

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

IN RE: AUTOMOTIVE PARTS ANTITRUST LITIGATION	Master File No. 12-md-02311
PRODUCTS:  AUTOMOTIVE BRAKE HOSES	Case No. 16-cv-03603-MOB-MKM
THIS DOCUMENT APPLIES TO: ALL END-PAYOR ACTIONS	Hon. Marianne O. Battani

**SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement” or “Settlement”) is made and entered into this 8th day of February, 2017 (“Execution Date”) by and between Hitachi Metals, Ltd., Hitachi Cable America Inc., and Hitachi Metals America, Ltd. (together, “Hitachi Metals”), and End-Payor Plaintiffs Class Representatives (collectively, “End-Payor Plaintiffs”), both individually and on behalf of a class of end-payor indirect purchasers of Automotive Brake Hoses (the “Settlement Class”), as more particularly defined in Paragraph 11 below.

WHEREAS, End-Payor Plaintiffs are prosecuting the above *In Re Automotive Parts Litigation*, Master File No. 12-md-02311 (E.D. Mich.) (the “MDL Litigation”), Case No. 16-cv-03603-MOB-MKM (the “Action”), on their own behalf and on behalf of the Settlement Class against, among others, Hitachi Metals;

WHEREAS, End-Payor Plaintiffs allege that they were injured as a result of Hitachi Metals’ participation in an unlawful conspiracy to raise, fix, maintain, and/or stabilize prices, rig

bids, allocate markets and customers for Automotive Brake Hoses (as defined below) 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' Class Action Complaint, filed contemporaneously with the execution of this Agreement, in the Action (together, "Complaint");

WHEREAS, Hitachi Metals denies End-Payor Plaintiffs' allegations and would assert defenses to End-Payor Plaintiffs' claims in the Action;

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

WHEREAS, End-Payor Plaintiffs, through their counsel, have conducted an investigation into the facts and the law regarding the Action and have concluded that resolving the claims against Hitachi Metals, according to the terms set forth below, is in the best interest of the End-Payor Plaintiffs and the Settlement Class because of the payment of the Settlement Amount and the value of the Cooperation (as those terms are defined below) that Hitachi Metals has agreed to provide pursuant to this Agreement;

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

WHEREAS, Hitachi Metals, 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 Hitachi Metals with respect to Automotive Brake Hoses based on the allegations in the Action, as more particularly set out below;

WHEREAS, Hitachi Metals has agreed to provide Cooperation to End-Payor Plaintiffs in the ongoing prosecution of the Action as set forth in this Agreement, and such Cooperation will reduce End-Payor Plaintiffs' burden and expense associated with prosecuting the Action; and

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

A. Definitions.

1. "Cooperation" refers to those provisions set forth below in Paragraphs 33-40.
2. "Cooperation Materials" means any information, testimony, Documents (as defined below) or other material provided by Hitachi Metals under the terms of this Agreement.
3. "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 11 and approving this Agreement under Federal Rule of Civil Procedure 23(e).
4. "Document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Rule 34(a) of the Federal Rules of Civil Procedure, including, without limitation, electronically stored information. A draft or non-identical copy is a separate Document within the meaning of this term.

5. “End-Payor Plaintiffs Class Representatives” means those Settlement Class Members, as defined in Paragraph 13, below, who are named plaintiffs in the Complaint.

6. “Indirect Purchaser States” means Arizona, Arkansas, California, District of Columbia, Florida, Hawaii, Iowa, Kansas, Maine, Massachusetts, Montana, Michigan, Minnesota, Mississippi, Missouri, 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.

7. For purposes of this Agreement, “Automotive Brake Hoses” are the flexible hoses that carry brake fluid through the hydraulic brake system of a Vehicle.

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

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

10. “Releasers” shall refer to End-Payor Plaintiffs Class Representatives and the members of the Settlement Class, as defined in Paragraph 11 below, and to their past and present officers, directors, employees, agents, stockholders, members, attorneys, servants, representatives, parents, subsidiaries, affiliates, 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 any of the foregoing.

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

All persons and entities who, during the period February 1, 2004, up to and including the date that the Court enters an Order granting the Motion for Preliminary Approval of the Settlement, purchased or leased a new Vehicle in the United States not for resale, which included one or more Automotive Brake Hoses as a component part, or indirectly purchased one or more Automotive Brake Hoses as a replacement part, which were manufactured or sold by any Defendant, any current or former parent, subsidiary, or affiliate of a Defendant, or any co-conspirator of the Defendants. Excluded from the Settlement Class are Defendants, their parent companies, subsidiaries and affiliates, any co-conspirators, federal government entities and instrumentalities of the federal government, and states and their subdivisions, agencies and instrumentalities, and persons who purchased Automotive Brake Hoses directly or for resale.

12. “Settlement Class Counsel” shall refer to the law firms of:

Robins Kaplan LLP  
601 Lexington Avenue, Suite 3400  
New York, NY 10022

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

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

13. “Settlement Class Member” means each member of the Settlement Class who has not timely elected to be excluded from the Settlement Class.

14. “Settlement Amount” shall be \$1,140,000 USD as specified in Paragraph 25.

15. “Settlement Fund” shall be the Settlement Amount plus any income or accrued interest on said amount as set forth in Paragraph 26.

16. “Vehicle” means any four-wheeled passenger automobile, van, sports utility

vehicle, cross over, or pick-up truck.

B. Approval of this Agreement and Dismissal of Claims Against Hitachi Metals.

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

18. Within fifteen (15) days after the execution of this Agreement, End-Payor Plaintiffs shall submit to the Court a motion seeking preliminary approval of this Agreement (the "Motion"). The Motion shall include (i) the proposed form of an order preliminarily approving this Agreement; and (ii) a proposed form of order and final judgment. The text of the proposed order shall be agreed upon by End-Payor Plaintiffs and Hitachi Metals before submission of the Motion. Hitachi Metals shall have a reasonable opportunity to review the Motion, and End-Payor Plaintiffs shall reasonably consider Hitachi Metals' comments. End-Payor Plaintiffs and Hitachi Metals agree that the Settlement Amount shall not be disclosed prior to the submission of the Motion.

19. End-Payor Plaintiffs, at a time to be decided in their sole discretion, shall submit to the Court a motion for authorization to disseminate notice of the settlement and final judgment contemplated by this Agreement to all Settlement Class Members identified by End-Payor Plaintiffs (the "Notice Motion"). In order to mitigate the costs of notice, the End-Payor Plaintiffs shall endeavor, if practicable, to disseminate notice with any other settlements that have been or are reached in the MDL Litigation at the time the Notice Motion is filed. The Notice Motion shall include a proposed form of, method for, and date of dissemination of notice, which shall be

subject to Hitachi Metals' review.

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

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

(b) certifying the Settlement Class described in Paragraph 11, pursuant to Rule 23 of the Federal Rules of Civil Procedure, solely for purposes of this Settlement as a settlement class;

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

(d) as to Hitachi Metals, 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 as well as over Hitachi Metals, for the duration of its provision of Cooperation pursuant to this Agreement, to the United States District Court for the Eastern District of Michigan;

(f) determining under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing that the judgment of dismissal with prejudice as to Hitachi Metals 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 Hitachi Metals, to contest certification of any other class proposed in the MDL Litigation, (ii) the Court's findings in this Order shall have no effect on the Court's ruling on any motion to certify any class in the MDL Litigation or on the Court's rulings concerning any Defendant's motion; and (iii) no party may cite or refer to the Court's approval of the Settlement Class as persuasive or binding authority with respect to any motion to certify any such class or any Defendant's motion.

21. This Agreement shall become final when (i) the Court has entered a final order certifying the Settlement Class described in Paragraph 11 and approving this Agreement under Federal Rule of Civil Procedure 23(e) and has entered a final judgment dismissing the Action with prejudice as to Hitachi Metals and without costs other than those provided for in this Agreement, and (ii) the time for appeal or to seek permission to appeal from the Court's approval of this Agreement and entry of a final judgment as to Hitachi Metals described in (i) hereof has expired or, if appealed, approval of this Agreement and the final judgment as to Hitachi Metals have been affirmed in their entirety by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review. It is agreed that the provisions of Rule 60 of the Federal Rules of Civil Procedure shall not be taken into account in determining the above-stated times. On the date that End-Payor Plaintiffs and Hitachi Metals have executed this Agreement, End-Payor Plaintiffs and Hitachi Metals shall be bound by its terms and this Agreement shall not be rescinded except in accordance with Paragraphs 26(h) or 45 of this Agreement.

22. Neither this Agreement (whether or not it should become final) nor the final judgment, nor any and all negotiations, Documents, and discussions associated with them



(including Cooperation Materials produced pursuant to Paragraphs 33-40) shall be deemed or construed to be an admission by Hitachi Metals, or evidence of any violation of any statute or law or of any liability or wrongdoing whatsoever by Hitachi Metals, or of the truth of any of the claims or allegations contained in any complaint or any other pleading filed in the MDL Litigation, and evidence thereof shall not be discoverable or used in any way, whether in the MDL Litigation, or any other arbitration, action, or proceeding whatsoever, against Hitachi Metals. Nothing in this Paragraph shall prevent End-Payor Plaintiffs from using and/or introducing into evidence Cooperation Materials produced pursuant to Paragraphs 33-40, against any other defendants in the MDL Litigation, to establish any of the above. Cooperation Materials shall otherwise be subject to the terms and conditions set forth in the Stipulation and Protective Order Governing the Production and Exchange of Confidential Information, Case No. 2:12-md-02311-MOB-MKM, Dkt. No. 200 in the MDL Litigation (the "Protective Order"), as well as any protective order subsequently entered in the Action. Neither this Agreement, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any other action taken to carry out this Agreement by Hitachi Metals, shall be referred to, offered as evidence, or received in evidence in any pending or future civil, criminal, or administrative action, arbitration, or proceedings, except in a proceeding to enforce this Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law.

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

23. In addition to the effect of any final judgment entered in accordance with this Agreement, upon this Agreement becoming final, as set out in Paragraph 20 of this Agreement, and in consideration of payment of the Settlement Amount, as specified in Paragraph 25 of this Agreement, into the Settlement Fund, and for other valuable consideration, the Releasees shall be

completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits, causes of action, whether class, individual, or otherwise in nature (whether or not any Settlement Class Member has objected to the settlement or makes a claim upon or participates in the Settlement Fund, whether directly, representatively, derivatively, or in any other capacity) under any federal, state, or local law of any jurisdiction in the United States, that Releasers, or each of them, ever had, now has, or hereafter can, shall, or may ever have, that now exist or may exist in the future, on account of, or in any way arising out of, any and all known and unknown, foreseen, and unforeseen, suspected or unsuspected, actual or contingent, liquidated or unliquidated claims, injuries, damages, and the consequences thereof in any way arising out of or relating in any way to any conduct alleged in the Complaint or any act or omission of the Releasees (or any of them), concerning Automotive Brake Hoses including, but not limited to, any conduct and causes of action alleged or asserted or that could have been alleged or asserted, in any class action or other complaints filed in the Action (the “Released Claims”), provided, however, that nothing herein shall release: (1) any claims made by direct purchasers of Automotive Brake Hoses as to such direct purchases; (2) any claims made by Settlement Class Members and any potential Settlement Class Members who have validly and timely requested to be excluded from the Settlement Class in the Automobile Dealer case, Case No. 2:16-cv-03602-MOB-MKM, as that term is defined in the Settlement Agreement between Hitachi Metals and Automobile Dealer Plaintiffs in that case; (3) any claims made by any state, state agency, or instrumentality or political subdivision of a state as to government purchases and/or penalties; (4) 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 Brake Hoses; (5) claims concerning any automotive part

other than Automotive Brake Hoses; (6) claims under laws other than those of the United States relating to purchases of Automotive Brake Hoses made outside of the United States; and (7) claims under federal law, or 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 the Agreement is, for any reason, not finally approved or terminated.

24. In addition to the provisions of Paragraph 22 of this Agreement, Releasors hereby expressly waive and release, upon this Agreement becoming final, any and all provisions, rights, and benefits as to their claims concerning Automotive Brake Hoses conferred by § 1542 of the California Civil Code, which states:

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

or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code. Each Releasor may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the claims which are released pursuant to the provisions of Paragraph 23 of this Agreement, but each Releasor hereby expressly waives and fully, finally, and forever settles and releases, upon this Agreement becoming final, any known or unknown, suspected or unsuspected, contingent or non-contingent claim that Hitachi Metals and End-Payor Plaintiffs have agreed to release pursuant to Paragraph 23, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

D. Settlement Amount.

25. Subject to the provisions hereof, and in full, complete and final settlement of the Action as provided herein, Hitachi Metals shall pay the Settlement Amount. The Settlement Amount shall be paid into an escrow account in United States Dollars to be administered in accordance with the provisions of Paragraph 26 of this Agreement (the “Escrow Account”) within 30 days following entry of an order preliminarily approving this Agreement.

26. 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 Hitachi Metals, 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 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.

(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 (the “Code”), and Treas. Reg. § 1.468B-1, *et seq.*, and End-Payor Plaintiffs, Settlement Class Counsel, and Hitachi Metals agree to treat the Settlement Fund as being at all times a qualified settlement fund. In addition, the Escrow Agent shall timely take such actions as are necessary to create and maintain the Settlement Fund’s status as a qualified settlement fund, including to timely make such elections as necessary or advisable to carry out the provisions of this Paragraph 26, including the relation-back election (as defined in Treas. Reg. § 1.468B-1(j)(2)) 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 the Escrow Agent 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.

(e) For the purpose of section 468B of the Code, and the regulations promulgated thereunder, the administrator shall be Settlement Class Counsel. Settlement Class Counsel shall timely and properly file all information and other tax returns necessary or advisable with respect to the Settlement Funds (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 26(d)) shall be consistent with Paragraph 26(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 paid out of the Settlement Fund as provided in Paragraph 26(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 Hitachi Metals or any other Releasee with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify

as a qualified settlement fund for federal or state income tax purposes (“Taxes”); and (ii) expenses and costs incurred in connection with the operation and implementation of Paragraphs 26(d) through 26(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 26(e) (“Tax Expenses”)), shall be timely paid out of the Settlement Fund.

(g) Neither Hitachi Metals nor any other Releasee nor their respective counsel shall have any liability or responsibility for the Taxes or the Tax Expenses. Further, 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(1)(2)). Hitachi Metals shall not be responsible or have any liability therefor. End-Payor Plaintiffs and Hitachi Metals 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 26(d) through 26(g).

(h) If this Agreement does not receive final Court approval, including final approval of the Settlement Class as defined in Paragraph 11, or if the Action is not certified as a class action for settlement purposes, then all amounts paid by Hitachi Metals into the Settlement Fund (other than costs expended or incurred in accordance with this Paragraph 26 and Paragraph 28) shall be returned to Hitachi Metals from the Escrow Account by the Escrow Agent along with any interest accrued thereon within thirty (30) calendar days of the Court’s denial of final

approval of the Agreement and/or Settlement Class.

27. Exclusions.

(a) 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 class notice will be invalid, and the person(s) or entity(ies) serving such an invalid request shall be deemed Settlement Class Member(s) and shall be bound by the Settlement Agreement upon final approval. Settlement Class Counsel shall, within ten (10) business days of the Opt-Out Deadline, provide Hitachi Metals with a list and copies of all opt-out requests it receives and shall file under seal with the Court a list of all members of the Settlement Class who timely and validly opted out of the settlement.

(b) 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. Hitachi Metals 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 Brake Hoses or has standing to bring any claim against Hitachi Metals.

(c) Subject to Court Approval, in the written request for exclusion, the member of the Settlement Class must state his, her, or its full name, address, and telephone number. Further, the member of the Settlement Class must include a statement in the written request for exclusion that he, she, or it wishes to be excluded from the settlement.

(d) Hitachi Metals 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.

28. Payment of Expenses.

(a) Hitachi Metals agrees to permit use of \$50,000 USD of the Settlement Fund towards the costs of notice to the Settlement Class and the costs of administration of the Settlement Fund. The notice and administration expenses (up to the maximum of \$50,000 USD) are not recoverable if this Settlement does not become final or is terminated to the extent such funds have actually been expended or incurred for notice and administration costs. Other than as set forth in this Paragraph 28 and Paragraph 30, Hitachi Metals shall not be liable for any of the costs or expenses of the litigation of the Action, including attorneys' fees, fees and expenses of expert witnesses and consultants, and costs and expenses associated with discovery, motion practice, hearings before the Court or any Special Master, appeals, trials, or the negotiation of other settlements, or for class administration and costs.

(b) In order to mitigate the costs of notice and administration, the End-Payor Plaintiffs shall use their best efforts, if practicable, to disseminate notice with any other settlements reached with Hitachi Metals or other defendants in the MDL Litigation and to apportion the costs of notice and administration on a reasonable basis across the applicable settlements.

E. The Settlement Fund.

29. 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 Hitachi Metals or any other Releasee.

30. After this Agreement becomes final within the meaning of Paragraph 20, the Settlement Fund shall be distributed in accordance with a plan to be submitted to the Court at the appropriate time by Settlement Class Counsel, subject to approval by the Court. In no event shall any Releasee have any responsibility, financial obligation, or liability whatsoever with respect to the investment, distribution, or administration of the Settlement Fund, including, but not limited to, the costs and expenses of such distribution and administration except as expressly otherwise provided in Paragraph 28 of this Agreement.

31. End-Payor Plaintiffs and Settlement Class Counsel shall be reimbursed and indemnified solely out of the Settlement Fund for all expenses and costs, as provided by Court Order. Hitachi Metals 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.

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

(a) Settlement Class Counsel may submit an application or applications to the Court (the "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 (the "Fee and Expense Award"). Settlement Class Counsel reserve the right to make additional applications for Court approval of fees and

expenses incurred and reasonable incentive awards, but in no event shall Hitachi Metals or any other Releasees be responsible to pay any such additional fees and expenses except to the extent they are paid out of the Settlement Fund.

(b) Subject to Court approval, 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. Attorneys' fees and expenses awarded by the Court shall be payable from the Settlement Fund upon award, notwithstanding the existence of any timely filed objections thereto, or potential appeal therefrom, or collateral attack on the settlement or any part thereof, subject to Settlement Class Counsel's obligation to make appropriate refunds or repayments to the Settlement Fund with interest, if and when, as a result of any appeal and/or further proceedings on remand, or successful collateral attack, the fee or award of expenses is reduced or reversed, or in the event the Agreement is rescinded or terminated pursuant to Paragraph 26(h) or Paragraph 45.

(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 or cancel this Agreement, or affect or delay the finality of the judgment approving the settlement.

(d) Neither Hitachi Metals nor any other Releasee under this Agreement shall have any responsibility for, or interest in, or liability whatsoever with respect to any payment to

Settlement Class Counsel of any Fee and Expense Award in the Action.

(e) Neither Hitachi Metals 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 who may assert some claim thereto, of any Fee and Expense Award that the Court may make in the Action.

F. Cooperation.

33. In return for the Release and Discharge provided herein, Hitachi Metals agrees to pay the Settlement Amount and agrees to use its best efforts to provide Cooperation as set forth specifically in Paragraphs 34-40 below. All Cooperation shall be coordinated, to the extent reasonably practicable between Settlement Class Counsel and settlement class counsel in any settlement of claims brought by Automobile Dealer Plaintiffs, in such a manner so as to avoid all unnecessary duplication and expense.

34. Documents. Hitachi Metals shall provide to Settlement Class Counsel the following Documents described in this Paragraph 34(a)-(b):

(a) Within sixty (60) business days after Preliminary Approval, transactional data in the manner and to the extent Hitachi Metals maintains such data in the ordinary course of business in electronic transactional databases, concerning Hitachi Metals' bids for and sales of Automotive Brake Hoses to Original Equipment Manufacturers ("OEMs") or other purchasers of Automotive Brake Hoses from February 1, 2002, through the last day of the month prior to the month in which the Agreement is executed. In addition, Hitachi Metals 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 Automotive Brake Hoses, in the manner and to the extent that Hitachi Metals

maintains such electronic data in the ordinary course of business. Hitachi Metals will preserve such transactional data until two years after the Execution Date of this Agreement. Hitachi Metals will also consider in good faith any request made by Settlement Class Counsel that it produce existing hard-copy records of sales transactions not recorded or maintained electronically in the existing electronic sales transaction database.

(b) Within thirty (30) business days after Preliminary Approval, Documents, including translations, if any, provided to or seized by the United States Department of Justice (“DOJ”) relating to the DOJ’s investigation into alleged competition violations with respect to Automotive Brake Hoses. Such Documents will include any sales data produced to the DOJ.

(c) Hitachi Metals will consider in good faith any reasonable request by End-Payor Plaintiffs to produce additional Documents.

35. 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, Hitachi Metals shall provide a privilege log, to the extent already in existence (“Existing 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 the Documents. No Document shall be withheld under claim of privilege if produced or made available to any government entity. If any Document protected by the attorney-client privilege, attorney work product protection, or any other privilege is accidentally or inadvertently produced under this Paragraph, upon notice by Hitachi Metals of such inadvertent production, the Document shall promptly be destroyed and/or returned to Hitachi Metals, and its production shall in no way be construed to have waived any privilege or protection attached to such Document.

36. Attorney Proffer, Witness Interviews, Depositions and Trial Testimony. Hitachi Metals shall use its best efforts to cooperate with Settlement Class Counsel as set forth in this Section F.

(a) Upon reasonable notice after Preliminary Approval, Hitachi Metals' counsel will make themselves available at a mutually agreed-upon location in the United States for one meeting of one business day to provide an attorney's proffer jointly to Settlement Class Counsel and settlement class counsel in the Automobile Dealer Action ("Automobile Dealer Settlement Class Counsel") of facts known to them regarding conduct relevant to End-Payor Plaintiffs' claims relating to the sales of Automotive Brake Hoses. The parties and their counsel agree that any attorney's proffer or other statements made by Hitachi Metals' counsel in connection with or as part of this settlement shall be governed by Federal Rule of Evidence 408. Notwithstanding anything herein, Settlement Class Counsel may use information contained in such attorney's proffer or other statements in the prosecution of its claims against Defendants other than Hitachi Metals in all cases in the MDL Litigation, consistent with Paragraph 22, including for the purpose of developing an allocation plan relating to any settlement or judgment proceeds, and rely on such information to certify that, to the best of Settlement Class Counsel's knowledge, information and belief, such information has evidentiary support or will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.

(b) Upon reasonable notice, but no sooner than thirty (30) days following Preliminary Approval, Hitachi Metals agrees to make available for interviews with Settlement Class Counsel and Automobile Dealer Settlement Class Counsel at Settlement Class Counsel's discretion, via either videoconference or at a mutually agreeable location, up to four (4) persons who Settlement Class Counsel and Automobile Dealer Settlement Class Counsel jointly select

who the parties reasonably and in good faith believe possess knowledge of facts or information that would reasonably assist End-Payor Plaintiffs in the prosecution of the Automotive Hoses claims in Automotive Parts Litigation, 12-md-02311.

(c) Upon reasonable notice, but no sooner than thirty (30) days following Preliminary Approval, Hitachi Metals shall make those same four persons referred to in subsection (b) above available for depositions, provide declarations or affidavits from the same persons, and make those persons available to testify at trial. If Hitachi Metals is unable to make those same persons available for interviews and depositions, or provide declarations and affidavits, then Settlement Class Counsel may jointly select a substitute interviewee, deponent or declarant with Settlement Class Counsel in the Automobile Dealer Plaintiff Action. The depositions shall be conducted at a mutually agreed-upon location in the United States, and shall be limited to a total of seven (7) hours over one (1) day unless the deposition is in a language other than English and an interpreter is requested, in which case the deposition shall be limited to a total of thirteen (13) hours over two (2) consecutive days. If the interview, deposition or trial takes place outside the country of the witness's residence, Settlement Class Counsel and Automobile 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 or deponent to be allocated between Settlement Class Counsel and Automobile Dealer Settlement Class Counsel. If the interview and the above-described deposition occur during the same trip, the above-limitations will apply to that trip.

37. In the event that Hitachi Metals has produced or subsequently produces pre-

existing Documents, including translations, or provides declarations or written responses to discovery to any government entity, party or non-party in the MDL Litigation, concerning or relating to this Action (a “Relevant Production”), Hitachi Metals shall produce all such Documents, declarations, or written discovery responses to Settlement Class Counsel contemporaneously with making the Relevant Production to the extent such Documents, declarations, or written discovery responses have not previously been produced by Hitachi Metals to Settlement Class Counsel. In no event shall Hitachi Metals be required to make such Relevant Production prior to the date this Agreement is Preliminarily Approved. In addition, Hitachi Metals shall provide End-Payor Plaintiffs with all cooperation it provides pursuant to any settlement agreement with any other party in this MDL Litigation, including but not limited to, the Direct Purchaser Plaintiffs. To the extent that such cooperation includes any attorney proffer, witness interviews, or depositions of individuals in addition to those already provided for in Paragraph 36 herein, Settlement Class Counsel shall be permitted to attend and participate in such attorney proffer, witness interviews or depositions, and shall be entitled to ask questions for a period of up to three (3) hours at any interview or deposition (provided that this shall not expand the time permitted for any deposition), but shall not be entitled to any independent additional attorney proffer, witness interviews or depositions. All such additional cooperation shall be coordinated, to the extent reasonably practicable, between Settlement Class Counsel, Automobile Dealer Settlement Class Counsel, and Direct Purchaser Plaintiffs, or such other party in the MDL Litigation to whom such cooperation is provided pursuant to a settlement agreement. End-Payor Plaintiffs’ receipt of or participation in cooperation provided by Hitachi Metals to other parties or non-parties 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, an attorney proffer,

witness interviews, and depositions.

38. This Agreement does not restrict Settlement Class Counsel from attending, cross-noticing, and/or participating in any depositions in the MDL Litigation noticed by any other party in the MDL Litigation. Settlement Class Counsel may attend, cross-notice, and/or participate in any depositions of Hitachi Metals' witnesses in addition to the four (4) depositions set forth in Paragraph 36, and Settlement Class Counsel together with Automobile Dealer Settlement Class Counsel may ask questions for up to three (3) hours at such deposition, provided that the time for participation of Settlement Class Counsel and Automobile Dealer Settlement Class Counsel shall not expand the time permitted for the deposition, and Settlement Class Counsel will not ask the Court to enlarge the time of any deposition noticed of a Hitachi Metals current or former employee. Participation by Settlement Class Counsel in the depositions discussed in this Paragraph will not limit the number of depositions to be provided under Paragraph 36 above. End-Payor Plaintiffs and Settlement Class Counsel agree to use their best efforts to ensure that any depositions taken under Paragraph 36 above are coordinated with any other deposition noticed in the MDL Litigation to avoid unnecessary duplication.

39. After conducting a reasonable search, Hitachi Metals shall, to the best of its knowledge, identify those Vehicles sold in the United States that contain Automotive Brake Hoses sold by Hitachi Metals.

40. Hitachi Metals' obligations to provide Cooperation shall not be affected by the Release set forth in this Agreement. Unless this Agreement is rescinded, disapproved, or otherwise fails to take effect, Hitachi Metals' obligations to provide Cooperation under this Agreement shall continue only until: (i) otherwise ordered by the Court, or (ii) the date that final judgment has been entered in the Action against all Defendants and the time for appeal or to seek



permission to appeal entry of the final judgment as to all Defendants has expired or, if appealed, final judgment(s) as to the applicable Defendant(s) have been affirmed in their entirety by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review.

41. In the event that this Agreement fails to receive final approval by the Court as contemplated in Paragraphs 17-21 hereof, including final approval of “the Settlement Class” as defined in Paragraph 11, 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 Hitachi Metals, 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 this Action, any deposition testimony or any Documents provided by Hitachi Metals and/or the Releasees, their counsel, or any individual made available by Hitachi Metals pursuant to Cooperation (as opposed to from any other source or pursuant to a court order). Notwithstanding anything contained herein, End-Payor Plaintiffs and the Settlement Class are not relinquishing any rights to pursue discovery against Hitachi Metals in the event that this Agreement fails to receive final approval by the Court as contemplated in Paragraphs 17-21 hereof, including final approval of “the Settlement Class” as defined in Paragraph 11, or in the event that it is terminated by either party under any provision herein.

42. Hitachi Metals need not respond to formal discovery requests from End-Payor Plaintiffs or otherwise participate in the Action during the pendency of the Agreement. Other than to enforce the terms of this Agreement, neither Hitachi Metals nor End-Payor Plaintiffs shall file motions against the other, in this Action, during the pendency of the Agreement.

43. Hitachi Metals and End-Payor Plaintiffs agree not to disclose publicly or to any other person the terms of this Agreement until this Agreement is submitted to the Court for Preliminary Approval. If Settlement Class Counsel believes that any current or former employee, officer, or director of Hitachi Metals has refused to cooperate under the terms of this Agreement, Settlement Class Counsel may seek an Order from the Court compelling such current or former employee, officer, or director of Hitachi Metals to provide discovery.

44. End-Payor Plaintiffs and Settlement Class Counsel agree they will not use the information provided by Hitachi Metals or the Releasees or their representatives under this Section F (¶¶ 33-44) for any purpose other than the prosecution of the Automotive Brake Hoses claims in the MDL Litigation, and will otherwise use it in the litigation consistent with the Protective Order, and will not use it beyond what is reasonably necessary for the prosecution of the Action in the MDL Litigation or as otherwise required by law. All Documents and other information provided pursuant to this Agreement will be deemed “Highly Confidential,” as said designation is described in the Protective Order, and subject to the Protective Order as if they had been produced in response to discovery requests and so designated.

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

45. If the Court refuses to approve this Agreement or any part hereof, including if the Court does not certify a settlement class in accordance with the specific Settlement Class definition set forth in this Agreement, or if such approval is modified or set aside on appeal, or if the Court does not enter the final judgment provided for in Paragraph 20 of this Agreement, or if the Court enters the final judgment and appellate review is sought, and on such review, such final judgment is not affirmed in its entirety, then Hitachi Metals 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 58. A modification or reversal on appeal of any amount of Settlement Class Counsel's fees and expenses awarded by the Court from the Settlement Fund shall not be deemed a modification of all or a part of the terms of this Agreement or such final judgment.

46. In the event that this Agreement does not become final as set forth in Paragraph 20, or this Agreement otherwise is terminated pursuant to Paragraph 45, then this Agreement shall be of no force or effect and any and all parts of the Settlement Fund caused to be deposited in the Escrow Account (including interest earned thereon) shall be returned forthwith to Hitachi Metals less only disbursements made in accordance with Paragraphs 26 and 28 of this Agreement. Hitachi Metals expressly reserves all rights and defenses if this Agreement does not become final.

47. Further, and in any event, End-Payor Plaintiffs and Hitachi Metals agree that this Agreement, whether or not it shall become final, and any and all negotiations, Documents, and discussions associated with it, shall not be deemed or construed to be an admission or evidence of (i) any violation of any statute or law or of any liability or wrongdoing whatsoever by Hitachi Metals, or the other Releasees to be used against Hitachi Metals, or of (ii) the truth of any of the claims or allegations contained in the Complaint or any other pleading filed in the MDL Litigation, to be used against Hitachi Metals, and evidence thereof shall not be discoverable or used in any way, in the MDL Litigation, against Hitachi Metals. Nothing in this Paragraph shall prevent End-Payor Plaintiffs from using Cooperation Materials produced pursuant to Paragraphs 33-42, as otherwise authorized in this Agreement.

48. This Agreement shall be construed and interpreted to effectuate the intent of the parties, which is to provide, through this Agreement, for a complete resolution of the relevant

claims with respect to each Releasee as provided in this Agreement as well as Cooperation by Hitachi Metals.

49. The parties to this Agreement contemplate and agree that, prior to final approval of the settlement as provided for in Paragraphs 17-21 hereof, appropriate notice (1) of the settlement; and (2) of a hearing at which the Court will consider the approval of this Agreement, will be given to End-Payor Plaintiffs and Settlement Class Members.

H. Miscellaneous.

50. Hitachi Metals 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.

51. Hitachi Metals, 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.

52. 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 other than Hitachi Metals 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 Hitachi Metals and the other Releasees, for sales made by Hitachi Metals and Hitachi Metals' alleged illegal conduct are specifically reserved by End-Payor Plaintiffs and Settlement Class Members. Hitachi Metals' sales to the class and its alleged illegal conduct shall, to the extent permitted or authorized by law, remain in the Action as a potential basis for damage claims and shall be part of any joint and several liability claims

against other current or future Defendants in the Action or other persons or entities other than Hitachi Metals and the other Releasees. Hitachi Metals shall not be responsible for any payment to End-Payor Plaintiffs other than the amount specifically agreed to in Paragraph 25 of this Agreement.

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

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

55. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of End-Payor Plaintiffs and Hitachi Metals. 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 Releasers. The Releasees (other than Hitachi Metals' entities which are parties hereto) are third-party beneficiaries of this Agreement and are authorized to enforce its terms applicable to them.

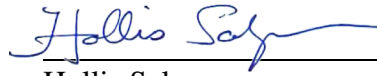
56. This Agreement may be executed in counterparts by End-Payor Plaintiffs and Hitachi Metals, and a facsimile signature shall be deemed an original signature for purposes of executing this Agreement.

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

58. Where this Agreement requires either party to provide notice or any other communication or Document to the other, such notice shall be in writing, and such notice, communication, or Document shall be provided by facsimile, or electronic mail (provided that the recipient acknowledges having received that email, with an automatic "read receipt" or similar notice constituting an acknowledgement of an email receipt for purposes of this Paragraph), or letter by overnight delivery to the undersigned counsel of record for the party to whom notice is being provided.

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

Dated: February 8, 2017



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*Interim Co-Lead Class Counsel and Settlement  
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Dated: February 8, 2017



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