

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

_____	:	
IN RE AUTOMOTIVE PARTS	:	Master File No. 2:12-md-02311
ANTITRUST LITIGATION	:	Honorable Marianne O. Battani
_____	:	
AUTOMOTIVE LAMPS	:	Case No. 2:13-cv-01203
HID BALLASTS	:	Case No. 2:13-cv-01703
_____	:	
THIS DOCUMENT RELATES TO:	:	
END-PAYOR ACTIONS	:	
_____	:	

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into this 26th day of May 2017 (“Execution Date”) by and between Koito Manufacturing Co., Ltd., North American Lighting, Inc. (collectively, “KOITO”), and End-Payor Plaintiff Class Representatives (“End-Payor Plaintiffs”), both individually and on behalf of classes of indirect purchasers of Automotive Lamps and HID Ballasts (“Settlement Classes”), as more particularly defined in Paragraphs 14 and 15 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-01203 and 2:13-cv-01703 (“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 KOITO’s participation in alleged unlawful conspiracies to raise, fix, maintain, and/or stabilize prices, rig bids, and allocate markets and customers for Automotive Lamps and HID Ballasts (as

defined in Paragraphs 7 and 8 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 Complaints for Damages and Injunctive Relief ("Complaints") (Case No. 2:13-cv-01203, Doc. No. 81; Case No. 2:13-cv-01703, Doc. No. 208).

WHEREAS, KOITO 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 KOITO 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 KOITO, 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 Cooperation (as those terms are defined below) that KOITO has agreed to provide pursuant to this Agreement;

WHEREAS, KOITO, 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 KOITO with respect to Automotive Lamps and HID Ballasts 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 hereinafter provided, without costs as to End-Payor Plaintiffs, the Settlement Classes, or KOITO, subject to the approval of the Court, on the following terms and conditions:

A. Definitions.

1. “End-Payor Plaintiff Class Representatives” means those Members of the Settlement Classes, as defined in Paragraph 17, below, who are named plaintiffs in the Complaints.

2. “Cooperation” shall refer to those provisions set forth below in Section F.

3. “Cooperation Materials” means any information, testimony, Documents (as defined below) or other material (including information from attorney proffers) provided by KOITO 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 a final order certifying the Settlement Classes described in Paragraphs 14 and 15 and approving this Agreement under Federal Rule of Civil Procedure (“Rule”) 23(e).

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

6. “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. “Automotive Lamps” shall have the meaning set forth in Paragraph 2 of the Automotive Lamps Complaint.

8. “HID Ballasts” shall have the meaning set forth in Paragraph 3 of the HID Ballasts Complaint.

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

10. “Protective Order” means the Stipulation and Protective Order Governing the Production and Exchange of Confidential Information, Master File No. 2:12-md-2311 (E.D. Mich. July 10, 2012) (ECF No. 200) and any other similar order issued in these Actions.

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

12. “Releasees” shall refer to (i) KOITO, (ii) all of KOITO’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, heirs, executors, administrators, and assigns of each of the persons and entities listed in (i) and (ii). “Releasees” does not include any defendant in the MDL Litigation other than KOITO.

13. “Releasers” shall refer to End-Payor Plaintiff Class Representatives and the members of the Settlement Classes, as defined in Paragraphs 14 and 15, below, and to their past and present officers, directors, supervisors, employees, agents, stockholders, members, attorneys, servants, representatives, parents, subsidiaries, affiliates, principals, partners, insurers and all other persons, partnerships or corporations with whom any of the former have been, or are now,

affiliated, and the predecessors, successors, heirs, executors, administrators and assigns of any of the foregoing.

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

All persons and entities who, from June 1, 1997 through the Execution Date, purchased or leased a new Vehicle in the United States not for resale, which included one or more Automotive Lamps as a component part, or indirectly purchased one or more Automotive Lamps 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 Class are Defendants, their parent companies, subsidiaries and affiliates, any co-conspirators, federal governmental entities and instrumentalities of the federal government, states and their subdivisions, agencies and instrumentalities, and persons who purchased Automotive Lamps directly or for resale.

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

All persons and entities who, from July 1, 1998 through the Execution Date, purchased or leased a new Vehicle in the United States not for resale, which included one or more HID Ballasts as a component part, or indirectly purchased one or more HID Ballasts 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 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 HID Ballasts directly or for resale.

16. “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

17. “Members of the Settlement Classes” means each member of the Settlement Classes who has not timely elected to be excluded from the Settlement Classes.

18. “Settlement Amount” shall be \$22,990,000.00, and the “Settlement Fund” shall be the Settlement Amount plus any income or accrued interest earned on that amount as set forth in Paragraph 29. Settlement Fund shall consist of:

(a) For the Automotive Lamps Settlement Class, \$21,654,653.10 plus accrued interest on said deposits set forth in Paragraph 29.

(b) For the HID Ballasts Settlement Class, \$1,335,346.90 plus accrued interest on said deposits set forth in Paragraph 29.

19. “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 KOITO.

20. End-Payor Plaintiffs and KOITO 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 Rules 23(c) and (e)) to secure the complete, and final dismissal with prejudice of the Actions as to the Releasees only.

21. 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 an order preliminarily approving this Agreement, and (ii) a proposed form of order and final judgment that shall include at least the terms set forth in Paragraph 23 below. The text of the proposed orders

shall be agreed upon by End-Payor Plaintiffs and KOITO before submission of the Preliminary Approval Motion.

22. End-Payor Plaintiffs, after reasonable notice to KOITO and at a time to be decided in End-Payor Plaintiffs' 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 Members of the Settlement Classes identified by End-Payor Plaintiffs ("Notice Motion"). End-Payor Plaintiffs will submit a draft of the Notice Motion to KOITO sufficiently in advance of the date the End-Payor Plaintiffs intend to submit the Notice Motion to the Court for KOITO's counsel to review and comment. 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 and of which notice has not previously been provided. The Notice Motion shall include a proposed form of, method for, and date of dissemination of notice.

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

(a) certifying the Settlement Classes described in Paragraphs 14 and 15, pursuant to Rule 23, solely for purposes of this settlement as 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 Members of the Settlement Classes within the meaning of Rule 23 and directing its consummation according to its terms;

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

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

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

(f) determining under Rule 54(b) that there is no just reason for delay and directing that the judgment of dismissal in the Actions as to KOITO 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 KOITO, 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.

24. This Agreement shall become final when (i) the Court has entered a final order certifying the Settlement Classes described in Paragraphs 14 and 15 and approving this Agreement under Rule 23(e) and has entered a final judgment dismissing the Actions with prejudice as to KOITO 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 KOITO described in (i) above has expired or, if appealed, approval of this Agreement and the final judgment in the Actions as to KOITO 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 this or any court seeking to set aside, enjoin, or in any way alter the judgment of final approved order in the Actions or to toll the time for appeal of the judgment. 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 KOITO have executed this Agreement, End-Payor Plaintiffs and KOITO shall be bound by its terms and this Agreement shall not be rescinded except in accordance with Paragraphs 29(h) or 52 of this Agreement.

25. Neither this Agreement (whether or not it should become final) nor the final judgment, nor any and all negotiations, Documents, or discussions associated with them (including Cooperation Materials produced pursuant to Section F), shall be deemed or construed to be an admission by KOITO, or evidence of any violation of any statute or law or of any liability or wrongdoing whatsoever by KOITO, 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 KOITO. Nothing in this Paragraph shall prevent End-Payor Plaintiffs from using and/or introducing into evidence Cooperation Materials produced pursuant to Section F, 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, provided that such use is subject to the terms and conditions set forth in the Protective Order and KOITO has had the opportunity to make applicable confidentiality designations under the Protective Order. 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 KOITO,

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. Neither Settlement Class Counsel nor End-Payor Plaintiffs shall disclose any Cooperation Materials provided by KOITO in connection with this settlement to any third parties that are not party to the MDL Litigation except as necessary to pursue the MDL Litigation.

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

26. In addition to the effect of any final judgment entered in accordance with this Agreement, upon this Agreement becoming final, as set out in Paragraph 24 of this Agreement, and in consideration of payment of the Settlement Amount, as specified in Paragraph 28 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 Member of the Settlement Classes 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 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 (ii) any act or omission of the Releasees (or any of them) concerning Automotive Lamps and HID Ballasts, 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 Automotive Lamps and HID Ballasts; (2) any claims made by automotive dealerships that are indirect purchasers of Automotive Lamps and HID Ballasts; (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 Lamps and HID Ballasts; (5) claims concerning any automotive part other than Automotive Lamps and HID Ballasts; (6) claims under laws other than United States federal or state laws relating to purchases of Automotive Lamps and HID Ballasts made by any Releasor outside of the United States; and (7) damage claims under the state or local laws of any jurisdiction other than an Indirect Purchaser State. Releasors shall not, after the date of this Agreement, seek to establish liability against any Releasee as to, in whole or in part, any of the Released Claims or as to conduct at issue in the Released Claims unless this Agreement is, for any reason, not finally approved or terminated.

27. In addition to the provisions of Paragraph 26 of this Agreement, Releasors hereby expressly waive and release, upon this Agreement becoming final, as set out in Paragraph 24 of this Agreement, any and all provisions, rights, and benefits, as to their claims concerning Automotive Lamps and HID Ballasts conferred by § 1542 of the California Civil Code, which states:

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 26 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 KOITO and End-Payor Plaintiffs have agreed to release pursuant to Paragraph 26, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

D. Settlement Amount.

28. Subject to the provisions hereof, and in full, complete and final settlement of the Actions as provided herein, KOITO, shall pay or cause to be paid the Settlement Amount of U.S. \$22,990,000.00. The Settlement Amount shall be paid in U.S. dollars into escrow accounts to be administered in accordance with the provisions of Paragraph 29 of this Agreement (“Escrow Accounts”) within twenty (20) days following entry of an order granting preliminary approval of the Agreement.

29. 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 KOITO, such escrows 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 Investors 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) 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 KOITO agree to treat the Settlement Fund 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 29, 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 a "Qualified Settlement Fund" 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 Fund 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 Fund (including without limitation the returns described in Treas. Reg. § 1.468B-2(k), (1)). Such returns (as well as the election described in Paragraph 29(d) above) shall be consistent with Paragraph 29(d) and in all events shall reflect that all Taxes, as defined below (including any estimated Taxes, interest or penalties), on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided in Paragraph 29(f) hereof.

(f) All (i) taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund, including any taxes or tax detriments that may be imposed upon KOITO 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 29(d) through 29(f) (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in Paragraph 29(e) (“Tax Expenses”)), shall be paid out of the Settlement Fund.

(g) Neither KOITO 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)). KOITO shall not be responsible or have any liability therefor. End-Payor Plaintiffs and KOITO agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of Paragraphs 29(d) through 29(f).

(h) If this Agreement does not receive final Court approval, including final approval of the Settlement Classes as defined in Paragraphs 14 and 15, or if the Actions are not certified as class actions for settlement purposes, then all amounts paid by KOITO into the Settlement Fund (other than costs expended or incurred in accordance with Paragraphs 29 and 32), shall be returned to KOITO 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.

30. Prospective Conduct.

Subject to the provisions hereof, and in full, complete and final settlement of the Actions as provided herein, KOITO further agrees that it will not engage in conduct that constitutes a *per se* violation of Section 1 of the Sherman Act with respect to the sale of any Automotive Lamps or HID Ballasts for a period of 24 months from the entry of the preliminary approval of this Agreement.

31. Exclusions from the Settlement Classes.

Subject to Court approval, any person or entity seeking exclusion from the Settlement Classes must file a written request for exclusion by the Opt Out Deadline, which shall be the

date set by the Court by which any member of the classes must request exclusion from the Settlement Classes. Any person or entity that files such a request shall be excluded from the Settlement Classes 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 Member(s) of the Settlement Classes 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 KOITO 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 members of the Settlement Classes who timely and validly opted out of the settlement.

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

(b) Subject to Court Approval, in the written request for exclusion, the member of the Settlement Classes must state his, her, or its full name, street address, and telephone number. Further, the member of Settlement Classes must include a statement in the written request for exclusion that he, she, or it wishes to be excluded from the settlement. Any member of the Settlement Classes that submits a written request for exclusion may also identify the number of Vehicles purchased from June 1, 1997 through the Execution Date of this Agreement (as to the Automotive Lamps Settlement Class) or July 1, 1998 through the Execution Date of this

Agreement (as to the HID Ballasts Settlement Class) as requested in the notice to the Settlement Classes as provided in Paragraph 22.

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

32. Payment of Expenses.

(a) KOITO agrees to permit a reasonable portion of the Settlement Fund, up to a maximum of \$200,000.00, to be used towards notice to the Settlement Classes and the costs of administration of the Settlement Fund. The notice and administration expenses actually expended or incurred 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. The Escrow Agent shall return all remaining portions of the Settlement Fund to KOITO if this Agreement does not receive final court approval, or is rescinded or terminated. Other than as set forth in Paragraph 29 and this Paragraph 32, KOITO shall not be liable for any of the costs or expenses of the litigation of the Actions, including attorneys' fees, fees and expenses of expert witnesses and consultants, and costs and expenses associated with discovery, motion practice, hearings before the Court or Special Master, appeals, trials, or the negotiation of other settlements, or for class administration and costs.

(b) To mitigate the costs of notice and administration, End-Payor Plaintiffs shall use their best efforts, if practicable, to disseminate notice with any other settlements reached with other defendants in the MDL Litigation for which notice pursuant to Federal Rule of Civil

Procedure 23 has not yet been provided and to apportion the costs of notice and administration on a pro rata basis across the applicable settlements.

E. The Settlement Fund.

33. In addition to the Cooperation and Prospective Conduct provided herein, Releasors' sole source or 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 KOITO or any other Releasee.

34. After this Agreement becomes final within the meaning of Paragraph 24, 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 32 of this Agreement.

35. 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. KOITO 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 Fund.

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

(a) Settlement Class Counsel may, after preliminary approval of this Agreement at a time to be determined in its sole discretion, submit an application or applications

to the Court (“Fee and Expense Application”) for: (i) an award of attorneys’ fees not in excess of one-third of the Settlement Fund; plus (ii) reimbursement of expenses and costs incurred in connection with prosecuting the 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 Fund (until paid), as may be awarded by the Court (“Fee and Expense Award”). Settlement Class Counsel reserves the right to make additional applications for Court approval of fees and expenses incurred and reasonable incentive awards, but in no event shall KOITO 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 and incentive awards. Attorneys’ fees and expenses awarded by the Court shall be payable from the Settlement Fund upon award, notwithstanding the existence of any timely filed objections thereto, or potential appeal therefrom, or collateral attack on the settlement or any part thereof, subject to Settlement Class Counsel’s obligation to make appropriate refunds or repayments to the Settlement Fund with interest, if and when, as a result of any appeal and/or further proceedings on remand, or successful collateral attack, the fee or award of expenses is reduced or reversed, or in the event the Agreement is rescinded or terminated pursuant to Paragraph 29(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 Fund 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 the finality of the final approval of the settlement.

(d) Neither KOITO 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 KOITO 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, 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.

37. In return for the release and discharge provided herein, KOITO agrees to pay the Settlement Amount and be bound by the Prospective Conduct described in paragraph 30, and further agrees to use its best efforts to provide reasonable, good faith, and timely Cooperation, as set forth specifically in Paragraphs 38-48 below. Cooperation will take place consistent with the timing set forth specifically below, and in a manner that is in compliance with KOITO's obligations to Government Entities (defined as the United States Department of Justice ("DOJ"), the Japanese Fair Trade Commission ("JFTC"), the European Commission ("EU"), or any other government entity). KOITO shall not be required to provide Documents or information protected by the attorney-client privilege, the attorney work product doctrine, any applicable privilege under foreign law, or disclosure of which is prohibited by court order, the law of the relevant foreign jurisdiction, or a Government Entity. Should KOITO withhold any materials pursuant to the foregoing sentence, KOITO will so inform the End-Payor Plaintiffs and will describe the basis for such withholding.

38. Identity of Individuals. Within twenty (20) days of the Execution Date of this Agreement, Counsel for KOITO shall provide Settlement Class Counsel with the identity of all current and former employees, directors and officers of KOITO who: (1) were interviewed and/or prosecuted by any Government Entity in connection with alleged price-fixing, bid rigging and market allocation of Automotive Lamps and HID Ballasts; (2) appeared before the grand jury in the DOJ's investigation into alleged antitrust violations with respect to Automotive Lamps and HID Ballasts; 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 Automotive Lamps and HID Ballasts.

39. Transactional Data. KOITO will use its best efforts to begin the production of transactional data, no later than sixty (60) days of End-Payor Plaintiffs' request following an order granting preliminary approval of the Agreement, concerning KOITO's sales of Automotive Lamps to Original Equipment Manufacturers, or other purchasers of Automotive Lamps from June 1, 1997 through the Execution Date and sales of HID Ballasts to Original Equipment Manufacturers, or other purchasers of HID Ballasts from July 1, 1998 through the Execution Date. The parties will meet-and-confer regarding any extensions concerning the timing of the completion of production. KOITO will produce transaction data only from existing electronic transaction databases, except that, to the extent KOITO has not recorded or maintained electronic transaction data relating to Automotive Lamps for any period between June 1, 1997 and the Execution Date, or electronic transaction data relating to HID Ballasts for any period between July 1, 1998 and the Execution Date, then KOITO 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.

40. In addition, after conducting a reasonable search, KOITO shall, to the best of its knowledge, identify those Vehicles sold in the United States from June 1, 1997 through the Execution Date of this Agreement that contain Automotive Lamps sold by KOITO and from July 1, 1998 through the Execution Date of this Agreement that contain HID Ballasts sold by KOITO.

41. Documents. KOITO will use its best efforts to complete the production of the following Documents, including all English translations, to the extent they exist in KOITO's possession as of the Execution Date, no later than sixty (60) days after the filing of End-Payor Plaintiffs' motion for preliminary approval of this settlement: (1) Documents, including any translations, provided to or seized by Government Entities relating to their investigation into alleged competition violations with respect to Automotive Lamps and HID Ballasts; (2) non-privileged Documents concerning Automotive Lamps and HID Ballasts collected and reviewed in connection with a communication, meeting, or agreement regarding Automotive Lamps and HID Ballasts, by any employee, officer or director of KOITO with any employee, officer, or director of another manufacturer or seller of Automotive Lamps and HID Ballasts, but that were not provided to or seized by Government Entities; and (3) Documents or non-public information regarding collusion with respect to any other automotive part that is the subject of the MDL Litigation. KOITO will use its best efforts to begin the production of the following Documents, including all English translations, to the extent they exist in KOITO's possession as of the Execution Date, no later than sixty (60) days of End-Payor Plaintiffs' request following an order granting preliminary approval of the Agreement: (4) Documents setting forth or otherwise describing KOITO's policies or methodologies for the determination of their prices for Automotive Lamps and HID Ballasts; and (5) for up to thirty-five (35) specifically identified requests for quotation ("RFQs") for Automotive Lamps and HID Ballasts, including: (a) initial RFQ Documents as received from

Original Equipment Manufacturers; (b) bids submitted in response to those RFQs; (c) RFQ award notifications; and (d) post-award price adjustments that included those RFQ awards. The parties will meet-and-confer regarding any extensions concerning the timing of the completion of production. End-Payor Plaintiffs agree to use best efforts to coordinate any Document requests made with the Automobile Dealership Plaintiffs to avoid unnecessary duplication.

42. Separate and apart of any attorney proffer, KOITO will provide End-Payor Plaintiffs with a list of all RFQs for Automotive Lamps it received between June 1, 1997 and the Execution Date and a list of all RFQs for HID Ballasts it received from between July 1, 1998 and the Execution Date. The list will include, to the extent KOITO has the information: (1) the year the RFQ was issued; (2) the identity of the issuer; (3) the make, model, and model year of the vehicle for which the Automotive Lamps and HID Ballasts were installed; (4) all Automotive Lamps and HID Ballasts suppliers that Koito believes received the RFQ; and (5) which supplier Koito believes won the business.

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

44. Attorney Proffers and Witness Interviews. Additionally, KOITO shall use its best efforts to cooperate with Settlement Class Counsel as set forth in this Section F.

(a) KOITO's counsel will make themselves available at a mutually agreed location in the United States for up to four (4) meetings of one business day each to provide an attorney's proffer of facts known to them. Such proffers shall include, but not be limited to, model-by-model and year-by-year USD sales information for Vehicle models included in either: (i) the DOJ's Volume of Affected Commerce calculation as to KOITO; or (ii) DOJ's "indirect sales" adjustment to Koito's recommended criminal fine based on ex-U.S. sales of Automotive Lamps and/or HID Ballasts. KOITO further agrees to make five (5) persons available for interviews and depositions, provide five (5) declarations or affidavits from the same persons, and make those persons available to testify at trial. If KOITO is unable to make those same persons available for interviews and depositions, or provide declarations and affidavits, then Settlement Class Counsel may select a substitute interviewee, deponent or declarant for purposes of KOITO's obligations under this paragraph. The deposition shall be conducted at a mutually agreed-upon location, 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, in which case the deposition shall be limited to a total of thirteen (13) hours over two (2) days. End-Payor Plaintiffs agree to use best efforts to coordinate any requests for interviews, declarations, affidavits, or depositions pursuant to this paragraph with the Automobile Dealership Plaintiffs.

(b) In addition to its Cooperation obligations set forth herein, KOITO agrees to produce through affidavit(s), declaration(s) and/or at trial, in Settlement Class Counsel's reasonable 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 KOITO. Settlement Class Counsel agrees to use their best efforts to obtain stipulations that would avoid the need to call KOITO witnesses at trial for the purpose of obtaining such evidentiary foundations.

(c) Any attorney proffers, Document productions, witness interviews, or depositions provided pursuant to Cooperation provisions shall be coordinated with, and occur at the same time as, the attorney proffers, Document productions, witness interviews, and depositions to be provided under KOITO's Cooperation provisions to the Automobile Dealership Plaintiffs and, if agreed upon by the parties hereto, any other party with whom KOITO reaches a separate settlement agreement related to claims of a subject matter similar to those raised in the Actions. It is understood that KOITO may, despite its best efforts, be unable to make available for interviews, depositions, or trial testimony or any other court proceedings certain individuals who have been or may be charged in the DOJ's ongoing investigation into price-fixing and bid-rigging in the automotive parts industry and represented by counsel other than counsel for KOITO.

45. Notwithstanding any other provision of this Agreement, the parties and their counsel further agree that any attorney proffers or other statements made by counsel for KOITO in connection with or as part of this settlement shall be governed by Federal Rule of Evidence 408, shall otherwise not be deemed admissible into evidence or subject to further discovery and shall be deemed to be "Highly Confidential" under the Protective Order. Notwithstanding anything herein, Settlement Class Counsel may use information contained in such attorney proffers or other statements: (a) in the prosecution of its claims in all cases in the Actions, including for the purpose of developing an allocation plan relating to any settlement or judgment proceeds, except any claims against KOITO or the other Releasees; and (b) to certify under seal 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 reasonable opportunity for further investigation or discovery, but shall not introduce any such information contained in such attorney proffers or such other statements into the record, or depose or subpoena any KOITO counsel.

46. KOITO, End-Payor Plaintiffs, and Settlement Class Counsel agree not to disclose the terms of this Agreement until this Agreement is submitted to the Court for preliminary approval publicly or to any other person, except such disclosure may be made: (a) to the Releasees where necessary, (b) as otherwise required by law or statute in any jurisdiction; (c) to any other party with whom KOITO reaches a separate settlement agreement related to claims of a subject matter similar to those raised in the Actions; and (d) to those employees and outside professional advisors (*e.g.*, accountants, lawyers, tax advisors, etc.) who need to be aware of this Agreement or its terms in the ordinary course of business to perform their duties and to properly advise KOITO and End-Payor Plaintiffs. KOITO may disclose the fact that it has settled with End-Payor Plaintiffs, without disclosing the settlement terms, to counsel for other Defendants in the Actions.

47. In the event that KOITO produces Documents or provides declarations or written responses to discovery to any party or non-party in the actions in the MDL Litigation, concerning or relating to the Action (“Relevant Production”), KOITO 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 KOITO to End-Payor Plaintiffs. This Agreement does not restrict Settlement Class Counsel from attending and/or participating in any deposition in the MDL Litigation. Settlement Class Counsel may notice, attend, and/or participate in any depositions of KOITO’s witnesses in addition to the depositions set forth in Paragraph 44, and Settlement Class Counsel together with settlement class counsel for the automobile dealership

plaintiffs (“Automobile Dealership Plaintiffs”) 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 settlement class counsel for the Automobile Dealership Plaintiffs 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 any KOITO 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 44 above. End-Payor Plaintiffs and Settlement Class Counsel agree to use their best efforts to ensure that any depositions taken under Paragraph 44 above are coordinated with any other deposition noticed in the MDL Litigation to avoid unnecessary duplication.

48. KOITO’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, KOITO’s obligations to provide Cooperation under this Agreement shall continue, unless otherwise ordered by the Court, until the date that final judgments have been entered in the Actions against all current and future Defendants. For purposes of this Paragraph, the term “final” shall have the same meaning as set forth in Paragraph 24.

49. In the event that this Agreement fails to receive final approval by the Court, including final approval of the Settlement Classes as defined in Paragraphs 14 and 15, 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 KOITO, at any hearing or trial, or in support of any motion, opposition or other pleading in the Action or in any other federal or state or foreign action alleging a violation of any law relating to the subject matter of the Actions, any Documents or information provided by KOITO and/or the

other Releasees, their counsel, or any individual made available by KOITO 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 KOITO which Settlement Class Counsel 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 KOITO in the event that this Agreement fails to receive final approval by the Court, including final approval of the Settlement Classes as defined in Paragraph 24, or in the event that it is terminated by either party under any provision herein.

50. KOITO and other Releasees need not respond to formal discovery requests from End-Payor Plaintiffs or otherwise participate in the Action during the pendency of this Agreement, with the exception of the Cooperation provisions set forth above in Section F. Other than to enforce the terms of this Agreement, neither KOITO 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 KOITO has failed to cooperate under the terms of this Agreement, Settlement Class Counsel may seek an order from the Court compelling such cooperation. Nothing in this provision shall limit in any way KOITO's ability to defend the level of Cooperation it has provided or to defend its compliance with the terms of the Cooperation provisions in this Agreement.

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

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 definitions of Settlement Classes 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 24 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 its entirety, then KOITO 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 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 24, or this Agreement otherwise is rescinded or terminated pursuant to Paragraph 52, 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 Accounts (including interest earned thereon) shall be returned forthwith to KOITO less only disbursements made in accordance with Paragraphs 29 and 32 of this Agreement. KOITO expressly reserves all rights and defenses if this Agreement does not become final.

54. Further, and in any event, End-Payor Plaintiffs and KOITO agree that this Agreement, whether or not it shall become final, and any and all negotiations, Documents, and discussions associated with it (including Cooperation Materials), 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 KOITO, or the other Releasees, to be used against KOITO, 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. Nothing in this Paragraph shall prevent End-Payor Plaintiffs from using Cooperation Materials produced by KOITO subject to the limitations in Paragraphs 44-51, against any other defendants in any actions 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 20-24 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 the Settlement Classes.

H. Miscellaneous.

57. KOITO 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 Member of the Settlement Classes asserted in the Complaints or, if amended, any subsequent complaints, against any Defendant or alleged co-conspirator other than KOITO. 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 Member of the Settlement Classes against any and all former, current, or future Defendants or co-conspirators or any other person other than KOITO and the other Releasees, for sales made by KOITO and KOITO's alleged illegal conduct are specifically reserved by End-Payor Plaintiffs and Member of the Settlement Classes. KOITO'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 KOITO's and the other Releasees. KOITO shall not be responsible for any payment to End-Payor Plaintiffs other than the amount specifically agreed to in Paragraph 28 of this Agreement.

59. 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 KOITO, 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. KOITO 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 KOITO pertaining to the settlement of the Actions against KOITO, and supersedes all prior and contemporaneous undertakings, communications, representations, understandings, negotiations and discussions, either oral or written, between End-Payor Plaintiffs and KOITO in connection herewith. This Agreement may not be modified or amended except in writing executed by End-Payor Plaintiffs and KOITO, 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 KOITO. 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 Members of the Settlement Classes and Releasers. The Releasees (other than KOITO 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 KOITO, and a facsimile signature shall be deemed an original signature for purposes of executing this Agreement.

63. Neither End-Payor Plaintiffs nor KOITO 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: May 26, 2017



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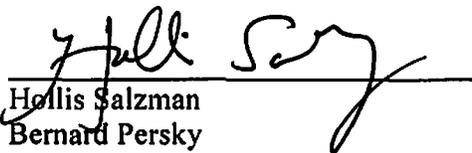
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