

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

IN RE AUTOMOTIVE PARTS
ANTITRUST LITIGATION

: 2:12-md-02311
: Honorable Marianne O. Battani
:

IN RE AUTOMOTIVE BEARINGS

: Case No. 2:12-cv-00503-MOB-MKM
:

THIS DOCUMENT RELATES TO:
END-PAYOR ACTION

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement” or “Settlement”) is made and entered into this 24th day of July 2017 (“Execution Date”) by and between Nachi-Fujikoshi Corp. and Nachi America Inc. (collectively, “Nachi”), and End-Payor Plaintiffs’ Class Representatives (as defined below) (collectively, “End-Payor Plaintiffs”), both individually and on behalf of a class of end-payor indirect purchasers of Automotive Bearings (“Settlement Class”), as more particularly defined in Paragraph 13 below.

WHEREAS, End-Payor Plaintiffs are prosecuting the above *In Re Automotive Parts Antitrust Litigation*, Master File No. 12-md-02311 (E.D. Mich.) (“MDL Litigation”), which includes *In Re Automotive Bearings*, Case No. 2:12-cv-00503 (“Action”), on their own behalf and on behalf of the Settlement Class against, among others, Nachi;

WHEREAS, End-Payor Plaintiffs allege that they were injured as a result of Nachi’s participation in an unlawful conspiracy to raise, fix, maintain, and/or stabilize prices, rig bids, and allocate markets and customers for Automotive Bearings (as defined in Paragraph 1) in violation of Section 1 of the Sherman Act and various state antitrust, unfair competition, unjust

enrichment, and consumer protection laws as set forth in End-Payor Plaintiffs' Second Consolidated Amended Class Action Complaint ("Complaint") in the Action (Doc. No. 122).

WHEREAS, Nachi denies End-Payor Plaintiffs' allegations and has asserted defenses to End-Payor Plaintiffs' claims in the Action;

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

WHEREAS, End-Payor Plaintiffs, through Settlement Class Counsel, have conducted an investigation into the facts and the law regarding the Action and have concluded that resolving the claims asserted in the Action against Nachi, according to the terms set forth below, is in the best interests of End-Payor Plaintiffs and the Settlement Class in view of the payment of the Settlement Amount and the value of the Compliance Obligations and Cooperation (as defined below) that Nachi has agreed to provide pursuant to this Agreement;

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

WHEREAS, Nachi has agreed to provide Cooperation (as defined below) to End-Payor Plaintiffs in the ongoing prosecution of the Action as set forth in this Agreement, and such Cooperation may reduce End-Payor Plaintiffs' substantial burden and expense associated with prosecuting the Action; and

WHEREAS, End-Payor Plaintiffs recognize the benefits of Nachi's Cooperation and recognize that because of joint and several liability, this Agreement with Nachi does not impair End-Payor Plaintiffs' ability to collect the full amount of damages to which they and the Settlement Class may be entitled in the Action, including any such damages attributable to Nachi's alleged conduct.

NOW, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, it is agreed by and among the undersigned that the Action be settled, compromised, and dismissed on the merits with prejudice as to the Releasees (as defined below) and except as hereinafter provided, without costs as to End-Payor Plaintiffs, the Settlement Class, or Nachi or other Releasees, subject to the approval of the Court, on the following terms and conditions:

A. Definitions.

1. "Automotive Bearings" shall have the meaning set forth in Paragraph 3 of the Complaint.
2. "Cooperation" shall refer to those provisions set forth below in Section F of this Agreement.
3. "Cooperation Materials" means any information, testimony, Documents (as defined below) or other material (including information from attorney proffers) provided by Nachi or its counsel under the terms of Section F of this Agreement.
4. "Defendant" means any party named as a defendant in the Action at any time up to and including the date when the Court has entered a final order certifying the Settlement Class described in Paragraph 13 and approving this Agreement under Federal Rule of Civil Procedure ("Rule") 23(e).

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

6. “End-Payor Plaintiffs’ Class Representatives” means those Settlement Class Members, as defined in Paragraph 15, below, who are named plaintiffs in the Complaint, or who are subsequently added as named plaintiffs in the Action prior to the entry of final judgment in the Action against Nachi.

7. “Indirect Purchaser States” means Arizona, Arkansas, California, District of Columbia, Florida, Hawaii, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, West Virginia, and Wisconsin.

8. “Opt-Out Deadline” means the deadline set by the Court for the timely submission of requests by members of the Settlement Class to be excluded from the Settlement Class and date by which any class member must request exclusion from the Settlement Class.

9. “Released Claims” means the claims described in Paragraphs 26-27.

10. “Releasees” shall refer to Nachi-Fujikoshi Corp. and Nachi America Inc. and to all of their respective past and present, direct and indirect, parents, subsidiaries, partnerships, and affiliates, including, but not limited to, Nachi Technology, Inc. and Nachi Europe GmbH, and the predecessors, successors, and assigns of each of the foregoing persons and entities, and to each and all of the present and former principals, partners, officers, directors, supervisors, employees, agents, stockholders, members, representatives, insurers, attorneys, heirs, executors, administrators, and assigns of each of the foregoing persons and entities. “Releasees” does not

include any defendant in the MDL Litigation other than Nachi and its related entities and persons described in this Paragraph.

11. "Releasers" shall refer to End-Payor Plaintiffs' Class Representatives and the Settlement Class Members, as defined in Paragraph 15, below, and to their past and present officers, directors, supervisors, employees, agents, stockholders, members, attorneys, servants, representatives, parents, subsidiaries, affiliates, principals, partners, insurers, and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing persons and entities.

12. "Settlement Amount" shall be \$3,230,000.00.

13. "Settlement Class" is defined as follows:

All persons and entities that, during the period from and including January 1, 2000 through the Execution Date, purchased or leased a new Vehicle in the United States not for resale, which included one or more Automotive Bearings as a component part, or indirectly purchased one or more Automotive Bearings as a replacement part, which were manufactured or sold by a Defendant, any current or former subsidiary of a Defendant, or any co-conspirator of a Defendant. Excluded from the Settlement Class are Defendants, their parent companies, subsidiaries and affiliates, any co-conspirators, federal governmental entities and instrumentalities of the federal government, states and their subdivisions, agencies and instrumentalities, and persons who purchased Automotive Bearings directly or for resale.

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

Cotchett, Pitre, & McCarthy LLP
San Francisco Airport Office Center
840 Malcolm Road, Suite 200
Burlingame, CA 94010

Robins Kaplan LLP
399 Park Avenue, Suite 3600
New York, NY 10022

Susman Godfrey L.L.P.
1901 Avenue of the Stars, Suite 950
Los Angeles, CA 90067

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

16. "Settlement Fund" shall be the Settlement Amount, together with all income and interest earned thereon after it is deposited into the Escrow Account (as set forth in Paragraph 29).

17. "Vehicles" shall refer to four-wheeled passenger automobiles, vans, sports utility vehicles, and crossover or pick-up trucks.

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

18. On the Execution Date of this Agreement, End-Payor Plaintiffs and Nachi shall be bound by its terms, and this Agreement shall not be terminated or rescinded except in accordance with Paragraph 50 of this Agreement.

19. End-Payor Plaintiffs and Nachi shall use their best efforts to effectuate this Agreement, including cooperating in seeking the Court's approval for the establishment of procedures (including the giving of class notice under Rule 23(c) and (e)) to secure the complete, and final dismissal with prejudice of the Action as to the Releasees only.

20. Within thirty (30) days after the execution of this Agreement, End-Payor Plaintiffs shall submit to the Court a motion seeking preliminary approval of this Agreement ("Preliminary Approval Motion"). The Preliminary Approval Motion shall include (a) the proposed form of an order preliminarily approving this Agreement, and (b) a proposed form of order and final judgment that shall include at least the terms set forth in Paragraph 22 below. The text of the Preliminary Approval Motion and the proposed orders and final judgment shall be agreed upon by End-Payor Plaintiffs and Nachi before submission of the Preliminary Approval Motion. Nachi shall have reasonable notice of and opportunity to review and comment on the Preliminary Approval Motion,

and End-Payor Plaintiffs shall reasonably consider Nachi's comments. The terms of the proposed order preliminarily approving this Agreement will include, at a minimum, the substance of the following provisions:

(a) preliminarily approving this Agreement as being fair, reasonable, and adequate to the Settlement Class;

(b) preliminarily certifying the Settlement Class as meeting the standards for settlement classes under Rule 23;

(c) appointing the law firms identified in Paragraph 14 of this Agreement as Settlement Class Counsel;

(d) appointing the End-Payor Plaintiffs as class representatives of the Settlement Class;

(e) directing that notice be given to the members of the Settlement Class at a time and in a manner consistent with the terms of this Agreement;

(f) approving the establishment of the Settlement Fund as defined in Paragraph 16;

(g) providing that the Court's preliminary approval of this Agreement and preliminary certification of the Settlement Class will have no effect on the rights of any Defendant, including Nachi, to contest the certification of any other proposed classes in the MDL Litigation; and

(h) staying the Action against Nachi for all purposes except those necessary to effectuate this Agreement.

21. End-Payor Plaintiffs shall, at a time to be decided in their sole discretion, and subject to Nachi's review and comment submit to the Court a motion for authorization to

disseminate notice of the Settlement and final judgment contemplated by this Agreement to all Settlement Class Members identified by End-Payor Plaintiffs (“Notice Motion”). The Notice Motion shall seek an order providing for notice to all members of the Settlement Class in a method designed to meet the requirements of Rule 23 and due process. Nachi will be given an opportunity to review the proposed notice form and End-Payor Plaintiffs will in good faith consider any comments or proposed edits from Nachi. To mitigate the costs of notice, End-Payor Plaintiffs shall endeavor, if practicable, to disseminate notice of this Settlement with notice of any other settlements that have been reached in the MDL Litigation at the time the Notice Motion is submitted. The Notice Motion shall include a proposed form of, method for, and date of dissemination of notice in the Action.

22. End-Payor Plaintiffs shall seek, and Nachi will not object unreasonably to, the entry of an order and final judgment, the text of which End-Payor Plaintiffs and Nachi shall agree upon in advance, by the Court in the Action. The terms of the proposed order and final judgment will include, at a minimum, the substance of the following provisions:

(a) certifying the Settlement Class described in Paragraph 13, pursuant to Rule 23, solely for purposes of this Settlement as a settlement class for the Action;

(b) as to the Action, approving finally this Settlement and its terms as being a fair, reasonable, and adequate settlement as to the Settlement Class Members within the meaning of Rule 23 and directing its consummation according to its terms;

(c) directing that all Releasers shall, by operation of law, be deemed to have released all Releasees from the Released Claims (as defined below).

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

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

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

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

(h) enjoining all Settlement Class Members, and their counsel, from asserting or prosecuting any claim or action against Nachi or the other Releasees that are released by this Agreement.

23. This Agreement shall become final and be deemed to have received "Final Court Approval" within the meaning of this Agreement when (a) the Court has entered a final order certifying the Settlement Class described in Paragraph 13 and approving this Agreement under Rule 23(e), and has entered a final judgment in the Action dismissing the Action with prejudice as to Nachi and without costs to Nachi other than those provided for in this Agreement, and (b) the time for appeal or to seek permission to appeal from the Court's approval of this Agreement and entry of a final judgment as to Nachi described in (a) hereof has expired and no motion or other pleading has been filed with the Court (or with any other court) seeking to set aside, enjoin, or in

any way alter the judgment or final approval order in the Action or to toll the time for appeal of the final judgment in the Action or, if appealed, approval of this Agreement and the final judgment in the Action as to Nachi has been affirmed in its entirety by the Court of last resort to which such appeal has been taken, and such affirmance has become no longer subject to further appeal or review. It is agreed that the provisions of Rule 60 shall not be taken into account in determining the above-stated times.

24. Neither this Agreement (whether or not it should become final or receive Final Court Approval) nor the final judgment, nor any and all negotiations, Documents, and discussions associated with them (including Cooperation Materials produced pursuant to Paragraphs 38-45), shall be deemed or construed to be an admission by Nachi or the other Releasees, or evidence of any violation of any statute or law or of any liability or wrongdoing whatsoever by Nachi or the other Releasees, to be used against Nachi or the other Releasees in any action or proceeding, or of the truth of any of the claims or allegations contained in any complaint or any other pleading filed in the MDL Litigation, and evidence thereof shall not be discoverable or used, directly or indirectly, in any way, whether in the MDL Litigation, or in any other action, arbitration, or proceeding whatsoever, against Nachi or the other Releasees.

25. Neither this Agreement, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any other action taken to carry out this Agreement by Nachi, shall be referred to, offered as evidence or received in evidence in any pending or future civil, criminal, or administrative action, arbitration, or proceeding, except in a proceeding to enforce this Agreement, or to defend against the assertion of Released Claims (as defined below), or as otherwise required by law. Nothing in this Paragraph shall prevent End-Payor Plaintiffs from using and/or introducing into evidence Cooperation Materials produced

pursuant to Paragraphs 38-45, subject to the limitations in those Paragraphs and the remainder of Section F, against any other Defendants in the MDL Litigation, subject to the terms and conditions set forth in the Stipulation and Protective Order Governing the Production and Exchange of Confidential Information, ECF No. 85, Case No. 2:12-cv-00500-MOB-MKM, entered by the Court in the Action (“Protective Order”), or to develop and promulgate a plan of allocation and distribution for Settlement Class Members. Notwithstanding any other provision of this Agreement, the parties and their counsel further agree that this Agreement and its terms and provisions, and any and all negotiations, Documents and discussions associated with them, and any other statements made by counsel for Nachi in connection with or as part of this Settlement, shall be governed by Federal Rule of Evidence 408. Nothing in this Paragraph shall be construed to limit the use of this Agreement to enforce its terms.

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

26. In addition to the effect of any final judgment entered in accordance with this Agreement, upon this Agreement receiving Final Court Approval, as set out in Paragraph 23 of this Agreement, and in consideration of payment of the Settlement Amount, as specified in Paragraph 28 of this Agreement, into the Settlement Fund, the Cooperation provided pursuant to Section F of this Agreement, the Compliance Obligations, and for other valuable consideration, the Releasees shall be completely released, acquitted, and forever discharged from 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 or makes a claim upon or participates in the Settlement Fund, whether directly, representatively, derivatively or in any other capacity), under any federal, state or local law of any jurisdiction in the United States that Releasers, or each of them, ever had, now has, or hereafter can, shall, or may ever have, that now exist or may exist in the future, on account of, or in any way arising out of, any and all

known and unknown, foreseen and unforeseen, suspected or unsuspected, actual or contingent, liquidated or unliquidated claims, injuries, damages, and the consequences thereof in any way arising out of or relating in any way to any conduct alleged in the Complaint, or any act or omission of the Releasees (or any of them or any combination thereof) concerning Automotive Bearings, including, but not limited to, any conduct alleged and causes of action asserted or that could have been alleged or asserted, in any class action or other complaints filed in the Action (“Released Claims”), provided however, that nothing herein shall release: (a) any claims made by direct purchasers of Automotive Bearings as to such direct purchases; (b) any claims made by any members of the Settlement Class and any potential members of the Settlement Class who have validly and timely requested to be excluded from the Settlement Class in the Automobile Dealership case, Case No. 2:12-cv-00502-MOB-MKM, as that term is defined in the Settlement Agreement between Nachi and Automobile Dealership Plaintiffs in that case; (c) any claims made by members of the Settlement Class and any potential members of the Settlement Class who have validly and timely requested to be excluded from the Settlement Class in the Truck and Equipment Dealer case, Case No. 2:14-cv-13356-MOB-MKM, as that term is defined in the Settlement Agreement between Nachi and Truck and Equipment Dealer Plaintiffs in that case; (d) any claims made by any state, state agency, or instrumentality or political subdivision of a state as to government purchases and/or penalties; (e) claims involving any negligence, personal injury, breach of contract, bailment, failure to deliver lost goods, damaged or delayed goods, product defect, securities or similar claim relating to Automotive Bearings; (f) claims concerning any automotive part other than Automotive Bearings; (g) claims under laws other than those of the United States relating to purchases of Automotive Bearings made by any Releasor outside of the United States; and (h) claims for damages under the state or local laws of any jurisdiction other

than an Indirect Purchaser State. Releasors shall not, after the date of this Agreement, seek to establish liability against any Releasee as to, in whole or in part, any of the Released Claims or conduct at issue in the Released Claims unless this Agreement does not, for any reason, receive Final Court Approval, or is rescinded, or terminated.

27. In addition to the provisions of Paragraph 26 of this Agreement, Releasors hereby expressly waive and release, upon this Agreement receiving Final Court Approval, as set out in Paragraph 23 of this Agreement, any and all provisions, rights, and benefits, as to their claims concerning Automotive Bearings 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 or statute of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code. Each Releasor may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the claims which are released pursuant to the provisions of Paragraph 26 of this Agreement, but each Releasor hereby expressly waives and fully, finally, and forever settles and releases, upon this Agreement receiving Final Court Approval, any known or unknown, suspected or unsuspected, contingent or non-contingent claim that Nachi and End-Payor Plaintiffs have agreed to release pursuant to Paragraph 26, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

D. Settlement Amount.

28. Subject to the provisions hereof, and in full, complete and final settlement of the Action as provided herein, Nachi, shall pay or cause to be paid the Settlement Amount of U.S. \$3,230,000 by wiring such funds to the Escrow Account to be administered in accordance with the provisions of Paragraph 29 of this Agreement within thirty (30) days following the later of the date (a) the Court enters an order granting the Preliminary Approval Motion as set forth in Paragraph 20, or (b) Nachi is provided with the account number, account name and wiring transfer information for the Escrow Account. No part of the Settlement Amount paid by Nachi shall constitute, nor shall it be construed or treated as constituting, a payment for treble damages, fines, penalties, forfeitures, or punitive recoveries.

29. Escrow Account.

(a) The Escrow Account will be established at Wells Fargo & Company with such Bank serving as escrow agent ("Escrow Agent") subject to escrow instructions mutually acceptable to Settlement Class Counsel and Nachi, such escrow to be administered by the Escrow Agent under the Court's continuing supervision and control.

(b) The Escrow Agent shall cause the Settlement Amount to be deposited in the Escrow Account, as well as the resulting Settlement Fund, to be invested in short-term instruments backed by the full faith and credit of the United States Government or fully insured in writing by the United States Government, or money market funds rated Aaa and AAA, respectively, by Moody's Investor Services and Standard and Poor's, invested substantially in such instruments, and shall reinvest any income from these instruments and the proceeds of these instruments as they mature in similar instruments at their then current market rates. Nachi shall bear no risk related to the management and investment of the Settlement Fund.

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

(d) The Settlement Fund is, and shall be operated in a manner so that it qualifies as, a qualified settlement fund under Section 468B of the Internal Revenue Code, as amended (“Code”), and Treas. Reg. § 1.468B-1, *et seq.* End-Payor Plaintiffs, Settlement Class Counsel, and Nachi agree to treat the Settlement Fund as being at all times a qualified settlement fund within the meaning of Treas. Reg. § 1.468B-1. In addition, Settlement Class Counsel shall timely take such actions as are necessary to create and maintain the Settlement Fund’s status as a qualified settlement fund, and to timely make such elections as are necessary or advisable to carry out the provisions of this Paragraph 29, including the relation-back election (as defined in Treas. Reg. § 1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of Settlement Class Counsel to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur. All provisions of this Agreement shall be interpreted in a manner that is consistent with the Settlement Amount being a “Qualified Settlement Fund” within the meaning of Treasury Regulation § 1.468B-1.

(e) For the purpose of Section 468B of the Code, and the regulations promulgated thereunder, the administrator of the Settlement Fund shall be Settlement Class Counsel. Settlement Class Counsel, as administrator, shall timely and properly file all information and other tax returns necessary or advisable with respect to the Settlement Fund (including without

limitation the information and tax returns described in Treas. Reg. §§ 1.468B-2(k)-(l)). Such returns (as well as the election described in Paragraph 29(d) above) shall be consistent with the provisions of Paragraph 29(d) and in all events shall reflect that all Taxes, as defined below (including any estimated Taxes, interest or penalties), on the income earned by the Settlement Fund shall be timely paid out of the Settlement Fund as provided in Paragraph 29(f) hereof.

(f) All (i) taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund, including any taxes or tax detriments that may be imposed upon Nachi or any other Releasee with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a qualified settlement fund for federal or state income tax purposes (“Taxes”); and (ii) costs and expenses incurred in connection with the operation and implementation of Paragraphs 29(d) through 29(f) (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in Paragraph 29(e) (“Tax Expenses”)), shall be paid out of the Settlement Fund.

(g) Taxes and Tax Expenses 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 Fund without prior order from the Court, and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to any claimants authorized by the Court any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(l)(2)). Neither Nachi nor any Releasee shall be responsible or have any liability therefor. End-Payor Plaintiffs and Nachi 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 Paragraphs 29(d) through 29(f).

(h) Neither Nachi nor any other Releasee nor their respective counsel shall have any liability or responsibility for Taxes or Tax Expenses, and Nachi, the other Releasees, and their respective counsel shall be indemnified and held harmless for such amounts (including taxes payable by reason of such indemnification) by the Settlement Fund.

(i) If this Agreement does not receive Final Court Approval, including Final Court Approval of the Settlement Class as described in Paragraph 23, or if the Action is not certified as a class action for settlement purposes, or if this Agreement is terminated or rescinded pursuant to Paragraph 50, then all amounts paid by Nachi into the Settlement Fund (other than costs expended or incurred in accordance with Paragraphs 29(d)-(g) and 32), shall be returned to Nachi from the Escrow Account by the Escrow Agent, along with any interest accrued thereon, within thirty (30) calendar days of the denial of Final Court Approval of the Agreement and/or Settlement Class, or termination or rescission of the Agreement.

30. Compliance Obligations.

Subject to the provisions hereof, and in full, complete, and final settlement of the Action as provided herein, Nachi further agrees that it will not engage in conduct that constitutes a *per se* violation of Section 1 of the Sherman Act (whether characterized as price fixing, market allocation, bid rigging, or otherwise) with respect to the sale of Automotive Bearings in the United States for a period of twenty-four (24) months from the date of the Court's entry of final judgment in the Action dismissing the claims against Nachi with prejudice.

31. Exclusions from the Settlement Class.

Subject to Court approval, any person or entity seeking exclusion from the Settlement Class must file a written request for exclusion by the Opt-Out Deadline. Any person or entity that files such a request shall be excluded from the Settlement Class and shall have no rights with respect to this Settlement. Subject to Court approval, a request for exclusion that does not comply with all of the provisions set forth in the applicable Court-approved notice of the Settlement to be disseminated to the members of the Settlement Class will be invalid, and the person(s) or entity(ies) serving such an invalid request shall be deemed Settlement Class Member(s) and shall be bound by this Agreement upon Final Court Approval. Settlement Class Counsel shall, within ten (10) business days of the Opt-Out Deadline, provide Nachi with a list and copies of all opt-out requests it receives in the Action and shall file with the Court a list of all members of the Settlement Class who timely and validly opted out of the Settlement.

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

(b) Subject to Court approval, in the written request for exclusion, the member of the Settlement Class must state his, her, or its full name, street address, and telephone number. Further, the member of the Settlement Class must include a statement in the written request for exclusion that the member wishes to be excluded from the Settlement. Any member of the Settlement Class that submits a written request for exclusion may also identify the number of

Vehicles purchased from January 1, 2000 through the Execution Date of this Agreement as requested in the notice to the Settlement Class.

(c) Nachi or Settlement Class Counsel may dispute an exclusion request, and the parties shall, if possible, resolve the disputed exclusion request by agreement and shall inform the Court of their position, and, if necessary, obtain a ruling thereon within thirty (30) days of the Opt-Out Deadline.

32. Payment of Expenses.

(a) Nachi agrees to permit a reasonable portion of the Settlement Fund, not to exceed \$100,000.00, to be used towards the costs of providing notice to the Settlement Class and the costs of administration of the Settlement Fund. To the extent such costs have been incurred or paid for notice and administration (up to the maximum of \$100,000.00), those costs are not recoverable by Nachi if this Agreement does not receive Final Court Approval or is terminated or rescinded. The Escrow Agent shall return all remaining portions of the Settlement Funds to Nachi should this Agreement not receive Final Court Approval or be terminated or rescinded. Other than as set forth in this Paragraph, Nachi shall not be liable for any of the costs or expenses of the litigation of the Action, including attorneys' fees, fees and expenses of expert witnesses and consultants, and costs and expenses associated with discovery, motion practice, hearings before the Court or Special Master, appeals, trials, or the negotiation of other settlements, or for Settlement Class, Settlement Fund, or Escrow Account administration and costs.

(b) To mitigate the costs of notice and administration, End-Payor Plaintiffs shall use their best efforts, if practicable, to disseminate notice to the Settlement Class of this Settlement with any other settlements reached with other defendants in the MDL Litigation and to

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

E. The Settlement Fund.

33. Releasors' sole recourse for settlement and satisfaction against the Releasees of all Released Claims is against the Settlement Fund, and Releasors shall have no other recovery against Nachi or any other Releasee.

34. After this Agreement receives Final Court Approval within the meaning of Paragraph 23, the Settlement Fund shall be distributed in accordance with a plan to be submitted to the Court at the appropriate time by Settlement Class Counsel, subject to approval by the Court. In no event shall any Releasee have any responsibility, financial obligation, or liability whatsoever with respect to the investment, distribution, or administration of the Settlement Fund, including, but not limited to, the costs and expenses of such distribution and administration.

35. End-Payor Plaintiffs and Settlement Class Counsel shall be reimbursed and indemnified solely out of the Settlement Fund for their costs and expenses, as provided by Court Order. Nachi and the other Releasees shall not be liable for any costs, fees, or expenses of any of End-Payor 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.

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

(a) Settlement Class Counsel may, after the Court has granted the Preliminary Approval Motion as set forth in Paragraph 20 and notice to the Settlement Class, submit an application or applications to the Court ("Fee and Expense Application") for: (i) an award of attorneys' fees not in excess of one-third of the Settlement Fund; plus (ii) reimbursement of

expenses and costs incurred in connection with prosecuting the Action and incentive awards, plus interest on such attorneys' fees, costs, and expenses at the same rate and for the same period as earned by the Settlement Fund (until paid), as may be awarded by the Court ("Fee and Expense Award"). Settlement Class Counsel reserves the right to make additional applications for Court approval of fees and expenses incurred and reasonable incentive awards, but in no event shall Nachi or any other Releasees be responsible to pay any such fees, expenses, costs, awards, and interest except to the extent they are paid out of the Settlement Fund.

(b) Subject to Court approval, and except as provided herein, End-Payor Plaintiffs and Settlement Class Counsel shall be reimbursed and paid solely out of the Settlement Fund for all expenses including, but not limited to, attorneys' fees and past, current, or future litigation expenses and incentive awards. Attorneys' fees and expenses awarded by the Court shall be payable from the Settlement Fund upon award, notwithstanding the existence of any timely filed objections thereto, or potential appeal therefrom, or collateral attack on the Settlement or any part thereof, subject to Settlement Class Counsel's obligation to make appropriate refunds or repayments to the Settlement Fund with interest, if and when, as a result of any appeal and/or further proceedings on remand, or successful collateral attack, the fee or award of expenses is reduced or reversed, or in the event this Agreement does not receive Final Court Approval or is terminated or rescinded pursuant to Paragraph 50.

(c) The procedure for and the allowance or disallowance by the Court of the application by Settlement Class Counsel for attorneys' fees, costs, and expenses, and incentive awards for class representatives to be paid out of the Settlement Fund are not part of this Agreement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement, and any order or proceeding relating to

the Fee and Expense Application, or any appeal from any such order shall not operate to terminate, rescind, or cancel this Agreement, or affect or delay the finality of the judgment approving the Settlement.

(d) Neither Nachi nor any other Releasee under this Agreement shall have any responsibility for, or interest in, or liability whatsoever with respect to any payment to Settlement Class Counsel and/or End-Payor Plaintiffs of any Fee and Expense Award in the Action.

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

F. Cooperation.

37. In return for the release and discharge provided herein, Nachi agrees to pay the Settlement Amount and be bound by the Compliance Obligations described in Paragraph 30, and further agrees to use its best efforts to provide Cooperation, as set forth specifically in Paragraphs 38-45 below, until (a) otherwise ordered by the Court, or (b) until the later of the entry of final judgments or judgments with respect to all of the remaining Defendants in the Action or dismissal with prejudice of those Defendants and when such judgment or dismissal becomes “final” as described in Paragraph 23(b), or unless this Agreement is terminated, rescinded, disapproved, or otherwise fails to take effect. Cooperation will take place consistent with the timing set forth specifically in this Section F, and shall occur in a manner that is consistent with Nachi’s obligations to Government Entities (defined as the United States Department of Justice (“DoJ”), the Japanese Fair Trade Commission (“JFTC”), or the European Commission (“EU”)) to the extent any such obligation continues. Settlement Class Counsel and End-Payor Plaintiffs agree to request such Cooperation only when and only to the extent reasonably necessary for their continued prosecution of the

Action. End-Payor Plaintiffs shall use their best efforts to coordinate Cooperation so as to avoid all unnecessary duplication and expense. Nachi shall not be required to provide Documents or information protected by the attorney-client privilege, the attorney work product doctrine, any applicable privilege under foreign law, or whose disclosure is prohibited by court order, any foreign or domestic law, or by a government entity. For all Documents withheld from production pursuant to (1) the attorney-client privilege; (2) the work-product doctrine; (3) a protective order, or (4) any other applicable privilege or doctrine protecting documents from disclosure, Nachi shall provide a privilege log describing such Documents in sufficient detail as to explain the nature of the privilege asserted or the basis of any other law or rule protecting such Documents. No Document shall be withheld under a claim of privilege if it was intentionally produced to any Government Entity.

38. Identity of Individuals.

Within ten (10) business days of a written request from Settlement Class Counsel after the Court enters an order granting the Preliminary Approval Motion, Counsel for Nachi shall provide Settlement Class Counsel with the identity of all current and former directors, officers, and employees of Nachi who: (a) were interviewed and/or prosecuted by any Government Entity in connection with alleged price-fixing, bid rigging and market allocation concerning the sale of Automotive Bearings; (b) appeared before the grand jury in the DOJ's investigation into alleged antitrust violations with respect to the sale of Automotive Bearings; and/or (c) were disclosed to the DOJ as having knowledge or information relating to the DOJ's investigation into alleged antitrust violations with respect to the sale of Automotive Bearings.

39. Transactional Data.

(a) In response to a written request from Settlement Class Counsel, Nachi will use its best efforts to complete the production of transactional data, no later than thirty (30) days after the Court enters an order granting the Preliminary Approval Motion, to the extent such data are reasonably accessible in Nachi's electronic databases and have not already been produced, that are responsive to End-Payor Plaintiffs' current requests, as limited by agreement with Nachi, concerning Nachi's sales of Automotive Bearings sold to Original Equipment Manufacturers, or other purchasers of Automotive Bearings from January 1, 1998 through the Execution Date. Except as provided herein, Nachi will only produce transactional data that exists as of the Execution Date of this Agreement and will not be obligated to do any analyses of the data for Settlement Class Counsel. Unless otherwise agreed to during meet-and-confer, to the extent Nachi has not recorded or maintained electronic transaction data for any period between January 1, 1998 and two (2) years from the Execution Date of this Agreement, Nachi will use reasonable efforts to produce existing hard copy records of sales transactions not recorded or maintained electronically in the existing electronic sales transaction database.

(b) Nachi will provide, in response to a written request from Settlement Class Counsel, a single production of electronic transactional data generated during the two years after the Execution Date of this Agreement concerning Nachi's sales of Automotive Bearings, as it exists in Nachi's electronic databases at the time of the request, within forty-five (45) days of the receipt of such request. Nachi shall preserve such transactional data until two (2) years after the Execution Date of this Agreement.

(c) In producing transactional data, Nachi is not obligated to compile any data from any less centralized or comprehensive source, including, without limitation,

individual invoices, purchase orders, personal computers, hard copy files, transactional Documents, servers or manufacturing facilities. Notwithstanding any other provision in this Agreement, Settlement Class Counsel agrees that it shall maintain all data produced by Nachi as “Highly Confidential,” as said designation is described in the Protective Order, subject to any challenge that any party may make subject to the Protective Order and any order(s) of the Court.

40. Documents.

(a) In response to a written request from Settlement Class Counsel, Nachi will use its best efforts to complete production of non-privileged Documents, including English translations, in its possession, custody, or control that are responsive to End-Payor Plaintiffs’ current requests, as limited by agreement with Nachi, and found in the files of previously agreed-upon custodians, no later than thirty (30) days after such written request or the Court’s entry of an order granting the Preliminary Approval Motion, whichever is later, including (i) Documents, including any existing translations, provided to or seized by Government Entities relating to their investigation into alleged competition violations with respect to Automotive Bearings; (ii) Documents concerning Automotive Bearings collected and reviewed in connection with a communication, meeting, or agreement regarding Automotive Bearings, by any employee, officer or director of Nachi with any employee, officer, or director of another manufacturer or seller of Automotive Bearings, but that were not provided to or seized by Government Entities; (iii) Documents concerning Nachi’s determination of its prices for Automotive Bearings; and (iv) Documents soliciting requests for quotation (“RFQ”), bids submitted in response to RFQs, RFQ award notifications, and post-award price adjustments for Automotive Bearings, including any Annual Price Reduction

(“APR”) Documents. As to Documents in Nachi’s possession, custody, or control that are not listed above, Nachi will consider in good faith any reasonable, limited and targeted request by End-Payor Plaintiffs to collect and produce such Documents provided the request would not impose an undue burden on Nachi.

(b) Should Nachi inadvertently disclose Documents protected by the attorney-client privilege, the attorney work product doctrine, any applicable privilege under foreign law, or whose disclosure is prohibited by any court order, foreign or domestic law, or by a government entity, End-Payor Plaintiffs agree (i) that such disclosure does not constitute a waiver of any applicable privilege or confidentiality requirement, (ii) to destroy any copies of such Documents upon a written request from Nachi, and (iii) that such Documents shall not be used by Settlement Class Counsel for any purpose. This Agreement, together with the Protective Order, brings any inadvertent production by Nachi within the protections of Federal Rule of Evidence 502(d), and Settlement Class Counsel will not argue that production to any person or entity made at any time suggests otherwise.

(c) Notwithstanding any other provision in this Agreement, Settlement Class Counsel agrees that it shall maintain, and limit disclosure and use of, all Documents produced by Nachi in accordance with the provisions of the Protective Order, including, but not limited to, Documents designated by Nachi as “Confidential” or “Highly Confidential,” as said designations are described in the Protective Order, subject to any challenge that any party may make subject to the Protective Order and any orders of the Court.

41. Attorney Proffers and Witness Interviews.

Nachi shall use its best efforts to cooperate with Settlement Class Counsel as set forth in Paragraph 41.

(a) In response to a written request from Settlement Class Counsel, Nachi's counsel will make themselves available at the offices of Lane Powell PC in Seattle, Washington, or Portland, Oregon, for one (1) meeting of no more than one (1) business day within thirty (30) business days to provide an attorneys' proffer of facts known to them. Any such attorney proffer shall be coordinated with, and occur at the same time as, any attorney proffers to be provided by Nachi in connection with settlements of indirect purchaser claims entered into by Nachi in the MDL Litigation and any related obligations that may arise from any other settlement. It is understood that Nachi has no obligation to seek new or additional information or Documents from any of its current or former directors, officers, and employees in connection with any proffer or otherwise; however, Nachi will in good faith consider requests for new or additional information or documents, and will produce such information or documents, if appropriate, in its discretion. Notwithstanding any other provision in this Agreement, Settlement Class Counsel shall maintain all statements made by Nachi's counsel as "Highly Confidential," as said designation is described in the Protective Order, and shall not use the information so received for any purpose other than the prosecution of claims in the Action against parties other than Nachi and the other Releasees. The parties and their counsel further agree that any statements made by Nachi's counsel in connection with and/or as part of this Settlement, including any attorney proffer referred to in this Paragraph, shall not be disclosed to any other party and shall be governed by Federal Rule of Evidence 408 and, otherwise, shall not be deemed admissible into evidence or to be subject to further discovery. Nachi further agrees to make up to four (4) persons available for interviews and depositions who have not previously been made available for interviews and depositions in the MDL Litigation, provide up to four (4) declarations or affidavits from persons to be selected by End-Payor Plaintiffs regardless of whether such persons have previously been made available for

interviews and depositions in the MDL Litigation, and make those persons available to testify at trial. The interviews and depositions shall be conducted at a mutually agreed-upon location in the United States, and the depositions shall be limited to a total of seven (7) hours over one (1) day unless the deposition is in a language other than English, in which case the deposition shall be limited to a total of thirteen (13) hours over two (2) days. If the interview, deposition, or trial takes place outside the country of a witness's residence, Settlement Class Counsel and Auto Dealer Settlement Class Counsel shall together reimburse half the reasonable travel costs incurred by such persons, but in no event shall Settlement Class Counsel be responsible for reimbursing such persons for time or services rendered. Such travel expenses may include economy airfare, but not airfare for business or first class seats. Reimbursable expenses shall not exceed \$1,500 per interviewee, deponent, or trial witness to be allocated between Settlement Class Counsel and Auto Dealer Settlement Class Counsel. If the interview and the above-described deposition or trial occur during the same trip, the above-limitations will apply to that trip.

(b) It is understood that Nachi may be unable to make available for an interview, deposition, affidavit, declaration, and/or at trial any person who is no longer an officer, director, or employee of Nachi at the time Settlement Class Counsel request such interview, deposition, affidavit, declaration, and/or trial testimony.

(c) In addition to its Cooperation obligations set forth herein, Nachi agrees to produce through affidavit(s), declaration(s), and/or at trial, in Settlement Class Counsel's reasonable discretion, and upon reasonable notice, a reasonable number of current employees whom Settlement Class Counsel, in consultation with counsel for Nachi, reasonably and in good faith believe are qualified to authenticate, establish as business records, or otherwise establish any other necessary foundation for admission into evidence of any Documents or transactional data

produced or to be produced by Nachi. Settlement Class Counsel agrees to use their best efforts to obtain stipulations that would avoid the need to call Nachi witnesses at trial for the purpose of obtaining such evidentiary foundations. Nachi shall use its best efforts to make available for an affidavit, declaration, and/or at trial any person who is no longer an officer, director, or employee of Nachi at the time Settlement Class Counsel request such affidavit, declaration, and/or trial testimony, though it is understood that Nachi may be unable to do so. Nothing in this provision shall prevent Nachi from objecting to the reasonableness of the number or identity of such persons selected by Settlement Class Counsel. If the trial takes place outside the country of a witness's residence, Settlement Class Counsel and Auto Dealer Settlement Class Counsel shall together reimburse half the reasonable travel costs incurred by such persons, but in no event shall Settlement Class Counsel be responsible for reimbursing such persons for time or services rendered. Such travel expenses may include economy airfare, but not airfare for business or first class seats. Reimbursable expenses shall not exceed \$1,500 per trial witness to be allocated between Settlement Class Counsel and Auto Dealer Settlement Class Counsel.

42. End-Payor Plaintiffs and Settlement Class Counsel agree they will not use the Cooperation Materials provided by Nachi or the other Releasees or their representatives under this Agreement for any purpose other than the prosecution of claims in the Action against parties other than Nachi and the other Releasees, and will only use such Materials in the Action consistent with the Protective Order, and will not use them beyond what is reasonably necessary for the prosecution of such claims in the Action or as otherwise required by law. All Documents and other Cooperation Materials provided pursuant to this Agreement will be deemed "Highly Confidential," as said designation is described in the Protective Order, and be subject to the Protective Order as if they had been produced in response to discovery requests and so designated.

43. Nachi and the other Releasees need not respond to discovery requests made pursuant to the Federal Rules of Civil Procedure by End-Payor Plaintiffs or Settlement Class Counsel, or meet and confer or otherwise negotiate with End-Payor Plaintiffs or Settlement Class Counsel regarding discovery requests previously served in the Action, or otherwise participate in the Action during the pendency of the Agreement. Within five days of the Execution Date, the parties shall mutually withdraw any discovery requests served on each other and shall withdraw from participation in any pending motions filed against each other. This withdrawal of discovery and pending motions shall be without prejudice to reinstating such discovery or motions if this Agreement fails to receive Final Court Approval or in the event that it is terminated or rescinded by either party under any provision herein. Other than to enforce the terms of this Agreement, neither Nachi nor End-Payor Plaintiffs shall file motions against the other, in the Action, during the pendency of the Agreement.

44. After conducting a reasonable search, Nachi shall, to the best of its knowledge, identify those Vehicles sold in the United States from January 1, 2000 through the Execution Date of this Agreement that contain Automotive Bearings sold by Nachi.

45. In the event that Nachi produces Documents, including translations, or provides declarations or written responses to discovery to any party or nonparty in any of the other Bearings cases in the MDL Litigation (“Relevant Production”), Nachi shall produce all such Documents, declarations or written discovery responses to End-Payor Plaintiffs contemporaneously with making the Relevant Production to the extent such Documents, declarations or written discovery responses have not previously been produced by Nachi to End-Payor Plaintiffs. In addition, Nachi shall provide End-Payor Plaintiffs with all cooperation it provides pursuant to any settlement agreement with any other party in this MDL Litigation. To the extent that such cooperation

includes any attorney proffer, witness interviews, or depositions of witnesses, Settlement Class Counsel shall be permitted to attend and/or participate in such attorney proffer, witness interviews or depositions, and shall be entitled to ask questions for a period up to three (3) hours at any interview or deposition (provided that this shall not expand the time permitted for any deposition). All such additional Cooperation shall be coordinated, to the extent reasonably practicable, between Settlement Class Counsel and such other party to whom such cooperation is provided pursuant to a settlement agreement. End-Payor Plaintiffs' receipt of, or participation in, cooperation provided by Nachi shall not in any way limit End-Payor Plaintiffs' entitlement to receive Cooperation as set forth in this Section F, including, but not limited to, attorney proffers, and witness interviews, and depositions. Nachi shall provide End-Payor Plaintiffs with all cooperation it provides to any other party in this MDL Litigation, including but not limited to, the Direct Purchaser Plaintiffs and Truck and Equipment Dealer Plaintiffs.

46. End-Payor Plaintiffs have foregone participating in depositions of Nachi witnesses scheduled on or after February 1, 2017 by other Plaintiff Groups. As such, in the event that (a) the Settlement does not receive Final Court Approval, or (b) any other settlement in the Action does not receive Final Court Approval, EPPs may, at a later date, take depositions of any Nachi witnesses who were previously deposed by other Plaintiff Groups except those that End-Payor Plaintiffs deposed prior to February 1, 2017. The examination time for each of these depositions shall not exceed three (3) hours for those conducted in English or five and a half (5.5) hours for those conducted through an interpreter. Nothing herein shall alter, limit or otherwise affect rights of End-Payor Plaintiffs to take depositions of Nachi employees subject to Paragraph 41(a) of this Agreement

47. Nachi's obligations to provide Cooperation shall not be affected by the releases set forth in this Agreement. If this Agreement is terminated, rescinded, disapproved, otherwise fails to take effect, or if final judgment has been entered by the Court against all Defendants in the Action (collectively, "Court Termination"), unless otherwise agreed by Nachi, within sixty (60) days after Court Termination, End-Payor Plaintiffs must destroy all Cooperation Materials received from Nachi to the extent required by the Protective Order, and must comply with all other terms of the Protective Order governing such return or destruction.

48. In the event that this Agreement fails to receive Final Court Approval, including Final Court Approval of the Settlement Class as described in Paragraph 23, or in the event that it is terminated by either party under any provision herein, the parties agree that neither End-Payor Plaintiffs nor Settlement Class Counsel shall be permitted to introduce into evidence against Nachi, at any hearing or trial, or in support of any motion, opposition or other pleading in the Action or in any other federal or state or foreign action alleging a violation of any law relating to the subject matter of the Action, any Documents or other Cooperation Materials provided by Nachi and/or the other Releasees, their counsel, or any individual made available by Nachi pursuant to Cooperation (as opposed to from any other source or pursuant to a court order). This limitation shall not apply to any discovery of Nachi in which Settlement Class Counsel participate as part of the MDL Litigation. Notwithstanding anything contained herein, End-Payor Plaintiffs and the Settlement Class are not relinquishing any rights to pursue discovery against Nachi in the event that this Agreement fails to receive Final Court Approval, including Final Court Approval of the Settlement Class as described in Paragraph 23, or in the event that it is terminated or rescinded by either party pursuant to Paragraph 50.

49. If Settlement Class Counsel believes that Nachi has refused to use its best efforts to cooperate under the terms of this Agreement, Settlement Class Counsel shall meet and confer with Nachi. Upon reaching an impasse in any meet and confer, Settlement Class Counsel may seek an Order from the Court compelling Nachi to use best efforts. Nothing in this provision shall limit in any way Nachi's ability to defend the level of Cooperation it has provided or to defend its compliance with the terms of the Cooperation provisions in this Agreement.

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

50. If the Court refuses to approve this Agreement or any part hereof, including, but not limited to, if the Court does not certify the Settlement Class in accordance with the specific Settlement Class definition set forth in Paragraph 13 of this Agreement, or if such approval is modified or set aside on appeal, or if the Court does not enter the final judgment provided for in Paragraph 22 of this Agreement, or if the Court enters the final judgment and appellate review is sought, and on such review, such final judgment is not affirmed in its entirety, or if this Agreement does not otherwise receive Final Court Approval as defined in Paragraph 23, then Nachi and End-Payor Plaintiffs shall each, in their sole discretion, have the option to rescind this Agreement in its entirety. Written notice of the exercise of any such right to rescind shall be made according to the terms of Paragraph 61. A modification or reversal on appeal of any amount of Settlement Class Counsel's fees and expenses awarded by the Court from the Settlement Funds shall not be deemed a modification of all or a part of the terms of this Agreement or such final judgment.

51. In the event that this Agreement does not receive Final Court Approval as set forth in Paragraph 23, or this Agreement otherwise is terminated or rescinded pursuant to Paragraph 50, then: (a) this Agreement shall be of no force or effect, except as expressly provided in this Agreement; (b) any and all parts of the Settlement Amount caused to be deposited in the Settlement Fund (including interest earned thereon) shall be returned forthwith to Nachi less only

disbursements made in accordance with Paragraphs 29 (d)-(g) and 32 of this Agreement; and (c) Nachi shall be entitled to any tax refunds owing to the Settlement Fund. At the request of Nachi, Settlement Class Counsel shall file claims for any tax refunds owed to the Settlement Fund and pay the proceeds, after deduction of any fees and expenses incurred with filing such claims for tax refunds, to Nachi. Nachi expressly reserves all rights and defenses if this Agreement does not receive Final Court Approval.

52. Further, and in any event, End-Payor Plaintiffs and Nachi agree that this Agreement, whether or not it shall become final, and any and all negotiations, Documents, and discussions associated with it, shall not be deemed or construed to be an admission or evidence of (a) any violation of any statute or law or of any liability or wrongdoing whatsoever by Nachi or the other Releasees, to be used against Nachi or the other Releasees, or of (b) the truth of any of the claims or allegations contained in the Complaint or any other pleading filed in the MDL Litigation or by any person or entity in any other action, to be used against Nachi or the other Releasees, and evidence thereof shall not be discoverable or used in any way in the Action, in the MDL Litigation, or in any other action or proceeding, against Nachi or the other Releasees. Nothing in this Paragraph shall prevent End-Payor Plaintiffs from using Cooperation Materials produced pursuant to Paragraphs 38-45 in the Action, subject to the limitations in Section F.

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

54. The parties to this Agreement contemplate and agree that, prior to the Court's final approval of the Settlement as provided in Paragraph 23 hereof, appropriate notice (a) of the

Settlement, and (b) of the hearing at which the Court will consider the approval of this Agreement, will be given to End-Payor Plaintiffs and Settlement Class Members.

55. Nachi, End-Payor Plaintiffs, and Settlement Class Counsel agree not to disclose publicly or to any other person the terms of this Agreement until this Agreement is fully executed by all parties and the Preliminary Approval Motion is submitted to the Court. Nachi and End-Payor Plaintiffs may disclose the Agreement itself and the terms and conditions thereof: (a) to persons for whom such information is necessary to effectuate the provisions of the Agreement (and who shall be advised of its confidentiality and be requested to agree to this provision); (b) to those employees and outside professional advisors (*e.g.*, accountants, lawyers, tax advisors, etc.) who need to be aware of this Agreement or its terms in the ordinary course of business to perform their duties and to properly advise Nachi and End-Payor Plaintiffs; (c) to the extent such disclosure is required for enforcement of this Agreement; (d) for the preparation of financial records (*e.g.*, tax returns, financial statements, etc.); (e) as required by law for the purpose of financial reporting (*e.g.*, securities notices, filings, and/or disclosures, etc.); or (f) as otherwise required by law, including, for example, compliance with legally authorized discovery procedures. Nachi may disclose the fact that it has settled with End-Payor Plaintiffs, without disclosing the settlement terms, to counsel for other Defendants in the Action.

H. Miscellaneous.

55. Nachi shall submit all materials required to be sent to appropriate Federal and State officials pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

56. This Agreement does not settle or compromise any claim by End-Payor Plaintiffs or any Settlement Class Member asserted in the Complaint or, if amended, any subsequent Complaint, against any Defendant or alleged co-conspirator in the Action other than Nachi and the other Releasees. All rights against such other Defendants or alleged co-conspirators are specifically

reserved by End-Payor Plaintiffs and the Settlement Class. All rights of any Settlement Class Member against any and all former, current, or future Defendants or co-conspirators or any other person other than Nachi and the other Releasees, for sales made by Nachi and Nachi's alleged illegal conduct are specifically reserved by End-Payor Plaintiffs and Settlement Class Members. Nachi's indirect sales to the Settlement Class and its alleged illegal conduct shall, to the extent permitted or authorized by law, remain in the Action as a potential basis for damage claims and shall be part of any joint and several liability claims against other current or future Defendants in the Action or other persons or entities other than Nachi and the other Releasees. Nachi shall not be responsible for any payment to End-Payor Plaintiffs other than the amount specifically agreed to in Paragraph 28 of this Agreement.

57. The United States District Court for the Eastern District of Michigan shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement or the applicability of this Agreement that cannot be resolved by negotiation and agreement by End-Payor Plaintiffs and the Settlement Class and Nachi, including challenges to the reasonableness of any party's actions. This Agreement shall be governed by and interpreted according to the substantive laws of the state of Michigan without regard to its choice of law or conflict of laws principles. Nachi will not object to complying with any of the provisions outlined in this Agreement on the basis of jurisdiction. This Agreement constitutes the entire, complete and integrated agreement among End-Payor Plaintiffs, the Settlement Class, and Nachi pertaining to the Settlement of the Action against Nachi, and supersedes all prior and contemporaneous undertakings, communications, representations, understandings, negotiations and discussions, either oral or written, between End-Payor Plaintiffs and Nachi in connection herewith. This

Agreement may not be modified or amended except in writing executed by End-Payor Plaintiffs and Nachi, and approved by the Court.

58. This Agreement shall be binding upon, and inure to the benefit of, the heirs, successors and assigns of End-Payor Plaintiffs and Nachi and the other Releasees. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by End-Payor Plaintiffs or Settlement Class Counsel shall be binding upon all Settlement Class Members and Releasees. The Releasees (other than the Nachi entities that are parties hereto) are third-party beneficiaries of this Agreement and are authorized to enforce its terms applicable to them.

59. This Agreement may be executed in counterparts by End-Payor Plaintiffs and Nachi, and a facsimile signature shall be deemed an original signature for purposes of executing this Agreement.

60. Neither End-Payor Plaintiffs nor Nachi shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

61. Where this Agreement requires either party to provide notice or any other communication or document to the other, such notice shall be in writing, and such notice, communication or document shall be provided by facsimile, or electronic mail, or letter by overnight delivery to the undersigned counsel of record for the party to whom notice is being provided.

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

63. This Agreement shall become effective upon: (a) its execution by Settlement Class Counsel and Nachi's counsel as provided below; and (b) approval by the Board of Directors of Nachi. Nachi shall promptly notify End-Payor Plaintiffs upon receipt of such approval.

[signature pages follow]

Dated: July 26, 2017



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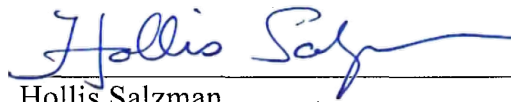
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