THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

In Re: PARKING HEATERS ANTITRUST LITIGATION	Case No. 15-MC-940 (DLI) (JO)
THIS DOCUMENT RELATES TO: *All Direct Purchaser Class Actions*	

NOTICE OF MOTION OF DIRECT PURCHASER PLAINTIFFS FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENTS WITH ESPAR AND WEBASTO DEFENDANTS

PLEASE TAKE NOTICE that, upon the Memorandum of Law in Support of Motion for Preliminary Approval of Settlements and the related Declarations and exhibits thereto, Plaintiffs Triple Cities Acquisition LLC d/b/a Cook Brothers Truck Parts, National Trucking Financial Reclamation Services, LLC, TrailerCraft Inc., and Myers Equipment Corporation (collectively, "Direct Purchaser Plaintiffs" or "DPPs") will move this Court on February 16, 2018,[1] before the Honorable James Orenstein, United States Magistrate Judge, at the United States Courthouse, 225 Cadman Plaza East, Courtroom 11D South, Brooklyn, New York, for an order:

(A) granting preliminary approval of DPPs' Settlement Agreements with Webasto Products North America, Inc., Webasto Thermo & Comfort North America, Inc., and Webasto Thermo & Comfort SE (collectively, "Webasto") and Eberspaecher Climate Control Systems GmbH & Co. KG, Espar, Inc., and Espar Products Inc. (collectively, "Espar");

(B) certifying the Settlement Class for settlement purposes only;

[1] Pursuant to the Court's suggestion in its January 12, 2018 Order, if the Court adjourns the status conference to March 2, 2018, DPPs will address this motion at that time.

(C) appointing Triple Cities Acquisition LLC d/b/a Cook Brothers Truck Parts, National Trucking Financial Reclamation Services, LLC, TrailerCraft Inc., and Myers Equipment Corporation, as Representatives of the Settlement Class;

(D) appointing Hausfeld LLP and Roberts Law Firm, P.A., as Settlement Class Counsel;

(E) appointing Epiq Systems, Inc. as Settlement Administrator;

(F) appointing the Huntington National Bank as Escrow Agent;

(G) staying all proceedings in the Action against Defendants until the Court renders a final decision on approval of the Settlements set forth in the Settlement Agreements;

(H) approving the proposed form and manner of notice to the Settlement Class.

(I) scheduling a Final Fairness Hearing to consider entry of a final order approving the Settlements and the request for attorneys' fees, costs, and expenses; and

(J) entering any such other relief as the Court may deem just and appropriate.

A proposed preliminary approval order is submitted herewith.

Dated: January 18, 2018

Respectfully submitted,

HAUSFELD LLP

/s/ Bonny E. Sweeney
Bonny E. Sweeney
Seth R. Gassman
600 Montgomery Street, Suite 3200
San Francisco, CA 94111
Telephone: (415) 633-1908
Facsimile: (415) 358-4980
Email: bsweeney@hausfeld.com
Email: sgassman@hausfeld.com

Michael D. Hausfeld
Jeannine M. Kenney

ROBERTS LAW FIRM, P.A.

/s/ Michael L Roberts
Michael L. Roberts
Debra G. Josephson
Stephanie E. Smith
20 Rahling Circle
Little Rock, AR 72223
Tel: 501.476.7391
Facsimile: 501.821.4474
Email: mikeroberts@robertslawfirm.us
Email: stephaniesmith@robertslawfirm.us
Email: debrajosephson@robertslawfirm.us

HAUSFELD LLP
1700 K St. NW, Suite 650
Washington, D.C. 20006
Telephone: (202) 540-7200
Facsimile: (202) 540-7201
Email: mhausfeld@hausfeld.com
Email: jkenney@hausfeld.com

Brent Landau
HAUSFELD LLP
325 Chestnut St., Suite 900
Philadelphia, PA 19106
Telephone: (215-985-3270
Facsimile: (215) 985-3271
Email: blandau@hausfeld.com

On behalf of Direct Purchaser Plaintiffs and the Settlement Class

THE UNITED STATES DISTRICT COURT
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In Re: PARKING HEATERS ANTITRUST LITIGATION	Case No. 15-MC-940 (DLI) (JO)
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MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR PRELIMINARY APPROVAL OF DIRECT PURCHASER
PLAINTIFFS' CLASS SETTLEMENTS WITH ESPAR AND WEBASTO DEFENDANTS

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PRELIMINARY STATEMENT

Following extensive arm's-length negotiations, including mediations conducted by the Honorable William Cahill (ret.) for Webasto[1] and the Honorable Vaughn Walker (ret.) for Espar,[2] Direct Purchaser Plaintiffs ("DPPs")[3] have reached separate settlement agreements with Webasto and Espar (the "Settlements")[4] that provide significant compensation for the Settlement Class. Specifically, the Webasto settlement provides a fund of up to $7,000,000 for the benefit of the Class, which can be reduced by up to 35% depending on the amount of relevant commerce of those who opt out of the settlement. The Espar settlement will provide at least $5,200,000 for the benefit of the Class, which corresponds to a 35% reduction off of the $8,000,000 gross settlement amount to account for private settlements Espar entered into with potential Class members. These Settlements represent between 7% and 10% of the dollar value of sales to customers potentially affected by the conspiracy, a significant percentage well above what courts have found sufficient when approving settlements. The proposed Settlements, therefore, are well within the "range of reasonableness with respect to a settlement." *See Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972).

Accordingly, Direct Purchaser Plaintiffs respectfully request the Court to enter the Preliminary Approval Order attached as Exhibit 1 to the accompanying Notice of Motion; appoint Hausfeld LLP and Roberts Law Firm, PA as Class Counsel and DPPs as Class

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[1] Webasto Products North America, Inc., Webasto Thermo & Comfort North America, Inc., and Webasto Thermo & Comfort SE (collectively, "Webasto").
[2] Eberspaecher Climate Control Systems GmbH & Co. KG, Espar, Inc., and Espar Products Inc. (collectively, "Espar," and with Webasto, "Defendants").
[3] Triple Cities Acquisition LLC d/b/a Cook Brothers Truck Parts, National Trucking Financial Reclamation Services, LLC, TrailerCraft Inc., and Myers Equipment Corporation (collectively, "Direct Purchaser Plaintiffs" or "DPPs").
[4] The Settlement Agreement Between Direct Purchaser Plaintiffs and Webasto ("Webasto Settlement Agreement") is attached as Exhibit 1 to the Declaration of Seth R. Gassman ("Gassman Decl."). The Settlement Agreement Between Direct Purchaser Plaintiffs and Espar ("Espar Settlement Agreement") is attached as Exhibit 2 to the Gassman Decl. All definitions in the Settlement Agreements are incorporated herein by reference.

Representatives; appoint Huntington National Bank to serve as the escrow agent and Epiq Systems, Inc. to serve as the claims administrator for the proposed Settlements; and approve the notice program described herein.

BACKGROUND

I. NATURE OF THE LITIGATION

Defendants are the two primary sellers of Parking Heaters in the United States. During the Class Period (from October 1, 2007 up to and including December 31, 2012), Espar and Webasto had roughly equal market shares. Total combined U.S. sales by Espar and Webasto of aftermarket Parking Heaters for use in commercial vehicles during the Class Period were approximately $140 million.

Parking Heaters heat the cab (and engine, in some cases) of commercial vehicles during rest breaks and other stops, without the need to keep the engine idling. Parking Heaters are recommended by the EPA as an alternative to idling, and are increasingly important in the growing number of states and municipalities that prohibit vehicle idling. In 2002, only 1% of Class 8 trucks (the heavyweight truck classification that includes tractor-trailers with sleeping cabs) had parking heaters; now, approximately 12% have parking heaters.

During the Class Period, Webasto and Espar sold two types of Parking Heaters to Class members: air heaters and coolant (or water) heaters. The former heat the cabs of vehicles directly, whereas the latter heat the engine, which, in turn, heats the cab. Parking Heaters are manufactured in a variety of sizes, from 2 kilowatts up to at least 35 kilowatts.

In 2013, the European Commission ("EC") and the United States Department of Justice ("DOJ") Antitrust Division began investigations into Espar's and Webasto's anticompetitive conduct in Europe and in the United States. The EC concluded that German entities related to

Espar and Webasto had breached European Commission antitrust rules by fixing prices and allocating parking heater customers in the entire European Economic Area, fining Espar's German affiliate 68,175,000 Euros for its role in the cartel. Webasto was granted immunity by the EC for revealing the existence of the cartel.

On March 12, 2015, Espar, Inc. pleaded guilty to a one-count violation of the Sherman Antitrust Act, 15 U.S.C. § 1, for conspiring to fix the prices of Parking Heaters sold to aftermarket commercial vehicle customers in the United States between October 1, 2007 and December 31, 2012, and agreed to pay a $14.97 million fine. Gassman Decl., Ex. 3, Plea Agreement ¶ 2. As outlined in the sentencing memorandum and confirmed by documents produced to DPPs, DPPs believe that Webasto and Espar entered into at least two price-fixing agreements relating to sales in the United States: First, beginning around October 2007 and continuing until August 2008, DPPs believe that Espar and Webasto agreed to a $600 price floor for 2kw air heater kits and 4kw and 5kw water heater kits. Second, in fall 2008, DPPs believe that Webasto and Espar agreed to increase their list prices for Parking Heaters sold in the United States. Pursuant to this agreement, Webasto, which historically had lower U.S. list prices than Espar, increased its list prices by 25% effective August 1, 2008; Espar increased its list prices on most products by 8% effective January 1, 2009. According to Espar, Inc.'s guilty plea, this second conspiracy continued until the end of 2012.

Webasto has confirmed that it applied for leniency under the Antitrust Division's corporate leniency policy, and has cooperated with the DOJ and with DPPs.

II. PROCEDURAL HISTORY

The first direct purchaser class action was filed in the Eastern District of New York on March 16, 2015 by Plaintiff Triple Cities Acquisition LLC. Ultimately, eleven direct purchaser

and indirect purchaser class actions were filed in this district and assigned to District Judge Gleeson and Magistrate Judge Orenstein. Following Judge Gleeson's retirement, the case was re-assigned to Chief Judge Irizarry. Magistrate Judge Orenstein appointed Hausfeld LLP and Roberts Law Firm, P.A. as interim Co-Lead Class Counsel for the DPP class on August 11, 2015. Direct Purchaser Plaintiffs filed a consolidated class action complaint ("CAC") on April 22, 2016. The U.S. Defendants answered DPP's CAC on June 21, 2016, and the German Defendants answered on August 19 and August 22, 2016.

Over the course of several months, the parties engaged in several meet-and-confer sessions to reach a consensus on a proposed Document Preservation Stipulation and Order, ESI Protocol, and Scheduling Order, all of which were submitted to the Court on December 9, 2016 and entered by the Court on December 12, 2016.

The parties have engaged in substantial formal and informal discovery. Both Webasto (in accordance with its ACPERA cooperation obligations) and Espar have participated in attorney proffers with DPPs, in which Webasto's and Espar's attorneys provided a narrative description of the conduct and its participants and identified select relevant documents. In addition, both Webasto and Espar produced to DPPs all of the documents they produced to the DOJ. Following extensive meet-and-confers, both Defendants responded to DPPs' document requests and interrogatories, and began producing responsive documents (in addition to the DOJ productions) in March 2017, including the production of their transactional data. To date, the Defendants have produced over 170,000 documents comprising over 500,000 pages. The produced documents include documents reflecting communications between the Defendants, documents concerning the marketing and sale of Parking Heaters, and transactional data reflecting Defendants' sales of Parking Heaters to Class members from 2003 through 2014.

III. SETTLEMENT NEGOTIATIONS

Both Settlements were reached as a result of extensive, hard-fought, arm's-length negotiations.

A. Webasto

Following several unsuccessful settlement discussions and the exchange of demands and offers between the parties, DPPs and Webasto engaged in mediation before the Honorable William Cahill (Ret.) on February 24, 2017. At the end of that mediation, the parties had reached an agreement in principle to settle the case, with the exception of one significant term. Over the following months, the parties continued to negotiate, and finally executed the proposed Settlement Agreement on August 16, 2017.

B. Espar

DPPs and Espar engaged in settlement discussions and the exchange of offers and demands for over two years. Following more than one year of negotiations, DPPs and Espar engaged the Honorable Vaughn Walker (Ret.) to mediate the settlement. The first mediation session with Judge Walker occurred on September 1, 2016, but was unsuccessful. The parties then continued to negotiate, but remained unsuccessful. A second mediation with Judge Walker occurred on September 20, 2017. An agreement in principle was reached at this second mediation, although several details remained to be negotiated. The Espar Settlement Agreement was finally executed on November 29, 2017.

IV. SUMMARY OF THE SETTLEMENTS

A. The Settlement Class

Under the terms of both Settlements, the parties have agreed to certification of the following Settlement Class for settlement purposes only:

> All persons or entities (but excluding federal and state government entities and Defendants, their officers, directors, and employees, as well as Defendants' parents, predecessors, successors, subsidiaries, affiliates) that purchased Parking Heaters in the United States, its territories or possessions, directly from any Defendant, or from any of their parents, predecessors, successors, subsidiaries, or affiliates, at any time during the period from and including October 1, 2007 up to and including December 31, 2012.

Webasto Settlement Agreement ¶ 2; Espar Settlement Agreement ¶ 2.

B. Benefits of the Settlements

The proposed Settlements provide substantial benefits to the Settlement Class. First, they will deliver a significant monetary payment. Webasto has agreed to deposit $7 million into an escrow account within 15 business days after this Court issues an order preliminarily approving the Webasto Settlement; Espar has similarly agreed to deposit $8 million into an escrow account within 30 calendar days after this Court issues an order preliminarily approving the Espar Settlement.

For the Webasto Settlement, $7 million constitutes approximately 10% of Webasto's sales to Class members during the Class Period. If any Class member opts out of the proposed Settlement, Webasto's payment obligations will be reduced in an amount corresponding to each opt-out's purchase volume relative to the Settlement Class's U.S. purchases from Webasto during the Class Period, up to a maximum reduction of $2,450,000, or 35%. Webasto Settlement Agreement ¶¶ 30-34. Thus, the Webasto settlement amount is equal to approximately 10% of Webasto's sales during the Class Period regardless of the amount of commerce that opts out of the settlement, and possibly more if Settlement Class members representing more than 35% of Webasto's relevant U.S. sales during the Class Period opt out.

Espar's $8 million initial payment will be reduced to account for potential Class members that reached private settlement agreements with Espar prior to September 20, 2017, and for

which Espar can demonstrate that it made the payments pursuant to those private settlements. Espar's payment obligations will be reduced in an amount corresponding to each privately settling potential Class member's purchase volume relative to the Settlement Class's U.S. purchases from Espar during the Class Period, up to a maximum reduction of 35% of the settlement amount—or $2.8 million. Based on discovery, Espar has entered into private settlements with potential Class members representing approximately 75% of Espar's relevant sales during the Class Period. Espar, therefore, is likely to pay $5.2 million to the Settlement Class. Notably, however, potential members of the Settlement Class who have already entered into private settlements with Espar are still eligible to claim against the settlement fund, if the amount received from Espar in the private settlement is less than the amount the customer would receive from the settlement fund (with an offset for the amount already received from Espar). Espar Settlement Agreement ¶ 36.

In addition to the monetary benefits, both Defendants have agreed to provide substantial cooperation to DPPs in the event either of these Settlements is not approved, which will be beneficial to DPPs should one of the two Settlements not be approved or otherwise be rescinded. In that event, Defendants have agreed to make their attorneys available for meetings, plus follow-up, to provide information about documents, witnesses, meetings and events relevant to DPPs' claims; and to make available for interviews and trial testimony, as necessary, officers and employees with knowledge of DPPs' claims. Webasto Settlement Agreement ¶¶ 37-38; Espar Settlement Agreement ¶¶ 40-41. Defendants have also agreed to provide declarations, deposition or trial testimony as necessary to authenticate Defendants' documents and demonstrate that Defendants' business records are admissible under the hearsay exception of FRE 803(6). Webasto Settlement Agreement ¶ 36; Espar Settlement Agreement ¶ 39. This potential

cooperation serves as a disincentive for either Defendant to attempt to rescind its Settlement Agreement.

ARGUMENT

I. PRELIMINARY APPROVAL OF THE SETTLEMENTS IS APPROPRIATE

Under Federal Rule of Civil Procedure 23(e)(2), a court may approve a class action settlement so long as it is fair, reasonable and adequate. In making this determination, courts in the Second Circuit generally consider the nine factors set forth in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974), *abrogated on other grounds by Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000). Although *Grinnell* was addressing final approval, courts consider most of the *Grinnell* factors in determining whether a settlement should be preliminarily approved. *See Reade-Alvarez v. Eltman, Eltman, & Cooper, P.C.*, 237 F.R.D. 26, 34 (E.D.N.Y. 2006); *Melito v. Am. Eagle Outfitters, Inc.*, No. 1:14-CV-02440-VEC, 2017 WL 366247, at *1 (S.D.N.Y. Jan. 24, 2017) (finding settlement fair, reasonable, and adequate, and within the range of possible approval, after "preliminary evaluation"). "Where the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the reasonable range of approval, preliminary approval is granted." *In re Currency Conversion Fee Antitrust Litig.*, No. 01MDL1409, 2006 WL 3247396 at *5 (S.D.N.Y. Nov. 8, 2006); *In re Nasdaq Market-Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997); *accord In re Initial Pub. Offering Sec. Litig.*, 226 F.R.D. 186, 191 (S.D.N.Y. 2005).

A. The Settlements Are Fair, Reasonable and Adequate

The proposed Settlements easily meet the requirements for preliminary approval. The parties reached agreements only after extensive arm's-length negotiations, and, for both Settlements, following mediation with distinguished mediators and jurists—the Hon. William Cahill (Ret.) for Webasto and the Hon. Vaughn Walker (Ret.) for Espar. The Settlements do not grant improperly preferential treatment to any class representative or class segment, "ha[ve] no obvious deficiencies," and fall well within the range of reasonableness. *In re Elec. Books Antitrust Litig.*, No. 11MD2293 (DLC), 2014 WL 3798764, at *2 (S.D.N.Y. Aug. 1, 2014) ("The Court finds that the Settlement Agreement is the result of extensive, arm's length negotiations by counsel well-versed in antitrust litigation and the particulars of this case. The assistance of a well-known mediator . . . reinforces the conclusion that the Settlement Agreement is non-collusive.").

The proposed Settlements also satisfy the relevant *Grinnell* factors,[5] which examine (1) the complexity, expense and likely duration of the litigation; (2) the stage of the proceedings and the amount of discovery completed; (3) the risks of establishing liability; (4) the risks of establishing damages; (5) the risks of maintaining the class action through the trial; (6) the ability of the defendants to withstand a greater judgment; (7) the range of reasonableness of the settlement fund in light of the best possible recovery; and (8) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation. *Grinnell*, 495 F.2d at 463.

[5] The second factor—the reaction of the class to the settlement—is not relevant at this stage.

B. Continued Litigation Against Defendants Would Unnecessarily Increase the Expense and Complexity

Prosecuting this case against Defendants through trial and any appeals would prolong and complicate Class members' ability to obtain any compensation for Defendants' illegal conduct, and would impose significant—and unnecessary—costs on all parties. *See, e.g.*, *In re Austrian and German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 174 (S.D.N.Y. 2000) (recognizing that "[m]ost class actions are inherently complex and settlement avoids the costs, delays, and multitude of other problems associated with them"). By reaching a favorable settlement prior to dispositive motions or trial, DPPs seek to avoid significant expense and delay, and instead ensure recovery for all members of the Class.

Continued proceedings against Defendants would likely increase DPPs' costs and risks in litigating the class certification motion and trying the case, with little likelihood that Class members' recovery would be significantly increased. The proposed Settlements deliver a real and substantial remedy to the Settlement Class without the risk or delay inherent in prosecuting this matter against Defendants through trial and appeal. Thus, this factor favors preliminary approval of the Settlements. *See, e.g.*, *Weinberger v. Kendrick,* 698 F.2d 61, 73 (2d Cir. 1982) ("There are weighty justifications, such as the reduction of litigation and related expenses, for the general policy favoring the settlement of litigation."); *In re Sunrise Sec. Litig.,* 131 F.R.D. 450, 455 (E.D. Pa. 1990) (approving a class action settlement because, in part, the settlement "will alleviate . . . the extraordinary complexity, expense and likely duration of this litigation").

C. DPPs Have a Substantial Understanding of Strengths and Weaknesses of Claims

At the time they negotiated the proposed Settlements, Co-Lead Class Counsel were well-informed of the important facts and relevant legal issues. Through discovery, Defendants' proffers, and Espar Inc.'s guilty plea, DPPs gained a detailed understanding of the scope of the

conduct at issue in DPPs' complaint. In addition, as a result of their experts' work analyzing the transactional data produced by Espar and Webasto, Co-lead Class Counsel were knowledgeable about the range of damages they were likely to obtain from Defendants if this case proceeded to trial.

The proper question is "whether counsel had an adequate appreciation of the merits of the case before negotiating." *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 526, 537 (3d Cir. 2004) (internal quotation marks and citations omitted). "[T]he pretrial negotiations and discovery must be sufficiently adversarial that they are not designed to justify a settlement . . . [, but] an aggressive effort to ferret out facts helpful to the prosecution of the suit." *In re Austrian and German Bank Holocaust Litig.*, 80 F. Supp. 2d at 176 (internal quotation marks and citations omitted). This factor favors preliminary approval of the Settlements.

D. The Settlements Are More Than Reasonable Considering the Best Possible Recovery and Attendant Risks of Continued Litigation

Although DPPs face little risk in establishing the liability of either Webasto, a confirmed leniency applicant, or the Espar Defendants, one of which pleaded guilty to the conspiracy alleged, they do face risk in establishing damages and certifying and maintaining a class through trial. *See, e.g.*, *Weseley v. Spear, Leeds & Kellogg*, 711 F. Supp. 713, 719 (E.D.N.Y. 1989) (antitrust class actions are "notoriously complex, protracted, and bitterly fought"). A comparison of the strength of DPPs' claims with the amount offered by the Settlements supports preliminary approval of both Settlements. Given these attendant risks, the proposed Settlements, which provide relief approaching the best possible monetary recovery, are more than reasonable.

Webasto must pay at least $4,550,000 and up to $7 million for the benefit of the Settlement Class, which constitutes approximately 10% of Webasto's Parking Heaters sales in the United States to Settlement Class members during the Class Period. The $5.2 million for

Espar—which does not include the amounts customers privately received for separately negotiated settlements with Espar—represents more than 7% of Espar's Parking Heater sales during the Class Period. Courts regularly approve settlements where the payment represents a much lower percentage of sales. *See, e.g.*, *In re Pressure Sensitive Labelstock Antitrust Litig.,* 584 F. Supp. 2d 697, 702 (M.D. Pa. 2008) (approving the settlement where the cash portion of the settlement was approximately 1.5% of total sales); *In re Linerboard Antitrust Litig.,* 321 F. Supp. 2d 619, 627 (E.D. Pa. 2004) (approving the settlement where the settlement represented 1.62% of total sales); *cf Grinnell*, 495 F.2d at 458 ("[T]he vast majority of courts which have approved settlements in this type of case, even though they may not have explicitly addressed the issue, have given their approval to settlements which are traditionally based on an estimate of single damages only."); *In re Toys R Us Antitrust Litig.*, 191 F.R.D. 347, 352 (E.D.N.Y. 2000) (finding settlement of more than state-plaintiff estimate, but less than class-plaintiff estimate, of damages fair, adequate, and reasonable).

Because Webasto is a cooperating defendant within the meaning of ACPERA, DPPs' potential damages claims against Webasto at trial would likely be limited to single damages with no joint and several liability. Under the DOJ Antitrust Division's corporate leniency program, a corporation that reports illegal antitrust activity and then cooperates with the DOJ's investigation may obtain immunity from criminal charges if it meets certain conditions. One of those conditions is that the reporting company provide restitution to injured parties, where possible. https://www.justice.gov/atr/corporate-leniency-policy. In 2004 and 2010, Congress enacted and then amended the Antitrust Criminal Penalty Enhancement and Reform Act ("ACPERA"), which further incentivizes cartel members to report illegal activity by eliminating treble damages and

joint and several liability for a leniency applicant that provides "satisfactory" cooperation to civil claimants. Development and Promulgation of Voluntary Consensus Standards, Pub. L. No. 108-237, § 213, 118 Stat. 661, 665 (June 22, 2004); Pub. L. No. 111-190, § 124 Stat. 1275 (2010). Because it has cooperated with injured parties, including DPPs, Webasto's damages would likely be limited to single damages derived from the sales of Webasto's products. The Webasto settlement amount, which represents approximately 10% of Webasto's sales to the Settlement Class during the relevant period, is a particularly outstanding result in light of these limitations on DPPs' potential damages recoveries from Webasto.

Although Espar is not a leniency applicant, the damages DPPs could recover at trial against it would likely be even more limited, because Espar has already settled with a large number of potential Class members. Collectively, those settled potential Class members' purchases amount to nearly 75% of Espar's sales of affected products during the Class Period. DPPs' recovery of $5.2 million (assuming Espar demonstrates that it settled with customers representing at least 35% of Espar's relevant Parking Heater sales during the Class Period and that it paid those customers under those settlements) represents an excellent recovery for the Class. Indeed, $5.2 million represents approximately 32% of Espar's remaining sales in the case once the commerce of those who have already reached private settlements with Espar is excluded, an outstanding result well within the range courts have found to be acceptable.

The benefits of the Settlements go beyond the significant cash payment. The Settlements also include an important cooperation component. Should one of the Settlements not receive final approval, the other Defendant must make its attorneys, officers and employees available for interviews, must make its officers and employees available for trial and must assist DPPs in

establishing the admissibility of business records. Webasto Settlement Agreement ¶¶ 36-38; Espar Settlement Agreement ¶¶ 39-43.

E. The Settlements Are the Result of Arm's-Length Negotiations Conducted by Experienced Counsel.

These Settlements result from the efforts of highly-qualified counsel who engaged in arm's-length negotiations for years, as well as mediations held before highly-experienced mediators. Courts in the Second Circuit have found that when counsel engage in arm's-length negotiations that result in a settlement, the settlement is entitled to a presumption of fairness. *See In re NASDAQ Market-Makers Antitrust Litig*., 187 F.R.D. 465, 474 (S.D.N.Y. 1998) ("[s]o long as the integrity of the arm's-length negotiation process is preserved … a strong initial presumption of fairness attaches to the proposed settlement"). Further, the opinion of competent counsel is a factor to be considered by the Court in determining whether a settlement is fair, reasonable, and adequate. *See Chatelain v. Prudential-Bache Sec., Inc.*, 805 F. Supp. 209, 212 (S.D.N.Y. 1992) ("A substantial factor in determining the fairness of the settlement is the opinion of counsel involved in the settlement.") (citing *Cannon v. Texas Gulf Sulphur Company*, 55 F.R.D. 308 (S.D.N.Y.1972) (opinion of counsel should be given "great weight")). Co-Lead Class Counsel have extensive experience litigating complex class actions, including major antitrust matters, and are of the opinion that the Settlements are excellent and within the "range of reasonableness with respect to a settlement." *See Newman*, 464 F.2d at 693.

II. CERTIFICATION OF THE SETTLEMENT CLASS

Courts "are mindful of the 'strong judicial policy in favor of settlements, particularly in the class action context.'" *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116-17 (2d Cir. 2005) (citing *In re PaineWebber Ltd. P'ships Litig.*, 147 F.3d 132, 138 (2d Cir. 1998)). Thus, the "compromise of complex litigation is encouraged by the courts and favored by public

policy." 4 Newberg on Class Actions § 11:41, at 87 (5th ed.). A settlement class in complex litigation "actually enhances absent class members' opt-out rights because the right to exclusion is provided simultaneously with the opportunity to accept or reject the terms of a proposed settlement." *In re Prudential Sec. Ltd. P'ship Litig.*, 163 F.R.D. 200, 205 (S.D.N.Y. 1995).

When granting preliminary approval of a class action settlement, it is appropriate for a court to certify a class for settlement purposes. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). Direct Purchaser Plaintiffs, Webasto, and Espar all agree to certification of the Settlement Class for settlement purposes only.

A. The Settlements Satisfy the Requirements of Fed. R. Civ. P. 23(a)

Rule 23(a) sets forth the following prerequisites for certifying a class: "(1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a). These requirements are satisfied here.

1. The Settlement Class Is So Numerous That Joinder Is Impracticable

Federal Rule of Civil Procedure 23(a)(1) requires a showing that "the class is so numerous that individual joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). "[T]he numerosity requirement is satisfied when joinder of all putative class members would needlessly complicate and hinder efficient resolution of the litigation." *Trief v. Dun & Bradstreet Corp.*, 144 F.R.D. 193, 198 (S.D.N.Y. 1992). The Second Circuit has recognized that "numerosity is presumed at a level of 40 members." *See Consol. Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir. 1995); *see also Robidoux v. Celani,* 987 F.2d 931, 935 (2d Cir. 1993); *In re Indep. Energy Holdings PLC Sec. Litig.*, 210 F.R.D. 476, 479 (S.D.N.Y. 2002)

("[w]hile precise calculation of the number of class members is not required, numbers in excess of forty generally satisfy the requirement"). Based on documents and data produced by Defendants, there are likely hundreds of members of the Settlement Class, and Class members are located throughout the United States. Thus, the Settlement Class is so numerous that joinder of all members is impractical.

2. There Are Questions of Law and Fact Common to the Class

Rule 23(a)(2) requires the existence of a question of law or fact that is common to all class members and capable of class-wide resolution, the determination of which is central to the validity of all class members' claims. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349 (2011).

Although the claims need not be identical, they must share common questions of fact or law; the proper question is whether there is a "unifying thread" among the claims to warrant class certification. *Ackerman v. Coca–Cola Co.*, No. 09 CV 395 (DLI)(RML), 2013 WL 7044866, at *8 (E.D.N.Y. July 18, 2013) ("In other words, the class members' claims need not be identical, but [P]laintiffs must identify some unifying thread among the members' claims that warrants class treatment."). "Generally, courts have liberally construed the commonality requirement to mandate a minimum of one issue common to all class members." *Trief v. Dun & Bradstreet Corp.,* 144 F.R.D. 193, 198–99 (S.D.N.Y. 1992).

This case involves numerous common issues. Questions of law and fact common to the Settlement Class include, *inter alia*:

a) Whether Defendants and their co-conspirators engaged in a contract, combination and/or conspiracy to fix, raise, maintain and stabilize prices of Parking Heaters sold in the United States and/or for delivery into the United States;

b) The identity of the participants in the conspiracy;

c) The duration of the conspiracy and the acts carried out by Defendants and their co-conspirators in furtherance of the conspiracy;

d) Whether the conspiracy violated the Sherman Act;

e) Whether the conduct of Defendants and their co-conspirators caused injury to the businesses and property of the Direct Purchaser Plaintiffs and the other members of the Class;

f) The effect of the conspiracy on the prices of Parking Heaters sold in the United States and/or for delivery into the United States during the Class Period; and

g) The appropriate measure of damages.

These legal and factual questions are common to each member of the Settlement Class. Therefore, the commonality requirement is satisfied.

3. Representative Plaintiffs' Claims Are Typical of the Claims of the Settlement Class

Typicality is satisfied when "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). Whether a plaintiff's claims are typical of those of the other class members is closely related to the commonality inquiry. "Like the commonality requirement, typicality does not require the representative party's claims to be identical to those of all class members." *Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 182 (W.D.N.Y. 2005). Typicality is satisfied "when each class member's claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant's liability." *Marisol A. v. Giuliani*, 126 F.3d 372, 376 (2d Cir. 1997) (citation omitted). "[M]inor variations in the fact patterns underlying individual claims" do not defeat typicality when the defendants direct "the same unlawful conduct" at the named plaintiff and the class. *Robidoux*, 987 F.2d at 936-37.

As alleged, Settlement Class members all suffered the same form of harm because they all paid artificially inflated prices for Parking Heaters. Thus, the typicality requirement of Rule 23(a)(3) is satisfied.

4. Representative Plaintiffs Will Fairly and Adequately Represent the Interests of the Settlement Class

Class representatives must "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). When class representatives and members seek the common goal of the largest possible recovery for the class, their interests do not conflict. *Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 453 (S.D.N.Y. 2004) ("There is no conflict between the class representatives and the other class members. All share the common goal of maximizing recovery"); *Denney v. Deutsche Bank AG*, 443 F.3d 253, 268 (2d Cir. 2006) (adequacy requirement ensures that the named representative "have an interest in vigorously pursuing the claims of the class, and . . . have no interests antagonistic to the interests of other class members").

Direct Purchaser Plaintiffs' interests are aligned with those of the other Settlement Class members. Direct Purchaser Plaintiffs and all other Settlement Class members were injured by the same alleged conduct—Defendants' conspiracy to fix the prices of Parking Heaters—and share a strong interest in establishing Defendants' liability and maximizing class-wide damages. Additionally, Co-Lead Class Counsel also meet the adequacy requirement of Rule 23(a)(4). Co-Lead Class Counsel are highly capable and experienced attorneys who have successfully prosecuted numerous class action cases, including major antitrust actions, and are capable of and committed to vigorously representing the interests of the Settlement Class. *See* ECF No. 49 (appointing Hausfeld LLP and Roberts Law Firm P.A. as interim Co-Lead Class Counsel).

B. The Requirements of Rule 23(b)(3) Are Satisfied

Rule 23(b)(3) requires that "questions of law or fact common to the members of the class predominate over any questions affecting only individual members of the class, and that a class action is superior to other available methods for fairly and efficiently adjudicating the

controversy." Fed. R. Civ. P. 23(b)(3). These requirements were added "to cover cases 'in which a class action would achieve economies of time, effort, and expense, and promote . . . uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results.'" *Amchem*, 521 U.S. at 615 (quoting Fed. R. Civ. P. 23(b)(3) Adv. Comm. Notes to 1966 Amendment). Both of these requirements are satisfied here.

1. Common Questions of Law and Fact Predominate Over Individual Questions

Rule 23(b)(3)'s predominance element requires that "questions of law or fact common to class members predominate over any questions affecting only individual members." Fed. R. Civ. P. 23(b)(3). The requirement "is satisfied when 'common questions represent a significant aspect of [a] case and . . . can be resolved for all members of [a] class in a single adjudication.'" *Messner v. Northshore Univ. HealthSystem*, 669 F.3d 802, 815 (7th Cir. 2012) (quoting 7AA Wright & Miller, Federal Practice & Procedure § 1778 (3d ed. 2011). "Predominance is a test readily met in certain cases alleging . . . violations of . . . antitrust laws." *Amchem*, 521 U.S. at 625. Plaintiffs must demonstrate that "the issues in the class action that are subject to generalized proof, and thus applicable to the class as a whole . . . predominate over those issues that are subject only to individualized proof." *Cordes & Co. Fin. Servs., Inc. v. A.G. Edwards & Sons, Inc.*, 502 F.3d 91, 107-08 (2d Cir. 2007).

Here, Class members' common factual allegations and common legal theory—that Defendants allegedly violated the Sherman Act by fixing the prices of Parking Heaters—predominate over any factual or legal variations among Class members. The existence, operation, and effect of Defendants' alleged conspiracy to artificially fix, raise, and maintain the prices of Parking Heaters sold in the United States are central issues in this case that are common to all Settlement Class members. Therefore, the predominance requirement is satisfied in this

case.

2. A Class Action Is the Superior Method to Fairly and Efficiently Adjudicate the Matter

Rule 23(b)(3) requires a class action to be "superior to other available methods for the fair and efficient adjudication of the controversy," and sets forth the following factors:

> The matters pertinent to these findings include: (A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action.

Fed. R. Civ. P. 23(b)(3). Where, as here, a court is deciding on the certification question in the context of a proposed settlement class, questions regarding the manageability of the case for trial purposes do not have to be considered. *See Amchem*, 521 U.S. at 619. A class action is not only the most desirable, efficient, and convenient mechanism to resolve the claims of the Settlement Class, but it is almost certainly the only fair and efficient means available to adjudicate such claims. *See, e.g.*, *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 809 (1985) ("[c]lass actions . . . permit the plaintiffs to pool claims which would be uneconomical to litigate individually . . . [in such a case,] most of the plaintiffs would have no realistic day in court if a class action were not available"); *Green v. Wolf Corp.*, 406 F.2d 291, 301 (2d Cir. 1968) ("the class action device [is] superior to other methods available for a fair and efficient adjudication of the controversy").

Many individual Settlement Class members likely would be unable or unwilling to shoulder the great expense of litigating the claims at issue against Defendants. A class action provides Class members with an avenue for resolution of their claims and avoids repetitive proceedings and inconsistent adjudications of similar issues and claims. A class action is the most suitable mechanism to fairly, adequately, and efficiently resolve DPPs' and Settlement

Class members' claims.

III. CO-LEAD CLASS COUNSEL ARE WELL-QUALIFIED TO REPRESENT THE INTERESTS OF THE SETTLEMENT CLASS

"An order that certifies a class action . . . must appoint class counsel under Rule 23(g)." Fed. R. Civ. P. 23(c)(1)(B). In appointing class counsel, courts should consider (i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action, (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class. Fed. R. Civ. P. 23(g)(1)(A).

The work of Hausfeld LLP and Roberts Law Firm, P.A. in this litigation and their experience prosecuting complex litigation matters, including antitrust class action matters, shows that they are well-qualified to represent the Settlement Class and possess the necessary resources to do so. *See* Gassman Decl., Exhibits 4 and 5 (resumes of Co-Lead Class Counsel).

IV. NOTICE PROGRAM

DPPs propose that Epiq Systems, Inc. ("Epiq") serve as the Settlement Administrator for the Settlements and request that the Court approve and appoint Epiq as Settlement Administrator. Epiq has significant experience as a class action notice provider and administrator. *See* Declaration of Cameron R. Azari on Settlement Notice Plan and Notices ¶¶ 4-9 and Exhibit 1 ("Azari Decl."), filed herewith. DPPs also request that the Court appoint Huntington National Bank to serve as Escrow Agent.

DPPs, in consultation with Epiq, have designed a notice program that will ensure the due process of absent Class members. Under the program, notice of the proposed Settlements will be disseminated to absent Class members through first-class mail, where address information is available. Defendants have agreed to provide address information for all members of the

Settlement Class, to the extent they have not done so already and the information exists in their records. First-class mail, therefore, should work to notify all or nearly all of the Settlement Class members. In addition, and to ensure that any Settlement Class member for which there is either no address or incorrect address information still receives notice, DPPs propose publishing a summary notice of the proposed Settlements one time in a trade magazine—*Fleet Owner*—that caters to businesses that are likely to be members of the Settlement Class. *See generally* Azari Decl. ¶¶ 10-16 (describing notice program). The claims administrator will also establish both a website and a toll-free telephone number to assist with the administration of the Settlements. *See id*. ¶¶ 18, 20.

Attached as Exhibits 2 and 3 to the Azari Declaration are proposed forms of the mail notice and the summary publication notice, respectively. These notices describe the lawsuit; explain what a Class member must do to file a claim, object to the Settlements, or opt out; and provide contact information for additional information (including an informational website and a toll-free number). Importantly, each mailed notice will also provide each Class member with instructions on how to obtain information about the claim from the case website. Each member of the Class will receive a unique identification number that will allow them access to information on a website that details approximately how much they are likely to receive as part of the Settlements once that information is ascertainable.

Under Rule 23(e)(1)(B), "[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal . . . ." Fed. R. Civ. P. 23(e)(1)(B). Further, under Rule 23(c)(2)(B), "the court must direct to class members the best notice that is practicable under the circumstances." The purpose of notice is to "afford members of the class due process which, in the context of the Rule 23(b)(3) class action, guarantees them the opportunity to be

excluded from the class action and not be bound by any subsequent judgment." *Peters v. Nat'l R.R. Passenger Corp*., 966 F.2d 1483, 1486 (D.C. Cir. 1992) (internal citation omitted); *In re Visa Check/MasterMoney Antitrust Litig.*, No. CV-96-5238, 2002 WL 31528478, at *1 (E.D.N.Y. June 21, 2002) (finding notice plan that consists of individual notice supplemented with publication notice "consistent with the requirements of Rule 23 and due process).

Direct Purchaser Plaintiffs' proposed notice program will inform potential Class members about how to obtain additional information about the Settlement Agreements. In addition, the proposed notice will apprise each member of the Settlement Class of his, her, or its right to exclude themselves from, or object to, the Settlements. Webasto Settlement Agreement ¶¶ 5-9; Espar Settlement Agreement ¶¶ 5-10. The notice therefore complies with the requirements of Rule 23 and due process. *See* Azari Decl. ¶¶ 26-30.

Accordingly, the Court should approve the proposed notice plan.

CONCLUSION

As the above demonstrates, the Settlements readily meet the standard for preliminary approval. Accordingly, Direct Purchaser Plaintiffs, individually and on behalf of the Settlement Class, by and through counsel, respectfully request that this Honorable Court enter the Proposed Order, attached as Exhibit 1 to Direct Purchaser Plaintiffs' Notice of Motion:

(A) granting preliminary approval of the Settlement Agreements;

(B) certifying the Settlement Class for settlement purposes only;

(C) appointing Triple Cities Acquisition LLC d/b/a Cook Brothers Truck Parts, National Trucking Financial Reclamation Services, LLC, TrailerCraft Inc., and Myers Equipment Corporation, as Representatives of the Settlement Class;

(D) appointing Co-Lead Class Counsel Hausfeld LLP and Roberts Law Firm, P.A., as

Settlement Class Counsel;

(E) appointing Epiq Systems, Inc. as Settlement Administrator;

(F) appointing the Huntington National Bank as Escrow Agent;

(G) staying all proceedings in the Action against Defendants until the Court renders a final decision on approval of the Settlements set forth in the Settlement Agreements;

(H) scheduling a Final Fairness Hearing to consider entry of a final order approving the Settlements and the request for attorneys' fees, costs, and expenses; and

(I) entering any such other relief as the Court may deem just and appropriate.

Dated: January 18, 2018

HAUSFELD LLP

__/s/Bonny E. Sweeney__________
Bonny E. Sweeney
Seth R. Gassman
600 Montgomery Street, Suite 3200
San Francisco, CA 94111
Telephone: (415) 633-1908
Facsimile: (415) 358-4980
Email: bsweeney@hausfeld.com
Email: sgassman@hausfeld.com

Michael D. Hausfeld
Jeannine M. Kenney
HAUSFELD LLP
1700 K St. NW, Suite 650
Washington, D.C. 20006
Telephone: (202) 540-7200
Facsimile: (202) 540-7201
Email: mhausfeld@hausfeld.com
Email: jkenney@hausfeld.com

Brent Landau

ROBERTS LAW FIRM, P.A.

____/s/ Michael L. Roberts_____________
Michael L. Roberts
Debra G. Josephson
Stephanie E. Smith
20 Rahling Circle
Little Rock, AR 72223
Tel: 501.476.7391
Facsimile: 501.821.4474
Email: mikeroberts@robertslawfirm.us
Email: stephaniesmith@robertslawfirm.us
Email: debrajosephson@robertslawfirm.us

HAUSFELD LLP
325 Chestnut St., Suite 900
Philadelphia, PA 19106
Telephone: (215-985-3270
Facsimile: (215) 985-3271
Email: blandau@hausfeld.com

On behalf of Direct Purchaser Plaintiffs and the Settlement Class

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

In Re: PARKING HEATERS ANTITRUST LITIGATION	Case No. 15-MC-940 (DLI) (JO)
THIS DOCUMENT RELATES TO: *All Direct Purchaser Class Actions*	

DECLARATION OF SETH R. GASSMAN IN SUPPORT OF DIRECT PURCHASER PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENTS

I, Seth R. Gassman, declare as follows:

1. I am of counsel at Hausfeld LLP, counsel for Direct Purchaser Plaintiffs in the above-captioned action. I am a member in good standing of the New York, District of Columbia, and California bars. I am also admitted to the Eastern District of New York, among other federal jurisdictions. I submit this declaration in support of Direct Purchaser Plaintiffs' Motion for Preliminary Approval of their Class Settlements with Webasto Products North America, Inc., Webasto Thermo & Comfort North America, Inc., and Webasto Thermo & Comfort SE (collectively, "Webasto"), and Eberspaecher Climate Control Systems GmbH & Co. KG, Espar, Inc., and Espar Products Inc. (collectively, "Espar").

2. Attached as Exhibit 1 to this Declaration is a true and correct copy of the settlement agreement between Direct Purchaser Plaintiffs and Webasto.

3. Attached as Exhibit 2 to this Declaration is a true and correct copy of the settlement agreement between Direct Purchaser Plaintiffs and Espar.

4. Attached as Exhibit 3 to this Declaration is a true and correct copy of the guilty plea entered by Espar, Inc. on March 12, 2015.

5. Attached as Exhibit 4 to this Declaration is a true and correct copy of Hausfeld LLP's firm resume.

6. Attached as Exhibit 5 to this Declaration is a true and correct copy of Roberts Law Firm, P.A.'s resume.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January 18, 2018 in San Francisco, California.

Seth R. Gassman
Hausfeld LLP
600 Montgomery Street, Suite 3200
San Francisco, CA 94111

EXHIBIT 1

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

In Re: PARKING HEATERS ANTITRUST LITIGATION	Case No. 15-MC-940 (JG) (JO)
THIS DOCUMENT RELATES TO: *All Direct Purchaser Class Actions*	

SETTLEMENT AGREEMENT BETWEEN DIRECT PURCHASER PLAINTIFFS AND WEBASTO DEFENDANTS

This settlement agreement ("Settlement Agreement") is made and entered into this 16th day of August, 2017, by and between Defendants Webasto Products North America, Inc., Webasto Thermo & Comfort North America, Inc., Webasto Thermo & Comfort SE (collectively, "Webasto"), and Direct Purchaser Plaintiff Class Representatives Triple Cities Acquisition LLC d/b/a Cook Brothers Truck Parts, National Trucking Financial Reclamation Services, TrailerCraft Inc., and Myers Equipment Corporation, individually and on behalf of the Settlement Class (as defined in Paragraph 1(g)) (collectively, "Direct Purchaser Plaintiffs").

WHEREAS, on April 22, 2016, Direct Purchaser Plaintiffs filed a Consolidated Class Action Complaint and Jury Demand ("CAC"), on behalf of themselves and a putative class of others similarly situated, in case number 1:15-MC-0940 (JG) (JO) in the

United States District Court for the Eastern District of New York (the "Action");

WHEREAS, Direct Purchaser Plaintiffs have alleged, among other things, that Webasto participated in an unlawful conspiracy to raise, fix, maintain, and/or stabilize the price of Parking Heaters, as defined here and in the CAC, at artificially high levels in violation of Section 1 of the Sherman Act (15 U.S.C. § 1);

WHEREAS, Direct Purchaser Plaintiffs have concluded, after an investigation into the facts and the law, and after carefully considering the circumstances of claims made by Direct Purchaser Plaintiffs and the Settlement Class, and the possible legal and factual defenses thereto, that it is in the best interests of Direct Purchaser Plaintiffs and the Settlement Class to enter into this Settlement Agreement with Webasto to avoid the uncertainties and risks of litigation, and that the settlement set forth herein is fair, reasonable, adequate, and in the best interests of the Settlement Class;

WHEREAS, Webasto, 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 release, order and judgment contemplated by this Agreement, and to put to rest with finality all claims that have been or could have been asserted against Webasto with respect to Parking Heaters based on the allegations in the Action, as more particularly set out below;

WHEREAS, Direct Purchaser Plaintiffs, for themselves individually and on behalf of each Settlement Class Member, and Webasto agree that neither this Settlement Agreement nor any statement made in negotiation thereof shall be deemed or construed to

be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by Webasto or of the truth of any of the claims or allegations alleged in the Action, and evidence thereof shall not be discoverable or used in any way in any action, arbitration, or proceeding whatesoever, against Webasto;

WHEREAS, this Settlement Agreement is the product of arm's-length negotiations between Class Co-Lead Counsel and Webasto's counsel under the guidance and oversight of Mediator Judge William Cahill (Ret'd.), and this Settlement Agreement embodies all of the terms and conditions of the settlement agreed upon between Webasto and Direct Purchaser Plaintiffs, both for themselves individually and on behalf of the Settlement Class;

NOW, THEREFORE, in consideration of the covenants, terms, and releases in this Settlement Agreement, it is agreed, by and amongst Direct Purchaser Plaintiffs (for themselves individually and on behalf of the Settlement Class and each member thereof) and Webasto, by and through Class Co-Lead Counsel and Webasto's counsel, that, subject to the approval of the Court, the Action be settled, compromised, and dismissed with prejudice as to Webasto and the Released Parties only, without costs, except as stated herein, and releases be extended, as set forth in this Settlement Agreement.

I. DEFINITIONS

1. As used in this Settlement Agreement, the following terms have the meanings specified below:

a. "Action" means *In re Parking Heaters Antitrust Litigation*, No. 1:15-MC-0940 (DLI) (JO), which is currently pending in the United States District Court

for the Eastern District of New York, and includes all actions filed in or transferred to the United States District Court for the Eastern District of New York and consolidated thereunder and all actions that are otherwise based on the alleged conduct in the above-captioned litigation.

b. "Eligible Class Member" means any Settlement Class Member who will be entitled to a distribution from the Net Settlement Fund pursuant to the Plan of Distribution approved by the Court in accordance with the terms of this Settlement Agreement.

c. "Class Co-Lead Counsel" means Hausfeld, LLP and Roberts Law Firm, P.A.

d. "Class Distribution Order" has the meaning given to it in Paragraph 44.

e. "Settlement Class Member" means a person who is a member of the Settlement Class and has not timely and validly excluded himself, herself, or itself in accordance with the procedures establish by the Court.

f. "Class Notice" means, collectively, the Mail Notice and/or Publication Notice to the Settlement Class, which shall be subject to consultation and agreement with Webasto before being submitted to the Court for approval.

g. "Settlement Class" means, collectively, the class, as defined in Paragraph 2.

h. "Court" means the United States District Court for the Eastern District of New York.

i. "Webasto's Counsel" refers to the law firm Morgan, Lewis & Bockius LLP, representing Webasto Products North America, Inc., Webasto Thermo & Comfort North America, Inc., and Webasto Thermo & Comfort SE.

j. "Defendants" means Webasto Products North America, Inc., Webasto Thermo & Comfort North America, Inc., and Webasto Thermo & Comfort SE (collectively, "Webasto"), and Eberspaecher Climate Control Systems GmbH & Co. KG, Espar, Inc., and Espar Products Inc. (collectively, "Espar").

k. "Direct Purchaser Plaintiffs" means Triple Cities Acquisition LLC d/b/a Cook Brothers Truck Parts, National Trucking Financial Reclamation Services, TrailerCraft Inc., and Myers Equipment Corporation.

l. "Effective Date" or "Effective Date of Settlement" has the meaning given to it in Paragraph 11.

m. "Escrow Agent" means a qualified financial institution that can serve as an escrow agent for this Settlement Agreement.

n. "Execution Date" means the date the Settlement Agreement is signed by all Settlement Parties.

o. "Fairness Hearing" means the hearing to be held by the Court to determine whether the settlement set forth in this Settlement Agreement shall receive final approval pursuant to Fed. R. Civ. P. 23.

p. "Fee and Expense Application" has the meaning given to it in Paragraph 21.

q. "Final Judgment and Order of Dismissal" means the order of the

Court finally approving the settlement set forth in this Settlement Agreement and dismissing the claims of Direct Purchaser Plaintiffs and the Settlement Class against Webasto. The Final Judgment and Order of Dismissal shall become final when: (i) no appeal has been filed and the prescribed time for commencing any appeal has expired; or (ii) an appeal has been filed and either (1) the appeal has been dismissed and the prescribed time, if any, for commencing any further appeal has expired, or (2) the order has been affirmed in all material respects and the prescribed time, if any, for commencing any further appeal has expired. For purposes of this paragraph, an appeal includes appeals as of right, discretionary appeals, interlocutory appeals, proceedings involving writs of certiorari or mandamus, and any other proceedings of like kind. It is agreed that the provisions of Rule 60 shall not be taken into account in determining the above-stated times.

r. "Mail Notice" means the Notice of Proposed Settlement of Class Action to be provided to the Settlement Class as provided in this Settlement Agreement, the Preliminary Approval Order, and the Notice Order.

s. "Net Settlement Fund" is the Settlement Fund less court-approved: (1) costs used for administration of the Settlement Fund, including taxes; (2) costs to issue Class Notice; and (3) costs or attorneys' fees the Court has ordered to be paid from the Settlement Fund.

t. "Notice Order" means an order of the Court that approves the form of Class Notice and preliminarily approves the proposed Plan of Distribution.

u. "Opt Out Deadline" means the deadline established by the Court and set forth in the Settlement Class Notice by which potential Settlement Class Members

must request exclusion from the Settlement Class.

v. "Opt Outs" means those potential Settlement Class Members who have exercised their right to request exclusion from the Settlement Class prior to the Opt Out Deadline.

w. "Parking Heaters" means parking heaters for commercial vehicles sold in the aftermarket, including the heaters themselves, accessories sold for use with the heaters, and parking heater kits containing heaters and selected accessories.

x. "Settlement Parties" means Webasto and Direct Purchaser Plaintiffs.

y. "Plan of Distribution" means a plan or formula of allocation of the Net Settlement Fund whereby the Settlement Fund shall be distributed to Eligible Class Members after payment of expenses of notice and administration of the settlement, Taxes and tax expenses, and such attorneys' fees, costs, expenses, interest, and other expenses as may be awarded by the Court. At a time and in a manner determined by the Court, Class Co-Lead Counsel shall submit for Court approval a Plan of Distribution for the Settlement Class that will provide for the distribution of the applicable Net Settlement Fund. Each Plan of Distribution shall be devised and implemented with the assistance of the Settlement Administrator.

z. "Preliminary Approval Order" means an order of the Court that preliminarily approves the settlement set forth in this Settlement Agreement.

aa. "Publication Notice" means the summary notice of proposed settlement and hearing for publication. Publication Notice will only be issued if the

Settlement Parties, in conjunction with the Settlement Administrator, deem such notice necessary.

bb. "Released Claims" means any and all claims, demands, actions, suits and causes of action, whether class, individual or otherwise in nature, that Releasing Parties, 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 arising out of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected, actual or contingent, liquidated or unliquidated claims, injuries or damages, and the consequences thereof, resulting from any actions or conduct alleged in the CAC (ECF No. 82, filed on April 22, 2016) or any act or omission of any Released Party relating to the marketing, distribution, and/or sale of Parking Heaters in the United States (including any conduct, whether or not concealed or hidden, alleged and causes of action asserted, or that could have been alleged or asserted, in the CAC) that may have occurred or did occur from the beginning of time through the Execution Date, and which in whole or in part arise from or relate to the facts or actions described in the CAC, including any claims, demands, actions, suits and causes of action under federal or state antitrust, unfair competition, unfair practices, price discrimination, unitary pricing, trade practice, consumer protection, fraud, RICO, civil conspiracy law, or similar laws, including, without limitation, the Sherman Antitrust Act, 15 U.S.C. § 1 et seq. Provided, however, Released Claims do not include, and this Settlement Agreement shall not and does not release, acquit or discharge, claims (1) based solely on purchases of Parking Heaters outside of the United States on behalf of persons or entities located outside of the United States at the time of such purchases; or (2) claims

based on any dispute from a Class Member not based on the activity that forms the basis of the Complaint, including claims based on theories of negligence, personal injury, breach of contract, bailment, failure to deliver lost goods, damaged or delayed goods, product defects, securities law violations, or similar claims. This Release is made without regard to the possibility of subsequent discovery or the existence of different or additional facts.

cc. "Released Parties" means Webasto Products North America, Inc., Webasto Thermo & Comfort North America, Inc., and Webasto Thermo & Comfort SE, and each of their past, present, and future, direct and indirect parents (including holding companies), subsidiaries, affiliates, associates, divisions, predecessors, successors, and each of their respective officers, directors, employees, agents, attorneys, legal or other representatives, trustees, heirs, executors, administrators, advisors, and assigns. Released Parties do not include Espar or any of Espar's past, present, and future, direct and indirect parents (including holding companies), subsidiaries, affiliates, associates, divisions, predecessors, successors, and each of their respective officers, directors, employees, agents, attorneys, legal or other representatives, trustees, heirs, executors, administrators, advisors, and assigns.

dd. "Releasing Party" means individually and collectively, Direct Purchaser Plaintiffs and each Settlement Class Member, on behalf of themselves and any of their respective past, present or future officers, directors, stockholders, agents, employees, legal or other representatives, partners, associates, trustees, parents, subsidiaries, divisions, affiliates, heirs, executors, administrators, purchasers, predecessors, successors, and assigns, whether or not they object to the settlement set forth

in this Settlement Agreement, and whether or not they are eligible for and/or do receive payment from the Net Settlement Fund.

ee. "Settlement Administrator" means a company qualified to administer the notice and claims process necessary to effectuate the Settlement Agreement.

ff. "Settlement Agreement" means this Stipulation and Agreement of Settlement.

gg. "Settlement Amount" means seven million United States dollars ($7,000,000).

hh. "Settlement Fund" means the escrow account established pursuant to Paragraphs 24-25 of this Settlement Agreement, including all monies held therein in accordance with the terms of this Settlement Agreement.

ii. "Taxes" has the meaning given to it in Paragraph 49.

II. CERTIFICATION OF THE SETTLEMENT CLASS

2. The Settlement Parties hereby stipulate solely for settlement purposes that the requirements of Fed. R. civ. P. 23(a) and Fed. R. Civ. P. 23(b)(3) are satisfied, and, subject to Court approval, the following settlement class (the "Settlement Class") shall be certified for settlement purposes:

> All persons or entities (but excluding federal and state government entities and Defendants, their officers, directors, and employees, as well as Defendants' parents, predecessors, successors, subsidiaries, affiliates) that purchased Parking Heaters in the United States, its territories or possessions, directly from any Defendant, or from any of their parents, predecessors, successors, subsidiaries, or affiliates, at any time during the period from and including October 1, 2007 up to and including December 31, 2012.

III. GOOD FAITH EFFORTS TO EFFECTUATE THIS SETTLEMENT AGREEMENT

3. The Settlement Parties agree to cooperate with one another in good faith to effectuate and implement the terms and conditions of this Settlement Agreement and to exercise their reasonable best efforts to accomplish the terms of this Settlement Agreement. This includes Direct Purchaser Plaintiffs serving notice on those entities required to receive notice pursuant to 28 U.S.C. § 1715.

IV. PRELIMINARY APPROVAL ORDER, NOTICE, AND FAIRNESS HEARING

4. Within sixty (60) days following the Execution Date, or such later date agreed to by the Settlement Parties, Class Co-Lead Counsel shall submit to the Court, and Webasto shall not oppose, a motion requesting entry of the Preliminary Approval Order. That motion shall:

i. seek certification of the Settlement Class solely for settlement purposes, pursuant to Fed. R. civ. P. 23(a) and Fed. R. Civ. P. 23(b)(3);

ii. request preliminary approval of the settlement set forth in this Settlement Agreement as fair, reasonable, and adequate;

iii. seek the appointment of Direct Purchaser Plaintiffs as representatives of the Settlement Class, and Class Co-Lead Counsel as Settlement Class counsel under Fed. R. Civ. P. 23(g);

iv. explain that Direct Purchaser Plaintiffs will submit a separate application, seeking approval of the form, and method of dissemination, of: (1) the Mail Notice, which shall include information that either informs the recipient of the

amount to which they are entitled under the Settlement Agreement or instructs the recipient how to obtain information on the amount to which they are entitled under the Settlement Agreement and be mailed via first-class mail; and, if deemed necessary, (2) the Publication Notice, which the parties intend to be the best notice practicable under the circumstances and which shall be given in such manner and scope as is reasonable, and consistent with the requirements of Fed. R. Civ. P. 23;

v. seek appointment of a qualified Settlement Administrator;

vi. seek appointment of a qualified Escrow Agent;

vii. stay all proceedings in the Action against Webasto until the Court renders a final decision on approval of the settlement set forth in this Settlement Agreement; and

viii. attach a proposed form of order, which includes such provisions as are typical in such orders, including: (1) setting a date for the Fairness Hearing, and (2) a provision that, if final approval of the settlement is not obtained, the settlement is null and void, and the Settlement Parties will revert to their positions *ex ante* without prejudice to their rights, claims, or defenses.

5. Class Notice shall apprise each member of the Settlement Class of his, her, or its right to exclude themselves from, or object to, the settlement. In conjunction with the Settlement Administrator, the Settlement Parties shall endeavor to include information in the Mail Notice that either informs potential Class Members of the amount to which they are entitled under the Settlement Agreement or instructs the potential Class Member how to obtain information on the amount to which they are entitled under the Settlement

Agreement.

6. Webasto shall, at its own expense and as reasonably available to Webasto and permissible by law, supply to Class Co-Lead Counsel in electronic format, or other such form as may be reasonably requested by Class Co-Lead Counsel and the Settlement Administrator, the names and addresses of all members of the Settlement Class who can be reasonably identified based on customer records that Webasto has in its possession, custody, or control. Any information provided pursuant to this provision shall be subject to the provisions of the Confidentiality Stipulation and Protective Order (ECF No. 69, filed on October 28, 2015). Moreover, any information provided pursuant to this provision shall be used solely for purposes of providing notice and administering and verifying eligibility for the amount of payment, as set forth in this Section and Sections VI and XII, and any distribution of such information shall be limited to what is necessary for those purposes. Mail Notice shall be mailed only to those persons that are identified by Webasto. Publication Notice to other members of the Settlement Class, if deemed necessary, shall be by publication as set forth above, if approved by the Court.

7. With the object of reducing the costs of Class Notice, Class Co-Lead Counsel shall use their reasonable best efforts to coordinate the provision of Class Notice pertaining to this Settlement Agreement with the provision of notice for any other settlements that may be reached. In all events, Webasto shall have no liability for the costs of provision of notice beyond those set forth in Paragraphs 6 and 25.

8. Any person falling within the definition of the Settlement Class may request to be excluded from the Settlement Class ("Request for Exclusion"). A Request for

Exclusion must be: (i) in writing, (ii) signed by the person or his, her, or its authorized representative, (iii) state the name, address, and telephone number of that person, and (iv) include: (1) proof of membership in the Settlement Class; and (2) a signed statement that "I/we hereby request that I/we be excluded from the Settlement Class in the *In Re: Parking Heaters Antitrust Litigation*." The request must be mailed to the Settlement Administrator at the address provided in the Mail Notice and be postmarked no later than the opt-out deadline set by the Court. Unless the Court orders otherwise, a Request for Exclusion that does not include all of the foregoing information, that does not contain the proper signature, that is sent to an address other than the one designated in the Settlement Class Notice, or that is not sent within the time specified, shall be invalid, and the person(s) filing such an invalid request shall be a Class Member and shall be bound by the settlement set forth in the Settlement Agreement, if approved. All persons who submit valid and timely Requests for Exclusion in the manner set forth in this paragraph shall be excluded from the Settlement Class, shall have no rights under the Settlement Agreement, shall not share in the distribution of the Net Settlement Fund, and shall not be bound by the Settlement Agreement. Class Co-Lead Counsel shall cause to be provided to Webasto copies of all Requests for Exclusion, together with all documents and information provided with such Requests, and any written revocation of Requests for Exclusion, within three (3) business days of receipt by Class Co-Lead Counsel or that exclusion request.

9. Any person who has not requested exclusion from the Settlement Class and who objects to the settlement set forth in this Settlement Agreement may appear in person or through counsel, at that person's own expense, at the Fairness Hearing to present any

evidence or argument that the Court deems proper and relevant. No such person shall be heard, and no papers, briefs, pleadings, or other documents submitted by any such person shall be received and considered by the Court, unless such person properly submits a written objection that includes: (i) a notice of intention to appear, (ii) proof of membership in the Settlement Class; and (iii) the specific grounds for the objection and any reasons why such person desires to appear and be heard, as well as all documents or writings that such person desires the Court to consider. Such a written objection must be both filed with the Court no later than thirty (30) days prior to the date set for the Fairness Hearing and mailed to Class Co-Lead Counsel and Webasto's counsel at the addresses provided in the Settlement Class Notice and postmarked no later than thirty (30) days prior to the date set for the Fairness Hearing. Any person that fails to object in the manner prescribed herein shall be deemed to have waived his, her, or its objections and will forever be barred from making any such objections in the Action, unless otherwise excused for good cause shown, as determined by the Court.

10. If the Preliminary Approval Order and the Notice Order are entered by the Court, Direct Purchaser Plaintiffs shall seek, and, Webasto shall not unreasonably object to entry of a Final Judgment and Order of Dismissal, the text of which Direct Purchaser Plaintiffs and Webasto shall agree upon, that:

i. certifies the Settlement Class pursuant to Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b)(3) solely for the purposes of the settlement;

ii. approves finally the settlement set forth in this Settlement Agreement and its terms as being a fair, reasonable, and adequate settlement as to

Settlement Class Members and directing its consummation according to its terms;

iii. finds that the Settlement Class Notice constituted due, adequate, and sufficient notice of the settlement set forth in this Settlement Agreement and the Fairness Hearing and meets the requirements of Due Process and the Federal Rules of Civil Procedure;

iv. directs that, as to the Released Parties, the Action shall be dismissed with prejudice and, except as provided for in this Settlement Agreement, without costs. Such dismissal shall not affect, in any way, the right of Direct Purchaser Plaintiffs or Class Members to pursue claims, if any, outside the scope of the Released Claims;

v. orders that the Releasing Parties are permanently enjoined and barred from instituting, commencing, or prosecuting any action or other proceedings asserting any Released Claims against any Released Party;

vi. retains with the Court exclusive jurisdiction over the settlement and this Settlement Agreement, including the administration and consummation of the settlement; and

vii. determines under Fed. R. Civ. P. 54(b) that there is no just reason for delay and directs that the judgment of dismissal as to Webasto shall be final and entered forthwith.

V. EFFECTIVE DATE OF SETTLEMENT

11. The Effective Date of Settlement shall be the date when all of the following events shall have occurred and shall be conditioned on the occurrence of all the following events:

i. the contribution to the Settlement Fund has been made pursuant to this Settlement Agreement;

ii. entry of the Preliminary Approval Order;

iii. entry of the Notice Order;

iv. final approval by the Court of the settlement set forth in this Settlement Agreement, following Class Notice and the Fairness Hearing;

v. no Settlement Party has exercised his, her, or its rights to terminate this Settlement Agreement pursuant to Section XIV; and

vi. entry by the Court of a Final Judgment and Order of Dismissal, and the Final Judgment and Order of Dismissal becomes final.

12. Notwithstanding any other provision herein, any proceeding or order, or motion for reconsideration, appeal, petition for a writ of certiorari or its equivalent, pertaining solely to any Plan of Distribution and/or Fee and Expense Application, shall not in any way delay or preclude the Effective Date.

13. On the date that Direct Purchaser Plaintiffs and Webasto have executed this Settlement Agreement, Direct Purchaser Plaintiffs and Webasto shall be bound by its terms and this Settlement Agreement shall not be rescinded or revoked except in accordance with Sections X or XIV of this Settlement Agreement.

VI. SETTLEMENT ADMINISTRATOR

14. Pursuant to the Preliminary Approval Order, and subject to Court approval, Class Co-Lead Counsel shall engage a qualified claims administrator as the Settlement Administrator. The Settlement Administrator will assist with the settlement process as set

forth herein.

15. The Settlement Administrator shall assist in the development of the Plan of Distribution and otherwise assist in the effectuation of this Settlement Agreement and any Court orders related thereto.

16. The Settlement Administrator shall effectuate the notice plan approved by the Court in the Preliminary Approval Order and the Notice Order, shall administer and calculate the amount owed to Class Members pursuant to the Plan of Distribution, and shall oversee distribution of the Net Settlement Fund to Eligible Class Members in accordance with the Plan of Distribution.

VII. SCOPE AND EFFECT OF SETTLEMENT

17. The obligations incurred pursuant to this Settlement Agreement shall be in full and final disposition of: (i) the Action against Webasto; and (ii) any and all Released Claims as against all Released Parties.

18. Upon the Effective Date of Settlement, each of the Releasing Parties: (i) shall be deemed to have, and by operation of the Final Judgment and Order of Dismissal, shall have, fully, finally, and forever, waived, released, relinquished, and discharged all Released Claims against the Released Parties, regardless of whether such Releasing Party is eligible for and/or received payment under this Settlement Agreement; and (ii) shall forever be enjoined from prosecuting in any forum any Released Claim against any of the Released Parties; and (iii) agrees and covenants not to sue any of the Released Parties on the basis of any Released Claims or to assist any third party in commencing or maintaining any suit against any Released Party related in any way to any Released Claims.

19. The release set forth in Paragraph 18 constitutes a waiver of Section 1542 of the California Civil Code and Section 20-7-11 of the South Dakota Codified Laws, each of which provides that 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, and a waiver of any similar, comparable, or equivalent provisions, statute, regulation, rule, or principle of law or equity of any other state or applicable jurisdiction. The Releasing Parties acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true with respect to the subject matter of this Settlement Agreement, but that it is their intention to release and settle fully, finally, and forever any and all claims released in Paragraph 18, and in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of any such additional or different facts. The Settlement Parties acknowledge that the foregoing waiver was separately bargained for and is a key and integral element of the Settlement Agreement of which the release is a part.

20. In the event that this Settlement Agreement is terminated pursuant to Sections X or XIV, or any condition for the final approval of this Settlement Agreement is not satisfied, the release and covenant not to sue provisions of the foregoing paragraphs shall be null and void and unenforceable.

VIII. FEE AND EXPENSE APPLICATION

21. Class Co-Lead Counsel will submit an application or applications (the "Fee and Expense Application") to the Court for an award from the Settlement Fund of: (i)

attorneys' fees not to exceed 33-1/3% of the Settlement Amount; (ii) reimbursement of litigation expenses incurred in connection with the prosecution of the Action, including any costs associated with notice; and/or (iii) incentive awards for Direct Purchaser Plaintiffs in conjunction with their representation of the Settlement Class. Webasto will take no position on the Fee and Expense Application. Attorneys' fees, expenses, and interest as are awarded by the Court ("Fee and Expense Award") to Class Co-Lead Counsel shall be paid from the Settlement Fund to Class Lead Counsel immediately upon entry by the Court of an order awarding such amounts, notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the settlement or any part thereof, subject to Class Co-Lead Counsel's obligation to repay those amounts to the Settlement Fund, plus accrued interest at the same net rate as is earned by the Settlement Fund, if and when, as a result of any appeal and/or further proceedings on remand, or successful collateral attack, the Fee and Expense Award is reduced or reversed, or return of the Settlement Fund is required consistent with the provisions of Sections X or XIV hereof. In such event, Class Co-Lead Counsel shall, within twenty-one (21) business days from the event which requires repayment of the Fee and Expense Award, refund to the Settlement Fund the Fee and Expense Award paid to them, along with interest at the same net rate as that earned by the Settlement Fund.

22. Notwithstanding any other provision of this Settlement Agreement to the contrary, the Fee and Expense Application shall be considered by the Court separate and apart from its consideration of the fairness, reasonableness, and adequacy of the settlement, and any order or proceeding relating to the Fee and Expense Application, or any appeal of

any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Settlement Agreement or the settlement of the Action, or affect the finality or binding nature of any of the releases granted hereunder.

23. The Released Parties shall have no responsibility for, and no liability whatsoever with respect to, any costs, fees or expenses of any/or 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 shall be paid out of the Settlement Fund.

IX. THE SETTLEMENT FUND

24. The Settlement Fund shall be established as an escrow account and administered by a qualified Escrow Agent, subject to approval by the Court. The Settlement Fund shall be administered pursuant to this Settlement Agreement and subject to the Court's continuing supervision and control. No monies shall be paid from the Settlement Fund without the specific authorization of Class Co-Lead Counsel. Counsel for the Parties agree to cooperate, in good faith, to form an appropriate escrow agreement in conformance with this Settlement Agreement.

25. Webasto shall cause the payment of $7,000,000 to be transferred to the Escrow Agent within fifteen (15) business days following entry of the Preliminary Approval Order, provided that within ten (10) days following entry of the Preliminary Approval Order, Class Co-Lead Counsel shall provide Webasto with such information as Webasto may require to complete the wire transfer. These funds, together with any interest earned thereon, shall constitute the Settlement Fund. All costs and expenses incurred in

connection with providing Class Notice and the administration of the settlement shall be paid from the Settlement Fund, subject to approval from the Court.

26. Without prejudice to the Direct Purchaser Plaintiffs' right to seek enforcement of this Settlement Agreement, if the Settlement Amount of $7,000,000 is not timely transferred to the escrow account, Class Co-Lead Counsel may terminate this Settlement Agreement if: (i) Class Co-Lead Counsel has notified Webasto's counsel in writing of Class Co-Lead Counsel's intention to terminate this Settlement Agreement; and (ii) the Settlement Amount is not transferred to the Settlement Fund within ten (10) business days after Class Co-Lead Counsel has provided such written notice.

27. The Settlement Fund shall be invested exclusively in 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 a U.S. Treasury Fund or a bank account that is either: (a) fully insured by the Federal Deposit Insurance Corporation ("FDIC"); or (b) secured by instruments backed by the full faith and credit of the United States Government. The proceeds of these accounts shall be reinvested in similar instruments at their then-current market rates as they mature. All risks related to the investment of the Settlement Fund in accordance with the investment guidelines set forth in this paragraph shall be borne by the Settlement Fund.

28. All funds held by the Escrow Agent 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 Settlement Agreement and the Plan of Distribution approved by the Court.

29. As set forth above and elsewhere in this Settlement Agreement, Webasto shall be responsible for paying the Settlement Amount. Webasto shall have no responsibility for any other costs, including, as further detailed in this Settlement Agreement, any attorneys' fees and expenses or any Taxes or tax-related costs relating to the Settlement Fund, but all such fees, expenses, and costs shall be paid from the Settlement Fund, as approved by the Court.

X. PROVISIONAL OPT-OUT REDUCTION

30. Within ten (10) business days of the conclusion of the opt-out period established by the Court, Direct Purchaser Plaintiffs shall provide to Webasto a written list of all potential Settlement Class Members who have exercised their right to request exclusion from the Settlement Class.

31. Within twenty (20) business days of Direct Purchaser Plaintiffs' providing the list set out in Paragraph 30, Webasto shall provide Class Co-Lead Counsel with the dollar value of all Parking Heater sales by Webasto to each opt out during the Settlement Class period, the total dollar value of all Parking Heater sales by Webasto to all opt outs during the Settlement Class period (the "Opt Out Sales"), and the dollar value of all Parking Heater sales by Webasto to the entire proposed Settlement Class (including the sales to all of the opt outs) during the Settlement Class Period ("Settlement Class Sales."). The ratio of Opt Out Sales to Settlement Class Sales shall be the Opt Out Ratio.

32. In the event Direct Purchaser Plaintiffs dispute Webasto's claimed opt-out sales amount and/or the resulting Opt-Out Ratio, Direct Purchaser Plaintiffs must notify Webasto's counsel within ten (10) business days from the delivery thereof. Such

notification shall include the basis for any dispute and any supporting data or documentation. Webasto shall respond to such notification within ten (10) business days. If, after good faith discussion about the dispute, the parties cannot agree to a resolution, they shall submit the dispute to Mediator Cahill for final resolution.

33. Within ten (10) business days of the determination of the Opt-Out Ratio (whether upon a failure of Direct Purchaser Plaintiffs to dispute Webasto's calculation, by agreement of the parties, or pursuant to Mediator determination), Direct Purchaser Plaintiffs shall remit to Webasto an amount equal to $7,000,000 multiplied by the Opt Out Ratio. To the extent the Opt Out Ratio is thirty-five percent (35%) or higher, the Direct Purchaser Plaintiffs shall only be required to remit thirty-five percent (35%), or $2,450,000, of the Settlement Amount to Webasto. In no situation shall Direct Purchaser Plaintiffs be required to remit more than $2,450,000 pursuant to this Section.

34. Webasto shall have a unilateral right to terminate this Settlement Agreement if the Opt Out Ratio exceeds 35%. Webasto may exercise this right to terminate by providing written notice in accordance with the methodology described in Section XIV within five (5) business days of the determination of the Opt Out Ratio as described in Paragraph 31. In the event that Webasto terminates this Settlement Agreement pursuant to this Paragraph, the terms of Paragraph 51 of this Settlement Agreement shall apply, and the Settlement Parties shall proceed in all respects as if this Settlement Agreement and any related orders had not been entered, and any portion of the Settlement Fund previously paid by or on behalf of Webasto, together with any interest earned thereon (and, if applicable, re-payment of any Fee and Expense Award referred to in Section VIII hereof), less Taxes

due, if any, with respect to such income, and less costs of settlement administration and notice to the Settlement Class actually incurred and paid or payable from the Settlement Fund shall be returned to Webasto within ten (10) business days from the date of Webasto's exercise of its right to terminate the Settlement Agreement pursuant to this Paragraph. At the request of Webasto's counsel, the Escrow Agent shall apply for any tax refund owed on the Settlement Fund and pay the proceeds to Webasto.

XI. COOPERATION

35. Webasto shall undertake reasonable efforts to cooperate with Class Co-Lead Counsel as set forth specifically below.

36. To the extent any of Webasto's documents produced or to be produced in this Action are required to be authenticated and/or shown to be business records, including but not limited to evidence of Webasto's sales or costs of Parking Heaters, Webasto agrees to produce, to the extent possible, through affidavits or declarations, or if necessary, through deposition or testimony at trial, representatives qualified to authenticate such documents and information, and, to the extent possible, provide confirmation that such documents and information are business records provided that Class Co-Lead Counsel agrees to use reasonable efforts to minimize the burden to Webasto of any such authentication or business record testimony.

37. Webasto agrees that, after the Execution Date, Webasto's counsel will make themselves available for up to a total of three (3) meetings with Class Co-Lead Counsel to provide information concerning documents, witnesses, meetings, communications, and events not covered by privilege or other protections available under

any applicable United States laws, plus reasonable follow-up conversations including, but not limited to, identifying individuals such as current or former employees, who may provide information or potential testimony relevant to the Action. Notwithstanding any other provision in this Settlement Agreement, Direct Purchaser Plaintiffs and Class Co-Lead Counsel agree that they shall not use directly or indirectly the information so received for any purpose other than the prosecution of the Action. The Settlement Parties and their counsel further agree that any statements made by Webasto's counsel in connection with and/or as part of this Settlement Agreement shall be protected by Federal Rule of Evidence 408, and shall in no event be discoverable by any person or treated as evidence of any kind, unless otherwise ordered by a court of competent jurisdiction.

38. Upon reasonable notice after the Execution Date, Webasto agrees to use reasonable efforts to make available for interviews and trial testimony at a location or locations to which the parties mutually agree (except for testimony at trial, which shall be at the United States Courthouse of the United States District Court for the Eastern District of New York) a total of three (3) current officers and employees of Webasto who Class Co-Lead Counsel, in consultation with Webasto's counsel, reasonably and in good faith believe to have knowledge of the claims alleged by Direct Purchaser Plaintiffs in the Action. If it is necessary to preserve testimony before trial, Direct Purchaser Plaintiffs may move the Court for leave to take the deposition of any such individual, and Webasto agrees not to unreasonably oppose such motion. Nothing herein shall require Webasto to pay any expense of Direct Purchaser Plaintiffs or Class Co-Lead Counsel in connection with any interview, deposition, or testimony provided for in this Paragraph 38. Upon request of the

witness, Direct Purchaser Plaintiffs shall provide a mutually agreeable translator for interviews and/or trial testimony of any witness designated pursuant to this Section who is not prepared to be interviewed or to testify in English. An "interview" for purposes of this Paragraph 38 shall last no longer than seven hours, excluding reasonable breaks and, subject to reasonable limitations, may occur on more than a single day but not more than two days, which the parties shall endeavor to make consecutive. Direct Purchaser Plaintiffs agree to bear reasonable travel costs incurred by witnesses pursuant to this Paragraph 38, and Direct Purchaser Plaintiffs agree to bear lodging and meal expenses for such witnesses, not to exceed $500.00 per day, and the cost of any translator that may be required pursuant to this Paragraph 38.

39. The release of claims provided for under Paragraph 18 and the covenant not to sue provided under Paragraph 18 shall not apply to any person, who has affirmatively refused to comply with a reasonable request by Class Co-Lead Counsel, properly made Pursuant to Paragraph 38 of this Settlement Agreement, that the person be interviewed or appear to testify at trial, and who, at the time of the determination, is a current employee or officer of Webasto. If Class Co-Lead Counsel believes that such person has refused to cooperate under the terms of this Settlement Agreement and Webasto does not in good faith agree, Class Co-Lead Counsel may seek a determination from the Mediator, Judge William Cahill (Ret'd.), who shall make that determination after considering all relevant factors, including an explanation by the person, and taking due account of the person's reasonable scheduling conflicts, any pertinent health or personal problems, and the total burden of the cooperation that the person has provided.

40. Webasto's obligations to cooperate shall not be affected by the release set forth in Paragraph 18 of this Settlement Agreement. Unless this Settlement Agreement is rescinded, disapproved, or otherwise fails to take effect, Webasto's obligations to cooperate under this Settlement Agreement shall continue until the date that final judgment has been rendered in the Action with respect to all Defendants.

XII. ADMINISTRATION OF THE SETTLEMENT

41. The Settlement Administrator shall process this settlement based upon information provided by the Parties in connection with the settlement, and, after entry of the Settlement Class Distribution Order, distribute the Net Settlement Fund in accordance with the Settlement Class Distribution Order. Except for their obligation to fund the settlement or cause it to be funded as detailed in this Settlement Agreement, Webasto shall have no liability, obligation, or responsibility for the administration of the settlement or disbursement of the Net Settlement Fund.

42. All proceedings with respect to the administration, processing, and determination of payment to Eligible Class Members and the determination of all controversies relating thereto shall be subject to the jurisdiction of the Court.

43. The Net Settlement Fund shall be distributed by the Settlement Administrator to, or for the account of, Eligible Class Members, as the case may be, only after the Effective Date and after: (i) all matters with respect to the Fee and Expense Application have been resolved by the Court, and all appeals therefrom have been resolved or the time therefor has expired; and (ii) all fees and costs of administration have been paid.

44. Class Co-Lead Counsel will apply to the Court for an order (the "Class

Distribution Order") approving the Settlement Administrator's determinations concerning the payments to Eligible Class Members and approving any fees and expenses not previously applied for, including the fees and expenses of the Settlement Administrator, and, if the Effective Date has occurred, directing payment of the Net Settlement Fund to or for the account of Eligible Class Members, as the case may be.

45. Direct Purchaser Plaintiffs and Settlement Class Members shall look solely to the Settlement Fund as full, final, and complete satisfaction of all Released Claims. Except as set forth in Paragraph 25, Webasto shall have no obligation under this Settlement Agreement or the settlement to pay or cause to be paid any amount of money, and Webasto shall have no obligation to pay or reimburse any fees, expenses, costs, liability, losses, Taxes, or damages whatsoever alleged or incurred by Direct Purchaser Plaintiffs, by any Settlement Class Member, or by any Releasing Parties, including but not limited to by their attorneys, experts, advisors, agents, or representatives, with respect to the Action and Released Claims. Direct Purchaser Plaintiffs and Settlement Class Members acknowledge that as of the Effective Date, the releases given herein shall become effective immediately by operation of the Final Judgment and Order of Dismissal and shall be permanent, absolute, and unconditional.

46. Webasto shall not have a reversionary interest in the Net Settlement Fund unless this Settlement Agreement is rescinded pursuant to Paragraphs 34 or 50. If there is a balance remaining in the Net Settlement Fund after six (6) months from the date of distribution of the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise), or reasonably soon thereafter, the Settlement Administrator shall, if

logistically feasible and economically justifiable, reallocate such balances among Eligible Class Members in an equitable fashion. These redistributions shall be repeated until the remaining balance in the Net Settlement Fund is *de minimis* and such remaining balance shall be donated to an appropriate 501(c)(3) non-profit organization selected by Class Co-Lead Counsel and approved by the Court.

XIII. TAXES

47. The Parties agree that the Settlement Fund is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation §1.468B-1, and agree not to take any position for Tax purposes inconsistent therewith. The Settlement Fund, less any amounts incurred for notice, administration, and/or Taxes (as defined below), plus any accrued interest thereon, shall be returned to Webasto, as provided in Paragraph 50, if the settlement does not become effective for any reason, including by reason of a termination of this Settlement Agreement pursuant to Sections X or XIV.

48. For the purpose of § 468B of the United States Internal Revenue Code and the Treasury regulations thereunder, Class Co-Lead Counsel shall be designated as the "administrator" of the Settlement Fund. Class Co-Lead Counsel shall timely and properly file all income, informational, and other tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treas. Reg. §1.468B-2(k)). Such returns shall be consistent with this Section XIII and in all events shall reflect that all Taxes (as defined below) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein.

49. All: (i) taxes or other similar imposts or charges (including any estimated

taxes, interest, penalties, or additions to tax) arising with respect to the income earned by the Settlement Fund, including any taxes or tax detriments that may be imposed upon the Released Parties 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" within the meaning of Treasury Regulation §1.468B-1 (or any relevant equivalent for state tax purposes); and (ii) other taxes or tax expenses imposed on or in connection with the Settlement Fund (collectively "Taxes"), shall promptly be paid out of the Settlement Fund by the Escrow Agent without prior order from the Court. The Escrow Agent shall also be obligated to, and shall be responsible for, withholding from distribution to Settlement Class Members any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes. The Settlement Parties agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this paragraph. Neither the Settlement Parties nor their counsel shall have any responsibility for or liability whatsoever with respect to: (i) any act, omission, or determination of the Escrow Agent, or Settlement Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement Fund or otherwise; (ii) the Plan of Distribution; (iii) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (iv) any losses suffered by, or fluctuations in the value of, the Settlement Fund; or (v) the payment or withholding of any Taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any Tax returns. The Escrow Agent shall indemnify and hold harmless the Settlement Parties out of the Settlement Fund from

and against any claims, liabilities, or losses relating to the matters addressed in the preceding sentence.

XIV. TERMINATION OF SETTLEMENT

50. Direct Purchaser Plaintiffs, through Class Co-Lead Counsel, and Webasto, through Webasto's counsel, shall, in each of their separate discretions, have the right to terminate the settlement set forth in this Settlement Agreement by providing written notice of their election to do so ("Termination Notice") to all other Settlement Parties hereto within thirty (30) days of the date on which: (i) the Court enters an order declining to enter the Preliminary Approval Order in any material respect; (ii) the Court enters an order refusing to approve this Settlement Agreement or any material part of it; (iii) the Court enters an order declining to enter the Final Judgment and Order of Dismissal in any material respect; or (iv) the Final Judgment and Order of Dismissal is modified or reversed by a court of appeal or any higher court in any material respect. In addition, upon written notice to all Settlement Parties, Webasto shall have the right to terminate the Settlement Agreement pursuant to the Opt-Out Termination Option described in Paragraph 34. Notwithstanding this paragraph, the Court's determination as to the Fee and Expense Application and/or any Plan of Distribution, or any determination on appeal from any such order, shall not provide grounds for termination of this Settlement Agreement or settlement.

51. Except as otherwise provided herein, in the event the Settlement Agreement is terminated in accordance herewith, is vacated, is not approved, or the Effective Date fails to occur for any reason, then the parties to this Settlement Agreement shall be deemed to

have reverted to their respective status in the Action as of the Execution Date, and, except as otherwise expressly provided herein, the Settlement Parties shall proceed in all respects as if this Settlement Agreement and any related orders had not been entered, and any portion of the Settlement Fund previously paid by or on behalf of Webasto, together with any interest earned thereon (and, if applicable, re-payment of any Fee and Expense Award referred to in Section VIII hereof), less Taxes due, if any, with respect to such income, and less costs of settlement administration and notice to the Settlement Class actually incurred and paid or payable from the Settlement Fund shall be returned to Webasto within ten (10) business days from the date of the event causing such termination. At the request of Webasto's counsel, the Escrow Agent shall apply for any tax refund owed on the Settlement Fund and pay the proceeds to Webasto.

52. Neither Webasto nor Webasto's counsel shall initiate discussions encouraging, either directly or indirectly, any potential member of the Settlement Class to request exclusion from the Settlement Class.

XV. RESERVATION OF CLASS MEMBERS' RIGHTS AGAINST OTHER DEFENDANTS

53. All rights of any Settlement Class Member against other former, current, or future Defendants or co-conspirators, or any other person, other than the Released Parties, with respect to any of the Released Claims are specifically reserved by Direct Purchaser Plaintiffs and the Settlement Class Members. The sale of Parking Heaters by Webasto shall, to the extent permitted and/or authorized by law, remain in the case against the other current or future Defendants in the Action other than the Released Parties as a potential basis for damage claims and shall be part of any joint and several liability claims against

the other former, current, or future defendants in the Action or any other persons other than the Released Parties.

XVI. MISCELLANEOUS

54. This Agreement does not settle or compromise any claim by Plaintiffs or any Class Member against any former or current Defendants or alleged co-conspirator or any other person or entity other than the Released Parties.

55. The parties to this Settlement Agreement intend the settlement to be a final and complete resolution of all disputes asserted or which could be asserted by Direct Purchaser Plaintiffs and/or any Settlement Class Member against the Released Parties with respect to the Action and the Released Claims. Accordingly, Direct Purchaser Plaintiffs and Webasto agree not to assert in any judicial proceeding that the Action was brought by Direct Purchaser Plaintiffs or defended by Webasto in bad faith or without a reasonable basis. The Settlement Parties further agree not to assert in any judicial proceeding that any Party violated Fed. R. Civ. P. 11. The Settlement Parties agree that the amount paid and the other terms of the settlement were negotiated at arm's-length in good faith by the Settlement Parties, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel and the mediator.

56. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

57. The administration and consummation of the settlement as embodied in this Settlement Agreement shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of entering orders relating to the Fee and Expense Application,

the Plan of Distribution, and enforcing the terms of this Settlement Agreement.

58. For the purpose of construing or interpreting this Settlement Agreement, Direct Purchaser Plaintiffs and Webasto agree that it is to be deemed to have been drafted equally by all Settlement Parties hereto and shall not be construed strictly for or against any party.

59. This Settlement Agreement shall constitute the entire agreement between Direct Purchaser Plaintiffs and Webasto pertaining to the settlement of the Action against Webasto and supersedes any and all prior and contemporaneous undertakings of Direct Purchaser Plaintiffs and Webasto in connection therewith. All terms of this Settlement Agreement are contractual and not mere recitals. The terms of this Settlement Agreement are and shall be binding upon each of the Settlement Parties hereto, their heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, and assigns, and upon all other persons claiming any interest in the subject matter hereto through any of the parties hereto including any Settlement Class Members.

60. This Settlement Agreement may be modified or amended only by a writing executed by Direct Purchaser Plaintiffs, through Class Co-Lead Counsel, and Webasto, through Webasto's counsel, subject (if after preliminary or final approval by the Court) to approval by the Court. Amendments and modifications may be made without notice to the Settlement Class unless notice is required by law or by the Court.

61. Nothing in this Settlement Agreement constitutes an admission by Webasto as to the merits of the allegations made in the Action, the validity of any defenses that could

be asserted by Webasto, or the appropriateness of certification of any class other than the Settlement Class under Fed. R. Civ. P. 23 solely for settlement purposes. This Settlement Agreement is without prejudice to the rights of Webasto to: (i) challenge the Court's certification of any class, including the Settlement Class, in the Action should the Settlement Agreement not be approved or implemented for any reason; and/or (ii) oppose any certification or request for certification in any other proposed or certified class action.

62. All terms of this Settlement Agreement shall be governed by and interpreted according to the substantive laws of New York without regard to its choice-of-law principles.

63. Webasto, Direct Purchaser Plaintiffs, their respective counsel, and the Settlement Class Members hereby irrevocably submit to the exclusive jurisdiction of the United States District Court for the Eastern District of New York, for any suit, action, proceeding or dispute arising out of or relating to this Settlement Agreement or the applicability of this Settlement Agreement, including, without limitation, any suit, action, proceeding, or dispute relating to the release provisions herein.

64. The proposed Plan of Distribution is not a necessary term of this Settlement Agreement and it is not a condition of this Settlement Agreement that any particular Plan of Distribution be approved. The Released Parties will take no position with respect to the proposed Plan of Distribution or such Plan of Distribution as may be approved by the Court. The Plan of Distribution is a matter separate and apart from the settlement between the Settlement Parties and any decision by the Court concerning a particular Plan of Distribution shall not affect the validity or finality of the proposed settlement, including the

scope of the release.

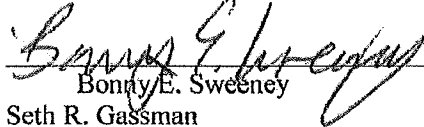
65. This Settlement Agreement may be executed in counterparts by Direct Purchaser Plaintiffs and Webasto, and a facsimile or .pdf signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

66. Direct Purchaser Plaintiffs and Webasto acknowledge that they have been represented by counsel and have made their own investigations of the matters covered by this Settlement Agreement to the extent they have deemed it necessary to do so. Therefore, Direct Purchaser Plaintiffs and Webasto and their respective counsel agree that they will not seek to set aside any part of this Settlement Agreement on the grounds of mistake. Moreover, Direct Purchaser Plaintiffs and Webasto and their respective counsel understand, agree, and expressly assume the risk that any fact may turn out hereinafter to be other than, different from, or contrary to the facts now known to them or believed by them to be true, and further agree that this Settlement Agreement shall be effective in all respects notwithstanding and shall not be subject to termination, modification, or rescission by reason of any such difference in facts.

67. 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 Settlement Agreement, subject to Court approval; and the undersigned Class Co-Lead Counsel represent that they are authorized to execute this Settlement Agreement on behalf of Direct Purchaser Plaintiffs. Each of the undersigned attorneys shall use their best efforts to effectuate this Settlement Agreement.

IN WITNESS WHEREOF, the parties hereto, through their fully authorized representatives, have agreed to this Settlement Agreement as of the date first herein written above.

HAUSFELD LLP

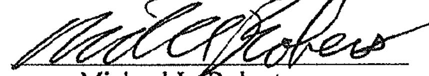


Bonny E. Sweeney
Seth R. Gassman
600 Montgomery Street, Suite 3200
San Francisco, CA 94111
Telephone: (415) 633-1908
Facsimile: (415) 358-4980
Email: bsweeney@hausfeld.com
Email: sgassman@hausfeld.com

Michael D. Hausfeld
Jeannine M. Kenney
HAUSFELD LLP
1700 K St. NW, Suite 650
Washington, D.C. 20006
Telephone: (202) 540-7200
Facsimile: (202) 540-7201
Email: mhausfeld@hausfeld.com
Email: jkenney@hausfeld.com

Brent Landau
HAUSFELD LLP
325 Chestnut St., Suite 900
Philadelphia, PA 19106
Telephone: (215-985-3270
Facsimile: (215) 985-3271
Email: blandau@hausfeld.com

ROBERTS LAW FIRM, P.A.



Michael L. Roberts
Debra G. Josephson
Stephanie E. Smith
20 Rahling Circle
Little Rock, AR 72223
Tel: 501.476.7391
Facsimile: 501.821.4474
Email: mikeroberts@robertslawfirm.us
Email:
stephaniesmith@robertslawfirm.us
Email:

debrajosephson@robertslawfirm.us

On behalf of Direct Purchaser Plaintiffs and the Settlement Class:

MORGAN, LEWIS & BOCKIUS LLP

John Clayton Everett, Jr.
1111 Pennsylvania Avenue, NW
Washington, DC 20004
Telephone: (202) 739-3000
Facsimile: (202) 739-3001
jeverett@morganlewis.com

On behalf of Defendants Webasto Products North America, Inc., Webasto Thermo & Comfort North America, Inc., Webasto Thermo & Comfort SE

EXHIBIT 2

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

In Re: PARKING HEATERS ANTITRUST LITIGATION	Case No. 15-MC-940 (DLI) (JO)
THIS DOCUMENT RELATES TO: *All Direct Purchaser Class Actions*	

SETTLEMENT AGREEMENT BETWEEN DIRECT PURCHASER PLAINTIFFS AND ESPAR DEFENDANTS

This settlement agreement ("Settlement Agreement" or "Agreement") is made and entered into this 29th day of November, 2017, by and between Defendants Eberspaecher Climate Control Systems GmbH & Co. KG, Espar, Inc., and Espar Products Inc. (collectively, "Espar"), and Direct Purchaser Plaintiff Class Representatives Triple Cities Acquisition LLC d/b/a Cook Brothers Truck Parts, National Trucking Financial Reclamation Services, TrailerCraft Inc., and Myers Equipment Corporation, individually and on behalf of the Settlement Class (as defined in Paragraph 1.g) (collectively, "Direct Purchaser Plaintiffs").

WHEREAS, on April 22, 2016, Direct Purchaser Plaintiffs filed a Consolidated Class Action Complaint and Jury Demand ("CAC"), on behalf of themselves and a putative class of others similarly situated, in case number 1:15-MC-0940 (JG) (JO) (Dkt.

No. 82) in the United States District Court for the Eastern District of New York;

WHEREAS, Direct Purchaser Plaintiffs have alleged, among other things, that Espar participated in an unlawful conspiracy to raise, fix, maintain, and/or stabilize the price of Parking Heaters sold in the aftermarket for use in commercial vehicles in the United States, as defined here and in the CAC, at artificially high levels in violation of Section 1 of the Sherman Act (15 U.S.C. § 1);

WHEREAS, Direct Purchaser Plaintiffs have concluded, after an investigation into the facts and the law, and after carefully considering the circumstances of claims made by Direct Purchaser Plaintiffs and the Settlement Class, and the possible legal and factual defenses thereto, that it is in the best interests of Direct Purchaser Plaintiffs and the Settlement Class to enter into this Settlement Agreement with Espar to avoid the uncertainties and risks of litigation, and that the settlement set forth herein is fair, reasonable, adequate, and in the best interests of the Settlement Class;

WHEREAS, Espar, 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 judgments contemplated by this Agreement, and to put to rest with finality all claims that have been or could have been asserted against Espar with respect to Parking Heaters based on the allegations in the Action, as more particularly set out below;

WHEREAS, Direct Purchaser Plaintiffs, for themselves individually and on behalf of each Settlement Class Member, as defined in Paragraph 1.e, and Espar agree

that neither this Settlement Agreement nor any statement made in negotiation thereof shall be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by Espar or of the truth of any of the claims or allegations alleged in the Action, and evidence thereof shall not be discoverable or used in any way in any action, arbitration, or proceeding whatsoever, against Espar;

WHEREAS, this Settlement Agreement is the product of arm's-length negotiations between Class Co-Lead Counsel and Espar's Counsel under the guidance and oversight of Mediator United States District Judge Vaughn Walker (Ret'd.), and this Settlement Agreement embodies all of the terms and conditions of the settlement agreed upon between Espar and Direct Purchaser Plaintiffs, both for themselves individually and on behalf of the Settlement Class, and is intended to supersede all prior agreements or understandings;

NOW, THEREFORE, in consideration of the covenants, terms, and releases in this Settlement Agreement, it is agreed, by and amongst Direct Purchaser Plaintiffs (for themselves individually and on behalf of the Settlement Class and each member thereof) and Espar, by and through Class Co-Lead Counsel and Espar's Counsel, that, subject to the approval of the Court, the Action be settled, compromised, and dismissed on the merits with prejudice as to Espar and the other Released Parties only, without costs as to Direct Purchaser Plaintiffs, the Settlement Class, or Espar, except as stated herein, and releases be extended, as set forth in this Settlement Agreement.

I. DEFINITIONS

1. As used in this Settlement Agreement, the following terms have the

meanings specified below:

a. "Action" means *In re Parking Heaters Antitrust Litigation*, No. 1:15-MC-00940 (DLI) (JO), which is currently pending in the United States District Court for the Eastern District of New York, and includes all actions filed in or transferred to the United States District Court for the Eastern District of New York and consolidated thereunder and all actions that are otherwise based on the alleged conduct in the above-captioned litigation.

b. "Eligible Class Member" means any Settlement Class Member and any Settled Customer, as defined in Paragraph 32, who will be entitled to a distribution from the Net Settlement Fund, as defined in Paragraph 1.s, pursuant to the Plan of Distribution approved by the Court in accordance with the terms of this Settlement Agreement.

c. "Class Co-Lead Counsel" means Hausfeld, LLP and Roberts Law Firm, P.A.

d. "Class Distribution Order" has the meaning given to it in Paragraph 48.

e. "Settlement Class Member" means a person who is a member of the Settlement Class and has not timely and validly excluded himself, herself, or itself in accordance with the procedures establish by the Court.

f. "Class Notice" means, collectively, the Mail Notice and/or Publication Notice to the Settlement Class, which shall be subject to consultation and agreement with Espar before being submitted to the Court for approval.

g. "Settlement Class" has the meaning given to it in Paragraph 2.

h. "Court" means the United States District Court for the Eastern District of New York.

i. "Espar's Counsel" means the law firm O'Melveny & Myers LLP, representing Eberspaecher Climate Control Systems GmbH & Co. KG, Espar, Inc., and Espar Products Inc.

j. "Defendants" means Webasto Products North America, Inc., Webasto Thermo & Comfort North America, Inc., and Webasto Thermo & Comfort SE (collectively, "Webasto"), and Eberspaecher Climate Control Systems GmbH & Co. KG, Espar, Inc., and Espar Products Inc. (collectively, "Espar").

k. "Direct Purchaser Plaintiffs" means Triple Cities Acquisition LLC d/b/a Cook Brothers Truck Parts, National Trucking Financial Reclamation Services, TrailerCraft Inc., and Myers Equipment Corporation.

l. "Effective Date" or "Effective Date of Settlement" has the meaning given to it in Paragraph 12.

m. "Escrow Agent" means a qualified financial institution that can serve as an escrow agent for this Settlement Agreement.

n. "Execution Date" means the date the Settlement Agreement is signed by all Settlement Parties.

o. "Fairness Hearing" means the hearing to be held by the Court to determine whether this Settlement Agreement shall receive final approval pursuant to Fed. R. Civ. P. 23.

p. “Fee and Expense Application” has the meaning given to it in Paragraph 23.

q. “Final Judgment and Order of Dismissal” means the order of the Court finally approving this Settlement Agreement and entering a final judgment in the Action dismissing on the merits with prejudice the claims of Direct Purchaser Plaintiffs and the Settlement Class against the Released Parties without costs other than those provided for in this Agreement. The Final Judgment and Order of Dismissal shall become final when: (i) no appeal from the Final Judgment and Order of Dismissal has been filed and the prescribed time for commencing any appeal or seeking permission to file such an appeal has expired; or (ii) an appeal from the Final Judgment and Order of Dismissal has been filed and either (1) the appeal has been dismissed and the prescribed time, if any, for commencing any further appeal has expired, or (2) the order has been affirmed in its entirety and the prescribed time, if any, for commencing any further appeal has expired. For purposes of this Paragraph, an appeal includes appeals as of right, discretionary appeals, interlocutory appeals, proceedings involving writs of certiorari or mandamus, and any other proceedings of like kind. 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.

r. “Mail Notice” means the notice of proposed settlement of class action to be provided to the Settlement Class as provided in this Settlement Agreement, the Preliminary Approval Order, and the Notice Order.

s. “Net Settlement Fund” is the Settlement Fund, as defined in

Section IX of this Agreement, less the Settlement Refund and Court-approved: (1) costs used for administration of the Settlement Fund, including taxes, as permitted by this Settlement Agreement; (2) costs to issue Class Notice; and (3) costs or attorneys' fees the Court has ordered to be paid from the Settlement Fund.

t. "Notice Order" means an order of the Court that approves the form of Class Notice and preliminarily approves the proposed Plan of Distribution.

u. "Opt Out Deadline" means the deadline established by the Court, and set forth in the Settlement Class Notice, by which potential Settlement Class Members that wish to request exclusion from the Settlement Class must do so.

v. "Opt Outs" means those potential Settlement Class Members who have exercised their right to request exclusion from the Settlement Class by the Opt Out Deadline.

w. "Parking Heaters" means parking heaters for commercial vehicles sold in the aftermarket in the United States, including the heaters themselves, accessories sold for use with the heaters, and parking heater kits containing heaters and selected accessories.

x. "Settlement Parties" means Espar and Direct Purchaser Plaintiffs.

y. "Plan of Distribution" means a plan or formula of allocation of the Net Settlement Fund whereby the Settlement Fund shall be distributed to Eligible Class Members after payment of expenses of notice and administration of the settlement, Taxes and tax expenses, and such attorneys' fees, costs, expenses, interest, and other expenses as may be awarded by the Court. At a time and in a manner determined by the Court,

Class Co-Lead Counsel shall submit for Court approval a Plan of Distribution for the Settlement Class that will provide for the distribution of the applicable Net Settlement Fund. Each Plan of Distribution shall be devised and implemented with the assistance of the Settlement Administrator.

z. "Preliminary Approval Order" means an order of the Court that preliminarily approves this Settlement Agreement.

aa. "Publication Notice" means the summary notice of this Settlement Agreement and hearing by the Court in a newspaper, magazine, trade journal, or other similar printed media. Publication Notice will only be issued if the Settlement Parties, in conjunction with the Settlement Administrator, deem such notice necessary.

bb. "Released Claims" means any and all claims, demands, actions, suits and causes of action, whether class, individual or otherwise in nature, (whether or not any Settlement Class Member has objected to the Settlement Agreement or makes a claim upon or participates in the Net 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 Releasing Parties, or each of them, ever had, now have, or hereafter can, shall, or may ever have, that now exist or may exist in the future, on account of, arising out of, or relating to any and all known and unknown, foreseen and unforeseen, suspected or unsuspected, actual or contingent, liquidated or unliquidated claims, injuries or damages, and the consequences thereof, in any way arising out of or relating to any actions or conduct alleged in the CAC (ECF No. 82, filed April 22, 2016) or any act or omission of any Released Party relating to the production or capacity

restrictions, pricing, marketing, distribution, and/or sale of Parking Heaters or products containing Parking Heaters in the United States (including any conduct, whether or not concealed or hidden, alleged and causes of action asserted, or that could have been alleged or asserted, in the CAC) that may have occurred or did occur from the beginning of time through the Execution Date, including any claims, demands, actions, suits and causes of action under federal or state antitrust, unfair competition, unfair practices, price discrimination, unitary pricing, trade practice, consumer protection, fraud, RICO, civil conspiracy law, unjust enrichment, or similar laws, including, without limitation, the Sherman Antitrust Act, 15 U.S.C. § 1 et seq. Releasing Parties shall not, after the Execution Date, seek to establish liability against any of the Released Parties based, in whole or in part, on any of the Released Claims or conduct at issue in the Released Claims, unless this Agreement is terminated or not finally approved. Provided, however, Released Claims do not include, and this Settlement Agreement shall not and does not release, acquit or discharge, claims (1) based solely on purchases of Parking Heaters outside of the United States, on behalf of persons or entities located outside of the United States at the time of such purchases, under laws other than those of the United States; or (2) claims based on any dispute from a Settlement Class Member not based on or related to activity that either was or could have been alleged in the CAC, including claims for personal injury, breach of contract, bailment, failure to deliver lost goods, damaged or delayed goods, product defects, or securities law violations. This Release is made without regard to the possibility of subsequent discovery or the existence of different or additional facts.

cc. "Released Parties" means Eberspaecher Climate Control Systems GmbH & Co. KG, Espar, Inc., and Espar Products Inc., and each of their past, present, and future, direct and indirect parents (including holding companies), subsidiaries, affiliates, associates, divisions, predecessors, successors, assigns, and each of their respective officers, directors, principals, partners, supervisors, stockholders, members, representatives, insurers, employees, agents, attorneys, legal or other representatives, trustees, heirs, executors, administrators, advisors, and assigns. Released Parties do not include Webasto or any of Webasto's past, present, and future, direct and indirect parents (including holding companies), subsidiaries, affiliates, associates, divisions, predecessors, successors, and each of their respective officers, directors, employees, agents, attorneys, legal or other representatives, trustees, heirs, executors, administrators, advisors, and assigns.

dd. "Releasing Party" means, individually and collectively, Direct Purchaser Plaintiffs and each Settlement Class Member, on behalf of themselves and any of their respective past, present or future officers, directors, stockholders, agents, principals, partners, supervisors, members, representatives, insurers, employees, legal or other representatives, partners, associates, trustees, parents, subsidiaries, divisions, affiliates, heirs, executors, administrators, purchasers, predecessors, successors, assigns, and all other persons, partnerships or corporations with whom any of the foregoing have been, or are now, affiliated, whether or not they object to this Settlement Agreement, and whether or not they are eligible for and/or do receive payment from the Net Settlement Fund.

ee. "Settlement Administrator" means a company qualified to administer the notice and claims process necessary to effectuate the Settlement Agreement.

ff. "Settlement Agreement" means this Stipulation and Agreement of Settlement.

gg. "Settlement Amount" means eight million United States dollars ($8,000,000).

hh. "Settlement Class Period" shall mean the period from and including October 1, 2007 up to and including December 31, 2012.

ii. "Settlement Refund" shall have the meaning given to it in Paragraph 35.

jj. "Settlement Fund" means the escrow account established pursuant to Paragraphs 26-27 of this Settlement Agreement, including all monies held therein in accordance with the terms of this Settlement Agreement.

kk. "Taxes" has the meaning given to it in Paragraph 53.

II. CERTIFICATION OF THE SETTLEMENT CLASS

2. The Settlement Parties hereby stipulate solely for settlement purposes that the requirements of Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b)(3) are satisfied, and, subject to Court approval, the following settlement class (the "Settlement Class") shall be certified for settlement purposes:

> All persons or entities (but excluding federal and state government entities and Defendants, their officers, directors, and employees, as well as Defendants' parents, predecessors, successors, subsidiaries, affiliates) that

purchased Parking Heaters in the United States, its territories or possessions, directly from any Defendant, or from any of their parents, predecessors, successors, subsidiaries, or affiliates, at any time during the period from and including October 1, 2007 up to and including December 31, 2012.

III. GOOD-FAITH EFFORTS TO EFFECTUATE THIS SETTLEMENT AGREEMENT

3. The Settlement Parties agree to cooperate with one another in good faith to effectuate and implement the terms and conditions of this Settlement Agreement and to exercise their reasonable best efforts to accomplish the terms of this Settlement Agreement. Espar's Counsel shall serve, or cause to be served, notice on those entities required to receive notice pursuant to 28 U.S.C. § 1715.

IV. PRELIMINARY APPROVAL ORDER, NOTICE, AND FAIRNESS HEARING

4. Within sixty (60) days following the Execution Date, or such later date agreed to in writing by the Settlement Parties, Class Co-Lead Counsel shall submit to the Court, and Espar shall not oppose, a motion requesting entry of the Preliminary Approval Order ("Motion"). Espar shall not oppose the Motion unless its terms are inconsistent with those called for by this Settlement Agreement. At least forty-eight (48) hours prior to the filing of any motions or other papers in connection with this Agreement, Class Co-Lead Counsel shall send working drafts of the Motion to Espar's Counsel. The Motion shall:

i. seek certification of the Settlement Class solely for settlement purposes, pursuant to Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b)(3);

ii. request preliminary approval of the settlement set forth in

this Settlement Agreement as fair, reasonable, and adequate;

iii. seek the appointment of Direct Purchaser Plaintiffs as representatives of the Settlement Class, and Class Co-Lead Counsel as Settlement Class counsel under Fed. R. Civ. P. 23(g);

iv. submit a separate application, seeking approval of the form, and method of dissemination, of: (1) the Mail Notice, which shall include information on how to obtain additional information regarding the Settlement Agreement and be mailed via first-class mail; and (2) if deemed necessary, the Publication Notice; which the Settlement Parties intend to be the best notice practicable under the circumstances and which shall be given in such manner and scope as is reasonable, and consistent with the requirements of Fed. R. Civ. P. 23;

v. seek appointment of a qualified Settlement Administrator;

vi. seek appointment of a qualified Escrow Agent;

vii. stay all proceedings in the Action against Espar until the Court renders a final decision on approval of this Settlement Agreement; and

viii. attach a proposed form of order, which includes such provisions as are typical in such orders, including: (1) setting a date for the Fairness Hearing, and (2) a provision that, if final approval of the settlement is not obtained, the settlement is null and void, and the Settlement Parties will revert to their positions *ex ante* without prejudice to their rights, claims, or defenses.

5. Class Notice shall apprise each member of the Settlement Class of his, her, or its right to exclude themselves from, or object to, the settlement. The Settlement

Parties shall endeavor to include information in the Mail Notice that informs potential Settlement Class Members how to obtain additional information regarding the Settlement Agreement.

6. Espar shall, at its own expense and as reasonably available to Espar and permissible by law, supply to Class Co-Lead Counsel in electronic format, or other such form as may be reasonably requested by Class Co-Lead Counsel and the Settlement Administrator, the names and addresses of all potential Settlement Class Members who can be reasonably identified based on customer records that Espar has in its possession, custody, or control. Any information provided pursuant to this provision shall be subject to the provisions of the Confidentiality Stipulation and Protective Order (ECF No. 69, filed October 28, 2015) (the "Protective Order"). Moreover, any information provided pursuant to this provision shall be used solely for purposes of providing notice and administering and verifying eligibility for the amount of payment, as set forth in this Section and Sections VI and XII, and any distribution of such information shall be limited to what is necessary for those purposes. Mail Notice shall be mailed only to those persons or entities that are identified by Espar. Publication Notice to other potential members of the Settlement Class, if deemed necessary, shall be by publication as set forth above in Paragraphs 1.aa and 4.iv, if approved by the Court.

7. With the object of reducing the costs of Class Notice, Class Co-Lead Counsel shall use their reasonable best efforts to coordinate the provision of Class Notice pertaining to this Settlement Agreement with the provision of notice for any other settlements that may be reached in the Action. In no event shall Espar have any liability

for the costs of provision of notice, except as set forth in Paragraphs 6 and 27.

8. Any person falling within the definition of the Settlement Class may request to be excluded from the Settlement Class by filing a request for exclusion that meets all of the conditions specified in this Paragraph ("Request for Exclusion"). To be valid, a Request for Exclusion must be: (i) in writing, (ii) signed and dated by the person or his, her, or its authorized representative, (iii) state the full legal name, address, and telephone number of that person, and (iv) include: (1) proof of membership in the Settlement Class; and (2) a signed statement that "I/we hereby request that I/we be excluded from the settlement with Espar in the *In Re: Parking Heaters Antitrust Litigation*." To be valid, a Request for Exclusion also must be mailed to the Settlement Administrator at the address provided in the Mail Notice and be both (i) postmarked no later than the Opt Out Deadline set by the Court and (ii) received by the Settlement Administrator no later than twenty (20) calendar days after the Opt Out Deadline. Unless the Court orders otherwise, a Request for Exclusion that does not meet all of the conditions specified in this Paragraph shall be invalid, and the person(s) filing such an invalid request shall be a Settlement Class Member and shall be bound by the Settlement Agreement, if approved by the Court. All persons who submit valid and timely Requests for Exclusion in the manner set forth in this Paragraph shall be excluded from the Settlement Class, shall have no rights under the Settlement Agreement, shall not share in the distribution of the Net Settlement Fund, and shall not be bound by the Settlement Agreement. Class Co-Lead Counsel shall cause to be provided to Espar copies of all Requests for Exclusion, together with all documents and information provided by the

persons filing such Requests, and any written revocation of Requests for Exclusion, within three (3) business days of receipt by Class Co-Lead Counsel of that Request for Exclusion. In addition, Class Co-Lead Counsel shall prepare a summary of the Opt Outs that includes only the name, city and state of the person or entity requesting exclusion, which summary Class Co-Lead Counsel shall file with the Court when seeking entry of the Final Judgment and Order of Dismissal referred to in Paragraph 11.

9. With respect to any potential Settlement Class Member who requests exclusion from the Settlement Class, Espar reserves all of its legal rights and defenses, including, but not limited to, any defenses relating to whether the excluded Settlement Class Member is a direct purchaser of any allegedly price-fixed Parking Heaters, has previously released its claims against Espar, and/or has standing to bring any claim.

10. Any person who has not requested exclusion from the Settlement Class and who objects to this Settlement Agreement may appear in person or through counsel, at that person's own expense, at the Fairness Hearing to present any evidence or argument that the Court deems proper and relevant. No such person shall be heard, and no papers, briefs, pleadings, or other documents submitted by any such person shall be received and considered by the Court, unless such person properly submits a written objection that includes: (i) a notice of intention to appear, (ii) proof of membership in the Settlement Class, (iii) the specific grounds for the objection and any reasons why such person desires to appear and be heard, and (iv) all documents or writings that such person desires the Court to consider. Such a written objection must be both (i) filed with the Court no later than thirty (30) calendar days prior to the date set for the Fairness Hearing

and (ii) mailed to Class Co-Lead Counsel and Espar's Counsel at the addresses provided in the Settlement Class Notice and postmarked no later than thirty (30) calendar days prior to the date set for the Fairness Hearing. Any person that fails to object in the manner prescribed herein shall be deemed to have waived his, her, or its objections and will forever be barred from making any such objections in the Action, unless otherwise excused for good cause shown, as determined by the Court.

11. If the Preliminary Approval Order and the Notice Order are entered by the Court, Direct Purchaser Plaintiffs shall seek, and Espar shall not unreasonably object to, entry of a Final Judgment and Order of Dismissal, the text of which Direct Purchaser Plaintiffs and Espar shall agree upon, that:

i. certifies the Settlement Class pursuant to Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b)(3) solely for the purposes of the settlement;

ii. approves finally this Settlement Agreement and its terms as being a fair, reasonable, and adequate settlement as to Settlement Class Members and directing its consummation according to its terms;

iii. finds that the Settlement Class Notice constituted due, adequate, and sufficient notice of the Settlement Agreement and the Fairness Hearing and meets the requirements of Due Process and the Federal Rules of Civil Procedure;

iv. directs that, as to the Released Parties, the Action shall be dismissed with prejudice and, except as provided for in this Settlement Agreement, without costs. Such dismissal shall not affect, in any way, the right of Direct Purchaser Plaintiffs or Class Members to pursue claims, if any, outside the scope of the Released

Claims;

v. orders that the Releasing Parties are permanently enjoined and barred from instituting, commencing, or prosecuting any action or other proceedings asserting any Released Claims against any Released Party;

vi. reserves to the Court exclusive jurisdiction over the settlement and this Settlement Agreement, including the interpretation, administration, and consummation of the settlement; and

vii. determines under Fed. R. Civ. P. 54(b) that there is no just reason for delay and directs that the judgment of dismissal as to Espar shall be final and entered forthwith.

V. EFFECTIVE DATE OF SETTLEMENT

12. The Effective Date of Settlement shall be the date when all of the following events shall have occurred and shall be conditioned on the occurrence of all the following events:

i. the contribution to the Settlement Fund has been made pursuant to this Settlement Agreement;

ii. the Settlement Refund, if any is due, has been paid to Espar;

iii. entry of the Preliminary Approval Order;

iv. entry of the Notice Order;

v. entry of the Final Judgment and Order of Dismissal;

vi. no Settlement Party has exercised his, her, or its rights to

terminate this Settlement Agreement pursuant to Section XIV; and

vii. entry by the Court of a Final Judgment and Order of Dismissal, and the Final Judgment and Order of Dismissal becomes final within the meaning of Paragraph 1.q.

13. Notwithstanding any other provision herein, any proceeding or order, or motion for reconsideration, appeal, petition for a writ of certiorari or its equivalent, pertaining solely to any Plan of Distribution and/or Fee and Expense Application, shall not in any way delay or preclude the Effective Date.

14. On the date that Direct Purchaser Plaintiffs and Espar have executed this Settlement Agreement, Direct Purchaser Plaintiffs and Espar shall be bound by its terms, and this Settlement Agreement shall not be rescinded or revoked except in accordance with Paragraph 28, Paragraph 37, or Section XIV of this Settlement Agreement.

VI. SETTLEMENT ADMINISTRATOR

15. Pursuant to the Preliminary Approval Order, and subject to Court approval, Class Co-Lead Counsel shall engage a qualified claims administrator as the Settlement Administrator. The Settlement Administrator will assist with the settlement process as set forth herein.

16. The Settlement Administrator shall assist in the development of the Plan of Distribution and otherwise assist in the effectuation of this Settlement Agreement and any Court orders related thereto.

17. The Settlement Administrator shall effectuate the notice plan approved by the Court in the Preliminary Approval Order and the Notice Order, shall administer and

calculate the amount owed to Eligible Class Members pursuant to the Plan of Distribution, and shall oversee distribution of the Net Settlement Fund to Eligible Class Members in accordance with the Plan of Distribution.

VII. SCOPE AND EFFECT OF SETTLEMENT

18. The obligations incurred pursuant to this Settlement Agreement shall be in full and final disposition of: (i) the Action against Espar; and (ii) any and all Released Claims as against all Released Parties.

19. In addition to the effect of any final judgment entered in accordance with this Agreement, upon the Effective Date of Settlement, each of the Releasing Parties: (i) shall be deemed to have, and by operation of the Final Judgment and Order of Dismissal, shall have, fully, finally, and forever, waived, released, relinquished, and discharged all Released Claims against any of the Released Parties, regardless of whether such Releasing Party is eligible for and/or received payment under this Settlement Agreement; (ii) shall forever be enjoined from prosecuting in any forum any Released Claim against any of the Released Parties; and (iii) agrees and covenants not to sue any of the Released Parties on the basis of any Released Claims or to assist any third party in commencing or maintaining any suit against any Released Party related in any way to any Released Claims.

20. The release set forth in Paragraph 19 constitutes a waiver of any and all provisions, rights, and benefits as to Releasing Parties' claims concerning Parking Heaters conferred by Section 1542 of the California Civil Code, which states:

> CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS

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

or by any law of any state or territory of the United States, or provision, statute, regulation, rule, or principle of law or equity, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code, including but not limited to Section 20-7-ll of the South Dakota Codified Laws. The Releasing Parties acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true with respect to the subject matter of this Settlement Agreement, but that it is their intention to release and settle fully, finally, and forever any and all claims released in Paragraph 19, and in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of any such additional or different facts. The Settlement Parties acknowledge that the foregoing waiver was separately bargained for and is a key and integral element of the Settlement Agreement of which the release is a part.

21. In the event that this Settlement Agreement is terminated pursuant to Paragraph 28, Paragraph 37, or Section XIV, or any condition for the final approval of this Settlement Agreement is not satisfied, the release and covenant not to sue provisions of the foregoing paragraphs shall be null and void and unenforceable.

22. Class Co-Lead Counsel will withdraw all currently pending discovery requests, and will seek no further discovery from Espar, or any other Released Parties, other than as provided for in this Agreement. Espar and the other Released Parties need

not respond to discovery requests from Direct Purchaser Plaintiffs made pursuant to the Federal Rules of Civil Procedure, meet and confer, or otherwise negotiate with Direct Purchaser Plaintiffs regarding discovery requests served in the Action, file a response to any pending complaint in the Action, or otherwise participate in the Action during the pendency of this Agreement, other than to effectuate the terms of this Settlement Agreement and the conditional cooperation provisions set forth in Section XI of this Agreement.

VIII. FEE AND EXPENSE APPLICATION

23. Class Co-Lead Counsel will submit an application or applications (the "Fee and Expense Application") to the Court for an award from the Settlement Fund of: (i) attorneys' fees not to exceed 33-1/3% of the Settlement Amount; (ii) reimbursement of litigation expenses incurred in connection with the prosecution of the Action, including any costs associated with notice; and/or (iii) incentive awards for Direct Purchaser Plaintiffs in conjunction with their representation of the Settlement Class. Provided the Fee and Expense Application is consistent with the requirements in this Paragraph and does not seek fees in excess of 33-1/3% of the sum of the Settlement Amount minus the Settlement Refund referred to in Paragraph 35, Espar will take no position on the Fee and Expense Application, but in no event shall Espar or any other Released Parties be responsible to pay any of the fees and expenses referred to in this Paragraph except to the extent that they are paid out of the Settlement Amount. Attorneys' fees, expenses, and interest as are awarded by the Court ("Fee and Expense Award") to Class Co-Lead Counsel shall be paid solely from the Settlement Fund to

Class Lead Counsel upon the Effective Date.

24. Notwithstanding any other provision of this Settlement Agreement to the contrary, the Fee and Expense Application shall be considered by the Court separate and apart from its consideration of the fairness, reasonableness, and adequacy of the settlement, and any order or proceeding relating to the Fee and Expense Application, or any appeal of any order relating thereto or reversal or modification thereof, shall not in any way delay or preclude the Effective Date or operate to terminate or cancel this Settlement Agreement or the settlement of the Action, or affect the finality or binding nature of any of the releases granted hereunder.

25. The Released Parties shall have no responsibility for, and no liability whatsoever with respect to, any costs, fees or expenses of any Direct Purchaser Plaintiffs or the Settlement Class's respective attorneys, experts, advisors, agents or representatives, except to the extent that such costs, fees, and expenses are approved by the Court and solely paid out of the Settlement Fund.

IX. THE SETTLEMENT FUND

26. The Settlement Fund shall be established as an escrow account and administered by a qualified Escrow Agent, subject to approval by the Court (the "Escrow Account"). The Settlement Fund shall be administered pursuant to this Settlement Agreement and subject to the Court's continuing supervision and control. No Monies shall be paid from the Settlement Fund unless expressly allowed in the Escrow Agreement. Counsel for the Parties agree to cooperate, in good faith, to form an appropriate escrow agreement in conformance with this Settlement Agreement.

27. Subject to the provisions hereof, and in full, complete, and final settlement of the Action as provided herein, Espar shall cause the payment of $8,000,000 (eight million dollars exactly) to be transferred to the Escrow Agent within thirty (30) calendar days following the later of (i) entry of the Preliminary Approval Order or (ii) the date Espar is provided with the account number, account name, and wire transfer information for the Escrow Account. These funds, together with any interest earned thereon, shall constitute the Settlement Fund. All costs and expenses incurred in connection with providing Class Notice and the administration of the settlement shall be paid exclusively from the Settlement Fund, subject to approval from the Court.

28. Without prejudice to the Direct Purchaser Plaintiffs' right to seek enforcement of this Settlement Agreement, if the Settlement Amount of $8,000,000 is not timely transferred to the escrow account, Class Co-Lead Counsel may terminate this Settlement Agreement if: (i) Class Co-Lead Counsel has notified Espar's Counsel in writing of Class Co-Lead Counsel's intention to terminate this Settlement Agreement, (ii) Class Co-Lead Counsel has met and conferred with Espar's Counsel concerning this notification, and (iii) the Settlement Amount is not transferred to the Settlement Fund within ten (10) business days after Class Co-Lead Counsel has provided such written notice.

29. The Settlement Fund shall be invested exclusively in 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 a U.S. Treasury Fund or a bank account that is either: (a) fully insured by the Federal Deposit Insurance Corporation

("FDIC"); or (b) secured by instruments backed by the full faith and credit of the United States Government. The proceeds of these accounts shall be reinvested in similar instruments at their then-current market rates as they mature. All risks related to the investment of the Settlement Fund in accordance with the investment guidelines set forth in this Paragraph shall be borne by the Settlement Fund.

30. All funds held by the Escrow Agent 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 Settlement Agreement and the Plan of Distribution approved by the Court.

31. As set forth in this Settlement Agreement, Espar shall be responsible for paying the Settlement Amount. Espar shall have no responsibility for any other costs, including, but not limited to, as further detailed in this Settlement Agreement, any attorneys' fees and expenses, accountants' expenses, administrative expenses, or any Taxes or tax-related costs (including any estimated taxes, interest, or penalties) relating to the Settlement Fund, but all such fees, expenses, and costs shall be paid from the Settlement Fund, as approved by the Court. Further, Taxes and tax-related costs shall be treated as, and considered to be, a cost of administration of the Settlement Fund and shall be timely paid by the Escrow Agent out of the Settlement Amount.

X. REDUCTION FOR PREVIOUSLY REACHED SETTLEMENTS

32. Within twenty (20) business days of depositing the Settlement Amount in the escrow account, Espar shall provide Class Co-Lead Counsel, subject to the Protective Order in this Action, the dollar values of any settlements or release of claims relating to

the claims in this Action that Espar paid or caused to be paid to any potential Settlement Class Members before September 20, 2017 (the "Settled Customers"), along with proof of payment for any such settlement or release of claim in the form of a business record from a bank or Espar (or Espar affiliate) of such payment.

33. Within twenty (20) business days of depositing the Settlement Amount in the escrow account, Espar shall provide Class Co-Lead Counsel with the dollar value of all U.S. Parking Heater sales during the Settlement Class Period by Espar to each Settled Customer (the "Settled Sales"), and the total dollar value of all U.S. Parking Heater sales by Espar to the entire proposed Settlement Class (including the sales to all potential Opt Outs and Settled Customers) during the Settlement Class Period ("Total Sales"). The ratio of Settled Sales to Total Sales shall be the Settlement Ratio. Espar and Direct Purchaser Plaintiffs agree that Espar's transactional data produced in the Action shall be used to determine the Settled Sales, Total Sales, and Settlement Ratio.

34. In the event Direct Purchaser Plaintiffs in good faith dispute both (i) Espar's claimed Settled Sales amount and/or the resulting Settlement Ratio, and (ii) that the Settlement Ratio is thirty-five percent (35%) or higher, Direct Purchaser Plaintiffs must notify Espar's Counsel within ten (10) business days from the delivery thereof. Such notification shall include the basis for any dispute, the Settlement Ratio below thirty-five percent (35%) that Direct Purchaser Plaintiffs believe is accurate, and any supporting data or documentation. Espar shall respond to such notification within ten (10) business days. If, after good-faith discussion about the dispute, the parties cannot agree to a resolution, they shall submit the dispute to Mediator Judge Walker (Ret.) (or, if Judge

Walker is unavailable, another mediator mutually acceptable to Direct Purchaser Plaintiffs and Espar) for final and binding resolution within thirty (30) days of Espar's response to Direct Purchaser Plaintiffs' notification. Neither Direct Purchaser Plaintiffs nor their counsel may make any effort to encourage, directly or indirectly, any Settled Customer to seek the cancellation, nullification, rescission, termination, withdrawal, invalidation, amendment, or modification of any of the releases and settlement agreements Espar has reached with any Settled Customers. However, the preceding sentence shall not prohibit Class Co-Lead Counsel from responding to questions potential Settlement Class Members (including any Settled Customers) ask regarding their rights under this Agreement.

35. Within ten (10) business days of the determination of the Settlement Ratio (whether upon a failure of Direct Purchaser Plaintiffs to dispute Espar's calculation, by agreement of the parties, or pursuant to Mediator resolution), and without the need for any further instruction or approval from Direct Purchaser Plaintiffs, Escrow Agent shall remit to Espar an amount equal to $8,000,000 multiplied by the Settlement Ratio (the "Settlement Refund"). If the Settlement Ratio is thirty-five percent (35%) or higher, the Escrow Agent shall remit thirty-five percent (35%) ($2,800,000) of the Settlement Amount to Espar. In no event shall Escrow Agent remit to Espar more than $2,800,000 pursuant to this Paragraph.

36. To the extent the amount a Settled Customer was paid by Espar pursuant to a private settlement, as reported in Paragraph 32, is less than the amount that same Settled Customer would have received under this Settlement Agreement had it not settled

separately with Espar (calculated based on the assumption that only that particular Settled Customer had not settled, but the other customer settlements remained in place, and using only the Settled Customers' purchases from Espar as the basis for the calculation), then Espar shall not oppose the designation of the Settled Customer as an Eligible Class Member and Class Co-Lead Counsel's decision, subject to Court approval, to allocate to that Settled Customer a portion of the Settlement Fund pursuant to the Plan of Distribution up to the amount it would have received had it not entered into a private settlement with Espar less the amount of its private settlement with Espar.

37. Without prejudice to Espar's right to seek enforcement of this Settlement Agreement, failure by Escrow Agent or Direct Purchaser Plaintiffs to timely remit to Espar the Settlement Refund shall entitle Espar to terminate this Settlement Agreement if (i) Espar's Counsel has notified Class Co-Lead Counsel in writing of Espar's intention to terminate this Settlement Agreement, (ii) Espar and Class Co-Lead Counsel have met and conferred concerning this notification, and (iii) the Settlement Refund is not transferred to Espar within ten (10) business days after Espar has provided such written notice.

XI. CONDITIONAL COOPERATION

38. Notwithstanding any other provision of this Settlement Agreement, neither Espar nor any of the other Released Parties shall have any obligations under Section XI of this Agreement unless Direct Purchaser Plaintiffs' settlement agreement with Webasto does not receive final approval, is invalidated, or is otherwise terminated. If that occurs, then Espar shall undertake reasonable efforts to cooperate with Class Co-Lead Counsel as set forth in this Section XI.

39. To the extent any of Espar's documents produced or to be produced in this Action are required to be authenticated and/or shown to be business records, including but not limited to evidence of Espar's sales or costs of Parking Heaters, Espar agrees to produce, to the extent possible, through affidavits or declarations, or if necessary, through deposition or testimony at trial, representatives qualified to authenticate such documents and information, and, to the extent possible, provide confirmation that such documents and information are business records. Class Co-Lead Counsel shall use reasonable efforts to minimize the burden to Espar of any authentication or business record testimony under this Paragraph, including by obtaining stipulations that would avoid the need to call Espar witnesses at trial for the purpose of obtaining such evidentiary foundations.

40. Espar agrees that, after the Execution Date, Espar's Counsel will make themselves available for up to a total of three (3) meetings (not to exceed one business day each) with Class Co-Lead Counsel to provide information known to Espar concerning documents, witnesses, meetings, communications, and events related to claims at issue in this Action not covered by privilege or other protections available under any applicable statute or United States laws, including, but not limited to, identifying individuals such as current or former employees, who may provide information or potential testimony relevant to the Action. Espar's Counsel will make themselves available for reasonable follow-up conversations in connection with the meetings referred to in this Paragraph. Notwithstanding any other provision in this Settlement Agreement, Direct Purchaser Plaintiffs and Class Co-Lead Counsel agree that they shall not use directly or indirectly the information received pursuant to this Section for any purpose

other than the prosecution of the Action. The Settlement Parties and their counsel further agree that any statements made by Espar's Counsel in connection with and/or as part of this Settlement Agreement shall be protected by Federal Rule of Evidence 408, and shall in no event be discoverable by any person or treated as evidence of any kind.

41. Upon reasonable notice after the Execution Date, Espar agrees to use reasonable efforts to make available for interviews and trial testimony at a location or locations to which the parties mutually agree (except for testimony at trial, which shall be at the United States Courthouse of the United States District Court for the Eastern District of New York) a total of two (2) current officers and employees of Espar who Class Co-Lead Counsel, in consultation with Espar's Counsel, reasonably and in good faith believe have knowledge of the claims alleged by Direct Purchaser Plaintiffs in the Action. If it is necessary to preserve testimony before trial, Direct Purchaser Plaintiffs may move the Court for leave to take the deposition of any such individual, and Espar agrees not to unreasonably oppose such motion. Nothing herein shall require Espar to pay any expense of Direct Purchaser Plaintiffs or Class Co-Lead Counsel in connection with any interview, deposition, or testimony provided for in this Paragraph. Upon request of the witness, Direct Purchaser Plaintiffs shall provide a mutually agreeable translator for interviews and/or trial testimony of any witness designated pursuant to this Section who is not prepared to be interviewed or to testify in English. An "interview" for purposes of this Paragraph shall last no longer than seven hours, excluding reasonable breaks, and, subject to reasonable limitations, may occur on more than a single day but not more than two days, which the parties shall endeavor to make consecutive. Direct Purchaser

Plaintiffs agree to bear reasonable travel costs incurred by witnesses pursuant to this Paragraph, and Direct Purchaser Plaintiffs agree to bear lodging and meal expenses for such witnesses, not to exceed $500.00 per day, and the cost of any translator that may be required pursuant to this Paragraph.

42. If Class Co-Lead Counsel believe that Espar or any current employee of Espar has failed to cooperate under the terms of this Agreement, Class Co-Lead Counsel may seek an Order from the Court compelling such cooperation. Nothing in this provision shall limit in any way Espar'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. The release of claims provided for under Paragraph 19 and the covenant not to sue provided under Paragraph 19 shall not apply to any person who has affirmatively refused to comply with a reasonable request by Class Co-Lead Counsel, properly made pursuant to Paragraph 38 of this Settlement Agreement, that the person be interviewed or appear to testify at trial, and who, at the time of the determination, is a current employee or officer of Espar. If Class Co-Lead Counsel believes that such person has refused to cooperate under the terms of this Settlement Agreement and Espar does not in good faith agree, Class Co-Lead Counsel may seek a determination from the Mediator, Judge Vaughn Walker (Ret'd.), who shall make that determination after considering all relevant factors, including an explanation by the person, and taking due account of the person's reasonable scheduling conflicts, any pertinent health or personal problems (including whether the person can travel to the United States without fear of arrest), and the total burden of the cooperation that the person has provided.

43. Espar's obligations to cooperate shall not be affected by the release set forth in Paragraph 19 of this Settlement Agreement. Unless this Settlement Agreement is rescinded, disapproved, or otherwise fails to take effect, Espar's obligations to cooperate under this Settlement Agreement shall continue until the date that final judgment has been rendered in the Action with respect to all Defendants, subject to the provisions of Paragraph 38.

44. In the event that this Agreement's Effective Date fails to occur, as contemplated in Paragraph 12 hereof, or in the event that it is terminated by either party under any provision herein, the parties agree that neither Direct Purchaser Plaintiffs nor Class Co-Lead Counsel nor any potential Settlement Class Member shall be permitted to introduce into evidence against Espar or any other Released Parties, 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 Espar and/or the other Released Parties, their counsel, or any individual made available by Espar pursuant to cooperation under this Section (as opposed to from any other source or pursuant to a court order). This limitation shall not apply to any discovery of Espar that Class Co-Lead Counsel participate in or obtain through the discovery process as part of the Action.

XII. ADMINISTRATION OF THE SETTLEMENT

45. The Settlement Administrator shall process this settlement based upon information provided by the Settlement Parties in connection with the settlement, and, after entry of the Plan of Distribution, distribute the Net Settlement Fund in accordance

with the Plan of Distribution. Except for its obligation to pay the Settlement Amount or cause it to be paid, Espar shall have no liability, obligation, or responsibility for the administration of the settlement or disbursement of the Net Settlement Fund.

46. All proceedings with respect to the administration, processing, and determination of payment to Eligible Class Members and the determination of all controversies relating thereto shall be subject to the jurisdiction of the Court.

47. The Net Settlement Fund shall be distributed by the Settlement Administrator to, or for the account of, Eligible Class Members, as the case may be, only after the Effective Date and after: (i) all matters with respect to the Fee and Expense Application have been resolved by the Court, and all appeals therefrom have been resolved or the time therefor has expired; and (ii) all fees and costs of administration have been paid.

48. Class Co-Lead Counsel will apply to the Court for an order (the "Class Distribution Order") approving the Settlement Administrator's determinations concerning the payments to Eligible Class Members and approving any fees and expenses not previously applied for, including the fees and expenses of the Settlement Administrator, and, if the Effective Date has occurred, directing payment of the Net Settlement Fund to or for the account of Eligible Class Members, as the case may be.

49. Direct Purchaser Plaintiffs and Settlement Class Members shall look solely to the Settlement Fund as full, final, and complete satisfaction of all Released Claims. Except as set forth in Paragraph 27, Espar shall have no obligation under this Settlement Agreement or the settlement to pay or cause to be paid any amount of money,

and Espar shall have no obligation to pay or reimburse any fees, expenses, costs, liability, losses, Taxes, or damages whatsoever alleged or incurred by Direct Purchaser Plaintiffs, by any Settlement Class Member, or by any Releasing Parties, including, but not limited to, by their attorneys, experts, advisors, agents, or representatives, with respect to the Action and Released Claims. Direct Purchaser Plaintiffs and Settlement Class Members acknowledge that as of the Effective Date, the releases given herein shall become effective immediately by operation of the Final Judgment and Order of Dismissal and shall be permanent, absolute, and unconditional.

50. Except as provided in Paragraph 35 of this Agreement, Espar shall not have a reversionary interest in the Net Settlement Fund unless this Settlement Agreement is rescinded pursuant to Paragraphs 28, 37, or 54. If there is a balance remaining in the Net Settlement Fund after six (6) months from the date of distribution of the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise), or reasonably soon thereafter, the Settlement Administrator shall, if logistically feasible and economically justifiable, reallocate such balances among Eligible Class Members in an equitable fashion. These redistributions shall be repeated until the remaining balance in the Net Settlement Fund is *de minimis* and such remaining balance shall be donated to an appropriate 501(c)(3) non-profit organization selected by Class Co-Lead Counsel and Espar's Counsel and approved by the Court.

XIII. TAXES

51. The Settlement Parties agree that the Settlement Fund is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1, and

agree not to take any position for Tax purposes inconsistent therewith. The Settlement Fund, less any amounts incurred for notice, administration, and/or Taxes (as defined below), plus any accrued interest thereon, shall be returned to Espar, as provided in Paragraph 54, if the settlement does not become effective for any reason, including by reason of a termination of this Settlement Agreement pursuant to Paragraph 28, Paragraph 37, or Section XIV.

52. For the purpose of § 468B of the United States Internal Revenue Code and the Treasury regulations thereunder, Class Co-Lead Counsel shall be designated as the "administrator" of the Settlement Fund. Class Co-Lead Counsel shall timely and properly file all income, informational, and other tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treas. Reg. § 1.468B-2(k)). Such returns shall be consistent with this Section XIII and in all events shall reflect that all Taxes (as defined below) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein.

53. All: (i) taxes or other similar imposts or charges (including any estimated taxes, interest, penalties, or additions to tax) arising with respect to the income earned by the Settlement Fund, including any taxes or tax detriments that may be imposed upon the Released Parties 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" within the meaning of Treasury Regulation § 1.468B-1 (or any relevant equivalent for state tax purposes); and (ii) other taxes or tax expenses imposed on or in connection with the Settlement Fund (collectively, "Taxes"), shall promptly be paid out of the Settlement

Fund by the Escrow Agent without prior order from the Court. The Escrow Agent shall also be obligated to, and shall be responsible for, withholding from distribution to Settlement Class Members any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes. The Settlement Parties agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Paragraph. Neither the Settlement Parties nor their counsel shall have any responsibility for or liability whatsoever with respect to: (i) any act, omission, or determination of the Escrow Agent, or Settlement Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement Fund or otherwise; (ii) the Plan of Distribution; (iii) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (iv) any losses suffered by, or fluctuations in the value of, the Settlement Fund; or (v) the payment or withholding of any Taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any Tax returns. The Escrow Agent shall indemnify and hold harmless the Settlement Parties out of the Settlement Fund from and against any claims, liabilities, or losses relating to the matters addressed in the preceding sentence.

XIV. TERMINATION OF SETTLEMENT

54. Direct Purchaser Plaintiffs, through Class Co-Lead Counsel, and Espar, through Espar's Counsel, shall, in each of their separate discretions, have the right to terminate this Settlement Agreement by providing written notice of their election to do so ("Termination Notice") to all other Settlement Parties hereto within thirty (30) days of

the date on which any of the following events occur: (i) the Court declines to enter the Preliminary Approval Order in any material respect without leave to file a revised motion for Preliminary Approval, and appellate review is not sought or is denied; (ii) the Court refuses to approve this Settlement Agreement or any material part of it; (iii) the Court declines to enter the Final Judgment and Order of Dismissal in any material respect; or (iv) the Final Judgment and Order of Dismissal is modified or reversed by a court of appeal or any higher court in any material respect. Notwithstanding this Paragraph, the Court's determination as to the Fee and Expense Application and/or any Plan of Distribution, or any determination on appeal from any such order, shall not provide grounds for termination of this Settlement Agreement. Except as otherwise provided herein, in the event the Settlement Agreement is terminated in accordance herewith, is vacated, is not approved, or the Effective Date fails to occur for any reason, then the parties to this Settlement Agreement shall be deemed to have reverted to their respective status in the Action as of the Execution Date, and, except as otherwise expressly provided herein, the Settlement Parties shall proceed in all respects as if this Settlement Agreement and any related orders had not been entered, and any portion of the Settlement Fund previously paid by or on behalf of Espar, together with any interest earned thereon (and, if applicable, repayment of any Fee and Expense Award referred to in Section VIII hereof), less Taxes due, if any, with respect to such income, and less costs of settlement administration and notice to the Settlement Class actually incurred and paid or due from the Settlement Fund, shall be returned to Espar within ten (10) business days from the date of the event causing such termination. At the request of Espar's Counsel, the Escrow

Agent shall apply for any tax refund owed on the Settlement Fund and pay the proceeds to Espar.

55. Neither Direct Purchaser Plaintiffs nor Class Co-Lead Counsel nor Espar nor Espar's Counsel shall initiate discussions encouraging, either directly or indirectly, any potential member of the Settlement Class to request exclusion from the Settlement Class.

XV. RESERVATION OF CLASS MEMBERS' RIGHTS AGAINST OTHER DEFENDANTS

56. All rights of any Settlement Class Member against other former, current, or future Defendants or co-conspirators, or any other person, other than the Released Parties, with respect to any of the Released Claims are specifically reserved by Direct Purchaser Plaintiffs and the Settlement Class Members. The sale of Parking Heaters by Espar shall, to the extent permitted and/or authorized by law, remain in the case against the other current or future Defendants in the Action other than the Released Parties as a potential basis for damage claims and shall be part of any joint and several liability claims against the other former, current, or future defendants in the Action or any other persons other than the Released Parties.

XVI. MISCELLANEOUS

57. This Agreement does not settle or compromise any claim by Direct Purchaser Plaintiffs or any Settlement Class Member against any former or current Defendants or alleged co-conspirator or any other person or entity other than the Released Parties.

58. The parties to this Settlement Agreement intend the settlement to be a final

and complete resolution of all disputes asserted or which could be asserted by Direct Purchaser Plaintiffs and/or any Settlement Class Member against the Released Parties with respect to the Action and the Released Claims. Accordingly, Direct Purchaser Plaintiffs and Espar agree not to assert in any judicial proceeding that the Action was brought by Direct Purchaser Plaintiffs or defended by Espar in bad faith or without a reasonable basis. The Settlement Parties further agree not to assert in any judicial proceeding that any Party violated Fed. R. Civ. P. 11. The Settlement Parties agree that the amount paid and the other terms of the settlement were negotiated at arm's length in good faith by the Settlement Parties, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel and the mediator.

59. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

60. The administration and consummation of the settlement as embodied in this Settlement Agreement shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of entering orders relating to the Fee and Expense Application, the Plan of Distribution, and enforcing the terms of this Settlement Agreement.

61. For the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision of this Agreement to be construed against its drafter, Direct Purchaser Plaintiffs and Espar agree that this Agreement is to be deemed to have been drafted equally by all Settlement Parties hereto.

62. This Settlement Agreement shall constitute the entire agreement between

Direct Purchaser Plaintiffs and Espar pertaining to the settlement of Direct Purchaser Plaintiffs' claims against Espar in the Action and supersedes any and all prior and contemporaneous undertakings, communications, representations, understandings, negotiations and discussions, either oral or written, between Direct Purchaser Plaintiffs and Espar in connection therewith. All terms of this Settlement Agreement are contractual and not mere recitals. The terms of this Settlement Agreement are and shall be binding upon, and inure to the benefit of, each of the Settlement Parties hereto, their heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, and assigns, and upon all other persons claiming any interest in the subject matter hereto through any of the parties hereto, including Releasors and any Settlement Class Members.

63. This Settlement Agreement may be modified or amended only by a writing executed by Direct Purchaser Plaintiffs, through Class Co-Lead Counsel, and Espar, through Espar's Counsel, subject (if after preliminary or final approval by the Court) to approval by the Court. Amendments and modifications may be made without notice to the Settlement Class unless notice is required by law or by the Court.

64. Nothing in this Settlement Agreement constitutes an admission by Espar as to the merits of the allegations made in the Action, the validity of any defenses that could be asserted by Espar, or the appropriateness of certification of any class other than the Settlement Class under Fed. R. Civ. P. 23 solely for settlement purposes. This Settlement Agreement is without prejudice to the rights of Espar to: (i) challenge the Court's certification of any class, including the Settlement Class, in the Action should the

Settlement Agreement not be approved or implemented for any reason; and/or (ii) oppose any certification or request for certification in any other proposed or certified class action.

65. All terms of this Settlement Agreement shall be governed by and interpreted according to the substantive laws of New York without regard to its choice-of-law principles.

66. Except as otherwise provided in Paragraphs 34 and 42, Espar, Direct Purchaser Plaintiffs, their respective counsel, and the Settlement Class Members hereby irrevocably submit to the exclusive jurisdiction of the United States District Court for the Eastern District of New York, for any suit, action, proceeding or dispute arising out of or relating to this Settlement Agreement or the applicability of this Settlement Agreement, including, without limitation, any suit, action, proceeding, or dispute relating to the release provisions herein.

67. The proposed Plan of Distribution is not a necessary term of this Settlement Agreement, and it is not a condition of this Settlement Agreement that any particular Plan of Distribution be approved. To the extent the proposed or approved Plan of Distribution is consistent with the terms of this Settlement Agreement, the Released Parties will take no position with respect to the proposed Plan of Distribution or such Plan of Distribution as may be approved by the Court. The Plan of Distribution is a matter separate and apart from the settlement between the Settlement Parties, and any decision by the Court concerning a particular Plan of Distribution shall not affect the validity or finality of the settlement, including the scope of the release.

68. This Settlement Agreement may be executed in counterparts by Direct

Purchaser Plaintiffs and Espar, and a facsimile or .pdf signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

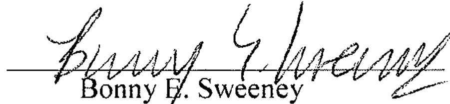
69. Direct Purchaser Plaintiffs and Espar acknowledge that they have been represented by counsel and have made their own investigations of the matters covered by this Settlement Agreement to the extent they have deemed it necessary to do so. Therefore, Direct Purchaser Plaintiffs and Espar and their respective counsel agree that they will not seek to set aside any part of this Settlement Agreement on the grounds of mistake. Moreover, Direct Purchaser Plaintiffs and Espar and their respective counsel understand, agree, and expressly assume the risk that any fact may turn out hereinafter to be other than, different from, or contrary to the facts now known to them or believed by them to be true, and further agree that this Settlement Agreement shall be effective in all respects notwithstanding and shall not be subject to termination, modification, or rescission by reason of any such difference in facts.

70. 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 Settlement Agreement, subject to Court approval; and the undersigned Class Co-Lead Counsel represent that they are authorized to execute this Settlement Agreement on behalf of Direct Purchaser Plaintiffs. Each of the undersigned attorneys shall use their best efforts to effectuate this Settlement Agreement.

IN WITNESS WHEREOF, the parties hereto, through their fully authorized representatives, have agreed to this Settlement Agreement.

DATED: 11/29/17

HAUSFELD LLP



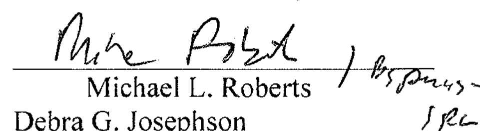
Bonny E. Sweeney
Seth R. Gassman
600 Montgomery Street, Suite 3200
San Francisco, CA 94111
Telephone: (415) 633-1908
Facsimile: (415) 358-4980
Email: bsweeney@hausfeld.com
Email: sgassman@hausfeld.com

Michael D. Hausfeld
Jeannine M. Kenney
HAUSFELD LLP
1700 K St. NW, Suite 650
Washington, D.C. 20006
Telephone: (202) 540-7200
Facsimile: (202) 540-7201
Email: mhausfeld@hausfeld.com
Email: jkenney@hausfeld.com

Brent Landau
HAUSFELD LLP
325 Chestnut St., Suite 900
Philadelphia, PA 19106
Telephone: (215-985-3270
Facsimile: (215) 985-3271
Email: blandau@hausfeld.com

DATED: 11/29/17

ROBERTS LAW FIRM, P.A.



Michael L. Roberts
Debra G. Josephson
Stephanie E. Smith
20 Rahling Circle
Little Rock, AR 72223
Tel: 501.476.7391
Facsimile: 501.821.4474
Email: mikeroberts@robertslawfirm.us
Email:
stephaniesmith@robertslawfirm.us
Email:

debrajosephson@robertslawfirm.us

On behalf of Direct Purchaser Plaintiffs and the Settlement Class

DATED: Nov. 29, 2017

O'MELVENY & MYERS LLP

Michael F. Tubach
Two Embarcadero Center
28th Floor
San Francisco, CA 94111

Telephone: (415) 984-8876
Facsimile: (415) 984-8701
Email: mtubach@omm.com

On behalf of Defendants Eberspaecher Climate Control Systems GmbH & Co. KG, Espar, Inc., and Espar Products Inc.

EXHIBIT 3

COURT EXHIBIT
#1
3/12/2015

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-- x

UNITED STATES OF AMERICA	:	Criminal No.
v.	:	Filed:
ESPAR INC.,	:	Violation: 15 U.S.C. § 1
Defendant.	:	

-- x

FILED
IN CLERK'S OFFICE
US DISTRICT COURT E.D.N.Y.
★ MAR 12 2015 ★
BROOKLYN OFFICE

PLEA AGREEMENT

The United States of America and Espar Inc. (hereinafter, the "defendant"), a corporation organized and existing under the laws of Illinois, hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P."):

RIGHTS OF DEFENDANTS

1. The defendant understands its rights:

(a) to be represented by an attorney;

(b) to be charged by Indictment;

(c) to plead not guilty to any criminal charge brought against it;

(d) to have a trial by jury, at which it would be presumed not guilty of the charge and the United States would have to prove every essential element of the charged offense beyond a reasonable doubt for it to be found guilty;

(e) to confront and cross-examine witnesses against it and to subpoena witnesses in its defense at trial;

(f) to appeal its conviction if it is found guilty; and

(g) to appeal the imposition of sentence against it.

AGREEMENT TO PLEAD GUILTY AND WAIVE CERTAIN RIGHTS

2. The defendant knowingly and voluntarily waives the rights set out in Paragraph 1(b)-(f) above. The defendant also knowingly and voluntarily waives any objection or defense it may have to the prosecution of the charged offense in the United States District Court for the Eastern District of New York based on venue. The defendant also knowingly and voluntarily waives the right to file any appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742, that challenges the sentence imposed by the Court if that sentence is consistent with or below the recommended sentence in Paragraph 9 of this Plea Agreement, regardless of how the sentence is determined by the Court. This agreement does not affect the rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b)-(c). Nothing in this paragraph, however, will act as a bar to the defendant perfecting any legal remedies it may otherwise have on appeal or collateral attack respecting claims of ineffective assistance of counsel or prosecutorial misconduct. The defendant agrees that there is currently no known evidence of ineffective assistance of counsel or prosecutorial misconduct. Pursuant to Fed. R. Crim. P. 7(b), the defendant will waive indictment and plead guilty to a one-count Information to be filed in the United States District Court for the Eastern District of New York. The Information will charge the defendant with participating in a combination and conspiracy to suppress and eliminate competition in the sale of parking heaters for commercial vehicles in the aftermarket by agreeing to fix, stabilize, and maintain prices of parking heaters, sold to aftermarket customers in the United States and elsewhere in North America, from at least as early as October 1, 2007 through at least December 31, 2012, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

3. The defendant will plead guilty to the criminal charge described in Paragraph 2 above pursuant to the terms of this Plea Agreement and will make a factual admission of guilt to the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4 below.

FACTUAL BASIS FOR OFFENSE CHARGED

4. Had this case gone to trial, the United States would have presented evidence sufficient to prove the following facts:

(a) For purposes of this Plea Agreement, the "relevant period" is that period from at least as early as October 1, 2007 through at least December 31, 2012. During the relevant period, the defendant was a corporation organized and existing under the laws of Illinois. During the relevant period, the defendant was a wholly-owned subsidiary of Eberspaecher Climate Control Systems International Beteiligungs-GmbH, located in Esslingen, Germany.

(b) During the relevant period, the defendant was engaged in the sale of parking heaters, which are devices that heat the interior compartment of a motor vehicle independent of the operation of the vehicle's engine. Parking heaters are used in a wide variety of commercial vehicles. Parking heaters sold by the defendant and its competitors included two primary types: air heaters, which work by heating interior or outside air drawn into the heater unit, and water or "coolant" heaters, which are integrated into the engine coolant circuit and heat the engine as well as the interior compartment. As used in this Plea Agreement, (i) the term "parking heaters" includes the heaters themselves, accessories sold for use with heaters, and packages containing heaters and selected accessories (parking heater "kits") and (ii) "aftermarket customers" are customers that purchase parking heaters for installation in a vehicle after it has been sold by the original vehicle manufacturer.

(c) During the relevant period, the defendant and some of its related entities, as defined in Paragraph 13 of this Plea Agreement, were engaged in the sale of parking heaters in the United States and elsewhere and employed at least 650 individuals. During the relevant period, the defendant's sales of parking heaters to U.S. aftermarket customers totaled at least $62.4 million.

(d) During the relevant period, the defendant, through its directors, officers, and employees, including high-level personnel of the defendant, participated in a combination and conspiracy to suppress and eliminate competition by agreeing to fix, stabilize, and maintain prices to parking heaters for commercial vehicles sold to aftermarket customers in the United States and elsewhere in North America, from at least as early as October 1, 2007 through at least December 31, 2012. In furtherance of the conspiracy, the defendant, through its directors, officers, and employees, engaged in communications and discussions and attended meetings with representatives of its co-conspirators. During these communications, discussions, and meetings, agreements were reached to fix, stabilize, and maintain prices on parking heaters to be sold to aftermarket customers in the United States and elsewhere in North America. During the relevant period, parking heaters sold by one or more of the conspirator firms, and equipment and supplies necessary to produce and distribute parking heaters, as well as payments for parking heaters, traveled in interstate and foreign commerce. The business activities of the defendant and its co-conspirators in connection with the production and sale of parking heaters that were the subject of this conspiracy were within the flow of, and substantially affected, interstate and foreign trade and commerce.

ELEMENTS OF THE OFFENSE

5. The elements of the charged offense are that:

(a) the conspiracy described in the Information existed at or about the time alleged;

(b) the defendant knowingly became a member of the conspiracy; and

(c) the conspiracy described in the Information either substantially affected interstate commerce in goods or services or occurred within the flow of interstate commerce in goods and services.

POSSIBLE MAXIMUM SENTENCE

6. The defendant understands that the statutory maximum penalty that may be imposed against it upon conviction for a violation of Section One of the Sherman Antitrust Act is a fine in an amount equal to the greatest of:

(a) $100 million (15 U.S.C. § 1);

(b) twice the gross pecuniary gain the conspirators derived from the crime (18 U.S.C. § 3571(c) and (d)); or

(c) twice the gross pecuniary loss caused to the victims of the crime by the conspirators (18 U.S.C. § 3571(c) and (d)).

7. In addition, the defendant understands that:

(a) pursuant to 18 U.S.C. § 3561(c)(1), the Court may impose a term of probation of at least one year, but not more than five years;

(b) pursuant to §8B1.1 of the United States Sentencing Guidelines ("U.S.S.G.," "Sentencing Guidelines," or "Guidelines") or 18 U.S.C. § 3563(b)(2) or § 3663(a)(3), the Court may order it to pay restitution to the victims of the offense; and

(c) pursuant to 18 U.S.C. § 3013(a)(2)(B), the Court is required to order the defendant to pay a $400 special assessment upon conviction for the charged crime.

SENTENCING GUIDELINES

8. The defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider, in determining and imposing sentence, the Guidelines Manual in effect on the date of sentencing unless that Manual provides for greater punishment than the Manual in effect on the last date that the offense of conviction was committed, in which case the Court must consider the Guidelines Manual in effect on the last date that the offense of conviction was committed. The parties agree there is no *ex post facto* issue under the November 1, 2014 Guidelines Manual. The Court must also consider the other factors set forth in 18 U.S.C. § 3553(a) in determining and imposing sentence. The defendant understands that the Guidelines determinations will be made by the Court by a preponderance of the evidence standard. The defendant understands that although the Court is not ultimately bound to impose a sentence within the applicable Guidelines range, its sentence must be reasonable based upon consideration of all relevant sentencing factors set forth in 18 U.S.C. § 3553(a).

SENTENCING AGREEMENT

9. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), and subject to the full, truthful, and continuing cooperation of the defendant and its related entities, as defined in Paragraph 13 of this Plea Agreement, the United States and the defendant agree that the appropriate disposition of this case is, and agree to recommend jointly that the Court impose, a sentence requiring the defendant to pay to the United States a criminal fine of $14,970,000, payable in full before the thirtieth (30th) day after the date of judgment, and no order of restitution ("the recommended sentence"). The defendant and the United States agree that there exists no aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the U.S.

Sentencing Commission in formulating the Sentencing Guidelines justifying a departure pursuant to U.S.S.G. §5K2.0. The defendant and the United States agree not to seek at the sentencing hearing any sentence outside of the Guidelines range nor any Guidelines adjustment for any reason that is not set forth in this Plea Agreement. The defendant and the United States further agree that the recommended sentence set forth in this Plea Agreement is reasonable.

(a) The defendant understands that the Court will order it to pay a $400 special assessment, pursuant to 18 U.S.C. § 3013(a)(2)(B), in addition to any fine imposed.

(b) In light of the availability of civil causes of action, which potentially provide for a recovery of a multiple of actual damages, the recommended sentence does not include a restitution order for the offense charged in the Information.

10. The United States and the defendant jointly submit that this Plea Agreement, together with the record that will be created by the United States and the defendant at the plea and sentencing hearings, and the further disclosure described in Paragraph 11, will provide sufficient information concerning the defendant, the crime charged in this case, and the defendant's role in the crime to enable the meaningful exercise of sentencing authority by the Court under 18 U.S.C. § 3553. The United States and defendant agree to request jointly that the Court accept the defendant's guilty plea and impose sentence on an expedited schedule as early as the date of arraignment, based upon the record provided by the defendant and the United States, under the provisions of Fed. R. Crim. P. 32(c)(1)(A)(ii) and U.S.S.G. §6A1.1. The Court's denial of the request to impose sentence on an expedited schedule will not void this Plea Agreement.

11. Subject to the full, truthful, and continuing cooperation of the defendant and its related entities, as defined in Paragraph 13 of this Plea Agreement, and prior to sentencing in this

case, the United States will fully advise the Court of the fact, manner, and extent of the defendant's and its related entities' cooperation and their commitment to prospective cooperation with the United States' investigation and prosecutions, all material facts relating to the defendant's involvement in the charged offense, and all other relevant conduct.

12. The United States and the defendant understand that the Court retains complete discretion to accept or reject the recommended sentence provided for in Paragraph 9 of this Plea Agreement.

(a) If the Court does not accept the recommended sentence, the United States and the defendant agree that this Plea Agreement, except for Paragraph 12(b) below, will be rendered void.

(b) If the Court does not accept the recommended sentence, the defendant will be free to withdraw its guilty plea (Fed. R. Crim. P. 11(c)(5) and (d)). If the defendant withdraws its plea of guilty, this Plea Agreement, the guilty plea, and any statement made in the course of any proceedings under Fed. R. Crim. P. 11 regarding the guilty plea or this Plea Agreement or made in the course of plea discussions with an attorney for the government will not be admissible against the defendant in any criminal or civil proceeding, except as otherwise provided in Fed. R. Evid. 410. In addition, the defendant agrees that, if it withdraws its guilty plea pursuant to this subparagraph of this Plea Agreement, the statute of limitations period for any offense referred to in Paragraph 15 of this Plea Agreement will be tolled for the period between the date of signature of this Plea Agreement and the date the defendant withdrew its guilty plea or for a period of sixty (60) days after the date of signature of this Plea Agreement, whichever period is greater.

DEFENDANT'S COOPERATION

13. The defendant and its immediate parent corporation, Eberspaecher Climate Control Systems International Beteiligungs-GmbH; the defendant's indirect parent corporations Eberspaecher Climate Control Systems GmbH & Co. KG (formerly known as J. Eberspaecher GmbH & Co. KG) and Eberspaecher Gruppe GmbH & Co. KG; and Espar Products Inc., the defendant's affiliate, and any of its related entities in which the defendant or any of the companies specifically named in this Paragraph 13 had a greater than 50% ownership interest as of the date of signature of this Plea Agreement) (collectively "related entities") will cooperate fully and truthfully with the United States in the prosecution of this case, the current federal investigation of violations of federal antitrust and related criminal laws involving the sale of parking heaters to customers in the United States and elsewhere in North America; any federal investigation resulting therefrom, and any litigation or other proceedings arising or resulting from any such investigation to which the United States is a party (collectively "Federal Proceeding"). Federal Proceeding includes, but is not limited to, an investigation, prosecution, litigation, or other proceeding regarding obstruction of, the making of a false statement or declaration in, the commission of perjury or subornation of perjury in, the commission of contempt in, or conspiracy to commit such offenses in, a Federal Proceeding. The full, truthful, and continuing cooperation of the defendant and its related entities will include, but not be limited to:

(a) producing to the United States all documents, information, and other materials, wherever located, not protected under the attorney-client privilege or the work-product doctrine (and with translations into English when requested by the United States), in the possession,

custody, or control of the defendant or any of its related entities, that are requested by the United States in connection with any Federal Proceeding; and

(b) securing the full, truthful, and continuing cooperation, as defined in Paragraph 14 of this Plea Agreement, of current directors, officers, and employees of the defendant or any of its related entities, but excluding individuals listed in Attachment A filed under seal, including making these persons available in the United States and other mutually agreed-upon locations, at the defendant's expense, for interviews and the provision of testimony in grand jury, trial, and other judicial proceedings in connection with any Federal Proceeding. Current directors, officers, and employees are defined for purposes of this Plea Agreement as individuals who are directors, officers, or employees of the defendant or any of its related entities as of the date of signature of this Plea Agreement.

14. The full, truthful, and continuing cooperation of each person described in Paragraphs 13(b) above will be subject to the procedures and protections of this paragraph, and will include, but not be limited to:

(a) producing in the United States and at other mutually agreed-upon locations all documents, including claimed personal documents and other materials, wherever located, not protected under the attorney-client privilege or the work-product doctrine (and with translations into English) that are requested by attorneys or agents of the United States in connection with any Federal Proceeding;

(b) making himself or herself available for interviews in the United States and at other mutually agreed-upon locations, not at the expense of the United States, upon the request of attorneys or agents of the United States in connection with any Federal Proceeding;

(c) responding fully and truthfully to all inquiries of the United States in connection with any Federal Proceeding, without falsely implicating any person or intentionally withholding any information, subject to the penalties of making false statements or declarations (18 U.S.C. §§ 1001, 1623), obstruction of justice (18 U.S.C. § 1503, *et seq.*), or conspiracy to commit such offenses;

(d) otherwise voluntarily providing the United States with any material or information not requested in (a) - (c) of this Paragraph and not protected under the attorney-client privilege or the work-product doctrine that he or she may have that is related to any Federal Proceeding;

(e) when called upon to do so by the United States in connection with any Federal Proceeding, testifying in grand jury, trial, and other judicial proceedings in the United States fully, truthfully, and under oath, subject to the penalties of perjury (18 U.S.C. § 1621), making false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401-402), and obstruction of justice (18 U.S.C. § 1503, *et seq.*); and

(f) agreeing that, if the agreement not to prosecute him or her in this Plea Agreement is rendered void under Paragraph 16(c), the statute of limitations period for any Relevant Offense, as defined in Paragraph 16(a), will be tolled as to him or her for the period between the date of the signature of this Plea Agreement and six (6) months after the date that the United States gave notice of its intent to void its obligations to that person under this Plea Agreement.

GOVERNMENT'S AGREEMENT

15. Subject to the full, truthful, and continuing cooperation of the defendant and its related entities, as defined in Paragraph 13 of this Plea Agreement, and upon the Court's acceptance of the guilty plea called for by this Plea Agreement and the imposition of the

recommended sentence, the United States agrees that it will not bring further criminal charges against the defendant or any of its related entities, for any act or offense committed before the date of signature of this Plea Agreement that was undertaken in furtherance of an antitrust conspiracy involving the sale of parking heaters in the United States and elsewhere in North America. The non-prosecution terms of this paragraph do not apply to (a) any acts of subornation of perjury (18 U.S.C. § 1622), making a false statement (18 U.S.C. § 1001), obstruction of justice (18 U.S.C. § 1503, *et seq.*), contempt (18 U.S.C. §§ 401-402), or conspiracy to commit such offenses; (b) civil matters of any kind; (c) any violation of the federal tax or securities laws or conspiracy to commit such offenses; or (d) any crime of violence.

16. The United States agrees to the following:

(a) Upon the Court's acceptance of the guilty plea called for by this Plea Agreement and the imposition of the recommended sentence and subject to the exceptions noted in Paragraph 16(c), the United States agrees that it will not bring criminal charges against any current director, officer, or employee of the defendant or its related entities for any act or offense committed before the date of signature of this Plea Agreement and while that person was acting as a director, officer, or employee of the defendant or its related entities that was undertaken in furtherance of any antitrust conspiracy involving the sale of parking heaters in the United States and elsewhere in North America ("Relevant Offense"), except that the protections granted in this paragraph do not apply to the individuals named in Attachment A filed under seal;

(b) Should the United States determine that any current director, officer, or employee of the defendant or its related entities may have information relevant to any Federal Proceeding, the United States may request that person's cooperation under the terms of this Plea Agreement by written request delivered to counsel for the individual (with a copy to the undersigned counsel

for the defendant) or, if the individual is not known by the United States to be represented, to the undersigned counsel for the defendant;

(c) If any person requested to provide cooperation under Paragraph 16(b) fails to comply fully with his or her obligations under Paragraph 14, then the terms of this Plea Agreement as they pertain to that person and the agreement not to prosecute that person granted in this Plea Agreement will be rendered void and the United States may prosecute such person criminally for any federal crime of which the United States has knowledge, including but not limited to any Relevant Offense;

(d) Except as provided in Paragraph 16(e), information provided by a person described in Paragraph 16(b) to the United States under the terms of this Plea Agreement pertaining to any Relevant Offense, or any information directly or indirectly derived from that information, may not be used against that person in a criminal case, except in a prosecution for perjury or subornation of perjury (18 U.S.C. §§ 1621-22), making a false statement or declaration (18 U.S.C. §§ 1001, 1623), obstruction of justice (18 U.S.C. § 1503, *et seq.*), contempt (18 U.S.C. §§ 401-402), or conspiracy to commit such offenses;

(e) If any person who provides information to the United States under this Plea Agreement fails to comply fully with his or her obligations under Paragraph 14 of this Plea Agreement, the agreement in Paragraph 16(c) not to use that information or any information directly or indirectly derived from it against that person in a criminal case will be rendered void;

(f) The non-prosecution terms of this paragraph do not apply to civil matters of any kind; any violation of the federal tax or securities laws, or conspiracy to commit such offenses; any crime of violence; perjury or subornation of perjury (18 U.S.C. §§ 1621-22), making a false

statement or declaration (18 U.S.C. §§ 1001, 1623), obstruction of justice (18 U.S.C. § 1503, *et seq.*), contempt (18 U.S.C. §§ 401-402), or conspiracy to commit such offenses; and

(g) Documents provided under Paragraphs 13(a) and 14(a) will be deemed responsive to outstanding grand jury subpoenas issued to the defendant or any of its related entities.

17. The United States agrees that when any person travels to the United States for interviews, grand jury appearances, or court appearances pursuant to this Plea Agreement, or for meetings with counsel in preparation therefor, the United States will take no action, based upon any Relevant Offense, to subject such person to arrest, detention, or service of process, or to prevent such person from departing the United States. This paragraph does not apply to an individual's commission of perjury or subornation of perjury (18 U.S.C. §§ 1621-22), making false statements (18 U.S.C. § 1001), making false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623), obstruction of justice (18 U.S.C. § 1503, *et seq.*), contempt (18 U.S.C. §§ 401-402), or conspiracy to commit such offenses.

18. The defendant understands that it may be subject to suspension or debarment action by federal or state agencies other than the United States Department of Justice, Antitrust Division, based upon the conviction resulting from this Plea Agreement, and that this Plea Agreement in no way controls whatever action, if any, other agencies may take. However, the Antitrust Division agrees that, if requested, it will advise the appropriate officials of any governmental agency considering such action of the fact, manner, and extent of the cooperation of the defendant and its related entities as a matter for that agency to consider before determining what action, if any, to take. The defendant nevertheless affirms that it wants to plead guilty regardless of any suspension or debarment consequences of its plea.

REPRESENTATION BY COUNSEL

19. The defendant has been represented by counsel and is fully satisfied that its attorneys have provided competent legal representation. The defendant has thoroughly reviewed this Plea Agreement and acknowledges that counsel has advised it of the nature of the charge, any possible defenses to the charge, and the nature and range of possible sentences.

VOLUNTARY PLEA

20. The defendant's decision to enter into this Plea Agreement and tender a plea of guilty is freely and voluntarily made and is not the result of force, threats, assurances, promises, or representations other than the representations contained in this Plea Agreement and its Attachments A (filed under seal) and B. The United States has made no promises or representations to the defendant as to whether the Court will accept or reject the recommendations contained within this Plea Agreement.

VIOLATION OF PLEA AGREEMENT

21. The defendant agrees that, should the United States determine in good faith, during the period that any Federal Proceeding is pending, that the defendant or any of its related entities has failed to provide full, truthful, and continuing cooperation, as defined in Paragraph 13 of this Plea Agreement, or has otherwise violated any provision of this Plea Agreement, the United States will notify counsel for the defendant in writing by personal or overnight delivery, email, or facsimile transmission and may also notify counsel by telephone of its intention to void any of its obligations under this Plea Agreement (except its obligations under this paragraph), and the defendant and its related entities shall be subject to prosecution for any federal crime of which the United States has knowledge including, but not limited to, the substantive offenses relating to the investigation resulting in this Plea Agreement. The defendant agrees that, in the

event that the United States is released from its obligations under this Plea Agreement and brings criminal charges against the defendant or any of its related entities for any offense referred to in Paragraph 15 of this Plea Agreement, the statute of limitations period for such offense will be tolled for the period between the date of the signing of this Plea Agreement and six (6) months after the date the United States gave notice of its intent to void its obligations under this Plea Agreement.

22. The defendant understands and agrees that in any further prosecution of it or its related entities resulting from the release of the United States from its obligations under this Plea Agreement, because of the defendant's or any of its related entities' violation of this Plea Agreement, any documents, statements, information, testimony, or evidence provided by it, its related entities, or their current directors, officers, or employees to attorneys or agents of the United States, federal grand juries, or courts, and any leads derived therefrom, may be used against it or its related entities. In addition, the defendant unconditionally waives its right to challenge the use of such evidence in any such further prosecution, notwithstanding the protections of Fed. R. Evid. 410.

ENTIRETY OF AGREEMENT

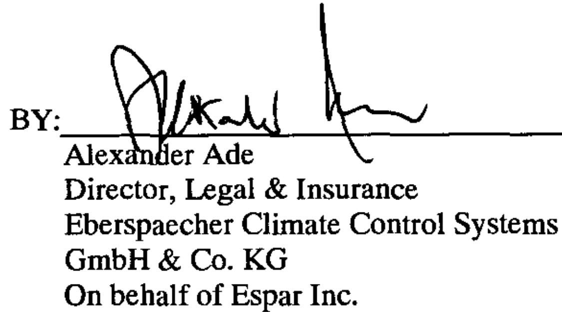
23. This Plea Agreement and its Attachments A (filed under seal) and B constitute the entire agreement between the United States and the defendant concerning the disposition of the criminal charges in this case. This Plea Agreement cannot be modified except in writing, signed by the United States and the defendant.

24. The undersigned is authorized to enter this Plea Agreement on behalf of the defendant as evidenced by the Resolution of the Board of Directors of the defendant attached to, and incorporated by reference in, this Plea Agreement.

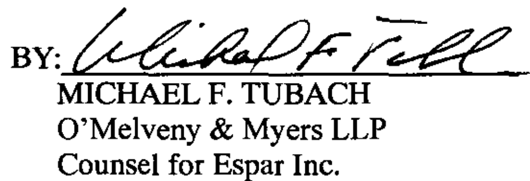
25. The undersigned attorneys for the United States have been authorized by the Attorney General of the United States to enter this Plea Agreement on behalf of the United States.

Dated: January 19, 2015

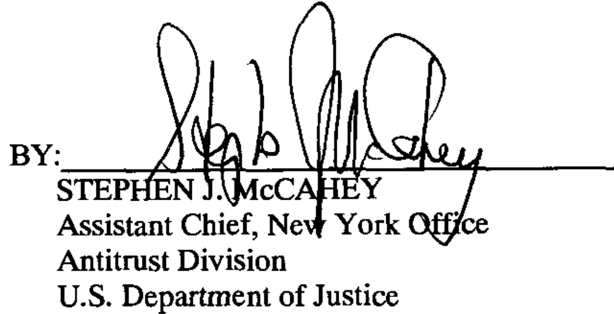
AGREED TO BY:



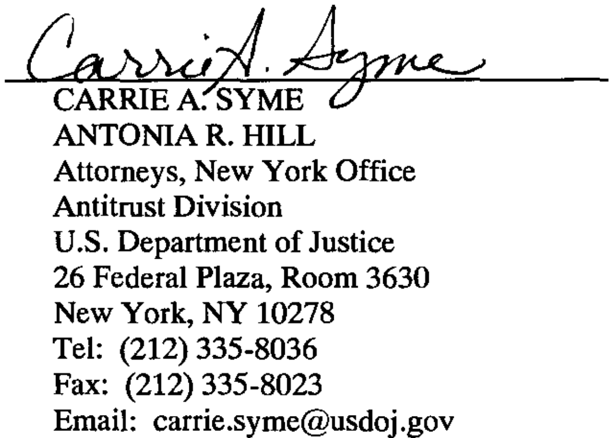
BY:____________________
Alexander Ade
Director, Legal & Insurance
Eberspaecher Climate Control Systems GmbH & Co. KG
On behalf of Espar Inc.



BY:____________________
MICHAEL F. TUBACH
O'Melveny & Myers LLP
Counsel for Espar Inc.



BY:____________________
STEPHEN J. McCAHEY
Assistant Chief, New York Office
Antitrust Division
U.S. Department of Justice



CARRIE A. SYME
ANTONIA R. HILL
Attorneys, New York Office
Antitrust Division
U.S. Department of Justice
26 Federal Plaza, Room 3630
New York, NY 10278
Tel: (212) 335-8036
Fax: (212) 335-8023
Email: carrie.syme@usdoj.gov

ATTACHMENT B TO PLEA AGREEMENT

GUARANTEE

In consideration of the January 19, 2015 Plea Agreement between the United States and Espar Inc. ("Plea Agreement") to which this Guarantee is attached, Eberspaecher Climate Control Systems International Beteiligungs-GmbH ("Eberspaecher," Espar Inc.'s parent company), knowingly and voluntarily agrees that it will act as guarantor to the United States for payment of the criminal fine of $14,970,000.00 imposed on Espar Inc. pursuant to the Plea Agreement, Paragraph 9. The signature of Eberspaecher's authorized representative below is an acknowledgment of Espar Inc.'s indebtedness to the United States in the above-stated amount and Eberspaecher's unconditional and irrevocable guarantee of that criminal fine pursuant to the terms of the Plea Agreement.

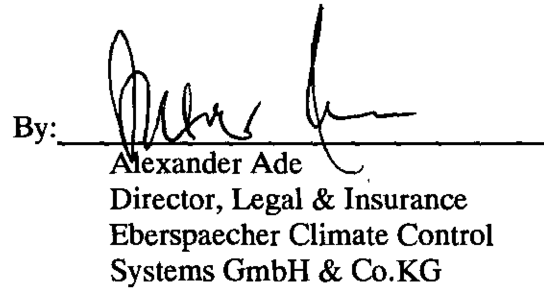
As guarantor, Eberspaecher agrees that in the event that Espar Inc. fails to make the payment as set forth in Paragraph 9 of the Plea Agreement (for whatever reason, including but not limited to, bankruptcy, dissolution, or any other event), Eberspaecher shall cure any such delinquent payment (as defined by 18 USC § 3572 (h)), including any accrued interest, within thirty (30) days of the date the fine became delinquent and will make such payment in accordance with the terms of the sentence imposed by the District Court pursuant to the Plea Agreement.

If Eberspaecher fails to make payment of the full outstanding balance (including interest) due as required above, the United States may proceed against Eberspaecher to enforce collection of the entire amount due and owing to the United States, plus interest and the costs of collection (including reasonable attorney's fees), by filing a lawsuit or by any other legal method available. In such event, Eberspaecher agrees to be jointly and severally liable for the entire amount then due and owing, plus interest and costs thereof. Eberspaecher waives promptness, diligence, protest, presentment, notice of acceptance, and, except as expressly provided herein, any and all notices of any kind and any requirement that the United States exhaust any right or take any action against any other person or entity or collateral.

Eberspaecher agrees that the exclusive jurisdiction and venue for any dispute arising between it and the United States with respect to this Guarantee will be the United States District Court for the Eastern District of New York, and that any such dispute will be governed by and interpreted in accordance with the laws of the United States. Eberspaecher will indemnify the United States against all losses, costs, and expenses incurred in connection with the enforcement of this Guarantee against it.

The undersigned attests that he or she is authorized to enter into this guarantee on behalf of Eberspaecher.

Dated: 12. Jan. 2015

By: 
Alexander Ade
Director, Legal & Insurance
Eberspaecher Climate Control
Systems GmbH & Co.KG

RESOLUTION OF THE DIRECTORS

OF

ESPAR, INC.

(the "Corporation")

At the meeting of the Board of Directors of Espar, Inc. ("**Espar**") held on January 9th 2015, the Board:

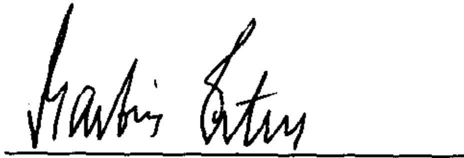
CONFIRMED that, consistent with the Eberspächer Group's 2013 Annual Report, Espar's immediate parent corporation is Eberspaecher Climate Control Systems International Beteiligungs-GmbH; Espar's indirect parent corporations are Eberspaecher Climate Control Systems GmbH & Co. KG (formerly known as J. Eberspaecher GmbH & Co. KG) and Eberspaecher Gruppe GmbH & Co. KG, and Espar's affiliate is Espar Products Inc.;

RESOLVED, that the execution, delivery, and performance of the Plea Agreement between the United States Department of Justice and Espar, in substantially the form attached hereto, is hereby approved;

RESOLVED, that Mr. Alexander Ade, General Counsel of Eberspächer Climate Control Systems GmbH & Co., KG, parent company of Espar, is authorized, empowered, and directed to execute and deliver the Plea Agreement in the name of and on behalf of Espar; and

RESOLVED, that Mr. Ade is authorized, empowered, and directed to represent Espar before any court or governmental agency in order to make statements and confirmations in accordance with the Plea Agreement, including entering a guilty plea on behalf of Espar.

SIGNED by all of the directors of ESPAR, INC. this 9th day of January, 2015.



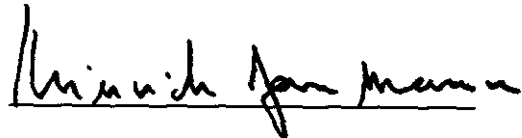


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EXHIBIT 4

BERLIN BOSTON BRUSSELS LONDON NEW YORK PHILADELPHIA SAN FRANCISCO WASHINGTON, DC www.hausfeld.com

Hausfeld: Global Litigation Solutions

Firm Resume

Hausfeld is "the world's leading antitrust litigation firm."

– Politico

Hausfeld Firm Summary

In the last decade, Hausfeld attorneys have won landmark trials, negotiated complex settlements among dozens of defendants, and recovered billions of dollars in cartel recoveries for clients both in and out of court. Renowned for skillful prosecution and resolution of complex and class-action litigation, Hausfeld is the only claimants' firm to be ranked in the top tier in private enforcement of antitrust/competition law in both the United States and the United Kingdom by the Legal 500.

From our locations in Washington, D.C., Boston, New York, Philadelphia, San Francisco, Berlin, Brussels, and London, Hausfeld contributes to the development of law in the United States and abroad in the areas of antitrust/competition, consumer protection, environmental threats, human and civil rights, mass torts, and securities fraud. Hausfeld attorneys have studied the global integration of markets—and responded with innovative legal theories and a creative approach to claims in developed and emerging markets.

Hausfeld was founded by Michael D. Hausfeld, who is widely recognized as one of the country's top civil litigators and a leading expert in the fields of private antitrust/competition enforcement and international human rights. The New York Times has described Mr. Hausfeld as one of the nation's "most prominent antitrust lawyers," while Washingtonian Magazine characterizes him as a lawyer who is "determined to change the world—and succeeding," noting that he "consistently brings in the biggest judgments in the history of law."

Antitrust and Competition Litigation

Hausfeld's reputation for leading groundbreaking antitrust class actions in the United States is well-earned. Having helmed more than thirty antitrust class actions, Hausfeld attorneys are prepared to **litigate and manage cases with dozens of defendants** (*In re Blue Cross Blue Shield Antitrust Litigation*, with more than thirty defendants), **negotiate favorable settlements for class members and clients** (*In re Air Cargo Shipping Services Antitrust Litigation*, settlements of more than $1.2 billion), take on the financial services industry (*In re Foreign Exchange Antitrust Litigation*, with settlements of more than $2 billion), **take cartelists to trial** (*In re Vitamin C Antitrust Litigation*, trial victory of $162 million against Chinese manufacturers of vitamin C), and **push legal boundaries where others have not** (*In re NCAA Antitrust Litigation*, another trial victory in which the court found the NCAA rules prohibiting payment of players to be unlawful).

Consumer Protection Litigation

Hausfeld also pursues consumer protection, defective product, and Lanham Act cases on behalf of a variety of litigants including consumers, entertainers, financial institutions, and other businesses. For example, we obtained class-wide settlements for purchasers of **defective Acer laptops** (*Wolph v. Acer America Corp.*) and **victims of unfair and deceptive practices** (*Radosti v. Envision EMI, LLC* and *In re Tyson Foods, Inc., Chicken Raised Without Antibiotics Consumer Litigation*); and sought compensation for domestic beekeepers and honey packers for **fraudulent mislabeling** of imported honey (*In re Honey Transshipping Litigation*).

Hausfeld Firm Summary

continued

Financial Services

Hausfeld has been at the forefront of numerous class actions against the financial services industry since 2009, pursuing wrongful conduct that spans the globe. Hausfeld leads two of the largest class actions against the world's biggest banks for manipulation of prices paid in the **Libor** and foreign exchange (**Forex**) markets, in which they obtained **more than $2 billion in settlements for the class.**

Mass Tort and Environmental Litigation

Hausfeld attorneys have pursued wide-ranging mass tort cases over the last decade. We have represented **homeowners with defective drywall** (*In re Chinese-Manufactured Drywall Products Liability Litig.*), former **football players who suffered from the long-lasting effects of concussions** (*In re National Football League Players' Concussion Injury Litigation*) **mine workers in southern Africa who contracted silicosis** from their workplace environment – the first case of its kind brought in South Africa, and **victims of dangerous prescription drugs and medical devices**, including women whose hormone replacement therapy caused them to suffer from breast cancer (*In re Prempro Products Liability Litigation*), and patients with defective hip replacements (*In re Stryker Rejuvenate and ABG II Hip Implant Products Liability Litigation*).

HAUSFELD

"Hausfeld stands out for its ability to provide worldwide solutions, leveraging its network of offices across the US and in Europe."

– The Legal 500 2016

Hausfeld: A Global Reach

Hausfeld's international reach enables it to advise across multiple jurisdictions and pursue claims on behalf of clients worldwide. Hausfeld works closely with clients to deliver outstanding results, while always addressing their business concerns. Hausfeld does so by anticipating issues, considering innovative strategies, and maximizing the outcome of legal disputes in a way that creates shareholder value. Its inventive cross border solutions work to the benefit of the multinational companies it often represents.

Creative Solutions to Complex Legal Challenges

Hausfeld lawyers consistently apply forward-thinking ideas and creative solutions to the most vexing global legal challenges faced by clients. As a result, the firm's litigators have developed numerous innovative legal theories that have expanded the quality and availability of legal recourse for claimants around the globe that have a right to seek recovery. Hausfeld's impact was recently recognized by the *Financial Times*, which awarded Hausfeld the "Most Innovative Law Firm in Dispute Resolution of 2013," as well as by the *Legal 500* who has ranked Hausfeld as the only top tier claimants firm in private enforcement of antitrust/competition law in both the United States and the United Kingdom. For example, the landmark settlement that Hausfeld negotiated to resolve claims against Parker ITR for antitrust overcharges on marine hose represented the first private resolution of a company's global cartel liability without any arbitration, mediation, or litigation – creating opportunities never before possible for dispute resolution and providing a new model for global cartel settlements going forward.

Unmatched Global Resources

The firm combines its U.S. offices on both coasts and vibrant European presence with a broad and deep network around the globe to offer clients the ability to seek redress or confront disputes in every corner of the world and across every industry. With over 70 lawyers in offices in Washington, D.C., Boston, New York, Philadelphia, San Francisco, Berlin, Brussels, and London, Hausfeld is a "market leader for claimant-side competition litigation."

HAUSFELD

"Hausfeld LLP is 'one of the most capable plaintiffs' firms involved in the area of civil cartel enforcement', is '[w]idely recognised as a market leader for claimant-side competition litigation… [It is the] market leader in terms of quantity of cases, and also the most advanced in terms of tactical thinking."

– The Legal 500 2014 and 2015

Antitrust Litigation

Hausfeld's antitrust litigation experience is unparalleled

Few, if any, U.S. law firms have litigated more class actions on behalf of companies and individuals injured by anticompetitive conduct than Hausfeld. The firm has litigated cases involving price-fixing, price manipulation, monopolization, tying, and bundling, through individual and class representation and has experience across a wide variety of industries, including automotive, banking, chemicals, construction, manufacturing, energy, financial services, food and beverage, health care, mining & metals, pharmaceuticals and life sciences, retail, sports and entertainment, technology, transportation. Clients rely on us for our antitrust expertise and our history of success in the courtroom and at the negotiation table, and the firm does not shy away from challenges, taking on some of the most storied institutions. Hausfeld is not only trusted by its clients, it is trusted by judges to pursue these claims, as evidenced by the fact that the firm has been appointed as lead or co-lead counsel in over 25 antitrust cases in the last decade. In one recent example, Judge Morrison C. England of the Eastern District of California praised Hausfeld for having "the breadth of experience, resources and talent necessary to navigate" cases of import.

Recognizing the firm's antitrust prowess, *Global Competition Review* has opined that Hausfeld is "one of – if not the – top Plaintiffs' antitrust firm in the U.S." *The Legal 500* likewise consistently ranks Hausfeld among the top five firms in the United States for antitrust litigation on behalf of plaintiffs. And in naming Hausfeld to its Plaintiffs' Hot List for the third year in a row in 2014, *The National Law Journal* opined that Hausfeld "punches above its weight" and "isn't afraid to take on firms far larger than its size and deliver results, especially in antitrust litigation."

Hausfeld has achieved outstanding results in antitrust cases

Hausfeld lawyers have achieved precedent-setting legal decisions and historic trial victories, negotiated some of the world's most complex settlement agreements, and have collectively recovered billions of dollars in settlement and judgments in antitrust cases. Key highlights include:

- ***O'Bannon v. NCAA*, No. 09-cv-03329 (N.D. Cal.)**
  Hausfeld serves as lead counsel in this case, which has received considerable press attention and has been hailed as a game-changer for college sports. Following a three-week trial, Hausfeld attained a historic trial victory when the court ruled that the NCAA's rules prohibiting payments to student-athletes for their names, images, and likenesses violate the antitrust laws. This ruling was upheld by the Ninth Circuit Court of Appeals.

- ***In re Air Cargo Shipping Services Antitrust Litig.*, No. 06-md-1775 (E.D.N.Y.)**
  Hausfeld serves as co-lead counsel in this case alleging over thirty international airlines engaged in conspiracy to fix the price of air cargo shipping services. The firm negotiated more than **$1.2 billion** in settlements from over 30 defendants for the class, won certification of the class and defeated the defendants' motions for summary judgment.

Antitrust Litigation

continued

- ***In re Foreign Exchange Benchmark Rates Antitrust Litig.*, 13-cv-7789 (S.D.N.Y.)**
  Hausfeld serves as co-lead counsel in this case alleging financial institutions participated in a conspiracy to manipulate a key benchmark in the foreign exchange market. To date, the firm has obtained over **$2 billion** in settlements from **nine defendants.** The case is ongoing against the remaining defendants.

- ***In re Vitamin C Antitrust Litig.*, No. 06-md-01738 (E.D.N.Y.)**
  Hausfeld serves as co-lead counsel in the first class antitrust case in the United States against Chinese manufacturers. Hausfeld obtained settlements for the class of **$22.5 million from two of the defendants** – the first after summary judgment, and the second, just before closing arguments at trial. Days later, the jury reached a verdict against the remaining defendants, and the court entered a judgment for **$162 million** after trebling the damages awarded. Appeals are pending.

- ***In re International Air Passenger Surcharge Antitrust Litig.*, No. 06-md-01793 (N.D. Cal.)**
  Hausfeld served as co-lead counsel in this case against two international airlines alleged to have fixed fuel surcharges on flights between the United States and United Kingdom. Lawyers at the firm negotiated a ground-breaking **$200 million** international settlement that provides recovery for both U.S. purchasers under U.S. antitrust laws and U.K. purchasers under U.K. competition laws.

- ***In re LIBOR-Based Financial Instruments Antitrust Litig.*, No. 11-md-2262 (S.D.N.Y.)**
  Hausfeld serves as co-lead counsel in this case against sixteen of the world's largest financial institutions for conspiring to fix LIBOR, the primary benchmark for short-term interest rates. To date, the firm has obtained **$120 million** in a settlement with one defendant. The case is ongoing against the remaining defendants.

- ***In re Municipal Derivatives Antitrust Litig.*, No. 08-cv-2516 (S.D.N.Y.)**
  Hausfeld serves as co-lead counsel in this case against banks, insurance companies, and brokers accused of rigging bids on derivative instruments purchased by municipalities. The firm has obtained over **$223 million** in settlements with **11 defendants**.

- ***In re Automotive Aftermarket Lighting Products Antitrust Litig.*, No. 09-ML-2007 (C.D. Cal.)**
  Hausfeld served as co-lead counsel in this case against three manufacturers for participating in an international conspiracy to fix the prices of aftermarket automotive lighting products. The firm obtained over **$50 million** in settlements.

- ***In re Processed Egg Products Antitrust Litig.*, No. 08-cv-04653 (E.D. Pa.)**
  Hausfeld serves as co-lead counsel in this case alleging that egg producers, through their trade associations, engaged in a scheme to artificially inflate egg prices by agreeing to restrict the supply of both laying hens and eggs. To date, the firm has obtained nearly **$60 million** in settlements and won certification of a class of shell egg purchasers. The case is ongoing against the remaining defendants.

Antitrust Litigation

continued

- ***In re Fresh and Process Potatoes Antitrust Litig.*, No. 10-MD-2186 (D. Idaho)**
  Hausfeld serves as chair of the executive committee in this case alleging that potato growers, their cooperatives, processors, and packers conspired to manipulate the price and supply of potatoes. In defeating defendants' motion to dismiss, the firm secured a judicial determination that supply restrictions are not protected conduct under a limited federal antitrust exemption available to certain grower associations—a novel question that had never before been decided by any court. The firm obtained **$19.5 million** in settlements and valuable injunctive relief prohibiting future production limitation agreements, achieving global resolution of the case.

- ***In re American Express Anti-Steering Rules Antitrust Litig.*, No. 11-md-2221 (E.D.N.Y)**
  As lead counsel, Hausfeld represents a class of merchants and retailers against American Express. The merchants allege that American Express violated antitrust laws by requiring them to accept all American Express cards, and by preventing them from steering their customers to other payment methods.

- ***In re Blue Cross Blue Shield Antitrust Litig.*, No. 13-mdl-2496 (N.D. Ala.)**
  Hausfeld attorneys serve as co-lead counsel and hold court-appointed committee positions in this case against Blue Cross Blue Shield entities, alleging that they illegally agreed not to compete with each other for health insurance subscribers across the United States. Having defeated motions to dismiss, Hausfeld is now marshalling evidence against more than thirty defendants in preparation for summary judgment and trial.

- ***In re Rail Freight Fuel Surcharge Antitrust Litig.*, No. 07-mc-00489 (D.D.C.)**
  Hausfeld is co-lead counsel in this case alleging fuel-surcharge collusion among the nation's largest rail-freight carriers. Leading dozens of firms, Hausfeld mastered the discovery record and obtained class certification in the district court, after which the D.C. Circuit remanded for further consideration of discrete expert issues. This antitrust case is one of the most high-profile class actions in the United States and concerns the claims of some 30,000 shippers, from small businesses to Fortune 500 companies.

Litigation Achievements

Significant Trial Victories

While many law firms like to talk about litigation experience, Hausfeld lawyers regularly bring cases to trial—and win. Among our trial victories are some of the largest antitrust cases in the modern era. For example, in ***O'Bannon v. NCAA*** **(N.D. Cal.)**, we conducted a three-week bench trial before the Chief Judge of the Northern District of California, resulting in a complete victory for college athletes who alleged an illegal agreement among the National Collegiate Athletic Association and its member schools to deny payment to athletes for the commercial licensing of their names, images, and likenesses. Our victory in the O'Bannon litigation followed the successful trial efforts in ***Law v. NCAA*** **(D. Kan.)**, a case challenging earning restrictions imposed on assistant college coaches in which the jury awarded **$67 million** to the class plaintiffs that one of our lawyers represented.

In ***In re Vitamin C Antitrust Litigation*** **(E.D.N.Y.)**, we obtained, on behalf of our direct purchaser clients, a **$162 million jury verdict** against Chinese pharmaceutical companies who fixed prices and controlled export output of Vitamin C—on the heels of $22.5 million in settlements with other defendants, which represented the first civil settlements with Chinese companies in a U.S. antitrust cartel case. Years earlier, we took on a global vitamin price-fixing cartel in ***In re Vitamins*** **(D.D.C.)**, in which we secured a **$1.1 billion settlement** for a class of vitamin purchasers and then took the remaining defendants to trial, culminating in a **$148 million jury verdict**.

Our trial experience extends to intellectual property matters and general commercial litigation as well. Recently, we represented entertainment companies that sought to hold internet service provider Cox Communications accountable for willful contributory copyright infringement by ignoring the illegal downloading activity of its users. Following a trial in ***BMG Rights Management (US) LLC, v. Cox Enterprises, Inc.*** **(E.D. Va.)**, the jury returned a **$25 million verdict** for our client.

Exceptional Settlement Results

In less than a decade, Hausfeld has recouped over $20 billion for clients and the classes they represented. We are proud of our record of successful dispute resolution. Among our settlement achievements, three cases merit special mention. In a case involving allegations of price-fixing among the world's largest airfreight carriers, ***In re Air Cargo Shipping Services Antitrust Litigation*** **(E.D.N.Y.)**, we negotiated settlements with more than 30 defendants totaling over $1.2 billion—all in advance of trial. During the same time period, in ***In re Foreign Exchange Benchmark Rates Antitrust Litigation*** **(S.D.N.Y.)**, we negotiated settlements totaling more than $2 billion with nine banks accused of conspiring to manipulate prices paid in the foreign-exchange market. And in the global ***Marine Hose*** matter, we broke new ground with the first private resolution of a company's global cartel liability without any arbitration, mediation, or litigation. That settlement enabled every one of Parker ITR's non-US marine-hose purchasers to recover up to 16% of their total purchases. These cases are just three among dozens of recent landmark settlements across our practice areas.

Reputation and Leadership in the Antitrust Bar

Court Commendations

Judges across the country have taken note of Hausfeld's experience and results achieved in antitrust litigation.

"All class actions generally are more complex than routine actions… But this one is a doozy. This case is now I guess nearly more than ten years old. The discovery as I've noted has been extensive. The motion practice has been extraordinary… The recovery by the class is itself extraordinary. The case, the international aspect of the case is extraordinary. Chasing around the world after all these airlines is an undertaking that took enormous courage."

– Judge Brian M. Cogan
In re Air Cargo Shipping Services Antitrust Litigation, No. 06-md-1775 (E.D.N.Y.)

Comparing Hausfeld's work through trial to Game of Thrones: "where individuals with seemingly long odds overcome unthinkable challenges… For plaintiffs, their trial victory in this adventurous, risky suit, while more than a mere game, is nothing less than a win…"

– Magistrate Judge Nathanael M. Cousin
O'Bannon v. Nat'l College Athletic Ass'n, 09-cv-3329 (N.D. Cal.)

Hausfeld lawyers had achieved "really, an outstanding settlement in which a group of lawyers from two firms coordinated the work… and brought an enormous expertise and then experience in dealing with the case." "[Hausfeld lawyers are] more than competent. They are outstanding."

– Judge Charles R. Breyer
In re International Air Passenger Surcharge Antitrust Litig., No. 06-md-01793 (N.D. Cal.) (approving a ground-breaking $200 million international settlement that provided recovery for both U.S. purchasers under U.S. antitrust laws and U.K. purchasers under U.K. competition laws.)

Hausfeld has "the breadth of experience, resources and talent necessary to navigate a case of this import." Hausfeld "stands out from the rest."

– District Judge Morrison C. England Jr.
Four In One v. SK Foods, No. 08-cv-3017 (E.D. Cal.)

Reputation and Leadership in the Antitrust Bar

continued

Awards and Recognitions

Global Competition Review:

In 2016, Hausfeld was awarded Global Competition Review's "Litigation of the Year – Cartel Prosecution" for its work on *In re Foreign Exchange Antitrust Benchmark Litigation*. The award recognized Hausfeld's success in the Foreign Exchange litigation to date, which has included securing settlements for more than $2 billion in on behalf of a class of injured foreign exchange investors and overcoming two motions to dismiss in the action.

In 2015, Hausfeld attorneys were awarded *Global Competition Review's* "Litigation of the Year – Non-Cartel Prosecution," which recognized their trial victory in *O'Bannon v. National Collegiate Athletics Association*, a landmark case brought on behalf of college athletes challenging the NCAA's restrictions on payment for commercial licensing of those athletes' names, images, and likenesses in various media.

National Law Journal:

In 2015, Hausfeld was named to the *National Law Journal's* "Plaintiffs Hot List" for the Fourth Year in a Row.

"Hausfeld's creative approaches underpinned key antitrust wins last year, including a trailblazing victory for former college athletes over the use of their likenesses in television broadcasts and video games…" also noting that Hausfeld along with its co-counsel, "nailed down a $99.5 million settlement with JPMorgan Chase & Co. in January in New York federal court for alleged manipulation of market benchmarks. And it helped land nearly $440 million in settlements last year, and more than $900 million thus far, in multidistrict antitrust litigation against air cargo companies."

In 2014, *The National Law Journal* named Hausfeld as one of a select group of America's Elite Trial Lawyers, as determined by "big victories in complex cases that have a wide impact on the law and legal business." The award notes that Hausfeld is among those "doing the most creative and substantial work on the plaintiffs side."

Financial Times:

In 2015, Michael Hausfeld was recognized by the *Financial Times* as one of the Top 10 Innovative Lawyers in North America.

In 2013, Hausfeld won the *Financial Times* Innovative Lawyer Dispute Resolution Award. The FT states that Hausfeld has "[p]ioneered a unique and market-changing litigation funding structure that improved accessibility and enabled victims to pursue actions with little or no risk."

Reputation and Leadership in the Antitrust Bar

continued

Chambers & Partners:

In 2016, *Chambers & Partners UK* ranked Hausfeld in the top tier among London firms representing private claimants in competition matters, and recognized the firm's accomplishments in Banking Litigation. Chambers observed that the firm was:

"Synonymous with competition damages claims in the UK thanks to its leading role in developing the market in this area. Adept at handling class-style actions and can co-ordinate proceedings for large groups of claimants across different jurisdictions. Well placed to handle both standalone and follow-on actions."

Chambers and Partners has also ranked Hausfeld's U.S. operations in the top tier nationally for antitrust. The publication noted the firm's attributes as including:

- A reputation as a "[m]arket-leading plaintiffs' firm with considerable experience in antitrust class action suits and criminal cartel investigations."
- "[N]umerous successes in the area resulting in major recovery or settlements for its clients."
- Firm Chair Michael Hausfeld's record as "a very successful and able antitrust litigator" and "one of the titans of the Plaintiffs Bar."

U.S. News & World Report:

In 2016, *U.S. News & World Report* – Best Law Firms named Hausfeld to its top tier in both Antitrust Law and Litigation, and among its top tiers in Commercial Litigation. Hausfeld was also recognized in New York, San Francisco, and Washington, DC in Antitrust Law, Litigation, Mass Torts and Commercial Litigation.

Legal 500:

In 2016, Hausfeld was ranked for the eighth year in a row to the top tier nationally for firms in civil litigation and class actions and was also ranked nationally for antitrust – cartel work by *The Legal 500*. The Legal 500 has declared:

"Representing large companies, small and medium-sized businesses, as well as individuals, Washington DC firm Hausfeld LLP remains 'top-notch' in antitrust litigation… Hausfeld LLP is 'one of the most capable plaintiffs' firms involved in the area of civil cartel enforcement', and is handling some of the major cartel-related cases…"

The Legal 500 has also recognized that Hausfeld is a "market transformer," the "most innovative firm with respect to antitrust damages," is "[d]riven by excellence,""anticipates the evolving needs of clients," and delivers "outstanding advice not only in legal terms but also with a true entrepreneurial touch'. . . ."

Reputation and Leadership in the Antitrust Bar

continued

Concurrences

In 2015, Hausfeld Partners Michael Hausfeld, Michael Lehmann and Sathya Gosselin, joined by co-authors Gordon Rausser and Gareth Macartney, were elected the winners of the Concurrences' 2015 Antitrust Writing Awards in the Private Enforcement (Academic) category for their article, *Antitrust Class Proceedings - Then and Now*, Research in Law and Economics, Vol. 26, 2014.

American Antitrust Institute:

In 2016, Hausfeld the American Antitrust Institute honored two Hausfeld case teams – In re Air Cargo Shipping Services Antitrust Litig. (E.D.N.Y.) and In re Municipal Derivatives Antitrust Litig. (S.D.N.Y.)—with its top award, for Outstanding Antitrust Litigation Achievement in Private Law Practice. Taken together, these two cases have yielded settlements of over $1.4 billion to class members after nearly a decade of litigation. The award celebrates private civil actions that provide significant benefits to clients, consumers, or a class and contribute to the positive development of antitrust policy.

In 2015, Hausfeld and fellow trial counsel won the American Antitrust Institute's award for Outstanding Antitrust Litigation Achievement in Private Law Practice for their trial and appellate victories in *O'Bannon v. NCAA*.

Reputation and Leadership in the Antitrust Bar

continued

Thought Leadership

Hausfeld lawyers do more than litigation. They exercise thought leadership in many fields. Hausfeld lawyers host, lecture at, and participate in leading legal conferences worldwide addressing ground-breaking topics, including: the pursuit of damages actions in the United States and the European Union on behalf of EU and other non-U.S. plaintiffs; nascent private civil enforcement of EU competition laws; application of the FTAIA; the impact of Wal-mart Stores, Inc. v. Dukes and Comcast Corp. v. Behrend on the class certification; reforms to the Federal Civil Rules of Procedure, emerging issues in complex litigation; legal technology and electronic discovery.

Hausfeld attorneys have presented before Congressional subcommittees, regulators, judges, business leaders, in-house counsel, private lawyers, public-interest advocates, elected officials and institutional investors, and hold leadership positions in organizations such as the American Bar Association, the American Antitrust Institute, the Women Antitrust Plaintiffs' Attorney network group, the Sedona Conference and IAALS.

Hausfeld attorneys also regularly organize and facilitate panels and conferences discussing the latest developments and trends in their respective practices and are frequently published in scholarly articles, journals, bulletins and legal treatises. Highlights from these publications and conferences include:

Recent Articles

- Michael D. Hausfeld and Irving Scher, "**Damage Class Actions After Comcast: A View from the Plaintiffs' Side**," Antitrust Magazine (Spring 2016).
- James J. Pizzirusso, "**Proving Damages in Consumer Class Actions**," Consumer Protection Committee, Vol. 22/ No. 1, ABA Section of Antitrust Law (Mar. 2016).
- Brent Landau and Gary Smith, "**Bundling Claims Under Section 1 of the Sherman Act: Focusing on Firms' Abilities to Create Anticompetitive Effects in a Market, Rather Than Their Share of It**," Antitrust Health Care Chronicle, Vol. 28/ No. 1, ABA Section of Antitrust Law (Jan. 2015).
- Michael D. Hausfeld, Gordon C. Rausser, Gareth J. Macartney, Michael P. Lehmann, Sathya S. Gosselin, "**Antitrust Class Proceedings – Then and Now**," Research in Law and Economics (Vol. 26, 2014) (Recipient of *Concurrences'* 2015 Antitrust Writing Award for Private Enforcement (Academic) Category.
- Brent Landau and Brian Ratner, "**Chapter 39: USA**," The International Comparative Legal Guide to Cartels & Leniency (Ch. 39, 2014).
- Michael Hausfeld and Brian Ratner, "**Prosecuting Class Actions and Group Litigation – Understanding the Rise of International Class and Collective Action Litigation and How this Leads to Classes that Span International Borders**," World Class Actions (Ch. 26, 2012)
- Michael Hausfeld and Kristen Ward Broz, "**The Business of American Courts in *Kiobel***," JURIST – Sidebar (Oct. 2012).

EXHIBIT 5

ROBERTS LAW FIRM
ROBERTS GROUP

MIKE ROBERTS †
J. MATTHEW MAULDIN
JEREMY SWEARINGEN
DEBRA G. JOSEPHSON ††† ∞
KAREN SHARP HALBERT
TERRY DON LUCY
EMILY A. NEAL ††
STEPHANIE EGNER SMITH ∞
JANA K. LAW

SUSAN M. FOWLER
JING ZHAO

OF COUNSEL:
MIKE BEEBE ♦
AMBASSADOR DIMITRIOS TSIKOURIS, JD *

♦ FORMER GOVERNOR OF STATE OF ARKANSAS
† ADMITTED IN ARKANSAS, FLORIDA, NEW YORK, TENNESSEE & TEXAS
∞ ADMITTED BEFORE THE U.S. PATENT AND TRADEMARK OFFICE
††† ADMITTED ONLY IN MASSACHUSETTS
* (FORMER AMBASSADOR – FOREIGN AFFAIRS ADVISOR
NOT ADMITTED TO PRACTICE LAW IN THE U.S.)

RESUME

Roberts Law Firm, P.A. is a Certified Minority Business Enterprise, and is based in Little Rock, Arkansas. The law firm has three divisions: Corporate, Intellectual Property, and Complex Class Litigation. The law firm's practice predominately involves complex class action litigation representing corporate clients to recover from defendants stemming from wrongful or illegal conduct. The firm has served as counsel for Plaintiff-Corporations in individual and class action cases, and has successfully recovered of hundreds of millions of dollars for its corporate clients.

Mike L. Roberts has served as co-lead counsel in multiple complex class actions, as noted below. Mr. Roberts is licensed in Arkansas, Florida, Tennessee, Texas, and New York. He is also licensed before the United States Supreme Court and several U.S. Federal District Courts in the U.S. The firm handles litigation in multi-states in the United States, and handles claims for corporate clients globally. Clients include corporations from Abu Dhabi, Dubai, Greece, England, Taiwan, China, and the United States.

Partial Client List

Tyson Foods Corporation, AT&T Corporation, Georgia Pacific Corporation, Uni-Arab Corporation, Federal Express Corporation, Southwest Airlines, Walgreens, Inc., RBX Industries, ASUSTek Computer, Inc. (Taiwan), Compal Electronics, Inc. (Taiwan).

Sample of Significant Cases of Roberts Law Firm, P.A.

1. *In re Parking Heaters Antitrust Litig*., United States District Court for the Eastern District of New York, Civil Action No. 15-mc-940-JG-JO (Appointed Co-Lead Interim Counsel for Direct Purchaser Plaintiffs).

2. *In Re Microsoft Antitrust Litigation: Paul Peek, D.D.S., et al. v. Microsoft Corporation,* Circuit Court of Lonoke County, Arkansas, First Division, No. CV2004-480 (Co-Lead Counsel) (case settled for $37 million).

3. *In Re: Heartland Payment Systems Inc. Customer Data Security Breach Litigation*, United States District Court for the Southern District of Texas, Civil Action No. H-09-MD-2046 (Appointed as Member of Steering Committee; case settled).

4. *In re Ori vs. Fifth Third Bank and Fiserv, Inc.,* United States District Court for the Eastern District of Wisconsin, Civil Action No. 08-CV-00432-LA. (Appointed Co-Lead Settlement Class Counsel; case settled).

5. *National Trucking Financial Reclamation Services, LLC vs. Pilot Corporation, Pilot Travel Centers d/b/a Pilot Flying J, et al,* United States District Court for the Eastern District of Arkansas, Case No.: 4:13-cv-00250-JMM. (Appointed Co-Lead Counsel; case settled in nine months for $84 million plus injunctive relief).

6. *AM Sheet Metal Litigation*, United States District Court for the Eastern District of Wisconsin, No. 2:11 CV 00162 - LA (Appointed Co-Lead Counsel for Indirect Purchaser Plaintiffs; case has reached partial settlement).

7. *In Re U.S. DRAM Antitrust Litigation:* (Class Counsel – Case has settled for approximately $300 million).

8. *In re: Augmentin Litigation*, United States District Court for the Eastern District of Virginia, No. 2:02cv442; Ryan-House et al. v. GlaxoSmithKline et al., United States District Court for the Eastern District of Virginia, No. 2:02cv442 (Direct Purchaser Plaintiffs Class Counsel – case settled for $61 million).

9. *In re: Nifedipine Litigation*, United States District Court for the District of Columbia, No. 04-CIV-00799 (RJL). SAJ Distributors, Inc. v. Biovail Corporation, United States District Court for the District of Columbia, No 04-CIV-00799 (RJL) (Plaintiffs class counsel; case settled for $40 million).

10. *In Re: Imodium Advanced Antitrust Litigation*, United States District Court Eastern District of Pennsylvania, Master File No. 02cv4093; SAJ Distributors, Inc. vs. McNeil-PPC, Inc., United States District Court for the Eastern District of Pennsylvania, Civil Action No. 02-6993 (Plaintiffs class counsel).

11. *In re: U.S. SRAM Antitrust Litigation:* United States District Court for the Northern District of California, Case No. 4:07-md-1819 CW (Plaintiffs class counsel; case has settled for $25.4 million).

12. *Hypodermic Products Antitrust Litigation*, United States District Court for the District of New Jersey, Docket No. 05-1602 (JLL/RJH), MDL No. 1730 (Plaintiffs class counsel).

13. *In re: Oxycontin Antitrust Litigation*, United States District Court for the Southern District of New York, MDL Docket No. 1603; SAJ Distributors, Inc. et al. v. The Purdue Pharma Co. et al., United States District Court for the Southern District of New York, MDL Docket No. 1603 (Case settled: $25 million).

14. *In Re Wellbutrin SR Antitrust Litigation,* United States District Court for the Eastern District of Pennsylvania, Master File No. 04-CV-5525 (Trial Team, Case settled - $49 million).

15. *In re Skelaxin Antitrust Litigation*, United States District Court for the Eastern District of Tennessee, 1:12-md-02343-CLC (Case settled - $73 million).

16. *In Re: Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, United States District Court Eastern District of New York, Master File No. 05-MD- l 720(JG)(JO) (Plaintiffs class counsel).

17. *First Impressions Salon, Inc., et al. v. National Milk Producers Federation*, 3:13-cv-00454-NJR-SCW (United States District Court for the Southern District of Illinois) (ongoing class action in which Roberts Law Firm serves as one of Plaintiffs' Counsel).

18. *In re: Generic Pharmaceuticals Antitrust Litigation*, 2:16-md-02724-CMR (United States District Court for the Eastern District of Pennsylvania) (ongoing class action in which Roberts Law Firm serves on the Direct Purchasers' Plaintiffs' Steering Committee).

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

In Re: PARKING HEATERS ANTITRUST LITIGATION	Case No. 15-MC-940 (DLI) (JO)
THIS DOCUMENT RELATES TO: *All Direct Purchaser Class Actions*	

DECLARATION OF CAMERON R. AZARI, ESQ., ON SETTLEMENT NOTICE PLAN AND NOTICES

I, CAMERON R. AZARI, ESQ., hereby declare and state as follows:

1. My name is Cameron R. Azari, Esq. I am over the age of twenty-one and I have personal knowledge of the matters set forth herein, and I believe them to be true and correct.

2. I am a nationally recognized expert in the field of legal notice and I have served as a legal notice expert in dozens of federal and state cases involving class action notice plans.

3. I am the Director of Legal Notice for Hilsoft Notifications, a firm that specializes in designing, developing, analyzing and implementing large-scale, un-biased, legal notification plans. Hilsoft has been involved with some of the most complex and significant notices and notice programs in recent history. Hilsoft is a business unit of Epiq Systems Class Action and Claims Solutions ("ECA").

4. With experience in more than 300 cases, notices prepared by Hilsoft Notifications have appeared in 53 languages with distribution in almost every country, territory, and dependency in the world. Judges, including in published decisions, have recognized and approved numerous notice plans

developed by Hilsoft Notifications, which decisions have always withstood collateral reviews by other courts and appellate challenges.

EXPERIENCE RELEVANT TO THIS CASE

5. Hilsoft Notifications has served as notice expert and has been recognized and appointed by courts to design and provide notice in many large and complex cases, including: *In re: Takata Airbag Products Liability Litigation (OEMS – BMW, Mazda, Subaru and Toyota)*, MDL No. 2599 (S.D. Fla.) ($553 million settlement regarding Takata airbags. The monumental Notice Plan included individual mailed notice to more than 19.7 million potential Class Members and notices via consumer publications, U.S. Territory newspapers, radio spots, internet banners, mobile banners, and specialized behaviorally targeted digital media. Combined, the Notice Plan reached more than 95% of adults aged 18+ in the U.S. who owned or leased a subject vehicle with a frequency of 4.0 times); *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices and Product Liability Litigation* (Bosch Settlement), MDL No. 2672 (N.D. Cal.) (comprehensive notice program within the Volkswagen Emissions Litigation that provided individual notice to more than 946,000 vehicle owners via first class mail and to more than 855,000 via email; a targeted internet campaign further enhanced the notice effort); *In re: Energy Future Holdings Corp., et. al.* (Asbestos Claims Bar Date Notice), 14-10979 (CSS) (Bankr. D. Del.) (large asbestos bar date notice effort, which included individual notice, national consumer publications and newspapers, hundreds of local newspapers, Spanish newspapers, union labor publications, and digital media to reach the target audience); and *In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010, MDL 2179* (E.D. La.) (dual landmark settlement notice programs to separate "Economic and Property Damages" and "Medical

Benefits" settlement classes; notice effort included over 7,900 television spots, over 5,200 radio spots, and over 5,400 print insertions and reached over 95% of Gulf Coast residents).

6. We have been recognized by courts for our testimony as to which method of notification is appropriate for a given case, and have provided testimony on numerous occasions on whether a certain method of notice represents the best notice practicable under the circumstances. For example:

a) *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation* (Bosch Settlement), MDL No. 2672 (N.D. Cal.), Judge Charles R. Breyer on May 17, 2017:

> *The Court is satisfied that the Notice Program was reasonably calculated to notify Class Members of the proposed Settlement. The Notice "apprise[d] interested parties of the pendency of the action and afford[ed] them an opportunity to present their objections." Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). Indeed, the Notice Administrator reports that the notice delivery rate of 97.04% "exceed[ed] the expected range and is indicative of the extensive address updating and re-mailing protocols used." (Dkt. No. 3188-2 ¶ 24.)*

b) In re: Caterpillar, Inc., C13 and C15 Engine Products Liability Litigation, MDL No. 2540 (D.N.J.), Judge Jerome B. Simadle on September 20, 2016:

> *The Court hereby finds that the Notice provided to the Settlement Class constituted the best notice practicable under the circumstances. Said Notice provided due and adequate notice of these proceedings and the matters set forth herein, including the terms of the Settlement Agreement, to all persons entitled to such notice, and said notice fully satisfied the requirements of Fed. R. Civ. P. 23, requirements of due process and any other applicable law.*

c) Chimeno-Buzzi v. Hollister Co. and Abercrombie & Fitch Co., No. 14-23120 (S.D. Fla.), Judge Marcia G. Cooke on April 11, 2016:

> *Pursuant to the Court's Preliminary Approval Order, the Settlement Administrator, Epiq Systems, Inc. [Hilsoft Notifications], has complied with the approved notice process as confirmed in its Declaration filed with the Court on*

March 23, 2016. The Court finds that the notice process was designed to advise Class Members of their rights. The form and method for notifying Class Members of the settlement and its terms and conditions was in conformity with this Court's Preliminary Approval Order, constituted the best notice practicable under the circumstances, and satisfied the requirements of Federal Rule of Civil Procedure 23(c)(2)(B), the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715, and due process under the United States Constitution and other applicable laws.

d) *Adkins v. Nestle Purina PetCare Company, et al.,* No. 12-cv-2871 (N.D. Ill.), Judge Robert W. Gettleman on June 23, 2015:

Notice to the Settlement Class and other potentially interested parties has been provided in accordance with the notice requirements specified by the Court in the Preliminary Approval Order. Such notice fully and accurately informed the Settlement Class members of all material elements of the proposed Settlement and of their opportunity to object or comment thereon or to exclude themselves from the Settlement; provided Settlement Class Members adequate instructions and a variety of means to obtain additional information; was the best notice practicable under the circumstances; was valid, due, and sufficient notice to all Settlement Class members; and complied fully with the laws of the State of Illinois, Federal Rules of Civil Procedure, the United States Constitution, due process, and other applicable law.

e) *Gulbankian et al. v. MW Manufacturers, Inc.,* No. 1:10-cv-10392-RWZ (D. Mass.), Judge Rya W. Zobel on December 29, 2014:

This Court finds that the Class Notice was provided to the Settlement Class consistent with the Preliminary Approval Order and that it was the best notice practicable and fully satisfied the requirements of the Federal Rules of Civil Procedure, due process, and applicable law. The Court finds that the Notice Plan that was implemented by the Claims Administrator satisfies the requirements of FED. R. CIV. P. 23, 28 U.S.C. § 1715, and Due Process, and is the best notice practicable under the circumstances. The Notice Plan constituted due and sufficient notice of the Settlement, the Final Approval Hearing, and the other matters referred to in the notices. Proof of the giving of such notices has been filed with the Court via the Azari Declaration and its exhibits.

f) *Rose v. Bank of America Corporation, and FIA Card Services, N.A.*, No. 5:11-CV-02390-EJD; 5:12-CV-04009-EJD (N.D. Cal.), Judge Edward J. Davila on August 29, 2014:

> *The Court finds that the notice was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of this action, all material elements of the Settlement, the opportunity for Settlement Class Members to exclude themselves from, object to, or comment on the settlement and to appear at the final approval hearing. The notice was the best notice practicable under the circumstances, satisfying the requirements of Rule 23(c)(2)(B); provided notice in a reasonable manner to all class members, satisfying Rule 23(e)(1)(B); was adequate and sufficient notice to all Class Members; and, complied fully with the laws of the United States and of the Federal Rules of Civil Procedure, due process and any other applicable rules of court.*

g) *Wong et al. v. Alacer Corp.,* No. CGC-12-519221 (Cal. Super. Ct.), Judge James A. Robertson, II on June 27, 2014:

> *Notice to the Settlement Class has been provided in accordance with the Preliminary Approval Order. Based on the Declaration of Cameron Azari dated March 7, 2014, such Class Notice has been provided in an adequate and sufficient manner, constitutes the best notice practicable under the circumstances and satisfies the requirements of California Civil Code Section 1781, California Civil Code of Civil Procedure Section 382, Rules 3.766 of the California Rules of Court, and due process.*

h) In *Marolda v. Symantec Corporation*, No. 08-cv-05701 (N.D. Cal.) Judge Edward M. Chen stated on April 5, 2013:

> *Approximately 3.9 million notices were delivered by email to class members, but only a very small percentage objected or opted out . . . The Court . . . concludes that notice of settlement to the class was adequate and satisfied all requirements of Federal Rule of Civil Procedure 23(e) and due process. Class members received direct notice by email, and additional notice was given by publication in numerous widely circulated publications as well as in numerous targeted publications. These were the best practicable means of informing class members of their rights and of the settlement's terms.*

i) In *In Re: Zurn Pex Plumbing Products Liability Litigation*, No. 0:08cv01958 (D. Minn.): Judge Ann D. Montgomery stated on February 27, 2013:

> *The parties retained Hilsoft Notifications ("Hilsoft"), an experienced class-notice consultant, to design and carry out the notice plan. The form and content of the notices provided to the class were direct, understandable, and consistent with the "plain language" principles advanced by the Federal Judicial Center. The notice plan's multi-faceted approach to providing notice to settlement class members whose identity is not known to the settling parties constitutes "the best notice [*26] that is practicable under the circumstances" consistent with Rule 23(c)(2)(B).*

j) In *In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010* (Economic and Property Damages Settlement), MDL No. 2179 (E.D. La.): Judge Carl J. Barbier stated on December 21, 2012:

> *The Court finds that the Class Notice and Class Notice Plan satisfied and continue to satisfy the applicable requirements of Federal Rule of Civil Procedure 23(c)(2)(b) and 23(e), the Class Action Fairness Act (28 U.S.C. § 1711 et seq.), and the Due Process Clause of the United States Constitution (U.S. Const., amend. V), constituting the best notice that is practicable under the circumstances of this litigation.*

> *The notice program surpassed the requirements of Due Process, Rule 23, and CAFA. Based on the factual elements of the Notice Program as detailed below, the Notice Program surpassed all of the requirements of Due Process, Rule 23, and CAFA.*

k) In *Schulte v. Fifth Third Bank*, No. 1:09-cv-6655 (N.D. Ill.), Judge Robert M. Dow, Jr. stated on July 29, 2011:

> *The Court has reviewed the content of all of the various notices, as well as the manner in which Notice was disseminated, and concludes that the Notice given to the Class fully complied with Federal Rule of Civil Procedure 23, as it was the best notice practicable, satisfied all constitutional due process concerns, and provided the Court with jurisdiction over the absent Class Members.*

l) In *In re: Heartland Payment Systems, Inc. Customer Data Security Breach Litigation,* MDL 09-2046 (S.D. Tex.), Judge Lee Rosenthal stated on March 2, 2012:

> *The notice that has been given clearly complies with Rule 23(e)(1)'s reasonableness requirement… Hilsoft Notifications analyzed the notice plan after its implementation and conservatively estimated that notice reached 81.4 percent of the class members. (Docket Entry No. 106, ¶ 32). Both the summary notice and the detailed notice provided the information reasonably necessary for the presumptive class members to determine whether to object to the proposed settlement. See Katrina Canal Breaches, 628 F.3d at 197. Both the summary notice and the detailed notice "were written in easy-to-understand plain English." In re Black Farmers Discrimination Litig., — F. Supp. 2d —, 2011 WL 5117058, at *23 (D.D.C. 2011); accord AGGREGATE LITIGATION § 3.04(c).15 The notice provided "satisf[ies] the broad reasonableness standards imposed by due process" and Rule 23. Katrina Canal Breaches, 628 F.3d at 197 (internal quotation marks omitted).*

7. Numerous other court opinions and comments as to our testimony, and opinions on the adequacy of our notice efforts, are included in Hilsoft Notifications' curriculum vitae attached as **Exhibit 1**.

8. In forming my expert opinions, my staff and I draw from our in-depth class action case experience, as well as our educational and related work experiences. I am an active member of the Oregon State Bar, receiving my Bachelor of Science from Willamette University and my Juris Doctor from Northwestern School of Law at Lewis and Clark College. I have served as the Director of Legal Notice for Hilsoft Notifications since 2008 and have overseen the detailed planning of virtually all of our court-approved notice programs since that time. Prior to assuming my current role with Hilsoft Notifications, I served in a similar role as Director of Epiq Legal Noticing (previously called Huntington Legal Advertising). Overall, I have more than 17 years of experience in the design and implementation of legal notification and claims administration programs, having been personally involved in well over one hundred successful notice programs. I have been directly and personally

responsible for designing all of the notice planning here, including analysis of the individual notice options and the media audience data and determining the most effective mixture of media required to reach the greatest practicable number of Class Members.

9. This declaration will describe the Settlement Notice Plan ("Notice Plan" or "Plan") designed by Hilsoft Notifications and proposed here for the parties' settlements with Webasto Products North America, Inc., Webasto Thermo & Comfort North America, Inc. and Webasto Thermo & Comfort SE (collectively, "Webasto") and Eberspaecher Climate Control Systems GmbH & Co. KG, Espar, Inc., and Espar Products Inc. (collectively, "Espar," and with Webasto, "Defendants") in *In re Parking Heaters Antitrust Litigation*, No. 1:15-MC-0940 (DLI) (JO), in the United States District Court Eastern District of New York.

NOTICE PLAN

10. The Settlement Agreements both define the "Class" as "all persons or entities (but excluding federal and state government entities and Defendants, their officers, directors, and employees, as well as Defendants' parents, predecessors, successors, subsidiaries, affiliates) that purchased Parking Heaters in the United States, its territories or possessions, directly from any Defendant (Webasto or Espar), or from any of their parents, predecessors, successors, subsidiaries, or affiliates, at any time during the period from and including October 1, 2007 up to and including December 31, 2012."

11. Rule 23 directs that the best notice practicable under the circumstances must include "individual notice to all members who can be identified through reasonable effort."[1] The proposed

[1] Fed. R. Civ. P. 23(c)(2)(B).

notice effort here satisfies this direction. A Detailed Notice and Claim Form will be sent to all Class Members who can be identified with reasonable effort. Address updating (both prior to mailing and on undeliverable pieces) and re-mailing protocols will meet or exceed those used in other class action settlements. I understand that the Defendants in the litigation (Webasto and Espar) will provide from their records, name and contact information for virtually all Class Members and this data will be provided to Epiq for the mailing of the Detailed Notice and Claim Form.

12. The Class Notice and Claim Form will be sent by United States Postal Service ("USPS") first class mail to all identified Class Members. Prior to mailing, postal mailing addresses will be checked against the National Change of Address ("NCOA") database maintained by the USPS, which contains records of all reported permanent moves for the past four years. Any addresses returned by NCOA as invalid will be updated through a third-party address search service prior to mailing. All addresses will be certified via the Coding Accuracy Support System ("CASS") to ensure the quality of the zip codes, and verified through the Delivery Point Validation ("DPV") to verify the accuracy of the addresses.

13. Notices returned as undeliverable will be re-mailed to any new address available through postal service information, for example, to the address provided by the postal service on returned pieces for which the automatic forwarding order has expired, but which is still during the period in which the postal service returns the piece with the address indicated, or to better addresses that may be found using a third-party lookup service. Upon successfully locating better addresses, Notices will be promptly re-mailed. Additionally, the Notices will be mailed to all persons who request one via the toll-free phone number maintained by the administrator.

14. In my experience, using the address updating protocol described above will result in the Class Notice being successfully delivered to well over 90% of all Class Members.

15. Attached as **Exhibit 2** to this Declaration is a true and correct copy of the Detailed Notice to be used in this litigation.

Relevant Trade Publication

16. In order to reinforce the mailed Notice to all Class Members a Publication Notice will be published in *Fleet Owner* Magazine. *Fleet Owner* is a monthly trucking magazine and source of information for executives and management personnel responsible for purchasing, operating and maintaining vehicles and equipment in truck and bus fleets consisting of five or more vehicles. It features articles and special reports covering management procedures, operating techniques, equipment and maintenance planning and practice, safety regulations, industry news, present and prospective equipment developments. A 1/2 page notice will appear one time in *Fleet Owner* with an estimated circulation of 105,000.

17. Attached as **Exhibit 3** to this Declaration is a true and correct copy of the Publication Notice to be used in this litigation.

Case Website

18. A neutral, informational, settlement website with an easy to remember domain name will be established where Class Members can obtain additional information and documents including the Settlement Agreement, Preliminary Approval Order, a list of answers to frequently asked questions and any other documents the Court may require. Class Members will also be able to input their unique ID number at the website to see their estimated payment amount (once it can be calculated). The

domain name will not be case sensitive. The website address will be prominently displayed in all notice documents.

Informational Release

19. To build additional reach and extend exposures, a party-neutral Informational Release will be issued to approximately 5,000 general media (print and broadcast) outlets and 5,400 online databases and websites throughout the United States. Additionaly, the Informational Release will be issued to PR Newswire's Trucking Microlist, which includes 206 trucking industry focused publications, websites and news outlets across the country. The Informational Release will serve a valuable role by providing additional notice exposures beyond that which will be provided by the mailed and published notice. There is no guarantee that any news stories will result, but if they do, potential Class Members will have additional opportunities to learn that their rights are at stake in credible news media, adding to their understanding. The Informational Release will include the toll free number and Case Website address.

Toll-free Telephone Number and Postal Mailing Address

20. A toll-free number will be established. Callers will hear an introductory message. Callers will then have the option to continue to get information about the Settlement in the form of recorded answers to frequently asked questions. Live operators will be available as needed. Callers will also have an option to request a Detailed Notice and/or a Claim Form by mail.

21. A postal mailing address will also be provided, allowing Class Members to request a claim form or other additional information or ask questions via mail.

PLAIN LANGUAGE NOTICE DESIGN

22. The Notices themselves are designed to be "noticed," reviewed, and—by presenting the information in plain language—understood by Class Members. The design of the Notices follows the principles embodied in the Federal Judicial Center's illustrative "model" notices posted at www.fjc.gov. Many courts, and as previously cited, the FJC itself, have approved notices that we have written and designed in a similar fashion. The Notices contain substantial, albeit easy-to-read, summaries of all of the key information about Class Members' rights and options. Consistent with our normal practice, all notice documents will undergo a final edit prior to actual mailing and publication for grammatical errors and accuracy.

23. All Notices were designed to increase noticeability and comprehension. Because mailing recipients are accustomed to receiving junk mail that they may be inclined to discard unopened, the Notice Plan calls for steps to bring the mailed Notice to the attention of Settlement Class Members. Once people "notice" the Notices, it is critical that they can understand them. As such, the Notices, as produced, are clearly worded with an emphasis on simple, plain language to encourage readership and comprehension.

24. Both the Detailed Notice and the Publication Notice feature a prominent headline ("**Purchasers of Parking Heaters directly from Webasto or Espar may be entitled to a payment from a class action settlement.**") in bold text. This alerts recipients and readers that the Notice is an important document authorized by a court and that the content may affect them, thereby supplying reasons to read the Notice.

25. The Detailed Notice mailed to each Class Member provides substantial information about the Settlement. The Detailed Notice begins with a summary page providing a concise overview of the important information and a table highlighting key options available to Settlement Class Members. A table of contents, categorized into logical sections, helps to organize the information, while a question and answer format makes it easy to find answers to common questions by breaking the information into simple headings.

CONCLUSION

26. In class action notice planning, execution, and analysis, we are guided by due process considerations under the United States Constitution, by federal and local rules and statutes, and further by case law pertaining to notice. This framework directs that the notice program be designed to reach the greatest practicable number of potential Class Members and, in a settlement class action notice situation such as this, that the notice or notice program itself not limit knowledge of the availability of benefits—nor the ability to exercise other options—to Class Members in any way. All of these requirements will be met in this case.

27. The Notice Plan outlined above will provide the best notice practicable under the circumstances of this case, conforms to all aspects of Federal Rule of Civil Procedure 23, and comports with the guidance for effective notice articulated in the Manual for Complex Litigation 4th Ed. Because name and contact information is ascertainable for virtually all Class Members, it is anticipated that individual notice will reach a very high percentage of the identified Class—likely well over 90%. The Publication Notice, Informational Release and Case Website will only increase that reach.

28. Many courts have accepted and understood that a 75 or 80 percent reach is more than adequate. In 2010, the Federal Judicial Center issued a Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide. This Guide states that, "the lynchpin in an objective determination of the adequacy of a proposed notice effort is whether all the notice efforts together will reach a high percentage of the class. It is reasonable to reach between 70–95%."[2] Here we are able to develop a Notice Plan that will reach at the high end of that range.

29. The Notice Plan schedule will afford enough time to provide full and proper notice to Class Members before any opt-out and objection deadline.

30. At the conclusion of the Notice Plan, we will provide a final report verifying its effective implementation.

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 18, 2018.

Cameron R. Azari, Esq.

[2] FED. JUDICIAL CTR, JUDGES' CLASS ACTION NOTICE AND CLAIMS PROCESS CHECKLIST AND PLAIN LANGUAGE GUIDE 3 (2010), available at http://www.fjc.gov/public/pdf.nsf/lookup/NotCheck.pdf/$file/NotCheck.pdf.

Exhibit 1

HILSOFT NOTIFICATIONS

Hilsoft Notifications is a leading provider of legal notice services for large-scale class action and bankruptcy matters. We specialize in providing quality, expert, notice plan development – designing notice programs that satisfy due process requirements and withstand judicial scrutiny. For more than 23 years, Hilsoft Notifications' notice plans have been approved and upheld by courts. Hilsoft Notifications has been retained by defendants and/or plaintiffs on more than 300 cases, including more than 30 MDL cases, with notices appearing in more than 53 languages and in almost every country, territory and dependency in the world. Case examples include:

- Hilsoft designed and implemented a monumental notice campaign to notify current or former owners or lessees of certain BMW, Mazda, Subaru and Toyota vehicles as part of a $553 million settlement regarding Takata airbags. The Notice Plan included individual mailed notice to more than 19.7 million potential Class Members and notices via consumer publications, U.S. Territory newspapers, radio spots, internet banners, mobile banners, and specialized behaviorally targeted digital media. Combined, the Notice Plan reached more than 95% of adults aged 18+ in the U.S. who owned or leased a subject vehicle with a frequency of 4.0 times. ***In re: Takata Airbag Products Liability Litigation (OEMS – BMW, Mazda, Subaru and Toyota)***, MDL No. 2599 (S.D. Fla.).

- A comprehensive notice program within the *Volkswagen Emissions Litigation* that provided individual notice to more than 946,000 vehicle owners via first class mail and to more than 855,000 via email. A targeted internet campaign further enhanced the notice effort. ***In re: Volkswagen "Clean Diesel" Marketing, Sales Practices and Product Liability Litigation (Bosch Settlement)***, MDL No. 2672 (N.D. Cal.).

- Hilsoft designed and implemented an extensive settlement Notice Plan for a class period spanning more than 40 years for smokers of light cigarettes. The Notice Plan delivered a measured reach of approximately 87.8% of Arkansas Adults 25+ with a frequency of 8.9 times and approximately 91.1% of Arkansas Adults 55+ with a frequency of 10.8 times. Hispanic newspaper notice, an informational release, radio PSAs, sponsored search listings and a case website further enhanced reach. ***Miner v. Philip Morris USA, Inc.***, No. 60CV03-4661 (Ark. Cir.).

- One of the largest claim deadline notice campaigns ever implemented, for BP's $7.8 billion settlement claim deadline relating to the Deepwater Horizon oil spill. Hilsoft Notifications designed and implemented the claim deadline notice program, which resulted in a combined measurable paid print, television, radio and Internet effort that reached in excess of 90% of adults aged 18+ in the 26 identified DMAs covering the Gulf Coast Areas an average of 5.5 times each. ***In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010***, MDL No. 2179 (E.D. La.).

- Large asbestos bar date notice effort, which included individual notice, national consumer publications, hundreds of local and national newspapers, Spanish newspapers, union labor publications, and digital media to reach the target audience. ***In re: Energy Future Holdings Corp., et al. (Asbestos Claims Bar Date Notice)***, 14-10979(CSS) (Bankr. D. Del.).

- Landmark $6.05 billion settlement reached by Visa and MasterCard. The intensive notice program involved over 19.8 million direct mail notices to class members together with insertions in over 1,500 newspapers, consumer magazines, national business publications, trade & specialty publications, and language & ethnic targeted publications. Hilsoft also implemented an extensive online notice campaign with banner notices, which generated more than 770 million adult impressions, a case website in eight languages, and acquisition of sponsored search listings to facilitate locating the website. ***In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation***, MDL No. 1720 (E.D.N.Y.).

- BP's $7.8 billion settlement of claims related to the Deepwater Horizon oil spill emerged from possibly the most complex class action in U.S. history. Hilsoft Notifications drafted and opined on all forms of notice. The 2012 notice program designed by Hilsoft reached at least 95% Gulf Coast region adults via television, radio, newspapers, consumer publications, trade journals, digital media and individual notice. ***In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010***, MDL No. 2179 (E.D. La.).

- Momentous injunctive settlement reached by American Express regarding merchant payment card processing. The notice program provided extensive individual notice to more than 3.8 million merchants as well as coverage in national and local business publications, retail trade publications and placement in the largest circulation newspapers in each of the U.S. territories and possessions. ***In re American Express Anti-Steering Rules Antitrust Litigation (II)***, MDL No. 2221 (E.D.N.Y.) ("Italian Colors").

- Overdraft fee class actions have been brought against nearly every major U.S. commercial bank. For related settlements, Hilsoft Notifications has developed programs that integrate individual notice and paid media efforts. PNC, Citizens, TD Bank, Fifth Third, Harris Bank M&I, Comerica Bank, Susquehanna Bank, Capital One, M&T Bank and Synovus are among the more than 20 banks that have retained Hilsoft. ***In re Checking Account Overdraft Litigation***, MDL No. 2036 (S.D. Fla.).

- Possibly the largest data breach in U.S. history with approximately 130 million credit and debit card numbers stolen. ***In re Heartland Data Security Breach Litigation***, MDL No. 2046 (S.D. Tex.)

- Largest and most complex class action in Canadian history. Designed and implemented groundbreaking notice to disparate, remote aboriginal people in the multi-billion dollar settlement. ***In re Residential Schools Class Action Litigation***, 00-CV-192059 CPA (Ont. Super. Ct.).

- Extensive point of sale notice program of a settlement providing payments up to $100,000 related to Chinese drywall – 100 million notices distributed to Lowe's purchasers during a six-week period. ***Vereen v. Lowe's Home Centers***, SU10-CV-2267B (Ga. Super. Ct.).

- Largest discretionary class action notice campaign involving virtually every adult in the U.S. for the settlement. ***In re Trans Union Corp. Privacy Litigation***, MDL No. 1350 (N.D. Ill.).

- Most complex national data theft class action settlement involving millions of class members. ***Lockwood v. Certegy Check Services, Inc.***, 8:07-cv-1434-T-23TGW (M.D. Fla.).

- Largest combined U.S. and Canadian retail consumer security breach notice program. ***In re TJX Companies, Inc., Customer Data Security Breach Litigation***, MDL No. 1838 (D. Mass.).

- Most comprehensive notice ever in a securities class action for the $1.1 billion settlement of ***In re Royal Ahold Securities and ERISA Litigation***, MDL No. 1539 (D. Md.).

- Most complex worldwide notice program in history. Designed and implemented all U.S. and international media notice with 500+ publications in 40 countries and 27 languages for $1.25 billion settlement. ***In re Holocaust Victims Assets, "Swiss Banks***", No. CV-96-4849 (E.D.N.Y.).

- Largest U.S. claim program to date. Designed and implemented a notice campaign for the $10 billion program. ***Tobacco Farmer Transition Program***, (U.S. Dept. of Ag.).

- Multi-national claims bar date notice to asbestos personal injury claimants. Opposing notice expert's reach methodology challenge rejected by court. ***In re Babcock & Wilcox Co***, No. 00-10992 (E.D. La.).

LEGAL NOTICING EXPERTS

Cameron Azari, Esq., Director of Legal Notice
Cameron Azari, Esq. has more than 17 years of experience in the design and implementation of legal notification and claims administration programs. He is a nationally recognized expert in the creation of class action notification campaigns in compliance with Fed R. Civ. P. 23(c)(2) (d)(2) and (e) and similar state class action statutes. Cameron has been responsible for hundreds of legal notice and advertising programs. During his career, he has been involved in an array of high profile class action matters, including *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation (MasterCard & Visa), In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, Heartland Payment Systems, In re: Checking Account Overdraft Litigation, Lowe's Home Centers, Department of Veterans Affairs (VA),* and *In re Residential Schools Class Action Litigation*. He is an active author and speaker on a broad range of legal notice and class action topics ranging from amendments to FRCP Rule 23 to email noticing, response rates and optimizing settlement effectiveness. Cameron is an active member of the Oregon State Bar. He received his B.S. from Willamette University and his J.D. from Northwestern School of Law at Lewis and Clark College. Cameron can be reached at caza@legalnotice.com.

Lauran Schultz, Executive Director
Lauran Schultz consults extensively with clients on notice adequacy and innovative legal notice programs. Lauran has more than 20 years of experience as a professional in the marketing and advertising field, specializing in legal notice and class action administration for the past seven years. High profile actions he has been involved in include companies such as BP, Bank of America, Fifth Third Bank, Symantec Corporation, Lowe's Home Centers, First Health, Apple, TJX, CNA and Carrier Corporation. Prior to joining Epiq Systems in 2005, Lauran was a Senior Vice President of Marketing at National City Bank in Cleveland, Ohio. Lauran's education includes advanced study in political science at the University of Wisconsin-Madison along with a Ford Foundation fellowship from the Social Science Research Council and American Council of Learned Societies. Lauran can be reached at lschultz@hilsoft.com.

ARTICLES AND PRESENTATIONS

- **Cameron Azari** Co-Author, "A Practical Guide to Chapter 11 Bankruptcy Publication Notice." E-book, published, May 2017.

- **Cameron Azari** Featured Speaker, "Proposed Changes to Rule 23 Notice and Scrutiny of Claim Filing Rates," DC Consumer Class Action Lawyers Luncheon, December 6, 2016.

- **Cameron Azari** Speaker, "2016 Cybersecurity & Privacy Summit. Moving From 'Issue Spotting' To Implementing a Mature Risk Management Model." King & Spalding, Atlanta, GA, April 25, 2016.

- **Cameron Azari** Speaker, "Live Cyber Incident Simulation Exercise." Advisen's Cyber Risk Insights Conference, London, UK, February 10, 2015.

- **Cameron Azari** Speaker, "Pitfalls of Class Action Notice and Claims Administration." PLI's Class Action Litigation 2014 Conference, New York, NY, July 9, 2014.

- **Cameron Azari** Co-Author, "What You Need to Know About Frequency Capping In Online Class Action Notice Programs." *Class Action Litigation Report*, June 2014.

- **Cameron Azari** Speaker, "Class Settlement Update – Legal Notice and Court Expectations." PLI's 19th Annual Consumer Financial Services Institute Conference, New York, NY, April 7-8, 2014 and Chicago, IL, April 28-29, 2014.

- **Cameron Azari** Speaker, "Legal Notice in Consumer Finance Settlements - Recent Developments." ACI's Consumer Finance Class Actions and Litigation, New York, NY, January 29-30, 2014.

- **Cameron Azari** Speaker, "Legal Notice in Building Products Cases." HarrisMartin's Construction Product Litigation Conference, Miami, FL, October 25, 2013.

- **Cameron Azari** Co-Author, "Class Action Legal Noticing: Plain Language Revisited." *Law360*, April 2013.

- **Cameron Azari** Speaker, "Legal Notice in Consumer Finance Settlements Getting your Settlement Approved." ACI's Consumer Finance Class Actions and Litigation, New York, NY, January 31-February 1, 2013.

- **Cameron Azari** Speaker, "Perspectives from Class Action Claims Administrators: Email Notices and Response Rates." CLE International's 8th Annual Class Actions Conference, Los Angeles, CA, May 17-18, 2012.

- **Cameron Azari** Speaker, "Class Action Litigation Trends: A Look into New Cases, Theories of Liability & Updates on the Cases to Watch." ACI's Consumer Finance Class Actions and Litigation, New York, NY, January 26-27, 2012.

- **Lauran Schultz** Speaker, "Legal Notice Best Practices: Building a Workable Settlement Structure." CLE International's 7th Annual Class Action Conference, San Francisco, CA, May 2011.

- **Cameron Azari** Speaker, "Data Breaches Involving Consumer Financial Information: Litigation Exposures and Settlement Considerations." ACI's Consumer Finance Class Actions and Litigation, New York, NY, January 2011.

- **Cameron Azari** Speaker, "Notice in Consumer Class Actions: Adequacy, Efficiency and Best Practices." CLE International's 5th Annual Class Action Conference: Prosecuting and Defending Complex Litigation, San Francisco, CA, 2009.

- **Lauran Schultz** Speaker, "Efficiency and Adequacy Considerations in Class Action Media Notice Programs." Chicago Bar Association, Chicago, IL, 2009.

- **Cameron Azari** Author, "Clearing the Five Hurdles of Email - Delivery of Class Action Legal Notices." *Thomson Reuters Class Action Litigation Reporter*, June 2008.

- **Cameron Azari** Speaker, "Planning for a Smooth Settlement." ACI: Class Action Defense – Complex Settlement Administration for the Class Action Litigator, Phoenix, AZ, 2007.

- **Cameron Azari** Speaker, "Noticing and Response Rates in Class Action Settlements" – Class Action Bar Gathering, Vancouver, British Columbia, 2007.

- **Cameron Azari** Speaker, "Structuring a Litigation Settlement." CLE International's 3rd Annual Conference on Class Actions, Los Angeles, CA, 2007.

- **Cameron Azari** Speaker, "Notice and Response Rates in Class Action Settlements" – Skadden Arps Slate Meagher & Flom, LLP, New York, NY, 2006.

- **Cameron Azari** Speaker, "Notice and Response Rates in Class Action Settlements" – Bridgeport Continuing Legal Education, Class Action and the UCL, San Diego, CA, 2006.

- **Cameron Azari** Speaker, "Notice and Response Rates in Class Action Settlements" – Stoel Rives litigation group, Portland, OR / Seattle, WA / Boise, ID / Salt Lake City, UT, 2005.

- **Cameron Azari** Speaker, "Notice and Response Rates in Class Action Settlements" – Stroock & Stroock & Lavan litigation group, Los Angeles, CA, 2005.

- **Cameron Azari** Author, "Twice the Notice or No Settlement." Current Developments – Issue II, August 2003.

- **Cameron Azari** Speaker, "A Scientific Approach to Legal Notice Communication" – Weil Gotshal litigation group, New York, NY, 2003.

JUDICIAL COMMENTS

Judge Charles R. Breyer, *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation* (May 17, 2017) MDL No. 2672 (N.D. Cal.):

> *The Court is satisfied that the Notice Program was reasonably calculated to notify Class Members of the proposed Settlement. The Notice "apprise[d] interested parties of the pendency of the action and afford[ed] them an opportunity to present their objections." Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). Indeed, the Notice Administrator reports that the notice delivery rate of 97.04% "exceed[ed] the expected range and is indicative of the extensive address updating and re-mailing protocols used." (Dkt. No. 3188-2 ¶ 24.)*

Judge Joseph F. Bataillon, *Klug v. Watts Regulator Company* (April 13, 2017) No. 8:15-cv-00061-JFB-FG3 (D. Neb.):

> *The court finds that the notice to the Settlement Class of the pendency of the Class Action and of this settlement, as provided by the Settlement Agreement and by the Preliminary Approval Order dated December 7, 2017, constituted the best notice practicable under the circumstances to all persons and entities within the definition of the Settlement Class, and fully complied with the requirements of Federal Rules of Civil Procedure Rule 23 and due process. Due and sufficient proof of the execution of the Notice Plan as outlined in the Preliminary Approval Order has been filed.*

Judge Yvonne Gonzales Rogers, *Bias v. Wells Fargo & Company, et al.* (April 13, 2017) No. 4:12-cv-00664-YGR (N.D. Cal.):

> *The form, content, and method of dissemination of Notice of Settlement given to the Settlement Class was adequate and reasonable and constituted the best notice practicable under the circumstances, including both individual notice to all Settlement Class Members who could be identified through reasonable effort and publication notice.*
>
> *Notice of Settlement, as given, complied with the requirements of Rule 23 of the Federal Rules of Civil Procedure, satisfied the requirements of due process, and constituted due and sufficient notice of the matters set forth herein.*
>
> *Notice of the Settlement was provided to the appropriate regulators pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715(c)(1).*

Judge Carlos Murguia, *Whitton v. Deffenbaugh Industries, Inc., et al* (December 14, 2016) No. 2:12-cv-02247 (D. Kan.) and ***Gary, LLC v. Deffenbaugh Industries, Inc., et al*** (December 14, 2016) No. 2:13-cv-2634 (D. Kan.):

> *The Court determines that the Notice Plan as implemented was reasonably calculated to provide the best notice practicable under the circumstances and contained all required information for members of the proposed Settlement Class to act to protect their interests. The Court also finds that Class Members were provided an adequate period of time to receive Notice and respond accordingly.*

Judge Yvette Kane, *In re: Shop-Vac Marketing and Sales Practices Litigation* (December 9, 2016) MDL No. 2380 (M.D. Pa.):

> *The Court hereby finds and concludes that members of the Settlement Class have been provided the best notice practicable of the Settlement and that such notice satisfies all requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and all other applicable laws.*

Judge Timothy D. Fox, *Miner v. Philip Morris USA, Inc.* (November 21, 2016) No. 60CV03-4661 (Ark. Cir.):

> *The Court finds that the Settlement Notice provided to potential members of the Class constituted the best and most practicable notice under the circumstances, thereby complying fully with due process and Rule 23 of the Arkansas Rules of Civil Procedure.*

Judge Eileen Bransten, *In re: HSBC Bank USA, N.A., Checking Account Overdraft Litigation* (October 13, 2016) No. 650562/2011 (Sup. Ct. N.Y.):

This Court finds that the Notice Program and the Notice provided to Settlement Class members fully satisfied the requirements of constitutional due process, the N.Y. C.P.L.R., and any other applicable laws, and constituted the best notice practicable under the circumstances and constituted due and sufficient notice to all persons entitled thereto.

Judge Jerome B. Simandle, *In re: Caterpillar, Inc. C13 and C15 Engine Products Liability Litigation* (September 20, 2016) MDL No. 2540 (D. N.J.):

The Court hereby finds that the Notice provided to the Settlement Class constituted the best notice practicable under the circumstances. Said Notice provided due and adequate notice of these proceedings and the matters set forth herein, including the terms of the Settlement Agreement, to all persons entitled to such notice, and said notice fully satisfied the requirements of Fed. R. Civ. P. 23, requirements of due process and any other applicable law.

Judge Marcia G. Cooke, *Chimeno-Buzzi v. Hollister Co. and Abercrombie & Fitch Co.* (April 11, 2016) No. 14-23120 (S.D. Fla.):

Pursuant to the Court's Preliminary Approval Order, the Settlement Administrator, Epiq Systems, Inc. [Hilsoft Notifications], has complied with the approved notice process as confirmed in its Declaration filed with the Court on March 23, 2016. The Court finds that the notice process was designed to advise Class Members of their rights. The form and method for notifying Class Members of the settlement and its terms and conditions was in conformity with this Court's Preliminary Approval Order, constituted the best notice practicable under the circumstances, and satisfied the requirements of Federal Rule of Civil Procedure 23(c)(2)(B), the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715, and due process under the United States Constitution and other applicable laws.

Judge Christopher S. Sontchi, *In re: Energy Future Holdings Corp, et al.,* (July 30, 2015) 14-10979(CSS) (Bankr. D. Del.):

Notice of the Asbestos Bar Date as set forth in this Asbestos Bar Date Order and in the manner set forth herein constitutes adequate and sufficient notice of the Asbestos Bar Date and satisfies the requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

Judge David C. Norton, *In re: MI Windows and Doors Inc. Products Liability Litigation* (July 22, 2015) MDL No. 2333, No. 2:12-mn-00001 (D. S.C.):

The court finds that the Notice Plan, as described in the Settlement and related declarations, has been faithfully carried out and constituted the best practicable notice to Class Members under the circumstances of this Action, and was reasonable and constituted due, adequate, and sufficient notice to all Persons entitled to be provided with Notice.

The court also finds that the Notice Plan was reasonably calculated, under the circumstances, to apprise Class Members of: (1) the pendency of this class action; (2) their right to exclude themselves from the Settlement Class and the proposed Settlement; (3) their right to object to any aspect of the proposed Settlement (including final certification of the Settlement Class, the fairness, reasonableness, or adequacy of the proposed Settlement, the adequacy of the Settlement Class's representation by Named Plaintiffs or Class Counsel, or the award of attorney's and representative fees); (4) their right to appear at the fairness hearing (either on their own or through counsel hired at their own expense); and (5) the binding and preclusive effect of the orders and Final Order and Judgment in this Action, whether favorable or unfavorable, on all Persons who do not request exclusion from the Settlement Class. As such, the court finds that the Notice fully satisfied the requirements of the Federal Rules of Civil Procedure, including Federal Rule of Civil Procedure 23(c)(2) and (e), the United States Constitution (including the Due Process Clause), the rules of this court, and any other applicable law, and provided sufficient notice to bind all Class Members, regardless of whether a particular Class Member received actual notice.

Judge Robert W. Gettleman, *Adkins v. Nestle Purina PetCare Company, et al.*, (June 23, 2015) No. 12-cv-2871 (N.D. Ill.):

> *Notice to the Settlement Class and other potentially interested parties has been provided in accordance with the notice requirements specified by the Court in the Preliminary Approval Order. Such notice fully and accurately informed the Settlement Class members of all material elements of the proposed Settlement and of their opportunity to object or comment thereon or to exclude themselves from the Settlement; provided Settlement Class Members adequate instructions and a variety of means to obtain additional information; was the best notice practicable under the circumstances; was valid, due, and sufficient notice to all Settlement Class members; and complied fully with the laws of the State of Illinois, Federal Rules of Civil Procedure, the United States Constitution, due process, and other applicable law.*

Judge James Lawrence King, *Steen v. Capital One, N.A.* (May 22, 2015) No. 2:10-cv-01505-JCZ-KWR (E.D. La.) and No. 1:10-cv-22058-JLK (S.D. Fla.) as part of ***In Re: Checking Account Overdraft Litigation***, MDL 2036 (S.D. Fla.)

> The Court finds that the Settlement Class Members were provided with the best practicable notice; the notice was reasonably calculated, under [the] circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Shutts*, 472 U.S. at 812 (quoting *Mullane*, 339 U.S. at 314-15). This Settlement with Capital One was widely publicized, and any Settlement Class Member who wished to express comments or objections had ample opportunity and means to do so. Azari Decl. ¶¶ 30-39.

Judge Rya W. Zobel, *Gulbankian et al. v. MW Manufacturers, Inc.*, (December 29, 2014) No. 1:10-cv-10392-RWZ (D. Mass.):

> *This Court finds that the Class Notice was provided to the Settlement Class consistent with the Preliminary Approval Order and that it was the best notice practicable and fully satisfied the requirements of the Federal Rules of Civil Procedure, due process, and applicable law. The Court finds that the Notice Plan that was implemented by the Claims Administrator satisfies the requirements of FED. R. CIV. P. 23, 28 U.S.C. § 1715, and Due Process, and is the best notice practicable under the circumstances. The Notice Plan constituted due and sufficient notice of the Settlement, the Final Approval Hearing, and the other matters referred to in the notices. Proof of the giving of such notices has been filed with the Court via the Azari Declaration and its exhibits.*

Judge Edward J. Davila, *Rose v. Bank of America Corporation, and FIA Card Services, N.A.*, (August 29, 2014) No. 5:11-CV-02390-EJD; 5:12-CV-04009-EJD (N.D. Cal.):

> *The Court finds that the notice was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of this action, all material elements of the Settlement, the opportunity for Settlement Class Members to exclude themselves from, object to, or comment on the settlement and to appear at the final approval hearing. The notice was the best notice practicable under the circumstances, satisfying the requirements of Rule 23(c)(2)(B); provided notice in a reasonable manner to all class members, satisfying Rule 23(e)(1)(B); was adequate and sufficient notice to all Class Members; and, complied fully with the laws of the United States and of the Federal Rules of Civil Procedure, due process and any other applicable rules of court.*

Judge James A. Robertson, II, *Wong et al. v. Alacer Corp.* (June 27, 2014) No. CGC-12-519221 (Cal. Super. Ct.):

> *Notice to the Settlement Class has been provided in accordance with the Preliminary Approval Order. Based on the Declaration of Cameron Azari dated March 7, 2014, such Class Notice has been provided in an adequate and sufficient manner, constitutes the best notice practicable under the circumstances and satisfies the requirements of California Civil Code Section 1781, California Civil Code of Civil Procedure Section 382, Rules 3.766 of the California Rules of Court, and due process.*

Judge John Gleeson, *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, (December 13, 2013) No. 1:05-cv-03800 (E.D. NY.):

> *The Class Administrator notified class members of the terms of the proposed settlement through a mailed notice and publication campaign that included more than 20 million mailings and publication in more than 400 publications. The notice here meets the requirements of due process and notice standards… The objectors' complaints provide no reason to conclude that the purposes and requirements of a notice to a class were not met here.*

Judge Lance M. Africk, *Evans, et al. v. TIN, Inc., et al,* (July 7, 2013) No. 2:11-cv-02067 (E.D. La.):

> *The Court finds that the dissemination of the Class Notice… as described in Notice Agent Lauran Schultz's Declaration: (a) constituted the best practicable notice to Class Members under the circumstances; (b) constituted notice that was reasonably calculated, under the circumstances…; (c) constituted notice that was reasonable, due, adequate, and sufficient; and (d) constituted notice that fully satisfied all applicable legal requirements, including Rules 23(c)(2)(B) and (e)(1) of the Federal Rules of Civil Procedure, the United States Constitution (including Due Process Clause), the Rules of this Court, and any other applicable law, as well as complied with the Federal Judicial Center's illustrative class action notices.*

Judge Edward M. Chen, *Marolda v. Symantec Corporation,* (April 5, 2013) No. 08-cv-05701 (N.D. Cal.):

> *Approximately 3.9 million notices were delivered by email to class members, but only a very small percentage objected or opted out . . . The Court . . . concludes that notice of settlement to the class was adequate and satisfied all requirements of Federal Rule of Civil Procedure 23(e) and due process. Class members received direct notice by email, and additional notice was given by publication in numerous widely circulated publications as well as in numerous targeted publications. These were the best practicable means of informing class members of their rights and of the settlement's terms.*

Judge Ann D. Montgomery, *In re Zurn Pex Plumbing Products Liability Litigation*, (February 27, 2013) No. 0:08cv01958 (D. Minn.):

> *The parties retained Hilsoft Notifications ("Hilsoft"), an experienced class-notice consultant, to design and carry out the notice plan. The form and content of the notices provided to the class were direct, understandable, and consistent with the "plain language" principles advanced by the Federal Judicial Center.*
>
> *The notice plan's multi-faceted approach to providing notice to settlement class members whose identity is not known to the settling parties constitutes "the best notice [*26] that is practicable under the circumstances" consistent with Rule 23(c)(2)(B).*

Magistrate Judge Stewart, *Gessele et al. v. Jack in the Box, Inc.*, (January 28, 2013) No. 3:10-cv-960 (D. Or.):

> *Moreover, plaintiffs have submitted [a] declaration from Cameron Azari (docket #129), a nationally recognized notice expert, who attests that fashioning an effective joint notice is not unworkable or unduly confusing. Azari also provides a detailed analysis of how he would approach fashioning an effective notice in this case.*

Judge Carl J. Barbier, *In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010* *(Medical Benefits Settlement)*, (January 11, 2013) MDL No. 2179 (E.D. La.):

> *Through August 9, 2012, 366,242 individual notices had been sent to potential [Medical Benefits] Settlement Class Members by postal mail and 56,136 individual notices had been e-mailed. Only 10,700 mailings—or 3.3%—were known to be undeliverable. (Azari Decl. ¶¶ 8, 9.) Notice was also provided through an extensive schedule of local newspaper, radio, television and Internet placements, well-read consumer magazines, a national daily business newspaper, highly-trafficked websites, and Sunday local newspapers (via newspaper supplements). Notice was also provided in non-measured trade, business and specialty publications, African-American, Vietnamese, and Spanish language publications, and Cajun radio programming. The combined measurable paid print, television, radio, and Internet effort reached an estimated 95% of adults aged 18+ in the Gulf Coast region an average of 10.3 times each, and an estimated 83% of all adults in the United States aged 18+ an average of 4 times each. (Id. ¶¶ 8, 10.) All notice documents were designed to be clear, substantive, and informative. (Id. ¶ 5.)*
>
> *The Court received no objections to the scope or content of the [Medical Benefits] Notice Program. (Azari Supp. Decl. ¶ 12.) The Court finds that the Notice and Notice Plan as implemented satisfied the best notice practicable standard of Rule 23(c) and, in accordance with Rule 23(e)(1), provided notice in a reasonable manner to Class Members who would be bound by the Settlement, including individual notice to all Class Members who could be identified through reasonable effort. Likewise, the Notice and Notice Plan satisfied the requirements of Due Process. The Court also finds the Notice and Notice Plan satisfied the requirements of CAFA.*

Judge Carl J. Barbier, *In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010* *(Economic and Property Damages Settlement)*, (December 21, 2012) MDL No. 2179 (E.D. La.):

> *The Court finds that the Class Notice and Class Notice Plan satisfied and continue to satisfy the applicable requirements of Federal Rule of Civil Procedure 23(c)(2)(b) and 23(e), the Class Action Fairness Act (28 U.S.C. § 1711 et seq.), and the Due Process Clause of the United States Constitution (U.S. Const., amend. V), constituting the best notice that is practicable under the circumstances of this litigation. The notice program surpassed the requirements of Due Process, Rule 23, and CAFA. Based on the factual elements of the Notice Program as detailed below, the Notice Program surpassed all of the requirements of Due Process, Rule 23, and CAFA.*
>
> *The Notice Program, as duly implemented, surpasses other notice programs that Hilsoft Notifications has designed and executed with court approval. The Notice Program included notification to known or potential Class Members via postal mail and e-mail; an extensive schedule of local newspaper, radio, television and Internet placements, well-read consumer magazines, a national daily business newspaper, and Sunday local newspapers. Notice placements also appeared in non-measured trade, business, and specialty publications, African-American, Vietnamese, and Spanish language publications, and Cajun radio programming. The Notice Program met the objective of reaching the greatest possible number of class members and providing them with every reasonable opportunity to understand their legal rights. See Azari Decl. ¶¶ 8, 15, 68. The Notice Program was substantially completed on July 15, 2012, allowing class members adequate time to make decisions before the opt-out and objections deadlines.*
>
> *The media notice effort alone reached an estimated 95% of adults in the Gulf region an average of 10.3 times each, and an estimated 83% of all adults in the United States an average of 4 times each. These figures do not include notice efforts that cannot be measured, such as advertisements in trade publications and sponsored search engine listings. The Notice Program fairly and adequately covered and notified the class without excluding any demographic group or geographic area, and it exceeded the reach percentage achieved in most other court-approved notice programs.*

Judge Alonzo Harris, Opelousas General Hospital Authority, A Public Trust, D/B/A Opelousas General Health System and Arklamiss Surgery Center, L.L.C. v. FairPay Solutions, Inc., (August 17, 2012) No. 12-C-1599 (27th Jud. D. Ct. La.):

> *Notice given to Class Members and all other interested parties pursuant to this Court's order of April 18, 2012, was reasonably calculated to apprise interested parties of the pendency of the action, the certification of the Class as Defined for settlement purposes only, the terms of the Settlement Agreement, Class Members rights to be represented by private counsel, at their own costs, and Class Members rights to appear in Court to have their objections heard, and to afford persons or entities within the Class Definition an opportunity to exclude themselves from the Class. Such notice complied with all requirements of the federal and state constitutions, including the Due Process Clause, and applicable articles of the Louisiana Code of Civil Procedure, and constituted the best notice practicable under the circumstances and constituted due and sufficient notice to all potential members of the Class as Defined.*

Judge James Lawrence King, In re Checking Account Overdraft Litigation (IBERIABANK), (April 26, 2012) MDL No. 2036 (S.D. Fla):

> *The Court finds that the Notice previously approved was fully and properly effectuated and was sufficient to satisfy the requirements of due process because it described "the substantive claims . . . [and] contained information reasonably necessary to [allow Settlement Class Members to] make a decision to remain a class member and be bound by the final judgment." In re Nissan Motor Corp. Antitrust Litig., 552 F.2d 1088, 1104-05 (5th Cir. 1977). The Notice, among other things, defined the Settlement Class, described the release as well as the amount and method and manner of proposed distribution of the Settlement proceeds, and informed Settlement Class Members of their rights to opt-out or object, the procedures for doing so, and the time and place of the Final Approval Hearing. The Notice also informed Settlement Class Members that a class judgment would bind them unless they opted out, and told them where they could obtain more information, such as access to a full copy of the Agreement. Further, the Notice described in summary form the fact that Class Counsel would be seeking attorneys' fees of up to 30 percent of the Settlement. Settlement Class Members were provided with the best practicable notice "reasonably calculated, under [the] circumstances, to apprise them of the pendency of the action and afford them an opportunity to present their objections." Mullane, 339 U.S. at 314. The content of the Notice fully complied with the requirements of Rule 23.*

Judge Bobby Peters, *Vereen v. Lowe's Home Centers,* (April 13, 2012) SU10-CV-2267B (Ga. Super. Ct.):

The Court finds that the Notice and the Notice Plan was fulfilled, in accordance with the terms of the Settlement Agreement, the Amendment, and this Court's Preliminary Approval Order and that this Notice and Notice Plan constituted the best practicable notice to Class Members under the circumstances of this action, constituted due and sufficient Notice of the proposed Settlement to all persons entitled to participate in the proposed Settlement, and was in full compliance with Ga. Code Ann § 9-11-23 and the constitutional requirements of due process. Extensive notice was provided to the class, including point of sale notification, publication notice and notice by first-class mail for certain potential Class Members.

The affidavit of the notice expert conclusively supports this Court's finding that the notice program was adequate, appropriate, and comported with Georgia Code Ann. § 9-11-23(b)(2), the Due Process Clause of the Constitution, and the guidance for effective notice articulate in the FJC's Manual for Complex Litigation, 4th.

Judge Lee Rosenthal, *In re Heartland Payment Systems, Inc. Customer Data Security Breach Litigation,* (March 2, 2012) MDL No. 2046 (S.D. Tex.):

*The notice that has been given clearly complies with Rule 23(e)(1)'s reasonableness requirement… Hilsoft Notifications analyzed the notice plan after its implementation and conservatively estimated that notice reached 81.4 percent of the class members. (Docket Entry No. 106, ¶ 32). Both the summary notice and the detailed notice provided the information reasonably necessary for the presumptive class members to determine whether to object to the proposed settlement. See Katrina Canal Breaches, 628 F.3d at 197. Both the summary notice and the detailed notice "were written in easy-to-understand plain English." In re Black Farmers Discrimination Litig., — F. Supp. 2d —, 2011 WL 5117058, at *23 (D.D.C. 2011); accord AGGREGATE LITIGATION § 3.04(c).15 The notice provided "satisf[ies] the broad reasonableness standards imposed by due process" and Rule 23. Katrina Canal Breaches, 628 F.3d at 197.*

Judge John D. Bates, *Trombley v. National City Bank,* (December 1, 2011) 1:10-CV-00232 (D.D.C.)

The form, content, and method of dissemination of Notice given to the Settlement Class were in full compliance with the Court's January 11, 2011 Order, the requirements of Fed. R. Civ. P. 23(e), and due process. The notice was adequate and reasonable, and constituted the best notice practicable under the circumstances. In addition, adequate notice of the proceedings and an opportunity to participate in the final fairness hearing were provided to the Settlement Class.

Judge Robert M. Dow, Jr., *Schulte v. Fifth Third Bank,* (July 29, 2011) No. 1:09-cv-6655 (N.D. Ill.):

The Court has reviewed the content of all of the various notices, as well as the manner in which Notice was disseminated, and concludes that the Notice given to the Class fully complied with Federal Rule of Civil Procedure 23, as it was the best notice practicable, satisfied all constitutional due process concerns, and provided the Court with jurisdiction over the absent Class Members.

Judge Ellis J. Daigle, *Williams v. Hammerman & Gainer Inc.*, (June 30, 2011) No. 11-C-3187-B (27th Jud. D. Ct. La.):

Notices given to Settlement Class members and all other interested parties throughout this proceeding with respect to the certification of the Settlement Class, the proposed settlement, and all related procedures and hearings—including, without limitation, the notice to putative Settlement Class members and others more fully described in this Court's order of 30th day of March 2011 were reasonably calculated under all the circumstances and have been sufficient, as to form, content, and manner of dissemination, to apprise interested parties and members of the Settlement Class of the pendency of the action, the certification of the Settlement Class, the Settlement Agreement and its contents, Settlement Class members' right to be represented by private counsel, at their own cost, and Settlement Class members' right to appear in Court to have their objections heard, and to afford Settlement Class members an opportunity to exclude themselves from the Settlement Class. Such notices complied with all requirements of the federal and state constitutions, including the due process clause, and applicable articles of the Louisiana Code of Civil Procedures, and constituted the best notice practicable under the circumstances and constituted due and sufficient notice to all potential members of the Settlement Class.

Judge Stefan R. Underhill, *Mathena v. Webster Bank, N.A.*, (March 24, 2011) No. 3:10-cv-1448 (D. Conn.):

> *The form, content, and method of dissemination of Notice given to the Settlement Class were adequate and reasonable, and constituted the best notice practicable under the circumstances. The Notice, as given, provided valid, due, and sufficient notice of the proposed settlement, the terms and conditions set forth in the Settlement Agreement, and these proceedings to all persons entitled to such notice, and said notice fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process.*

Judge Ted Stewart, *Miller v. Basic Research, LLC*, (September 2, 2010) No. 2:07-cv-871 (D. Utah):

> *Plaintiffs state that they have hired a firm specializing in designing and implementing large scale, unbiased, legal notification plans. Plaintiffs represent to the Court that such notice will include: 1) individual notice by electronic mail and/or first-class mail sent to all reasonably identifiable Class members; 2) nationwide paid media notice through a combination of print publications, including newspapers, consumer magazines, newspaper supplements and the Internet; 3) a neutral, Court-approved, informational press release; 4) a neutral, Court-approved Internet website; and 5) a toll-free telephone number. Similar mixed media plans have been approved by other district courts post class certification. The Court finds this plan is sufficient to meet the notice requirement.*

Judge Sara Loi, *Pavlov v. Continental Casualty Co.*, (October 7, 2009) No. 5:07cv2580 (N.D. Ohio):

> *As previously set forth in this Memorandum Opinion, the elaborate notice program contained in the Settlement Agreement provides for notice through a variety of means, including direct mail to each class member, notice to the United States Attorney General and each State, a toll free number, and a website designed to provide information about the settlement and instructions on submitting claims. With a 99.9% effective rate, the Court finds that the notice program constituted the "best notice that is practicable under the circumstances," Fed. R. Civ. P. 23(c)(2)(B), and clearly satisfies the requirements of Rule 23(c)(2)(B).*

Judge James Robertson, *In re Department of Veterans Affairs (VA) Data Theft Litigation*, (September 23, 2009) MDL No. 1796 (D.D.C.):

> *The Notice Plan, as implemented, satisfied the requirements of due process and was the best notice practicable under the circumstances. The Notice Plan was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the action, the terms of the Settlement, and their right to appear, object to or exclude themselves from the Settlement. Further, the notice was reasonable and constituted due, adequate and sufficient notice to all persons entitled to receive notice.*

Judge Lisa F. Chrystal, *Little v. Kia Motors America, Inc.*, (August 27, 2009) No. UNN-L-0800-01 (N.J. Super. Ct.):

> *The Court finds that the manner and content of the notices for direct mailing and for publication notice, as specified in the Notice Plan (Exhibit 2 to the Affidavit of Lauran R. Schultz), provides the best practicable notice of judgment to members of the Plaintiff Class.*

Judge Barbara Crowder, *Dolen v. ABN AMRO Bank N.V.*, (March 23, 2009) No. 01-L-454, 01-L-493 (3rd Jud. Cir. Ill.):

> *The Court finds that the Notice Plan is the best notice practicable under the circumstances and provides the Eligible Members of the Settlement Class sufficient information to make informed and meaningful decisions regarding their options in this Litigation and the effect of the Settlement on their rights. The Notice Plan further satisfies the requirements of due process and 735 ILCS 5/2-803. That Notice Plan is approved and accepted. This Court further finds that the Notice of Settlement and Claim Form comply with 735 ILCS 5/2-803 and are appropriate as part of the Notice Plan and the Settlement, and thus they are hereby approved and adopted. This Court further finds that no other notice other than that identified in the Notice Plan is reasonably necessary in this Litigation.*

Judge Robert W. Gettleman, *In re Trans Union Corp.*, (September 17, 2008) MDL No. 1350 (N.D. Ill.):

> *The Court finds that the dissemination of the Class Notice under the terms and in the format provided for in its Preliminary Approval Order constitutes the best notice practicable under the circumstances, is due and sufficient notice for all purposes to all persons entitled to such notice, and fully satisfies the requirements of the Federal Rules of Civil Procedure, the requirements of due process under the Constitution of the United States, and any other applicable law… Accordingly, all objections are hereby OVERRULED.*

Judge Steven D. Merryday*, Lockwood v. Certegy Check Services, Inc.*, (September 3, 2008) No. 8:07-cv-1434-T-23TGW (M.D. Fla.):

> *The form, content, and method of dissemination of the notice given to the Settlement Class were adequate and reasonable and constituted the best notice practicable in the circumstances. The notice as given provided valid, due, and sufficient notice of the proposed settlement, the terms and conditions of the Settlement Agreement, and these proceedings to all persons entitled to such notice, and the notice satisfied the requirements of Rule 23, Federal Rules of Civil Procedure, and due process.*

Judge William G. Young, *In re TJX Companies*, (September 2, 2008) MDL No. 1838 (D. Mass.):

> *The form, content, and method of dissemination of notice provided to the Settlement Class were adequate and reasonable, and constituted the best notice practicable under the circumstances. The Notice, as given, provided valid, due, and sufficient notice of the proposed settlement, the terms and conditions set forth in the Settlement Agreement, and these proceedings to all Persons entitled to such notice, and said Notice fully satisfied the requirements of Fed. R. Civ. P. 23 and due process.*

Judge Philip S. Gutierrez, *Shaffer v. Continental Casualty Co.,* (June 11, 2008) SACV-06-2235-PSG (PJWx) (C.D. Cal.):

> *…was reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice; and met all applicable requirements of the Federal Rules of Civil Procedure, the Class Action Fairness Act, the United States Constitution (including the Due Process Clauses), the Rules of the Court, and any other applicable law.*

Judge Robert L. Wyatt, *Gunderson v. AIG Claim Services, Inc.,* (May 29, 2008) No. 2004-002417 (14th Jud. D. Ct. La.):

> *Notices given to Settlement Class members…were reasonably calculated under all the circumstances and have been sufficient, as to form, content, and manner of dissemination…Such notices complied with all requirements of the federal and state constitutions, including the due process clause, and applicable articles of the Louisiana Code of Civil Procedure, and constituted the best notice practicable under the circumstances and constituted due and sufficient notice to all potential members of the Settlement Class.*

Judge Mary Anne Mason, *Palace v. DaimlerChrysler Corp.,* (May 29, 2008) No. 01-CH-13168 (Ill. Cir. Ct.):

> *The form, content, and method of dissemination of the notice given to the Illinois class and to the Illinois Settlement Class were adequate and reasonable, and constituted the best notice practicable under the circumstances. The notice, as given, provided valid, due, and sufficient notice of the proposed Settlement, the terms and conditions set forth in the Settlement Agreement, and these proceedings, to all Persons entitled to such notice, and said notice fully satisfied the requirements of due process and complied with 735 ILCS §§5/2-803 and 5/2-806.*

Judge David De Alba, *Ford Explorer Cases,* (May 29, 2008) JCCP Nos. 4226 & 4270 (Cal. Super. Ct.):

> *[T]he Court is satisfied that the notice plan, design, implementation, costs, reach, were all reasonable, and has no reservations about the notice to those in this state and those in other states as well, including Texas, Connecticut, and Illinois; that the plan that was approved—submitted and approved, comports with the fundamentals of due process as described in the case law that was offered by counsel.*

Judge Kirk D. Johnson, ***Webb v. Liberty Mutual Ins. Co.,*** (March 3, 2008) No. CV-2007-418-3 (Ark. Cir. Ct.):

> *The Court finds that there was minimal opposition to the settlement. After undertaking an extensive notice campaign to Class members of approximately 10,707 persons, mailed notice reached 92.5% of potential Class members.*

Judge Carol Crafton Anthony, *Johnson v. Progressive Casualty Ins. Co.*, (December 6, 2007) No. CV-2003-513 (Ark. Cir. Ct.):

> *Notice of the Settlement Class was constitutionally adequate, both in terms of its substance and the manner in which it was disseminated…Notice was direct mailed to all Class members whose current whereabouts could be identified by reasonable effort. Notice reached a large majority of the Class members. The Court finds that such notice constitutes the best notice practicable…The forms of Notice and Notice Plan satisfy all of the requirements of Arkansas law and due process.*

Judge Kirk D. Johnson, *Sweeten v. American Empire Insurance Co.*, (August 20, 2007) No. CV-2007-154-3 (Ark. Cir. Ct.):

> *The Court does find that all notices required by the Court to be given to class members was done within the time allowed and the manner best calculated to give notice and apprise all the interested parties of the litigation. It was done through individual notice, first class mail, through internet website and the toll-free telephone call center…The Court does find that these methods were the best possible methods to advise the class members of the pendency of the action and opportunity to present their objections and finds that these notices do comply with all the provisions of Rule 23 and the Arkansas and United States Constitutions.*

Judge Robert Wyatt, ***Gunderson v. F.A. Richard & Associates, Inc.,*** (July 19, 2007) No. 2004-2417-D (14th Jud. D. Ct. La.):

> *This is the final Order and Judgment regarding the fairness, reasonableness and adequacy. And I am satisfied in all respects regarding the presentation that's been made to the Court this morning in the Class memberships, the representation, the notice, and all other aspects and I'm signing that Order at this time.*

Judge Lewis A. Kaplan, *In re Parmalat Securities Litigation*, (July 19, 2007) MDL No. 1653-LAK (S.D.N.Y.):

> *The Court finds that the distribution of the Notice, the publication of the Publication Notice, and the notice methodology…met all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution, (including the Due Process clause), the Private Securities Litigation Reform Act of 1995 (15 U.S.C. 78u-4, et seq.) (the "PSLRA"), the Rules of the Court, and any other applicable law.*

Judge Joe Griffin, *Beasley v. The Reliable Life Insurance Co.,* (March 29, 2007) No. CV-2005-58-1 (Ark. Cir. Ct.):

> *[T]he Court has, pursuant to the testimony regarding the notification requirements, that were specified and adopted by this Court, has been satisfied and that they meet the requirements of due process. They are fair, reasonable, and adequate. I think the method of notification certainly meets the requirements of due process…So the Court finds that the notification that was used for making the potential class members aware of this litigation and the method of filing their claims, if they chose to do so, all those are clear and concise and meet the plain language requirements and those are completely satisfied as far as this Court is concerned in this matter.*

Judge Lewis A. Kaplan, *In re Parmalat Securities Litigation,* (March 1, 2007) MDL No. 1653-LAK (S.D.N.Y.):

> *The court approves, as to form and content, the Notice and the Publication Notice, attached hereto as Exhibits 1 and 2, respectively, and finds that the mailing and distribution of the Notice and the publication of the Publication Notice in the manner and the form set forth in Paragraph 6 of this Order…meet the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Securities Exchange Act of 1934, as emended by Section 21D(a)(7) of the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4(a)(7), and due process, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons and entities entitled thereto.*

Judge Anna J. Brown, *Reynolds v. The Hartford Financial Services Group, Inc.,* (February 27, 2007) No. CV-01-1529-BR (D. Or):

> *[T]he court finds that the Notice Program fairly, fully, accurately, and adequately advised members of the Settlement Class and each Settlement Subclass of all relevant and material information concerning the proposed settlement of this action, their rights under Rule 23 of the Federal Rules of Civil Procedure, and related matters, and afforded the Settlement Class with adequate time and an opportunity to file objections to the Settlement or request exclusion from the Settlement Class. The court finds that the Notice Program constituted the best notice practicable under the circumstances and fully satisfied the requirements of Rule 23 and due process.*

Judge Kirk D. Johnson, ***Zarebski v. Hartford Insurance Company of the Midwest,*** (February 13, 2007) No. CV-2006-409-3 (Ark. Cir. Ct.):

> *Based on the Court's review of the evidence admitted and argument of counsel, the Court finds and concludes that the Class Notice, as disseminated to members of the Settlement Class in accordance with provisions of the Preliminary Approval Order, was the best notice practicable under the circumstances to all members of the Settlement Class. Accordingly, the Class Notice and Claim Form as disseminated are*

finally approved as fair, reasonable, and adequate notice under the circumstances. The Court finds and concludes that due and adequate notice of the pendency of this Action, the Stipulation, and the Final Settlement Hearing has been provided to members of the Settlement Class, and the Court further finds and concludes that the notice campaign described in the Preliminary Approval Order and completed by the parties complied fully with the requirements of Arkansas Rule of Civil Procedure 23 and the requirements of due process under the Arkansas and United States Constitutions.

Judge Richard J. Holwell, *In re Vivendi Universal, S.A. Securities Litigation,* 2007 WL 1490466, at *34 (S.D.N.Y.):

In response to defendants' manageability concerns, plaintiffs have filed a comprehensive affidavit outlining the effectiveness of its proposed method of providing notice in foreign countries. According to this…the Court is satisfied that plaintiffs intend to provide individual notice to those class members whose names and addresses are ascertainable, and that plaintiffs' proposed form of publication notice, while complex, will prove both manageable and the best means practicable of providing notice.

Judge Samuel Conti, *Ciabattari v. Toyota Motor Sales, U.S.A., Inc.,* (November 17, 2006) No. C-05-04289-SC (N.D. Cal.):

After reviewing the evidence and arguments presented by the parties…the Court finds as follows…The class members were given the best notice practicable under the circumstances, and that such notice meets the requirements of the Due Process Clause of the U.S. Constitution, and all applicable statutes and rules of court.

Judge Ivan L.R. Lemelle, ***In re High Sulfur Content Gasoline Prods. Liability Litigation,*** (November 8, 2006) MDL No. 1632 (E.D. La.):

This Court approved a carefully-worded Notice Plan, which was developed with the assistance of a nationally-recognized notice expert, Hilsoft Notifications…The Notice Plan for this Class Settlement was consistent with the best practices developed for modern-style "plain English" class notices; the Court and Settling Parties invested substantial effort to ensure notice to persons displaced by the Hurricanes of 2005; and as this Court has already determined, the Notice Plan met the requirements of Rule 23 and constitutional due process.

Judge Catherine C. Blake, *In re Royal Ahold Securities and "ERISA" Litigation,* (November 2, 2006) MDL No. 1539 (D. Md.):

The global aspect of the case raised additional practical and legal complexities, as did the parallel criminal proceedings in another district. The settlement obtained is among the largest cash settlements ever in a securities class action case and represents an estimated 40% recovery of possible provable damages. The notice process appears to have been very successful not only in reaching but also in eliciting claims from a substantial percentage of those eligible for recovery.

Judge Elaine E. Bucklo, *Carnegie v. Household International,* (August 28, 2006) No. 98 C 2178 (N.D. Ill.):

[T]he Notice was disseminated pursuant to a plan consisting of first class mail and publication developed by Plaintiff's notice consultant, Hilsoft Notification[s]…who the Court recognized as experts in the design of notice plans in class actions. The Notice by first-class mail and publication was provided in an adequate and sufficient manner; constitutes the best notice practicable under the circumstances; and satisfies all requirements of Rule 23(e) and due process.

Judge Joe E. Griffin, *Beasley v. Hartford Insurance Company of the Midwest,* (June 13, 2006) No. CV-2005-58-1 (Ark. Cir. Ct.):

Based on the Court's review of the evidence admitted and argument of counsel, the Court finds and concludes that the Individual Notice and the Publication Notice, as disseminated to members of the Settlement Class in accordance with provisions of the Preliminarily Approval Order, was the best notice practicable under the circumstances…and the requirements of due process under the Arkansas and United States Constitutions.

Judge Norma L. Shapiro, *First State Orthopedics et al. v. Concentra, Inc., et al.,* (May 1, 2006) No. 2:05-CV-04951-NS (E.D. Pa.):

> *The Court finds that dissemination of the Mailed Notice, Published Notice and Full Notice in the manner set forth here and in the Settlement Agreement meets the requirements of due process and Pennsylvania law. The Court further finds that the notice is reasonable, and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice, is the best practicable notice; and is reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the Lawsuit and of their right to object or to exclude themselves from the proposed settlement.*

Judge Thomas M. Hart, *Froeber v. Liberty Mutual Fire Ins. Co.,* (April 19, 2006) No. 00C15234 (Or. Cir. Ct.):

> *The court has found and now reaffirms that dissemination and publication of the Class Notice in accordance with the terms of the Third Amended Order constitutes the best notice practicable under the circumstances.*

Judge Catherine C. Blake, *In re Royal Ahold Securities and "ERISA" Litigation,* (January 6, 2006) MDL No. 1539 (D. Md.):

> *I think it's remarkable, as I indicated briefly before, given the breadth and scope of the proposed Class, the global nature of the Class, frankly, that again, at least on a preliminary basis, and I will be getting a final report on this, that the Notice Plan that has been proposed seems very well, very well suited, both in terms of its plain language and in terms of its international reach, to do what I hope will be a very thorough and broad-ranging job of reaching as many of the shareholders, whether individual or institutional, as possibly can be done to participate in what I also preliminarily believe to be a fair, adequate and reasonable settlement.*

Judge Catherine C. Blake, *In re Royal Ahold Securities & "ERISA" Litigation,* 437 F.Supp.2d 467, 472 (D. Md. 2006):

> *The court hereby finds that the Notice and Notice Plan described herein and in the Order dated January 9, 2006 provided Class Members with the best notice practicable under the circumstances. The Notice provided due and adequate notice of these proceedings and the matters set forth herein, including the Settlement and Plan of Allocation, to all persons entitled to such notice, and the Notice fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process.*

Judge Robert H. Wyatt, Jr., *Gray v. New Hampshire Indemnity Co., Inc.*, (December 19, 2005) No. CV-2002-952-2-3 (Ark. Cir. Ct.):

> *Notice of the Settlement Class was constitutionally adequate, both in terms of its substance and the manner in which it was disseminated. The Notice contained the essential elements necessary to satisfy due process, including the Settlement Class definition, the identities of the Parties and of their counsel, a summary of the terms of the proposed settlement, Class Counsel's intent to apply for fees, information regarding the manner in which objections could be submitted, and requests for exclusions could be filed. The Notice properly informed Class members of the formula for the distribution of benefits under the settlement…Notice was direct mailed to all Class members whose current whereabouts could be identified by reasonable effort. Notice was also effected by publication in many newspapers and magazines throughout the nation, reaching a large majority of the Class members multiple times. The Court finds that such notice constitutes the best notice practicable.*

Judge Michael J. O'Malley, *Defrates v. Hollywood Entm't Corp.*, (June 24, 2005) No. 02 L 707 (Ill. Cir. Ct.):

> *[T]his Court hereby finds that the notice program described in the Preliminary Approval Order and completed by HEC complied fully with the requirements of due process, the Federal Rules of Civil Procedure and all other applicable laws.*

Judge Wilford D. Carter, *Thibodeaux v. Conoco Phillips Co.,* (May 26, 2005) No. 2003-481 F (14th J.D. Ct. La.):

> *Notice given to Class Members…were reasonably calculated under all the circumstances and have been sufficient, both as to the form and content…Such notices complied with all requirements of the federal and state constitutions, including the due process clause, and applicable articles of the Louisiana Code of Civil Procedure, and constituted the best notice practicable under the circumstances and constituted due process and sufficient notice to all potential members of the Class as Defined.*

Judge Michael Canaday, *Morrow v. Conoco Inc.*, (May 25, 2005) No. 2002-3860 G (14th J.D. Ct. La.):

The objections, if any, made to due process, constitutionality, procedures, and compliance with law, including, but not limited to, the adequacy of notice and the fairness of the proposed Settlement Agreement, lack merit and are hereby overruled.

Judge John R. Padova, *Nichols v. SmithKline Beecham Corp.*, (April 22, 2005) No. 00-6222 (E.D. Pa.):

Pursuant to the Order dated October 18, 2004, End-Payor Plaintiffs employed Hilsoft Notifications to design and oversee Notice to the End-Payor Class. Hilsoft Notifications has extensive experience in class action notice situations relating to prescription drugs and cases in which unknown class members need to receive notice…After reviewing the individual mailed Notice, the publication Notices, the PSAs and the informational release, the Court concludes that the substance of the Notice provided to members of the End-Payor Class in this case was adequate to satisfy the concerns of due process and the Federal Rules.

Judge Douglas Combs, *Morris v. Liberty Mutual Fire Ins. Co.,* (February 22, 2005) No. CJ-03-714 (D. Okla.):

I am very impressed that the notice was able to reach – be delivered to 97 ½ percent members of the class. That, to me, is admirable. And I'm also – at the time that this was initially entered, I was concerned about the ability of notice to be understood by a common, nonlawyer person, when we talk about legalese in a court setting. In this particular notice, not only the summary notice but even the long form of the notice were easily understandable, for somebody who could read the English language, to tell them whether or not they had the opportunity to file a claim.

Judge Joseph R. Goodwin, *In re Serzone Products Liability Litigation,* 231 F.R.D. 221, 231 (S.D. W. Va. 2005):

The Notice Plan was drafted by Hilsoft Notifications, a Pennsylvania firm specializing in designing, developing, analyzing and implementing large-scale, unbiased legal notification plans. Hilsoft has disseminated class action notices in more than 150 cases, and it designed the model notices currently displayed on the Federal Judicial Center's website as a template for others to follow…To enhance consumer exposure, Hilsoft studied the demographics and readership of publications among adults who used a prescription drug for depression in the last twelve months. Consequently, Hilsoft chose to utilize media particularly targeting women due to their greater incidence of depression and heavy usage of the medication.

Judge Richard G. Stearns, *In re Lupron® Marketing and Sales Practice Litigation,* (November 24, 2004) MDL No. 1430 (D. Mass.):

After review of the proposed Notice Plan designed by Hilsoft Notifications…is hereby found to be the best practicable notice under the circumstances and, when completed, shall constitute due and sufficient notice of the Settlement and the Fairness Hearing to all persons and entities affected by and/or entitled to participate in the Settlement, in full compliance with the notice requirements of Rule 23 the Federal Rules of Civil Procedure and due process.

Judge Richard G. Stearns, *In re Lupron® Marketing and Sales Practice Litigation,* (November 23, 2004) MDL No. 1430 (D. Mass.):

I actually find the [notice] plan as proposed to be comprehensive and extremely sophisticated and very likely be as comprehensive as any plan of its kind could be in reaching those most directly affected.

Judge James S. Moody, Jr., *Mantzouris v. Scarritt Motor Group Inc.,* (August 10, 2004) No. 8:03 CV- 0015-T-30 MSS (M.D. Fla.):

Due and adequate notice of the proceedings having been given and a full opportunity having been offered to the members of the Class to participate in the Settlement Hearing, or object to the certification of the Class and the Agreement, it is hereby determined that all members of the Class, except for Ms. Gwendolyn Thompson, who was the sole person opting out of the Settlement Agreement, are bound by this Order and Final Judgment entered herein.

Judge Robert E. Payne, *Fisher v. Virginia Electric & Power Co.*, (July 1, 2004) No. 3:02CV431 (E.D. Va.)**:**

> *The record here shows that the class members have been fully and fairly notified of the existence of the class action, of the issues in it, of the approaches taken by each side in it in such a way as to inform meaningfully those whose rights are affected and to thereby enable them to exercise their rights intelligently…The success rate in notifying the class is, I believe, at least in my experience, I share Ms. Kauffman's experience, it is as great as I have ever seen in practicing or serving in this job…So I don't believe we could have had any more effective notice.*

Judge John Kraetzer, *Baiz v. Mountain View Cemetery*, (April 14, 2004) No. 809869-2 (Cal. Super. Ct.):

> *The notice program was timely completed, complied with California Government Code section 6064, and provided the best practicable notice to all members of the Settlement Class under the circumstances. The Court finds that the notice program provided class members with adequate instructions and a variety of means to obtain information pertaining to their rights and obligations under the settlement so that a full opportunity has been afforded to class members and all other persons wishing to be heard…The Court has determined that the Notice given to potential members of the Settlement Class fully and accurately informed potential Members of the Settlement Class of all material elements of the proposed settlement and constituted valid, due, and sufficient notice to all potential members of the Settlement Class, and that it constituted the best practicable notice under the circumstances.*

Hospitality Mgmt. Assoc., Inc. v. Shell Oil Co., 356 S.C. 644, 663, 591 S.E.2d 611, 621 (Sup. Ct. S.C. 2004):

> *Clearly, the Cox court designed and utilized various procedural safeguards to guarantee sufficient notice under the circumstances. Pursuant to a limited scope of review, we need go no further in deciding the Cox court's findings that notice met due process are entitled to deference.*

Judge Joseph R. Goodwin, *In re Serzone Prods. Liability Litigation,* 2004 U.S. Dist. LEXIS 28297, at *10 (S.D. W. Va.):

> *The Court has considered the Notice Plan and proposed forms of Notice and Summary Notice submitted with the Memorandum for Preliminary Approval and finds that the forms and manner of notice proposed by Plaintiffs and approved herein meet the requirements of due process and Fed.R.Civ.P. 23(c) and (e), are the best notice practicable under the circumstances, constitute sufficient notice to all persons entitled to notice, and satisfy the Constitutional requirements of notice.*

Judge James D. Arnold, *Cotten v. Ferman Mgmt. Servs. Corp.,* (November 26, 2003) No. 02-08115 (Fla. Cir. Ct.):

> *Due and adequate notice of the proceedings having been given and a full opportunity having been offered to the member of the Class to participate in the Settlement Hearing, or object to the certification of the Class and the Agreement…*

Judge Judith K. Fitzgerald, *In re Pittsburgh Corning Corp.,* (November 26, 2003) No. 00-22876-JKF (Bankr. W.D. Pa.):

> *The procedures and form of notice for notifying the holders of Asbestos PI Trust Claims, as described in the Motion, adequately protect the interests of the holders of Asbestos PI Trust Claims in a manner consistent with the principles of due process, and satisfy the applicable requirements of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.*

Judge Carter Holly, *Richison v. American Cemwood Corp.,* (November 18, 2003) No. 005532 (Cal. Super. Ct.):

> *As to the forms of Notice, the Court finds and concludes that they fully apprised the Class members of the pendency of the litigation, the terms of the Phase 2 Settlement, and Class members' rights and options…Not a single Class member—out of an estimated 30,000—objected to the terms of the Phase 2 Settlement Agreement, notwithstanding a comprehensive national Notice campaign, via direct mail and publication Notice…The notice was reasonable and the best notice practicable under the circumstances, was due, adequate, and sufficient notice to all Class members, and complied fully with the laws of the State of California, the Code of Civil Procedure, due process, and California Rules of Court 1859 and 1860.*

Judge Thomas A. Higgins, *In re Columbia/HCA Healthcare Corp.,* (June 13, 2003) MDL No. 1227 (M.D. Tenn.):

Notice of the settlement has been given in an adequate and sufficient manner. The notice provided by mailing the settlement notice to certain class members and publishing notice in the manner described in the settlement was the best practicable notice, complying in all respects with the requirements of due process.

Judge Harold Baer, Jr., *Thompson v. Metropolitan Life Ins. Co.,* 216 F.R.D. 55, 68 (S.D.N.Y. 2003):

In view of the extensive notice campaign waged by the defendant, the extremely small number of class members objecting or requesting exclusion from the settlement is a clear sign of strong support for the settlement…The notice provides, in language easily understandable to a lay person, the essential terms of the settlement, including the claims asserted…who would be covered by the settlement…[T]he notice campaign that defendant agreed to undertake was extensive…I am satisfied, having reviewed the contents of the notice package, and the extensive steps taken to disseminate notice of the settlement, that the class notice complies with the requirements of Rule 23 (c)(2) and 23(e). In summary, I have reviewed all of the objections, and none persuade me to conclude that the proposed settlement is unfair, inadequate or unreasonable.

Judge Edgar E. Bayley, *Dimitrios v. CVS, Inc.,* (November 27, 2002) No. 99-6209; ***Walker v. Rite Aid Corp.,*** No. 99-6210; and ***Myers v. Rite Aid Corp.*,** No. 01-2771 (Pa. Ct. C.P.):

The Court specifically finds that: fair and adequate notice has been given to the class, which comports with due process of law.

Judge Dewey C. Whitenton, *Ervin v. Movie Gallery, Inc.,* (November 22, 2002) No. 13007 (Tenn. Ch.):

The content of the class notice also satisfied all due process standards and state law requirements…The content of the notice was more than adequate to enable class members to make an informed and intelligent choice about remaining in the class or opting out of the class.

Judge James R. Williamson, *Kline v. The Progressive Corp.*, (November 14, 2002) No. 01-L-6 (Ill. Cir. Ct.):

Notice to the Settlement Class was constitutionally adequate, both in terms of its substance and the manner in which it was disseminated. The notice contained the essential elements necessary to satisfy due process…

Judge Marina Corodemus, *Talalai v. Cooper Tire & Rubber Co.,* (September 13, 2002) No. L-008830.00 (N.J. Super. Ct.):

Here, the comprehensive bilingual, English and Spanish, court-approved Notice Plan provided by the terms of the settlement meets due process requirements. The Notice Plan used a variety of methods to reach potential class members. For example, short form notices for print media were placed…throughout the United States and in major national consumer publications which include the most widely read publications among Cooper Tire owner demographic groups.

Judge Harold Baer, Jr., *Thompson v. Metropolitan Life Ins. Co.,* (September 3, 2002) No. 00 Civ. 5071-HB (S.D.N.Y.):

The Court further finds that the Class Notice and Publication Notice provided in the Settlement Agreement are written in plain English and are readily understandable by Class Members. In sum, the Court finds that the proposed notice texts and methodology are reasonable, that they constitute due, adequate and sufficient notice to all persons entitled to be provided with notice, and that they meet the requirements of the Federal Rules of Civil Procedure (including Fed. R. Civ. P. 23(c)(2) and (e)), the United States Constitution (including the Due Process Clause), the Rules of the Court, and any other applicable law.

Judge Milton Gunn Shuffield, *Scott v. Blockbuster Inc.,* (January 22, 2002) No. D 162-535 (Tex. Jud. Dist. Ct.) ultimately withstood challenge to Court of Appeals of Texas. *Peters v. Blockbuster* 65 S.W.3d 295, 307 (Tex. App.-Beaumont, 2001):

In order to maximize the efficiency of the notice, a professional concern, Hilsoft Notifications, was retained. This Court concludes that the notice campaign was the best practicable, reasonably calculated, under all

the circumstances, to apprise interested parties of the settlement and afford them an opportunity to present their objections…The notice campaign was highly successful and effective, and it more than satisfied the due process and state law requirements for class notice.

Judge Marina Corodemus, *Talalai v. Cooper Tire & Rubber Co.,* (October 30, 2001) No. MID-L-8839-00-MT (N.J. Super. Ct.):

The parties have crafted a notice program which satisfies due process requirements without reliance on an unreasonably burdensome direct notification process…The form of the notice is reasonably calculated to apprise class members of their rights. The notice program is specifically designed to reach a substantial percentage of the putative settlement class members.

Judge Marina Corodemus, *Talalai v. Cooper Tire & Rubber Co.,* (October 29, 2001) No. L-8830-00-MT (N.J. Super. Ct.):

I saw the various bar graphs for the different publications and the different media dissemination, and I think that was actually the clearest bar graph I've ever seen in my life…it was very clear of the time periods that you were doing as to each publication and which media you were doing over what market time, so I think that was very clear.

Judge Stuart R. Pollak, *Microsoft I-V Cases,* (April 1, 2001) J.C.C.P. No. CJC-00-004106 (Cal. Super. Ct.):

[C]oncerning dissemination of class notice; and I have reviewed the materials that have been submitted on that subject and basically I'm satisfied. I think it's amazing if you're really getting 80 percent coverage. That's very reassuring. And the papers that you submitted responded to a couple things that had been mentioned before and I am satisfied with all that.

Judge Stuart R. Pollak, *Microsoft I-V Cases,* (March 30, 2001) J.C.C.P. No. 4106 (Cal. Super. Ct.):

Plaintiffs and Defendant Microsoft Corporation have submitted a joint statement in support of their request that the Court approve the plan for dissemination of class action notice and proposed forms of notice, and amend the class definition. The Court finds that the forms of notice to Class members attached hereto as Exhibits A and B fairly and adequately inform the Class members of their rights concerning this litigation. The Court further finds that the methods for dissemination of notice are the fairest and best practicable under the circumstances, and comport with due process requirements.

LEGAL NOTICE CASES

Hilsoft Notifications has served as a notice expert for planning, implementation and/or analysis in the following partial listing of cases:

Andrews v. MCI (900 Number Litigation)	S.D. Ga., CV 191-175
Harper v. MCI (900 Number Litigation)	S.D. Ga., CV 192-134
In re Bausch & Lomb Contact Lens Litigation	N.D. Ala., 94-C-1144-WW
In re Ford Motor Co. Vehicle Paint Litigation	E.D. La., MDL No. 1063
Castano v. Am. Tobacco	E.D. La., CV 94-1044
Cox v. Shell Oil (Polybutylene Pipe Litigation)	Tenn. Ch., 18,844
In re Amino Acid Lysine Antitrust Litigation	N.D. Ill., MDL No. 1083
In re Dow Corning Corp. (Breast Implant Bankruptcy)	E.D. Mich., 95-20512-11-AJS

Kunhel v. CNA Ins. Companies	N.J. Super. Ct., ATL-C-0184-94
In re Factor Concentrate Blood Prods. Litigation (Hemophiliac HIV)	N.D. Ill., MDL No. 986
In re Ford Ignition Switch Prods. Liability Litigation	D. N.J., 96-CV-3125
Jordan v. A.A. Friedman (Non-Filing Ins. Litigation)	M.D. Ga., 95-52-COL
Kalhammer v. First USA (Credit Card Litigation)	Cal. Cir. Ct., C96-45632010-CAL
Navarro-Rice v. First USA (Credit Card Litigation)	Or. Cir. Ct., 9709-06901
Spitzfaden v. Dow Corning (Breast Implant Litigation)	La. D. Ct., 92-2589
Robinson v. Marine Midland (Finance Charge Litigation)	N.D. Ill., 95 C 5635
McCurdy v. Norwest Fin. Alabama	Ala. Cir. Ct., CV-95-2601
Johnson v. Norwest Fin. Alabama	Ala. Cir. Ct., CV-93-PT-962-S
In re Residential Doors Antitrust Litigation	E.D. Pa., MDL No. 1039
Barnes v. Am. Tobacco Co. Inc.	E.D. Pa., 96-5903
Small v. Lorillard Tobacco Co. Inc.	N.Y. Super. Ct., 110949/96
Naef v. Masonite Corp (Hardboard Siding Litigation)	Ala. Cir. Ct., CV-94-4033
In re Synthroid Mktg. Litigation	N.D. Ill., MDL No. 1182
Raysick v. Quaker State Slick 50 Inc.	D. Tex., 96-12610
Castillo v. Mike Tyson (Tyson v. Holyfield Bout)	N.Y. Super. Ct., 114044/97
Avery v. State Farm Auto. Ins. (Non-OEM Auto Parts)	Ill. Cir. Ct., 97-L-114
Walls v. The Am. Tobacco Co. Inc.	N.D. Okla., 97-CV-218-H
Tempest v. Rainforest Café (Securities Litigation)	D. Minn., 98-CV-608
Stewart v. Avon Prods. (Securities Litigation)	E.D. Pa., 98-CV-4135
Goldenberg v. Marriott PLC Corp (Securities Litigation)	D. Md., PJM 95-3461
Delay v. Hurd Millwork (Building Products Litigation)	Wash. Super. Ct., 97-2-07371-0
Gutterman v. Am. Airlines (Frequent Flyer Litigation)	Ill. Cir. Ct., 95CH982
Hoeffner v. The Estate of Alan Kenneth Vieira (Un-scattered Cremated Remains Litigation)	Cal. Super. Ct., 97-AS 02993
In re Graphite Electrodes Antitrust Litigation	E.D. Pa., MDL No. 1244
In re Silicone Gel Breast Implant Prods. Liability Litigation, Altrichter v. INAMED	N.D. Ala., MDL No. 926
St. John v. Am. Home Prods. Corp. (Fen/Phen Litigation)	Wash. Super. Ct., 97-2-06368

Crane v. Hackett Assocs. (Securities Litigation)	E.D. Pa., 98-5504
In re Holocaust Victims Assets Litigation (Swiss Banks)	E.D.N.Y., CV-96-4849
McCall v. John Hancock (Settlement Death Benefits)	N.M. Cir. Ct., CV-2000-2818
Williams v. Weyerhaeuser Co. (Hardboard Siding Litigation)	Cal. Super. Ct., CV-995787
Kapustin v. YBM Magnex Int'l Inc. (Securities Litigation)	E.D. Pa., 98-CV-6599
Leff v. YBM Magnex Int'l Inc. (Securities Litigation)	E.D. Pa., 95-CV-89
In re PRK/LASIK Consumer Litigation	Cal. Super. Ct., CV-772894
Hill v. Galaxy Cablevision	N.D. Miss., 1:98CV51-D-D
Scott v. Am. Tobacco Co. Inc.	La. D. Ct., 96-8461
Jacobs v. Winthrop Financial Associates (Securities Litigation)	D. Mass., 99-CV-11363
Int'l Comm'n on Holocaust Era Ins. Claims – Worldwide Outreach Program	Former Secretary of State Lawrence Eagleburger Commission
Bownes v. First USA Bank (Credit Card Litigation)	Ala. Cir. Ct., CV-99-2479-PR
Whetman v. IKON (ERISA Litigation)	E.D. Pa., 00-87
Mangone v. First USA Bank (Credit Card Litigation)	Ill. Cir. Ct., 99AR672a
In re Babcock and Wilcox Co. (Asbestos Related Bankruptcy)	E.D. La., 00-10992
Barbanti v. W.R. Grace and Co. (Zonolite / Asbestos Litigation)	Wash. Super. Ct., 00201756-6
Brown v. Am. Tobacco	Cal. Super. Ct., J.C.C.P. 4042, 711400
Wilson v. Servier Canada Inc. (Canadian Fen/Phen Litigation)	Ont. Super. Ct., 98-CV-158832
In re Texaco Inc. (Bankruptcy)	S.D.N.Y. 87 B 20142, 87 B 20143, 87 B 20144
Olinde v. Texaco (Bankruptcy, Oil Lease Litigation)	M.D. La., 96-390
Gustafson v. Bridgestone/Firestone, Inc. (Recall Related Litigation)	S.D. Ill., 00-612-DRH
In re Bridgestone/Firestone Tires Prods. Liability Litigation	S.D. Ind., MDL No. 1373
Gaynoe v. First Union Corp. (Credit Card Litigation)	N.C. Super. Ct., 97-CVS-16536
Carson v. Daimler Chrysler Corp. (Fuel O-Rings Litigation)	W.D. Tenn., 99-2896 TU A
Providian Credit Card Cases	Cal. Super. Ct., J.C.C.P. 4085
Fields v. Great Spring Waters of Am., Inc. (Bottled Water Litigation)	Cal. Super. Ct., 302774

Sanders v. Great Spring Waters of Am., Inc. (Bottled Water Litigation)	Cal. Super. Ct., 303549
Sims v. Allstate Ins. Co. (Diminished Auto Value Litigation)	Ill. Cir. Ct., 99-L-393A
Peterson v. State Farm Mutual Auto. Ins. Co. (Diminished Auto Value Litigation)	Ill. Cir. Ct., 99-L-394A
Microsoft I-V Cases (Antitrust Litigation Mirroring Justice Dept.)	Cal. Super. Ct., J.C.C.P. 4106
Westman v. Rogers Family Funeral Home, Inc. (Remains Handling Litigation)	Cal. Super. Ct., C-98-03165
Rogers v. Clark Equipment Co.	Ill. Cir. Ct., 97-L-20
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In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010—Economic and Property Damages Settlement (Claim Deadline Notice)	E.D. La., MDL No. 2179

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Morton v. Greenbank (Overdraft Fees)	20th Jud. Dist. Tenn., No. 11-135-IV
Jacobs, et al. v. Huntington Bancshares Inc., et al. (FirstMerit Overdraft Fees)	Ohio C.P., No. 11CV000090

Farnham v. Caribou Coffee Company, Inc. (TCPA)	W.D. Wis., No. 16-cv-00295-WMC
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Lewis v. Flue-Cured Tobacco Cooperative Stabilization Corporation (n/k/a United States Tobacco Cooperative, Inc.)	N.C. Gen. Ct of Justice, Sup. Ct. Div., No. 05 CVS 188, No. 05 CVS 1938
T.A.N. v. PNI Digital Media, Inc.	S.D. GA., No. 2:16-cv-132-LGW-RSB.
In re: Syngenta Litigation	4th Jud. Dist. Minn., No. 27-CV-15-3785
The Financial Oversight and Management Board for Puerto Rico as representative of Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy)	D. Puerto Rico, No. 17-04780(LTS)
Callaway v. Mercedes-Benz USA, LLC (Seat Heaters)	C.D. Cal., No 14-cv-02011 JVS
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Hilsoft-cv-140

Exhibit 2

UNITED STATES DISTRICT COURT DISTRICT FOR THE EASTERN DISTRICT OF NEW YORK

Purchasers of Parking Heaters directly from Webasto or Espar may be entitled to a payment from a class action settlement.

A federal court directed this notice. This is not a solicitation from a lawyer.

- Two settlements, worth up to $15 million, have been reached with Defendants Webasto Products North America, Inc., Webasto Thermo & Comfort North America, Inc. and Webasto Thermo & Comfort SE (collectively, "Webasto") and Eberspaecher Climate Control Systems GmbH & Co. KG, Espar, Inc., and Espar Products Inc. (collectively, "Espar") in a class action lawsuit about whether Webasto and Espar participated in an unlawful conspiracy to raise, fix, maintain, and/or stabilize the price of aftermarket Parking Heaters (heaters and accessories used to heat commercial vehicles) at artificially high levels. Webasto and Espar deny the allegations in the lawsuit but have agreed to the Settlements. The Court has not decided who is right.

- The settlement with Webasto is for up to $7 million, while the settlement with Espar is for up to $8 million. The two settlements will be collectively referred to in this Notice as the "Settlements."

- The Settlements offer automatic payments to certain persons and entities that purchased aftermarket Parking Heaters in the United States, its territories or possessions, directly from Webasto or Espar, or from any of their parents, predecessors, successors, subsidiaries, or affiliates, at any time from October 1, 2007 through December 31, 2012.

- Estimated payments will be calculated based on available purchase data. Once the calculations are made, you can visit the Settlements website and input your unique ID number (if this Notice was mailed to you, your ID number was included on a separate sheet) to see your estimated payment. Please be patient and check back often as the calculations may take time to make.

- Your legal rights are affected whether you act or do not act. Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THESE SETTLEMENTS	
EXCLUDE YOURSELF	Request to be excluded and get no benefits from the Settlements. This is the only option that allows you to start or continue your own lawsuit against Webasto or Espar for the claims at issue in the Settlements.
OBJECT	Write to the Court about why you do not like one or both of the Settlements.
GO TO A HEARING	Ask to speak in Court about the fairness of one or both of the Settlements.

- These rights and options—**and the deadlines to exercise them**—are explained in this notice.

- The Court in charge of this lawsuit still has to decide whether to approve the Settlements. If it does, and after any appeals are resolved, benefits will be distributed to those who do not request exclusion from the Class. Please be patient.

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BASIC INFORMATION

1. Why is there a notice?

A Court authorized this notice because you have a right to know about the proposed Settlements of a class action lawsuit known as *In re Parking Heaters Antitrust Litigation*, No. 1:15-MC-0940 (DLI) (JO), in the United States District Court Eastern District of New York, and about all of your options before the Court decides whether to give final approval to the Settlements. This notice explains the lawsuit, the Settlements, and your legal rights.

Chief Judge Dora Lizette Irizarry of the United States District Court Eastern District of New York is overseeing this case. The people who sued are called the "Plaintiffs." Webasto Products North America, Inc., Webasto Thermo & Comfort North America, Inc. and Webasto Thermo & Comfort SE (collectively, "Webasto") and Eberspaecher Climate Control Systems GmbH & Co. KG, Espar, Inc., and Espar Products Inc. (collectively, "Espar") are the "Defendants."

2. What is this litigation about?

The lawsuit alleges that Webasto and Espar participated in an unlawful conspiracy to raise, fix, maintain, and/or stabilize the price of aftermarket Parking Heaters at artificially high levels in violation of Section 1 of the Sherman Act (15 U.S.C. § 1). Webasto and Espar have each agreed to settle the claims in the case.

The Plaintiffs' Class Action Complaint and Jury Demand, both Settlement Agreements, and other case-related documents are posted on the website, www.XXXXXXXXXXXXXXXXXXX.com. The Settlements resolve the lawsuit with both Webasto and Espar. The Court has not decided who is right.

3. What are "Parking Heaters"?

Under the Settlements, "Parking Heaters" are defined as "parking heaters for commercial vehicles sold in the aftermarket, including the heaters themselves, accessories sold for use with the heaters, and parking heater kits containing heaters and selected accessories." Parking Heaters produce heat without the need to run a vehicle's engine or idling. They include two primary types: (1) air heaters, which work by heating interior or outside air drawn into the heater unit, and (2) water or "coolant" heaters, which are integrated into the engine coolant circuit and heat the engine as well as the interior compartment.

4. Why is this a class action?

In a class action, one or more people here called "Direct Purchaser Plaintiffs" sue on behalf of themselves and other people with similar claims. Together, all the people with similar claims (except those who exclude themselves) are members of a "Settlement Class." The Direct Purchaser Plaintiffs here are Triple Cities Acquisition LLC d/b/a Cook Brothers Truck Parts, National Trucking Financial Reclamation Services, TrailerCraft Inc., and Myers Equipment Corporation.

5. Why are there Settlements?

The Court has not decided in favor of the Direct Purchaser Plaintiffs, Webasto, or Espar. Instead, the Parties have agreed to the Settlements. By agreeing to the Settlements, the Parties avoid the costs and uncertainty of a trial, and if the Settlements are approved by the Court, Settlement Class Members will receive the benefits described in this notice. The proposed Settlements do not mean that any law was broken or that

either Webasto or Espar did anything wrong. Both Webasto and Espar deny all legal claims in this case. Direct Purchaser Plaintiffs and their lawyers think the proposed Settlements are best for everyone who is affected.

WHO IS PART OF THE SETTLEMENTS

6. Who is included in the Settlements?

The Settlements include all persons or entities (but excluding federal and state government entities and Defendants, their officers, directors, and employees, as well as Defendants' parents, predecessors, successors, subsidiaries, affiliates) that purchased aftermarket Parking Heaters in the United States, its territories or possessions, directly from any Defendant (Webasto or Espar), or from any of their parents, predecessors, successors, subsidiaries, or affiliates, at any time during the period from and including October 1, 2007 up to and including December 31, 2012.

7. What if I am not sure whether I am included in the Settlements?

If you were mailed this Notice and were assigned a unique ID number, then Defendants' records show that you are member of the Settlement Class under at least one of the Settlements or are otherwise eligible for a payment. If you were not mailed a Notice or if you are still not sure whether you are in the Settlement Class or have any other questions about the Settlements, visit the Settlements website at www.XXXXXXXXXXXXX.com or call the toll-free number, 1-XXX-XXX-XXXX. You also may send questions to the Settlement Administrator at Parking Heaters Settlement Administrator, P.O. Box XXXX, Portland, OR 97XXX-XXXX.

THE SETTLEMENT BENEFITS

8. What do the Settlements provide?

The Webasto Settlement establishes a $7 million Settlement Fund and the Espar Settlement establishes an $8 million Settlement Fund. Each Settlement may be reduced by up to 35% depending on certain developments. The Webasto Settlement may be reduced by up to 35%, depending on the number of potential Settlement Class Members who opt out of the Webasto Settlement. In no event shall the Webasto Settlement be less than $4.55 million. The Espar Settlement may be reduced by up to 35%, depending on the number of potential Settlement Class Members Espar reached a private settlement with prior to September 20, 2017. In no event shall the Espar Settlement be less than $5.2 million.

Payments will be made to eligible Class Members *automatically*, after payment of expenses of notice and administration of the Settlement, taxes and tax expenses, and attorneys' fees, costs, expenses, interest, and other expenses as may be awarded by the Court. Settlement payment amounts to eligible Class Members will be calculated based on available records of Parking Heater sales provided by Webasto and Espar.

Class Members do not need to file a claim to receive a payment. If you were mailed this Notice, you also received a unique ID number that you can input at the Settlements website to see your estimated payment amount. These estimated amounts will be calculated and available to review after the Month Day, 201_ deadline for requesting exclusion from the Settlements passes, and after the Court has determined what other fees need to be paid from the settlement fund (see Question 10 below) and other potential reductions to the Settlements have been calculated.

Settlement Class members who already settled individually with Espar or Webasto are still entitled to a share of the settlement with the defendant with whom they did not settle (even if they did not purchase any Parking Heaters from that defendant), and Settlement Class members who settled with Espar individually may also be entitled to receive a share in the Espar settlement amount depending on the terms of their individual settlement with Espar.

9. What if I do not agree with my estimated payment amount?

Each Class Member's estimated payment amount will be calculated based on available Parking Heater sales records provided by Webasto and Espar. If you believe that your payment amount is incorrect, you can visit the Settlements website or call the toll-free number for information on how to file a disputed payment claim. In order to successfully make a disputed payment claim you must be able to demonstrate proof (through receipts or other documentation) of more Parking Heater purchases made directly from Webasto or Espar during the Class Period than were calculated through available records.

10. When will I receive my payment?

Payments to Class Members will be made only after the Court grants "final approval" to the Settlements, all costs and fees (including attorneys' fees) have been awarded, and after any appeals are resolved (*see* "The Court's Fairness Hearing" below). If there are appeals, resolving them can take time. Please be patient.

EXCLUDING YOURSELF FROM THE SETTLEMENTS

If you do not want benefits from one or both of the Settlements, and you want to keep any right you might have to sue Webasto and/or Espar about the issues in this case, then you must take steps to get out of one or both of the Settlements. This is called excluding yourself or "opting out" of the Settlement Class.

11. How do I get out of one or both of the Settlement?

To exclude yourself from the Settlements, you must send a letter or other written document by mail to:

Parking Heaters Settlement Administrator
P.O. Box XXXX
Portland, OR 97XXX-XXXX

Your request for exclusion must:

- Be in writing;
- Signed by you or an authorized representative of the Class Member;
- State your full personal or business name, address, and telephone number;
- State whether you are opting out of the Espar Settlement, the Webasto Settlement, or both; and
- Include:
  - Proof of membership in the Settlement Class; and
  - A signed statement that "I/we hereby request that I/we be excluded from the Settlement Class in the *In Re: Parking Heaters Antitrust Litigation*."

Your exclusion request must be postmarked no later than **Month Day, 201_** and received by the Settlement Administrator by **Month Day, 201_**. You cannot ask to be excluded on the phone, by email, or at the website.

12. If I do not exclude myself, can I sue the Defendants for the same thing later?

No. Unless you exclude yourself, you give up any right you might have to sue Webasto and/or Espar for the legal claims that the Settlement you are opting out of resolves. You must exclude yourself in order to try to continue a separate lawsuit against Webasto and/or Espar. If you start your own lawsuit, you will have to hire your own lawyer, and you will have to prove your claims.

13. What am I giving up to stay in the Settlement Class?

Unless you exclude yourself from the Settlements, you cannot sue or be part of any other lawsuit against Webasto or Espar about the issues in this case, including any existing litigation, arbitration, or proceeding. Unless you exclude yourself, all of the decisions and judgments by the Court will bind you. If you remain in the Settlement Class, you will be releasing Webasto and Espar from all of the claims described and identified in Paragraph 1(bb) of the Settlement Agreements.

If you only exclude yourself from one of the Settlements, you may only pursue a future lawsuit against that Defendant.

The Settlement Agreements are both available at www.XXXXXXXXXXXXXXX.com. The Settlement Agreements each provide more detail regarding the releases and describe the released claims with specific descriptions in necessary, accurate legal terminology, so read them carefully. You can talk to the law firm representing the Class listed below in Question 17 for free, or you can, at your own expense, talk to your own lawyer if you have any questions about the released claims or what they mean.

14. If I exclude myself, can I still get a payment?

No. You will not get a payment from the Settlement Fund if you exclude yourself from the Settlement. If you only exclude yourself from one of the Settlements, however, you may still receive payment related to the other Settlement.

THE LAWYERS REPRESENTING YOU

15. Do I have a lawyer in the case?

The Court has appointed the following law firms as "Co-Lead Counsel" to represent all members of the Settlement Class: Hausfeld, LLP and Roberts Law Firm, P.A. You will not be charged for these lawyers. If you want to be represented by another lawyer, you may hire one to appear in Court for you at your own expense.

16. How will the lawyers be paid?

Co-Lead Counsel intend to request (i) attorneys' fees not to exceed 33-1/3% of the Settlement Amount; (ii) reimbursement of litigation expenses incurred in connection with the prosecution of the lawsuit, including any costs associated with notice and administration of the Settlements; and/or (iii) potential incentive awards for the Direct Purchaser Plaintiffs in conjunction with their representation of the Settlement Class. The Court will decide the amount of fees and expenses to award.

OBJECTING TO THE SETTLEMENT

17. How do I tell the Court if I do not like one or both of the Settlements?

If you are a Settlement Class Member (and do not exclude yourself from the Settlement Class), you can appear in person or through your own counsel, at your own expense, at the Fairness Hearing (described below in Question 19) to present any evidence or argument that the Court deems proper and relevant. To object, you must submit a letter or other written document that includes the following:

- A notice of intention to appear;
- Proof of membership in the Settlement Class; and
- The specific grounds for the objection and any reasons why you desire to appear and be heard, as well as all documents or writings that you desire the Court to consider.

You must file your objection with the Court and mail copies to Co-Lead Counsel and counsel for Webasto and Espar by **Month Day, 201_**. The addresses are listed below.

CLERK OF THE COURT	CO-LEAD COUNSEL	ESPAR'S COUNSEL	WEBASTO'S COUNSEL
United States District Court Eastern District of New York 225 Cadman Plaza East Brooklyn, NY 11201	Bonny E. Sweeney HAUSFELD LLP 600 Montgomery Street, Suite 3200 San Francisco, CA 94111 Michael L. Roberts ROBERTS LAW FIRM, P.A. 20 Rahling Circle Little Rock, AR 72223	Michael F. Tubach O'Melveny & Myers LLP Two Embarcadero Center 28th Floor San Francisco, CA 94111	John Clayton Everett, Jr. MORGAN, LEWIS & BOCKIUS LLP 1111 Pennsylvania Avenue, NW Washington, DC 20004

18. What is the difference between objecting and asking to be excluded?

Objecting is simply telling the Court that you do not like something about one or both of the Settlements. You can object to one or both of the Settlements only if you do not exclude yourself from the Settlement to which you are objecting. Excluding yourself is telling the Court that you do not want to be part of one or both of the Settlements. If you exclude yourself, you have no basis to object to the Settlements for which you are excluded because it no longer affects you.

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the Settlements and any requests for fees and expenses ("Fairness Hearing").

19. When and where will the Court decide whether to approve the Settlements?

The Court has scheduled a Fairness Hearing on **Month Day, 2018 at __: _.m.**, at the United States District Court District of Eastern District of New York, 225 Cadman Plaza East, Brooklyn, NY 11201. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check www.XXXXXXXXXXXXXXXXX.com for updates. At this hearing, the Court will consider whether the Settlements are fair, reasonable, and adequate. The Court will also consider the requests by Co-Lead Counsel for attorneys' fees and expenses and for incentive awards to the Direct Purchaser Plaintiffs. If there are objections, the Court will consider them at that time. After the hearing, the Court will decide whether to approve the Settlements. It is unknown how long these decisions will take.

20. Do I have to attend the hearing?

No. Co-Lead Counsel will answer any questions the Court may have. But, you are welcome to attend the hearing at your own expense. You also may pay your own lawyer to attend the hearing, but it is not necessary.

21. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing only by following the procedures for objecting to the Settlement outlined in Question 17 above.

You cannot ask to speak at the hearing if you exclude yourself from both Settlements.

IF YOU DO NOTHING

22. What happens if I do nothing at all?

If you are a Class Member or are otherwise entitled to a payment under the Settlements and do nothing, you will receive an automatic payment if you are eligible. Unless you exclude yourself, you will be bound by the judgment entered by the Court. This means you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit or proceeding against Webasto or Espar about the claims at issue in this case.

GETTING MORE INFORMATION

23. How do I get more information?

This notice summarizes the proposed Settlements. More details are in the Settlement Agreements. For a complete, definitive statement of the Settlement terms, refer to the Settlement Agreements at www.XXXXXXXXXXXXXXXX.com. You may also write with questions to the Settlement Administrator at Parking Heaters Settlement Administrator, P.O. Box XXXX, Portland, OR 97XXX- XXXX, or call the toll-free number, 1-XXX-XXX-XXXX.

Exhibit 3

Publication Notice

Purchasers of Parking Heaters directly from Webasto or Espar may be entitled to a payment from a class action settlement.

Important Legal Notice from the United States District Court for the Eastern District of New York

Two settlements, worth up to $15 million, have been reached with Defendants Webasto Products North America, Inc., Webasto Thermo & Comfort North America, Inc. and Webasto Thermo & Comfort SE (collectively, "Webasto") and Eberspaecher Climate Control Systems GmbH & Co. KG, Espar, Inc., and Espar Products Inc. (collectively, "Espar") in a class action lawsuit about whether Webasto and Espar participated in an unlawful conspiracy to raise, fix, maintain, and/or stabilize the price of aftermarket Parking Heaters (heaters and accessories used to heat commercial vehicles) at artificially high levels. Webasto and Espar deny the allegations in the lawsuit but have agreed to the Settlements. The Court has not decided who is right.

What is a Parking Heater? Under the Settlements, "Parking Heaters" are defined as "parking heaters for commercial vehicles sold in the aftermarket, including the heaters themselves, accessories sold for use with the heaters, and parking heater kits containing heaters and selected accessories." Parking Heaters produce heat without the need to run a vehicle's engine or idling.

Who is included in the Settlements? The Settlements include all persons or entities that purchased aftermarket Parking Heaters in the United States, its territories or possessions, directly from Webasto or Espar, or from any of their parents, predecessors, successors, subsidiaries, or affiliates, from October 1, 2007 through December 31, 2012. Federal and state government entities and Defendants, their officers, directors, and employees, as well as Defendants' parents, predecessors, successors, subsidiaries, affiliates are excluded. A person or entity fitting this definition is a "Class Member." It is important to note that if you bought Parking Heaters from any other source and not directly from Webasto or Espar, you are not a Class Member.

What do the Settlements provide? The Settlements offers automatic payments to Class Members. If you received a notice in the mail and the Settlement is approved, you do not need to file a claim in order to receive a payment. Estimated payments will be calculated based on available purchase data. Once the calculations are made, Class Members can visit the Settlements website and input their unique ID number (notices with unique ID numbers were mailed to all identified Class Members) to see their estimated payment. If you believe you are a Class Member and did not receive a notice in the mail, please visit the website or call the toll-free number below.

What are my other options? If you do not want to be legally bound by one or both of the Settlements, you must exclude yourself by **Month Day, 201_**. If you do not exclude yourself, you will release any claims you may have against Webasto and Espar. You may object to one or both of the Settlements by **Month Day, 201_**. You cannot both exclude yourself from, and object to, the Settlements. The Detailed Notice available on the website listed below explains how to exclude yourself or object. The Court will hold a fairness hearing on **Month Day, 201_** to consider whether

to finally approve the Settlements and a request for attorneys' fees of up to 33-1/3% of the total Settlement Amount and incentive awards for each of the Direct Purchaser Plaintiffs. You may appear at the fairness hearing, either by yourself or through an attorney hired by you, but you don't have to. For more information, call or visit the website below.

1-XXX-XXX-XXXX **www.XXXXXXXXXXXXXXX.com**

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

In re: PARKING HEATERS ANTITRUST LITIGATION,	Case No. 1:15-mc-00940-DLI-JO
THIS DOCUMENT RELATES TO: All Direct Purchaser Class Actions	HON. JAMES ORENSTEIN

[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL
OF CLASS SETTLEMENTS WITH ESPAR AND WEBASTO DEFENDANTS

Upon consideration of Direct Purchaser Plaintiffs' Motion for Preliminary Approval of Proposed Settlement with Defendants Espar, Inc., Espar Products, Inc., and Eberspaecher Climate Control Systems GmbH & Co. KG (together, "Espar") and Webasto Products North America, Inc., Webasto Thermo & Comfort North America, Inc., and Webasto Thermo & Comfort SE (collectively, "Webasto," and with Espar, "Defendants") and certification of the settlement class ("Motion"), it is hereby **ORDERED** as follows:

1. The Motion is hereby **GRANTED**.

Unless otherwise set forth herein, defined terms in this Order shall have the same meaning ascribed to them in the settlement agreements between Direct Purchaser Plaintiffs and Defendants (hereinafter, "the Settlement Agreements"). As provided for in the Settlement Agreements and as used in the class definitions below, "Parking Heaters" means parking heaters used for commercial

vehicles sold in the aftermarket in the United States, including the heaters themselves, accessories sold for use with the heaters, and parking heater kits containing heaters and selected accessories, to keep the cabin or other compartment of the vehicle warm independent of the operation of the vehicle's engine.

Preliminary Approval of Settlement Agreements

2. The terms of the Settlement Agreements are hereby preliminarily approved, including the releases contained therein, as being fair, reasonable, and adequate to the Settlement Class, subject to a Fairness Hearing. The Court finds that both Settlement Agreements were entered into at arm's length by experienced counsel, each with the assistance of separate mediators, and are sufficiently within the range of reasonableness that notice of both Settlement Agreements should be given to members of the proposed Settlement Class, pursuant to the plan submitted by Settlement Class Counsel and approved by the Court, as provided in this Order.

Class Certification

3. Pursuant to Federal Rule of Civil Procedure 23 ("Rule 23"), and to facilitate the proposed settlements, the Court hereby finds that the prerequisites for a class action have been met and certifies for settlement purposes only the following class (the "Settlement Class"):

> All persons or entities (but excluding federal and state government entities and Defendants, their officers, directors, and employees, as well as Defendants' parents, predecessors, successors, subsidiaries, affiliates) that purchased Parking Heaters in the United States, its territories or possessions, directly from any Defendant, or from any of their parents, predecessors, successors, subsidiaries, or affiliates, at any time during the period from and including October 1, 2007 up to and including December 31, 2012.

4. The Court finds that certification of the Settlement Class is warranted because: (a) the Settlement Class is so numerous that joinder is impracticable; (b) Direct Purchaser Plaintiffs' claims present common issues and are typical of the Settlement Class; (c) Direct Purchaser

Plaintiffs and Settlement Class Counsel (defined below) will fairly and adequately represent the Settlement Class; and (d) common issues predominate over any individual issues affecting the members of the Settlement Class. The Court further finds that Direct Purchaser Plaintiffs' interests are aligned with the interests of all other members of the Settlement Class. The Court also finds settlement of this action on a class basis superior to other means of resolving the matter.

Appointment of Settlement Class Counsel, Class Representatives,
Settlement Administrator, and Escrow Agent

5. The Court hereby appoints Hausfeld, LLP and Roberts Law Firm, P.A. as Settlement Class Counsel, having determined that the requirements of Rule 23(g) are fully satisfied by this appointment.

6. The Court hereby appoints Direct Purchaser Plaintiffs Triple Cities Acquisition LLC d/b/a Cook Brothers Truck Parts, National Trucking Financial Reclamation Services, TrailerCraft Inc., and Myers Equipment Corporation as class representatives on behalf of the Settlement Class.

7. The Court hereby appoints Epiq Systems, Inc. as the Settlement Administrator and Huntington National Bank as the Escrow Agent for the Direct Purchaser Plaintiffs' settlements with both Espar and Webasto.

Notice to Potential Class Members

8. Prior to the Fairness Hearing, Settlement Class Counsel shall provide notice of the Settlement Agreements and the Fairness Hearing to all persons affected by and/or entitled to participate in the Settlement Agreements in compliance with the notice requirements of Rule 23 and due process of law.

9. The Court finds that there is sufficient basis for notifying the Settlement Class of the proposed settlements.

10. The Court finds that Direct Purchaser Plaintiffs' proposed notice program will inform potential Settlement Class members about how to obtain additional information about the Settlement Agreements, and apprise each member of the Settlement Class of his, her, or its right to exclude themselves from, or object to, one or both of the settlements. The notices therefore comply with the requirements of Rule 23.

11. Further, the manner and form of proposed notice is hereby approved. Specifically, the form of mail notice and publication notice attached as Exhibits 2 and 3 to the Declaration of Cameron R. Azari, submitted with Direct Purchaser Plaintiffs' motion for preliminary approval, are hereby approved, as is the publication of notice in *Fleet Owner* (a trade magazine that caters to business that are likely to be members of the proposed Settlement Class). The notices:

a. describe the lawsuit;

b. explain what a class member must do to file a claim, object to the settlements, or opt out; and

c. provide contact information for additional information.

12. Direct Purchaser Plaintiffs, in conjunction with the Claims Administrator, are hereby ordered to begin implementing the notice program as soon as practicable, including sending the mail notice no later than 60 days before the Fairness Hearing.

Fairness Hearing

13. The Court will conduct a Fairness Hearing on __: __ am/pm on ___ __, 2018 to determine the following:

a. Whether the proposed settlements are fair, reasonable, and adequate and should be granted final approval;

b. Whether final judgment should be entered dismissing the claims of the Settlement Class against Espar and Webasto with prejudice as required by the Settlement Agreements; and

c. Such other matters as the Court may deem appropriate.

Other Provisions

14. Any member of the Settlement Class that does not properly and timely request exclusion from the Settlement Class shall, upon final approval of the settlements, be bound by the terms and provisions of the Settlement Agreements, whether or not such person or entity objected to one or both of the settlements and whether or not such person or entity makes a claim upon the Settlement Funds.

15. In the event that either Settlement Agreement is terminated in accordance with its provisions, that Settlement Agreement and all proceedings had in connection therewith shall be null and void, except insofar as expressly provided to the contrary in that Settlement Agreement, and without prejudice to the status quo and rights of Direct Purchaser Plaintiffs, the members of the Settlement Class, and the Defendant (either Webasto or Espar) that has had its Settlement Agreement either terminated or rescinded. The termination or rescission of one Settlement Agreement shall have no impact on the viability of the other Settlement Agreement.

16. Should either or both Settlement Agreements be terminated or rescinded, the Court's findings in this Order shall have no effect on the Court's ruling on any subsequent motion to certify any class in these actions or on the Court's ruling(s) concerning any Defendant's motion; and 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.

17. The Court approves the establishment of the Settlement Funds pursuant to the Settlement Agreements as a qualified settlement fund ("QSF") pursuant to Internal Revenue Code

Section 468B and the Treasury Regulations promulgated thereunder, and retains continuing jurisdiction as to any issue that may arise in connection with the formation and/or administration of the QSF. Settlement Class Counsel are, in accordance with the Settlement Agreements, authorized to expend funds from the QSF for the payment of the costs of notice, payment of taxes, and settlement administration costs.

18. The litigation against Released Parties (as defined in the Settlement Agreements) is stayed except to the extent necessary to effectuate the Settlement Agreements. All deadlines previously set by the Court (including those related to discovery and class certification) are hereby vacated.

19. The Court retains exclusive jurisdiction over this action to consider all further matters arising out of or connected with the Settlement Agreements, except as explicitly agreed otherwise by the parties in the Settlement Agreements.

IT IS SO ORDERED

Dated:

____
HON. JAMES ORENSTEIN
UNITED STATES MAGISTRATE JUDGE

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

In Re: PARKING HEATERS ANTITRUST LITIGATION	Case No. 15-MC-940 (DLI) (JO)
THIS DOCUMENT RELATES TO: *All Direct Purchaser Class Actions*	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 18, 2018, the following documents were electronically filed with the Clerk of the Court and served via electronic service on all parties.

1. NOTICE OF MOTION OF DIRECT PURCHASER PLAINTIFFS FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENTS WITH ESPAR AND WEBASTO DEFENDANTS;

2. MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF DIRECT PURCHASER PLAINTIFFS' CLASS SETTLEMENTS WITH ESPAR AND WEBASTO DEFENDANTS;

3. DECLARATION OF SETH R. GASSMAN IN SUPPORT OF DIRECT PURCHASER PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENTS;

4. DECLARATION OF CAMERON R. AZARI, ESQ., ON SETTLEMENT NOTICE PLAN AND NOTICES; and

5. [PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS SETTLEMENTS WITH ESPAR AND WEBASTO DEFENDANTS.

Dated: January 18, 2018

San Francisco, CA

By: *<u>/s/ Seth R. Gassman</u>*
Seth R. Gassman