

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

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IN RE: AUTOMOTIVE PARTS ANTITRUST  
LITIGATION

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: 2:12-md-02311  
: Honorable Marianne O. Battani  
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RADIATORS  
AUTOMATIC TRANSMISSION FLUID WARMERS  
AIR CONDITIONING SYSTEMS

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Case No. 2:13-cv-01003  
Case No. 2:13-cv-02403  
Case No. 2:13-cv-02703  
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THIS DOCUMENT RELATES TO:  
END-PAYOR ACTIONS

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SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into this 30<sup>th</sup> day of January 2018 (“Execution Date”) by and between Calsonic Kansei Corporation and CalsonicKansei North America, Inc. (together, “Calsonic”) and End-Payor Plaintiff Class Representatives (“End-Payor Plaintiffs”), both individually and on behalf of classes of indirect purchasers of Radiators, Automatic Transmission Fluid Warmers (“ATF Warmers”), and Air Conditioning Systems (collectively, “Settlement Classes”), as more particularly defined in Paragraph 12 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”) and Case Nos. 2:13-cv-01003 (“Radiators Action”), 2:13-cv-02403 (“ATF Warmers Action”), and 2:13-

cv-02703 (“Air Conditioning Systems Action”), (collectively, “Actions”) on their own behalf and on behalf of the Settlement Classes;

WHEREAS, End-Payor Plaintiffs allege that they were injured as a result of Calsonic’s participation in unlawful conspiracies to raise, fix, maintain, and/or stabilize prices, rig bids, and allocate markets and customers for (1) Radiators (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’ Second Consolidated Amended Class Action Complaint (Case No. 2:13-cv-01003, Doc. No. 186) (“Radiators Complaint”), (2) ATF Warmers and Oil Coolers (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’ Second Consolidated Amended Class Action Complaint (Case No. 2:13-cv-02403, Doc. No. 108) (“ATF Warmers Complaint”), and (3) Air Conditioning Systems (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’ Consolidated Amended Class Action Complaint (Case No. 2:13-cv-02703, Doc. No. 105) (“Air Conditioning Systems Complaint”) (collectively, “Complaints”);

WHEREAS, Calsonic denies End-Payor Plaintiffs’ allegations and has asserted defenses to End-Payor Plaintiffs’ claims in the Actions;

WHEREAS, arm’s-length settlement negotiations have taken place between Settlement Class Counsel (as defined below) and counsel for Calsonic, 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 Actions and have concluded that resolving the claims against Calsonic, according to the terms set forth below, is in the best interests of End-Payor Plaintiffs and the Settlement Classes because of the payment of the Settlement Amount and the value of the Injunctive Relief and Cooperation (as those terms are defined below) that Calsonic has agreed to provide pursuant to this Agreement; and

WHEREAS, Calsonic, 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 Calsonic with respect to Radiators, ATF Warmers, Oil Coolers, and Air Conditioning Systems (“Relevant Parts”), based on the allegations in the Actions, as more particularly set out below.

NOW, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, it is agreed by and among the undersigned that the Actions be settled, compromised, and dismissed on the merits with prejudice as to the Releasees and except as provided in Paragraphs 26 and 29, without costs as to End-Payor Plaintiffs, the Settlement Classes, or Calsonic, subject to the approval of the Court, on the following terms and conditions:

A. Definitions.

1. “End-Payor Plaintiff Class Representatives” means those Settlement Class Members, as defined in Paragraph 14, below, who are named plaintiffs in the Complaints.
2. “Cooperation” shall refer to those provisions set forth below in Paragraphs 33-51, below.

3. “Cooperation Materials” means any information, testimony, Documents (as defined below) or other material provided by Calsonic under the terms of this Agreement.

4. “Defendant” means any party named as a defendant in the Actions at any time up to and including the date when the Court has entered final orders certifying the Settlement Classes described in Paragraph 12 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 but not limited to, electronically stored information. A draft or non-identical copy is a separate Document within the meaning of this term.

6. “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.

7. For purposes of this Agreement, the “Relevant Parts” are defined to include each of the following:

(a) “Air Conditioning Systems” shall have the meaning set forth in Paragraph 3 of the Air Conditioning Systems Complaint.

(b) “ATF Warmers” shall have the meaning set forth in Paragraph 2 of the ATF Warmers Complaint.

(c) “Oil Coolers” shall have the meaning set forth in Paragraph 3 of the ATF Warmers Complaint.

(d) "Radiators" shall have the meaning set forth in Paragraph 3 of the Radiators Complaint.

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

9. "Released Claims" means the Claims described in Paragraphs 23-24.

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

11. "Releasers" shall refer to End-Payor Plaintiffs Class Representatives and the Settlement Class Members, as defined in Paragraph 14, 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 any of the foregoing.

12. For purposes of this Agreement, the "Settlement Classes" are defined to include each of the follow classes:

(a) "Radiators Settlement Class" is defined as:

All persons and entities that, from February 1, 2001 through the Execution Date, purchased or leased a new Vehicle in the United States not for resale, which included one or more Radiator(s) as a component part, or indirectly purchased one or more Radiator(s) 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 Radiators directly or for resale.

(b) "ATF Warmers Settlement Class" is defined as:

All persons and entities that, from November 1, 2002 through the Execution Date, purchased or leased a new Vehicle in the United States not for resale, which included one or more ATF Warmer(s) and Oil Cooler(s) as a component part, or indirectly purchased one or more ATF Warmer(s) and Oil Cooler(s) 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 ATF Warmers and Oil Coolers directly or for resale.

(c) "Air Conditioning Systems Settlement Class" is defined as:

All persons and entities who, during the period from and including May 1, 1999 through the Execution Date, purchased or leased a new Vehicle in the United States not for resale which included one or more Air Conditioning System(s) as a component part, or indirectly purchased one or more Air Conditioning Systems 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 Air Conditioning Systems directly or for resale.

13. "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

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

15. “Settlement Amount” shall be U.S. \$11,121,840.00, and the “Settlement Funds” shall be the Settlement Amount plus any income or accrued interest earned on that amount as set forth in Paragraph 25. The Settlement Amount shall be allocated between the Actions as follows:

(a) For the Radiators Settlement Class, \$5,587,612.42 plus accrued interest on said deposits set forth in Paragraph 25.

(b) For the ATF Warmers Settlement Class, \$380,366.93 plus accrued interest on said deposits set forth in Paragraph 25.

(c) For the Air Conditioning Systems Settlement Class, \$5,153,860.65 plus accrued interest on said deposits set forth in Paragraph 25.

16. “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 Calsonic.

17. End-Payor Plaintiffs and Calsonic shall use their reasonable best efforts to effectuate this Agreement, including but not limited to cooperating in seeking the Court’s

approval for the establishment of procedures (including the giving of class notice under Rules 23(c) and (e)) to secure the complete and final dismissal with prejudice of the Actions as to the Releasees only.

18. 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 (i) the proposed form of orders preliminarily approving this Agreement, and (ii) proposed form of orders and final judgments that shall include at least the terms set forth in Paragraph 20 below. The text of these proposed orders shall be agreed upon by End-Payor Plaintiffs and Calsonic before submission of the Preliminary Approval Motion. Calsonic shall have a reasonable opportunity to review and comment on the Preliminary Approval Motion, and End-Payor Plaintiffs shall reasonably consider Calsonic’s comments.

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 (“Notice Motion”). 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 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 in the Actions. Calsonic shall have a reasonable opportunity to review and comment on the Notice Motion and related notice materials, and End-Payor Plaintiffs shall reasonably consider Calsonic’s comments.



20. End-Payor Plaintiffs shall seek, and Calsonic will not object unreasonably to, the entry of orders and final judgments in the Actions. The terms of said orders and final judgments will include, at a minimum, the substance of the following provisions:

(a) certifying the Settlement Classes described in Paragraph 12, pursuant to Rule 23, solely for purposes of this settlement as the Settlement Classes for the Actions;

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

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

(d) as to Calsonic, directing that the Actions be dismissed with prejudice and, except as provided for in Paragraphs 26 and 29 this Agreement, without costs;

(e) reserving exclusive jurisdiction over the settlement and this Agreement, including the interpretation, administration, implementation, enforcement, consummation, and performance of this settlement, as well as over Calsonic and End-Payor Plaintiffs for the duration and limited purpose of interpreting, administering, implementing, enforcing, consummating, and performing under this settlement including Calsonic's provision of Cooperation pursuant to this Agreement, 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 Actions as to Calsonic shall be final; and

(g) providing that (i) the Court's certification of the Settlement Classes is without prejudice to, or waiver of, the rights of any Defendant, including Calsonic, to contest certification of any other class proposed in the MDL Litigation, (ii) the Court's findings in the

order shall have no effect on the Court's ruling on any motion to certify any class in the MDL Litigation or on the Court's rulings concerning any Defendant's motion, and (iii) no party may cite or refer to the Court's approval of the Settlement Classes 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 final orders certifying the Settlement Classes and approving this Agreement under Rule 23(e) and has entered final judgments dismissing the Actions with prejudice as to Calsonic 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 final judgments as to Calsonic described in (i) above has expired or, if appealed, approval of this Agreement and the final judgment in the Actions as to Calsonic 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, and no other motion or pleading is pending in any court. It is agreed that the provisions of Rule 60 shall not be taken into account in determining the above-stated times. On the date that End-Payor Plaintiffs and Calsonic have executed this Agreement, End-Payor Plaintiffs and Calsonic shall be bound by its terms and this Agreement shall not be rescinded except in accordance with Paragraph 26(h) or 52 of this Agreement.

22. Neither this Agreement (whether or not it should become final) nor the final judgment, nor any and all negotiations, mediations, Documents, or discussions associated with them (including Cooperation Materials produced pursuant to Paragraphs 33-51), shall be deemed or construed to be an admission by Calsonic, or evidence of any violation of any statute or law or of any liability or wrongdoing whatsoever by Calsonic, 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 Calsonic. Nothing in this Paragraph shall prevent End-Payor Plaintiffs from using and/or introducing into evidence Cooperation Materials produced pursuant to Paragraphs 33-51, subject to the limitations in those Paragraphs, against any other defendants in the MDL Litigation, or to develop and promulgate a plan of allocation and distribution. Neither this Agreement, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any other action taken to carry out this Agreement by Calsonic, 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 21 of this Agreement, and in consideration of payment of the Settlement Amount, as specified in Paragraph 25 of this Agreement, into the Settlement Funds, 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 Funds, whether directly, representatively, derivatively or in any other capacity) that Releasers, or any of them, ever had, now has, or hereafter can, shall, or may ever have, that now exist or may exist in the future, on account of, or in any way arising out of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected, actual or contingent, liquidated or unliquidated claims, injuries, damages, and the consequences thereof in

any way arising out of or relating in any way to (i) any conduct alleged in the Complaints, and/or (ii) any act or omission of the Releasees (or any of them) concerning Relevant Parts, including but not limited to any conduct and causes of action alleged or asserted or that could have been alleged or asserted, in any class action or other complaint filed in the Actions (“Released Claims”), provided however, that nothing herein shall release: (1) any claims made by direct purchasers of Relevant Parts; (2) any claims made by automobile dealerships that are indirect purchasers of Relevant Parts; (3) any claims made by truck and equipment dealerships that are indirect purchasers of Relevant Parts; (4) any claims made by any state, state agency, or instrumentality or political subdivision of a state as to government purchases and/or penalties; (5) 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 Relevant Parts; (6) claims concerning any automotive part other than Relevant Parts; (7) claims under laws other than those of the United States relating to purchases of Relevant Parts made by any Releasor outside of the United States; and (8) 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 unless this Agreement is, for any reason, not finally approved or terminated.

24. In addition to the provisions of Paragraph 23 of this Agreement, Releasors hereby expressly waive and release, upon this Agreement becoming final, as set out in Paragraph 21 of this Agreement, any and all provisions, rights, and benefits, as to their claims concerning Relevant Parts conferred by § 1542 of the California Civil Code, which states:

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

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

or by any equivalent law or statute of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code. Each Releasor may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the claims which are released pursuant to the provisions of Paragraph 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 Calsonic 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 Actions as provided herein, Calsonic, shall pay or cause to be paid the Settlement Amount. The Settlement Amount shall be paid in U.S. dollars into escrow accounts to be administered in accordance with the provisions of Paragraph 26 of this Agreement (“Escrow Accounts”) within thirty (30) days following the later of (i) entry of an order preliminarily approving this Agreement or (ii) the date Calsonic is provided with the account number, account name, and wiring transfer information for the Escrow Accounts. No part of the Settlement Amount paid by Calsonic shall constitute, nor shall it be construed or treated as constituting, a payment for treble damages, fines, penalties, forfeitures, or punitive recoveries.

26. Escrow Accounts.

(a) The Escrow Accounts will be established at Wells Fargo Bank with such Bank serving as escrow agent (“Escrow Agent”) subject to escrow instructions regarding investment types and reinvestment of income and proceeds mutually acceptable to Settlement Class Counsel and Calsonic, such escrow to be administered by the Escrow Agent under the Court’s continuing supervision and control.

(b) The Escrow Agent shall cause the funds deposited in the Escrow Accounts 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. Calsonic shall bear no risk related to the management and investment of the Settlement Funds.

(c) All funds held in the Escrow Accounts 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) End-Payor Plaintiffs and Calsonic agree to treat the Settlement Funds as being at all times qualified settlement funds within the meaning of Treas. Reg. § 1.468B-1. In addition, Settlement Class Counsel shall 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)) 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 “Qualified Settlement Funds” within the meaning of Treasury Regulation § 1.468B-1.

(e) For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the administrator of the Settlement Funds 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 but not limited to the returns described in Treas. Reg. § 1.468B-2(k), (1)). Such returns (as well as the election described in Paragraph 26(d) above) 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 Funds shall be paid out of the Settlement Funds 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 Funds, including any taxes or tax detriments that may be imposed upon Calsonic or any other Releasee with respect to any income earned by the Settlement Funds for any period during which the Settlement Funds do not qualify as qualified settlement funds 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 but not limited to 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 paid out of the Settlement Funds.

(g) Neither Calsonic 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 Funds and shall be timely paid by the Escrow Agent out of the Settlement Funds 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)). Calsonic shall not be responsible or have any liability therefor. End-Payor Plaintiffs and Calsonic 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(f).

(h) If this Agreement does not receive final Court approval, including final approval of the Settlement Classes, or if the Actions are not certified as class actions for settlement purposes, then all amounts paid by Calsonic into the Settlement Funds (other than costs expended or incurred in accordance with Paragraphs 26 and 29), shall be returned to Calsonic from the Escrow Accounts by the Escrow Agent, along with any interest accrued thereon, within thirty (30) calendar days of the Court’s final determination denying final approval of the Agreement and/or Settlement Classes.

27. Injunctive Relief. Subject to the provisions hereof, and in full, complete, and final settlement of the Actions as provided herein, Calsonic 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 Relevant Parts for a period of twenty-four (24) months from the date of the entry of final judgment.

28. Exclusions from the Settlement Classes.

(a) Subject to Court approval, any person or entity seeking exclusion from any of the Settlement Classes must file a written request for exclusion from such Settlement Class(es) by the Opt-Out Deadline. Any person or entity that files such a request shall be excluded from the Settlement Class(es) and shall have no rights with respect to any Settlement Class(es) from which the class member has requested to be excluded. 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 Calsonic with a list and copies of all opt-out requests it receives in the Actions and shall file with the Court a list of all Settlement Class Members who timely and validly opted-out of the settlement.

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

(c) Subject to Court approval, in the written request for exclusion, the member of a 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 he, she, or it wishes to be excluded from the one or more of the Settlement Classes, identifying each such Settlement Class. Any member of a Settlement Class that submits a written request for exclusion may also identify the number of Vehicles purchased from May 1, 1999 through the Execution Date of this Agreement as requested in the notice to the Settlement Classes as provided in Paragraph 19.

(d) Calsonic 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.

29. Payment of Expenses.

(a) Calsonic agrees to permit use of a maximum of U.S. \$500,000 of the Settlement Funds to be used towards the cost of providing notice to the Settlement Classes and the costs of administration of the Settlement Funds. The notice and administration expenses (up to the maximum of U.S. \$500,000) 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 Paragraphs 26 and 29, Calsonic shall not be liable for any of the costs or expenses of the litigation of the Action, including but not limited to, 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,

mediation, appeals, trials, or the negotiation of other settlements, or for Settlement Class administration, notice, and/or costs.

(b) To mitigate the costs of notice and administration, End-Payor Plaintiffs shall use their best efforts, if practicable, to disseminate notice 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 Funds.

30. After this Agreement becomes final within the meaning of Paragraph 21, the Settlement Funds 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 Funds, including but not limited to, the costs and expenses of such distribution and administration except as expressly otherwise provided in Paragraphs 26 and 29 of this Agreement.

31. End-Payor Plaintiffs and Settlement Class Counsel shall be reimbursed and indemnified solely out of the Settlement Funds for all expenses and costs, as provided by court order. Calsonic and the other Releasees shall not be liable for any costs, fees, or expenses of any of End-Payor Plaintiffs or the Settlement Classes' 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 Funds.

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 ("Fee and Expense Application") for: (i) an award of attorneys' fees not in excess of one-

third of the Settlement Funds, plus (ii) reimbursement of expenses and costs incurred in connection with prosecuting the Actions 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 Funds (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 Calsonic 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 Funds.

(b) Subject to Court approval, End-Payor Plaintiffs and Settlement Class Counsel shall be reimbursed and paid solely out of the Settlement Funds 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 Funds 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 Funds 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 52.

(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 Funds is not part of this Agreement, and is to be considered by the Court separately from the Court's consideration of the

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

(d) Neither Calsonic 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 Actions.

(e) Neither Calsonic 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, End-Payor Plaintiffs and/or any other person who may assert some claim thereto, of any Fee and Expense Award that the Court may make in the Actions.

F. Cooperation.

33. In return for the release and discharge provided herein, Calsonic agrees to pay the Settlement Amount and be bound by the Injunctive Relief described in Paragraph 27, and further agrees to use its reasonable best efforts to provide satisfactory and timely Cooperation, as set forth specifically in Paragraphs 34-51 below. Cooperation will take place consistent with the timing set forth specifically below, and in a manner that is in compliance with Calsonic's obligations to Government Entities (defined as the United States Department of Justice ("DOJ"), the Japanese Fair Trade Commission ("JFTC"), the European Commission, or any other government entity). Cooperation shall be limited to the Relevant Parts and shall not include information relating to any other products.

34. Identity of Individuals. Within five (5) business days of the Execution Date of this Agreement, counsel for Calsonic shall provide Settlement Class Counsel with the identity of all current and former employees, directors and officers of Calsonic who: (1) were interviewed

and/or prosecuted by any Government Entity in connection with alleged price-fixing, bid rigging and market allocation of Relevant Parts; (2) appeared before the grand jury in the DOJ's investigation into alleged antitrust violations with respect to Relevant Parts; and/or (3) were disclosed to the DOJ as having knowledge or information relating to the DOJ's investigation into alleged antitrust violations with respect to Relevant Parts.

35. In addition, after conducting a reasonable search, Calsonic shall, to the best of its knowledge, identify those Vehicles sold in the United States from February 1, 2001 through the Execution Date of this Agreement that contain Radiators sold by Calsonic, from November 1, 2002 through the Execution Date of this Agreement for ATF Warmers and Oil Coolers sold by Calsonic, and from May 1, 1999 through the Execution Date of this Agreement that contain Air Conditioning Systems sold by Calsonic.

36. DOJ Documents. To the extent not already produced, Calsonic shall use its reasonable best efforts to complete the production of non-privileged Documents, including any translations, provided to or seized by the DOJ in connection with its investigations into potential violations of competition laws with respect to the Relevant Parts within thirty (30) days after preliminary approval by the Court of this Agreement.

37. In the event that Calsonic produces Documents, including translations, or provides declarations or written responses to discovery to any party or nonparty in the Actions in the MDL Litigation, concerning or relating to the Actions ("Relevant Production"), Calsonic 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 Calsonic to End-Payor Plaintiffs. In addition, Calsonic 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 witnesses in addition to those already provided for in Paragraphs 42 and 46, 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, settlement class counsel for Automobile Dealer Plaintiffs (“Automobile Dealer Settlement Class Counsel”), and settlement class counsel for the Direct Purchaser Plaintiffs, or such other party whom such cooperation is provided pursuant to a settlement agreement. End-Payor Plaintiffs’ receipt of, or participation in, cooperation provided by Calsonic 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, witness interviews, and depositions.

38. This Agreement does not restrict Settlement Class Counsel from cross-noticing, attending and/or participating in any deposition in the MDL Litigation. Settlement Class Counsel may cross-notice, attend, and/or participate in any depositions of Calsonic’s witnesses in addition to the depositions set forth in Paragraphs 42 and 46, and Settlement Class Counsel together with Automobile Dealer Settlement Class Counsel may ask questions for a combined total of three (3) hours at such deposition, provided that the time for participation of Settlement Class Counsel and Automobile Dealer Settlement Class Counsel shall not expand the time permitted for the deposition as may be provided by the Court, and Settlement Class Counsel will not ask the Court



to enlarge the time of any deposition noticed of a Calsonic current or former employee. Participation by Settlement Class Counsel in the depositions discussed in Paragraphs 42 and 46 will not limit the number of depositions to be provided under Paragraphs 42 and 46 below. End-Payor Plaintiffs and Settlement Class Counsel agree to use their best efforts to ensure that any depositions taken under Paragraph 42 and 46 above are coordinated with any other deposition noticed in the MDL Litigation to avoid unnecessary duplication.

39. Further Cooperation as to Air Conditioning Systems. With respect to Air Conditioning Systems, Calsonic shall provide the following additional cooperation set forth in Paragraphs 40-42 below. However, if End-Payor Plaintiffs enter into settlement agreements with all Defendants in the Air Conditioning Systems Action prior to the deadline to complete the additional cooperation as set forth in Paragraphs 40-42 below, or if otherwise notified by End-Payor Plaintiffs that certain cooperation is no longer required, Calsonic will not be obligated to complete said additional cooperation. Notwithstanding the foregoing, Calsonic will only be required to complete said additional cooperation if End-Payor Plaintiffs initiate or resume active litigation against a Defendant in the Air Conditioning Systems Action for any reason, unless End-Payor Plaintiffs initiate or resume active litigation against Calsonic with respect to the Air Conditioning Systems Action. The parties will subsequently meet and confer in good faith regarding any extensions concerning the timing of the completion of such cooperation.

40. Transactional Data. Calsonic will use its reasonable best efforts to complete the production of transactional data, no later than thirty (30) days after preliminary approval by the Court of this Agreement, concerning Calsonic's sales of Air Conditioning Systems sold to Original Equipment Manufacturers, or other purchasers of Air Conditioning Systems from May 1, 1997 through the Execution Date. In addition, Calsonic will provide, in response to a written



request from Settlement Class Counsel, a single production of electronic transactional data generated during the two (2) years after the Execution Date of this Agreement concerning Air Conditioning Systems, as it exists in Calsonic's electronic databases at the time of the request, within sixty (60) days of the receipt of such request. Calsonic shall preserve such transactional data until two (2) years after the Execution Date of this Agreement. Calsonic will produce transaction data only from existing electronic transaction databases, except that, to the extent Calsonic has not recorded or maintained electronic transaction data for any period between May 1, 1997 and two (2) years from the Execution Date of this Agreement, then Calsonic 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.

41. Documents. To the extent not already produced, Calsonic will use its reasonable best efforts to complete the production of the following Documents, including English translations, to the extent they exist: (1) Documents, provided to or seized by DOJ and JFTC relating to their investigation into alleged competition violations with respect to Air Conditioning Systems; (2) non-privileged Documents concerning the Air Conditioning Systems collected and reviewed in connection with a communication, meeting, or agreement regarding Air Conditioning Systems, by any employee, officer, or director of Calsonic with any employee, officer, or director of another manufacturer or seller of Air Conditioning Systems, which were not provided to or seized by the DOJ or JFTC; (3) Documents concerning Calsonic's determination of their prices for Air Conditioning Systems; and (4) Documents soliciting requests for quotation ("RFQ"), bids submitted in response to RFQs, RFQ award notifications, and post-award price adjustments for Air Conditioning Systems, including any Annual Price Reduction ("APR") Documents. The parties will meet and confer regarding the timing of

production. As to Documents in Calsonic's possession, custody, or control that are not listed above, including Documents provided to or seized by Government Entities in addition to the DOJ and JFTC, Calsonic will consider in good faith any reasonable request by End-Payor Plaintiffs to collect and produce such Documents provided the request would not impose an undue burden on Calsonic.

42. Attorney Proffers and Witness Interviews. Additionally, Calsonic shall use its reasonable best efforts to cooperate with Settlement Class Counsel as set forth below.

(a) Calsonic's counsel will make themselves available at a mutually agreed location in the United States for up to two (2) meetings of one (1) business day each within thirty (30) business days to provide an attorneys' proffer of facts known to them. Calsonic further agrees to make four (4) persons available for interviews and depositions, provide four (4) declarations or affidavits from the same persons, 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 any such interview or deposition takes place outside of the country of the witness's residence, Settlement Class Counsel shall reimburse Calsonic for such person's economy class fare and up to \$450 per day for lodging and expenses actually incurred. To the extent that Settlement Class Counsel coordinated any such interview or deposition with Automobile Dealer Settlement Class Counsel, Settlement Class Counsel and Automobile Dealer Settlement Class Counsel shall collectively reimburse Calsonic for such person's economy class fare and up to \$450 per day for lodging and expense actually incurred.

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

43. Further Cooperation as to Radiators and ATF Warmers. Only if End-Payor Plaintiffs initiate or resume active litigation against a Defendant in either or both of the Radiators or ATF Warmers Actions ("Relevant Actions") for any reason, unless End-Payor Plaintiffs initiate or resume active litigation against Calsonic with respect to either or both of the Relevant Actions, Calsonic, upon End-Payor Plaintiffs' request, shall provide the following additional Cooperation, only with respect to the relevant part for which the action has been initiated or resumed, as set forth in Paragraphs 44-46 pursuant to the timing provisions therein. The parties will meet and confer in good faith regarding any extensions concerning the timing of the completion of such Cooperation.

44. Within thirty (30) days of End-Payor Plaintiffs' request, and to the extent not previously produced, Calsonic will use its reasonable best efforts to complete the production of transactional data concerning Calsonic's sales of (i) Radiators sold to Original Equipment Manufacturers, or other purchasers of Radiators from February 1, 1999 through the Execution Date; and (ii) ATF Warmers and Oil Coolers sold to Original Equipment Manufacturers, or other purchases of Automatic Transmission Warmers and Oil Coolers from November 1, 2000 through the Execution Date. In addition, Calsonic will provide, in response to a written request from

Settlement Class Counsel, a single production of electronic transactional data generated during the two (2) years after the Execution Date of this Agreement concerning Radiators, ATF Warmers, and Oil Coolers as it exists in Calsonic's electronic databases at the time of the request, within sixty (60) days of the receipt of such request. Calsonic shall preserve such transactional data until sixty (60) days from the date that final judgment has been entered in the Relevant Actions against all Defendants. For purposes of this Paragraph, "final" shall have the meaning set forth in Paragraph 21. Calsonic will produce transaction data only from existing electronic transaction databases, except that, to the extent Calsonic has not recorded or maintained electronic transaction data for any period between February 1, 1999 and two (2) years from the Execution Date of this Agreement for Radiators, and between November 1, 2000 and two (2) years from the Execution of this Agreement for ATF Warmers and Oil Coolers, then Calsonic 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.

45. Documents. Within forty-five (45) days of End-Payor Plaintiffs' request, and to the extent not already produced, Calsonic will use its reasonable best efforts to complete the production of the following Documents, including English translations, to the extent they exist: (1) Documents provided to or seized by Government Entities relating to their investigation into alleged competition violations with respect to Radiators, ATF Warmers, and Oil Coolers; (2) non-privileged Documents concerning Radiators, ATF Warmers, and Oil Coolers collected and reviewed in connection with a communication, meeting, or agreement regarding Radiators, ATF Warmers, and Oil Coolers, by any employee, officer or director of Calsonic with any employee, officer, or director of another manufacturer or seller of Radiators, ATF Warmers, and Oil Coolers, but that were not provided to or seized by Government Entities; (3) Documents

concerning Calsonic's determination of their prices for Radiators, ATF Warmers, and Oil Coolers; and (4) Documents soliciting RFQs, bids submitted in response to RFQs, RFQ award notifications, and post-award price adjustments for Radiators, ATF Warmers, and Oil Coolers, including any APR Documents. As to Documents in Calsonic's possession, custody, or control that are not listed above, Calsonic will consider in good faith any reasonable request by End-Payor Plaintiffs to collect and produce such Documents provided the request would not impose an undue burden on Calsonic.

46. Attorney Proffers and Witness Interviews. Additionally, Calsonic shall use its reasonable best efforts to cooperate with Settlement Class Counsel as set forth below.

(a) Calsonic's counsel will make themselves available at a mutually agreed location in the United States for up to two (2) meetings of one (1) business day each within thirty (30) business days to provide an attorneys' proffer of facts known to them. Calsonic further agrees to make three (3) persons available for interviews and depositions in the Radiators Action and three (3) persons available for interviews and depositions in the ATF Warmers Action, provide three (3) declarations or affidavits from the same persons in the Radiators and ATF Actions, respectively, 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 any such interview or deposition takes place outside of the country of the witness's residence, Settlement Class Counsel shall reimburse Calsonic for such person's economy class fare and up to \$450 per day for lodging and expenses actually incurred. To the extent that Settlement Class Counsel coordinates any such interview or

deposition with Automobile Dealer Settlement Class Counsel, Settlement Class Counsel and Automobile Dealer Settlement Class Counsel shall collectively reimburse Calsonic for such person's economy class fare and up to \$450 per day for lodging and expenses actually incurred.

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

47. Calsonic's obligations to provide Cooperation shall not be affected by the releases set forth in this Settlement Agreement. Unless this Agreement is rescinded, disapproved, or otherwise fails to take effect, Calsonic's obligations to provide Cooperation under this Agreement shall continue only until otherwise ordered by the Court, or the date that final judgment has been entered in all actions in the MDL Litigation against all defendants. For purposes of this Paragraph, the term "final" shall have the same meaning as set forth in Paragraph 21.

48. In the event that this Agreement fails to receive final approval by the Court, including final approval of the Settlement Classes, or in the event that it is terminated or rescinded by either party under any provision herein, or otherwise fails to take effect, the parties agree that neither End-Payor Plaintiffs nor Settlement Class Counsel shall be permitted to introduce into evidence against Calsonic, at any hearing or trial, or in support of any motion, opposition or other pleading in the Actions or in any other federal or state or foreign action

alleging a violation of any law relating to the subject matter of the Action, any Documents provided by Calsonic and/or the other Releasees, their counsel, or any individual made available by Calsonic 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 Calsonic which Settlement Class Counsel may participate in as part of the MDL Litigation. Notwithstanding anything contained herein, End-Payor Plaintiffs and the Settlement Classes are not relinquishing any rights to pursue discovery against Calsonic in the event that this Agreement fails to receive final approval by the Court, including final approval of the Settlement Classes, or in the event that it is terminated by either party under any provision herein.

49. End-Payor Plaintiffs further agree that, within, sixty (60) days of (i) this Agreement either being rescinded, disapproved, terminated, or otherwise failing to take effect, or (ii) final judgment has been entered by the Court against all Defendants in the Actions, unless otherwise agreed by Calsonic, End-Payor Plaintiffs must return or destroy all Cooperation Materials received from Calsonic. For purposes of this Paragraph, “final” shall have the meaning set forth in Paragraph 21.

50. Calsonic and other Releasees need not respond to formal discovery requests from End-Payor Plaintiffs or otherwise participate in the Actions during the pendency of this Agreement, with the exception of the Cooperation provisions set forth above in Paragraphs 33-47. Other than to enforce the terms of this Agreement, neither Calsonic nor End-Payor Plaintiffs shall file motions against the other, in the Actions, during the pendency of this Agreement.

51. If Settlement Class Counsel believes that Calsonic or any current or former employee, officer, or director of Calsonic has failed to cooperate under the terms of this Agreement, Settlement Class Counsel shall meet and confer with Calsonic over a ten (10) day



period. If at the conclusion of the ten (10) day period, the parties remain at an impasse, Settlement Class Counsel may seek an order from the Court compelling such Cooperation. Nothing in this provision shall limit in any way Calsonic'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. Moreover, nothing in this Agreement shall be interpreted to state or imply that Calsonic has any control over any former employees, officers, or directors.

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

52. If the Court refuses to approve this Agreement or any part hereof, including if the Court does not certify the Settlement Classes in accordance with the specific Settlement Class definitions 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 judgments provided for in Paragraph 21 of this Agreement, or if the Court enters the final judgments and appellate review is sought, and on such review, such final judgments are not affirmed in their entirety, then Calsonic and End-Payor Plaintiffs shall each, in their sole discretion, have the option to rescind this Agreement in its entirety following a meet and confer. The parties shall have a ten (10) day period over which to meet and confer. If at the conclusion of the ten (10) day period the parties remain at an impasse, Calsonic and/or End-Payor Plaintiffs may provide written notice of the exercise of their right to rescind. Written notice of the exercise of any such right to rescind shall be made according to the terms of Paragraph 64. 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.

53. In the event that this Agreement does not become final as set forth in Paragraph 21, or this Agreement otherwise is terminated pursuant to Paragraph 52, then this Agreement shall be of no force or effect and any and all parts of the Settlement Funds caused to be deposited



in the Escrow Accounts (including interest earned thereon) shall be returned forthwith to Calsonic less only disbursements made in accordance with Paragraphs 26 and 29 of this Agreement. Calsonic expressly reserves all rights and defenses if this Agreement does not become final.

54. Further, and in any event, End-Payor Plaintiffs and Calsonic agree that this Agreement, whether or not it shall become final, and any and all negotiations, mediations, 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 Calsonic, or the other Releasees, to be used against Calsonic, or of (ii) the truth of any of the claims or allegations contained in the Complaints or any other pleading filed in the MDL Litigation, to be used against Calsonic, and evidence thereof shall not be discoverable or used in any way, whether in the MDL Litigation or in any other action or proceeding, against Calsonic. Nothing in this Paragraph shall prevent End-Payor Plaintiffs from using Cooperation Materials produced by Calsonic against any other defendants in any Actions in the MDL Litigation to establish (i) or (ii) above.

55. 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.

56. 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 (i) of the settlement, and (ii) of a hearing at which the Court will consider the approval of this Agreement, will be given to the Settlement Classes.

H. Miscellaneous.

57. Calsonic 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.

58. This Agreement does not settle or compromise any claim by End-Payor Plaintiffs or any Settlement Class Member asserted in the Complaints or, if amended, any subsequent complaint, against any Defendant or alleged co-conspirator other than Calsonic. All rights against such other Defendants or alleged co-conspirators are specifically reserved by End-Payor Plaintiffs and the Settlement Classes. 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 Calsonic and the other Releasees, for sales made by Calsonic and Calsonic's alleged illegal conduct are specifically reserved by End-Payor Plaintiffs and Settlement Class Member. Calsonic's sales to the classes and its alleged illegal conduct shall, to the extent permitted or authorized by law, remain in the Actions as a basis for damage claims and shall be part of any joint and several liability claims against other current or future Defendants in the Actions or other persons or entities other than Calsonic and the other Releasees. Calsonic shall not be responsible for any payment to End-Payor Plaintiffs other than the amount specifically agreed to in Paragraph 25 of this Agreement.

59. The United States District Court for the Eastern District of Michigan shall retain exclusive jurisdiction over the interpretation, administration, implementation, enforcement, consummation 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 Calsonic, 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. Calsonic will not object to complying with any of the provisions outlined in this Agreement on the basis of jurisdiction.

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

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

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

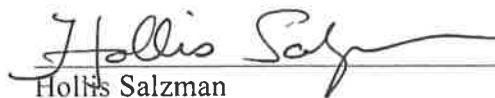
63. Neither End-Payor Plaintiffs nor Calsonic shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

64. 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.

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

*[signature pages follow]*

Dated: January 30, 2018



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*Interim Co-Lead Class Counsel for the Proposed  
End-Payor Plaintiff Classes*

Dated: January 30, 2018



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