

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

_____	:	
IN RE AUTOMOTIVE PARTS	:	2:12-md-02311
ANTITRUST LITIGATION	:	Honorable Marianne O. Battani
_____	:	
IN RE BODY SEALING PRODUCTS	:	No. 2:16-cv-10456
_____	:	No. 2:16-cv-03403
	:	
THIS DOCUMENT RELATES TO:	:	
END-PAYOR ACTION	:	
_____	:	

**SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) is made and entered into this 15th day of November 2017 (“Execution Date”) by and between Nishikawa Rubber Company, Ltd. (“NRC”), which entered into the Plea Agreement with Department of Justice, and End-Payor Plaintiff Class Representatives (“End-Payor Plaintiffs”), both individually and on behalf of a class of indirect purchasers of Body Sealings (“Settlement Class”), as more particularly defined in Paragraph 14 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 No. 2:16-cv-03403 (E.D. Mich.) (“Action”) on their own behalf and on behalf of the Settlement Class against, among others, NRC and its affiliated companies, Nishikawa of America, Inc. (“NOA”) and Nishikawa Cooper, LLC (“NISCO”) (NRC, NOA and NISCO together are referred to as the “Nishikawa Defendants”);

WHEREAS, End-Payor Plaintiffs allege that they were injured as a result of the Nishikawa Defendants’ participation in an unlawful conspiracy to raise, fix, maintain, and/or

stabilize prices, rig bids, and allocate markets and customers for Body Sealings (as defined in Paragraph 8) 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 Amended Class Action Complaint, No. 2:16-cv-03403 (Aug. 12, 2016) (ECF No. 19) (“Complaint”).

WHEREAS, the Nishikawa Defendants have denied End-Payor Plaintiffs’ allegations and have asserted defenses to End-Payor Plaintiffs’ claims in the Action;

WHEREAS, arm’s-length settlement negotiations have taken place between Settlement Class Counsel (as defined below) and counsel for NRC, with the participation and facilitation of the Settlement Master, and this Agreement has been reached as a result of those negotiations;

WHEREAS, these arm’s-length settlement negotiations included the submission of a mediator’s proposal by Judge Weinstein, which has been duly considered and accepted by Settlement Class Counsel and by NRC, and the terms of Judge Weinstein’s mediator’s proposal are reflected in this Agreement;

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

WHEREAS, NRC, 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 the Nishikawa Defendants with respect to Body Sealings based on the allegations in the Action, as more particularly set out below;

WHEREAS, the Nishikawa Defendants provided information to show significant financial conditions on its ability to pay settlement consideration. These financial conditions and the fact that NRC remains under financial pressure were a material part of End-Payor Plaintiffs' analysis and conclusion regarding an appropriate settlement; and

WHEREAS, End-Payor Plaintiffs recognize the benefits of NRC's Cooperation and recognize that because of joint and several liability, this Agreement with NRC does not impair End-Payor Plaintiffs' ability to collect the full amount of the damages to which they and the Settlement Class (as defined below) may be entitled in the Action from non-Releasees, including damages attributable to the Nishikawa Defendants' alleged conduct.

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

E. Definitions.

1. "Automobile Dealership Plaintiffs" means the named plaintiffs in *In re Body Sealing Products*, No. 2:16-cv-03402-MOB-MKM (E.D. Mich.).

2. “End-Payor Plaintiff Class Representatives” means those Settlement Class Members, as defined in Paragraph 16, below, who are named plaintiffs in the Complaint.

3. “Cooperation” shall refer to those provisions set forth below in Paragraphs 36-47.

4. “Cooperation Materials” means any information (including information from attorney proffers and witness interviews), testimony, Documents (as defined below) or other material provided by NRC under the terms of this Agreement.

5. “Defendant” means any party named as a defendant in the Action at any time up to and including the date when the Court has entered a final order certifying the Settlement Class described in Paragraph 14 and approving this Agreement under Federal Rule of Civil Procedure (“Rule”) 23(e).

6. “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.

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

8. “Body Sealings” shall have the meaning set forth in Paragraph 2 of the Complaint.

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

10. “Protective Order” means the Stipulation and Protective Order Governing the Production and Exchange of Confidential Information, entered in *In re Wire Harnesses*, Master File No. 2:12-md-2311 (E.D. Mich. July 10, 2012) (ECF No. 200).

11. “Released Claims” means the Claims described in Paragraphs 25-26.

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

13. “Releasers” shall refer to End-Payor Plaintiffs Class Representatives and the Settlement Class Members, as defined in Paragraphs 2 and 16, respectively, and to their past and present direct and indirect parents, subsidiary companies and affiliates, including their respective predecessors, successors and assigns and each and all of the present and former principals, partners, officers, directors, supervisors, employees, agents, stockholders, members, attorneys, servants, representatives, parents, subsidiaries, affiliates, principals, partners, insurers, heirs, executors, administrators, assigns 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 “Settlement Class” is defined as:

All persons and entities that, from January 1, 2000 through the Execution Date, purchased or leased a new Vehicle in the United States not for resale, which included one or more Body Sealing(s) as a component part, or indirectly purchased one or more Body

Sealing(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 Body Sealings directly or for resale.

15. “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

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

17. “Settlement Amount” shall be \$37,620,000, to be paid in installments as set forth in Paragraph 27, and the “Settlement Fund” shall be the Settlement Amount plus any income or accrued interest earned on that amount as set forth in Paragraph 28.

18. “Vehicles” shall refer to four-wheeled passenger automobiles, vans, sports utility vehicles, crossovers or pick-up trucks.

F. Approval of this Agreement and Dismissal of Claims Against the Nishikawa Defendants.

19. End-Payor Plaintiffs and NRC shall use their reasonable 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 Action as to the Releasees only. NRC shall also use its best efforts to secure the cooperation of the other Nishikawa Defendants in effectuating 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 Action as to the Releasees only.

20. Within thirty (30) days after the execution of this Agreement, End-Payor Plaintiffs shall submit to the Court a motion seeking preliminary approval of this Agreement ("Preliminary Approval Motion"). The Preliminary Approval Motion shall include (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 22 below. NRC shall have reasonable notice of and opportunity to review and comment on the Preliminary Approval Motion, and End-Payor Plaintiffs shall reasonably consider NRC's comments.

21. End-Payor Plaintiffs, at a time to be decided in their sole discretion, but after reasonable prior notice to NRC pursuant to this Paragraph, 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"). End-Payor Plaintiffs will submit a draft of the Notice Motion to counsel for NRC at least forty-eight hours in advance of their submission of the Notice Motion to the Court. 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. The Notice Motion shall include a proposed form of, method for, and date of dissemination of notice.

22. End-Payor Plaintiffs shall seek, and NRC will not object unreasonably to, the entry of an order and final judgment in the Action, the text of which End-Payor Plaintiffs and NRC 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 Class described in Paragraph 14, pursuant to Rule 23, solely for purposes of this settlement as Settlement Class for the Action;

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

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

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

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

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

(g) providing that (i) the Court's certification of the Settlement Class is without prejudice to, or waiver of, the rights of any Defendant, including the Nishikawa Defendants, 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 Class as persuasive or binding authority with respect to any motion to certify any such class or any Defendant's motion.

23. This Agreement shall become final when (i) the Court has entered a final order certifying the Settlement Class described in Paragraph 14 and approving this Agreement under Rule 23(e) and has entered a final judgment dismissing the Action with prejudice as to the Nishikawa Defendants 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 the Nishikawa Defendants described in (i) above has expired or, if appealed, approval of this Agreement and the final judgment in the Action as to the Nishikawa Defendants have been affirmed in their entirety by the Court of last resort to which such appeal has been taken, and such affirmance has become no longer subject to further appeal or review, and no other motion or pleading affecting this Agreement or the final judgment entered with respect to the Nishikawa Defendants 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 NRC have executed this Agreement, End-Payor Plaintiffs and NRC shall be bound by its terms and this Agreement shall not be rescinded except in accordance with Paragraphs 28(h) or 48 of this Agreement.

24. 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 Paragraphs 36-47), shall be deemed or construed to be an admission by NRC or the other Releasees, or evidence of any violation of any statute or law or of any liability or wrongdoing whatsoever by NRC or the other Releasees, or of the truth of any of the claims or allegations contained in the Complaint or in any other 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 NRC or the other Releasees. Nothing in this Paragraph shall prevent End-Payor Plaintiffs from using and/or introducing into evidence Cooperation Materials produced pursuant to Paragraphs 36-47, subject to the limitations in those Paragraphs, against any other defendants in the MDL Litigation or in confidential settlement discussions, 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 NRC or the other Releasees, 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.

25. 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 23 of this Agreement, and in consideration of payment of the Settlement Amount by NRC, as specified in Paragraph 27 of this Agreement, into the Settlement Fund; in consideration of the Cooperation obligations undertaken by NRC as specified in Paragraphs 36-F.47; in consideration of NRC's agreement to use its best efforts to secure the provision of Cooperation by the other Nishikawa Defendants; and in consideration of the Conduct Relief set forth in Paragraph 29; and for other valuable consideration; the Releasees shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits and causes of action, whether class, individual, or otherwise in nature (whether or not any Settlement Class Member has objected to the settlement or makes a claim upon or participates in the Settlement Fund, whether directly, representatively,

derivatively or in any other capacity) 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 Complaint, and/or (ii) any act or omission of the Releasees (or any of them) concerning Body Sealings, 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 Action (“Released Claims”), provided however, that nothing herein shall release: (1) any claims made by direct purchasers of Body Sealings arising from those direct purchases (as opposed to separate claims arising from indirect purchases, which are released pursuant to this Agreement); (2) any claims made by automotive dealerships that are indirect purchasers of Body Sealings for resale and/or of new Body Sealings in vehicles purchased for resale arising from those indirect purchases for resale (as opposed to separate claims arising from indirect purchases not for resale, which are released pursuant to this Agreement); (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 Body Sealings; (5) claims concerning any automotive part other than Body Sealings; (6) claims under laws other than those of the United States relating to purchases of Body Sealings made by any Releaser outside of the United States; and (7) claims for damages under the state or local laws of any jurisdiction other than an Indirect Purchaser State. Releasers 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, rescinded, not finally approved or terminated.

26. In addition to the provisions of Paragraph 25 of this Agreement, Releasors hereby expressly waive and release, upon this Agreement becoming final, as set out in Paragraph 23 of this Agreement, any and all provisions, rights, and benefits, as to their claims concerning Body Sealings 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 25 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 End-Payor Plaintiffs have agreed to release pursuant to Paragraph 25, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

D. Settlement Amount.

27. Subject to the provisions hereof, and in full, complete and final settlement of the Action as provided herein, NRC, as its own obligation, shall pay or cause to be paid the Settlement Amount of U.S. \$37,620,000.00 in two (2) installment payments (each a “Settlement Installment Payment”). Each Settlement Installment Payment shall be paid in U.S. dollars into an escrow

account to be administered in accordance with the provisions of Paragraph 28 of this Agreement (“Escrow Account”). Neither NOA nor NISCO shall have any obligation to pay, or to contribute to the payment of, the Settlement Amount.

(a) The first Settlement Installment Payment of \$18,810,000 shall be paid within thirty (30) days following the entry of an order preliminarily approving this Agreement.

(b) The second Settlement Installment Payment of \$18,810,000 shall be paid by April 30, 2018.

28. Escrow Account.

(a) The Escrow Account 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 NRC, such escrow to be administered by the Escrow Agent under the Court’s continuing supervision and control. The Settlement Class Counsel shall indemnify and hold NRC and the Releasees harmless for Taxes and Tax Expenses (including taxes payable by reason of such indemnification).

(b) The Escrow Agent shall cause the funds deposited in the Escrow Account 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. NRC and the other Releasees shall bear no risk related to the management and investment of the Settlement Fund.

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

(d) End-Payor Plaintiffs and NRC agree to treat the Settlement Fund as being at all times a “Qualified Settlement Fund” within the meaning of Treas. Reg. § 1.468B-1. In addition, Settlement Class Counsel shall timely make such elections as necessary or advisable to carry out the provisions of this Paragraph 28, 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 28(d) above) shall be consistent with Paragraph 28(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 28(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 NRC 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) reasonable expenses and costs incurred in connection with the operation and implementation of Paragraphs 28(d) through 28(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 28(e)) (“Tax Expenses”), shall be paid out of the Settlement Fund.

(g) Neither NRC nor any other Releasee nor their respective counsel shall have any liability or responsibility for the Taxes or the Tax Expenses or for the filing of any tax returns or other Documents with the Internal Revenue Service or any other taxation authority in any jurisdiction with respect to the Settlement Fund. 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)). NRC and the other Releasees shall not be responsible or have any liability therefor and shall have no responsibility for any reporting requirements that may relate thereto. End-Payor Plaintiffs and

NRC 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 28(d) through 28(f).

(h) If this Agreement does not receive final Court approval, including final approval of the Settlement Class as defined in Paragraph 14, or if the Action is not certified as class action for settlement purposes, or if this Agreement is rescinded or terminated, then all amounts paid by NRC into the Settlement Fund (other than costs expended or incurred in accordance with Paragraphs 28 and 31), shall be returned to NRC from the Escrow Account 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 Class.

29. Conduct Relief.

Subject to the provisions hereof, and in full, complete, and final settlement of the Action as provided herein, NRC 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 Body Sealings for a period of twenty-four (24) months from the date of the entry of final judgment (the "Conduct Relief").

30. Exclusions from the Settlement Class.

Subject to Court approval, any person or entity seeking exclusion from the Settlement Class must file a written request for exclusion by the Opt Out Deadline, which shall be the date set by the Court by which any class member must request exclusion from the Settlement Class. Any person or entity that files such a request shall be excluded from the Settlement Class and shall have no rights with respect to this settlement. Subject to Court approval, a request for exclusion that does not comply with all of the provisions set forth in the applicable

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

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

(b) Subject to Court Approval, in the written request for exclusion, the member of the Settlement Class must state his, her, or its full name, street address, and telephone number. Further, the member of the Settlement Class must include a statement in the written request for exclusion that he, she, or it wishes to be excluded from the settlement. Any member of the Settlement Class that submits a written request for exclusion may also identify the number of Vehicles purchased from January 1, 2000 through the Execution Date of this Agreement as requested in the notice to the Settlement Class as provided in Paragraph 21.

(c) NRC 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.

31. Payment of Expenses.

(a) NRC agrees to permit a reasonable portion of the Settlement Fund to be used towards notice to the Settlement Class and the costs of administration of the Settlement Fund. The reasonable notice and administration expenses, including Tax Expenses as defined in Paragraph 28(f)(ii), paid from the Settlement Fund shall not exceed \$1,000,000. The notice and administration expenses 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 amounts in the Settlement Fund to NRC if this Agreement does not become final, is rescinded or is terminated. Other than as set forth in Paragraphs 28, 31 and 34, no Releasee shall be liable for any of the costs or expenses of the litigation of the Action, including attorneys' fees, fees and expenses of expert witnesses and consultants, and costs and expenses associated with discovery, motion practice, hearings before the Court or Special Master, appeals, trials, or the negotiation of other settlements, or for class administration and costs.

(b) To mitigate the costs of notice and administration, End-Payor Plaintiffs shall use their reasonable 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 Fund.

32. The Settlement Fund is Releasers' sole monetary recourse for settlement and satisfaction of all Released Claims against the Releasees, and Releasers shall have no monetary recovery against any Releasee other than the Settlement Fund.

33. After this Agreement becomes final within the meaning of Paragraph 23, the Settlement Fund shall be distributed in accordance with a plan to be submitted to the Court at the

appropriate time by Settlement Class Counsel, subject to approval by the Court. In no event shall any Releasee have any responsibility, financial obligation, or liability whatsoever with respect to the investment, distribution, or administration of the Settlement Fund, including, but not limited to, the costs and expenses of such distribution and administration except as expressly otherwise provided in Paragraph 31 of this Agreement.

34. 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. NRC and the other Releasees shall not be liable for any costs, fees, or expenses of any of End-Payor Plaintiffs or the Settlement Class' 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.

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

(a) After preliminary approval of this Settlement, 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 Fund; plus (ii) reimbursement of expenses and costs incurred in connection with prosecuting the Action and incentive awards, plus interest on such attorneys' fees, costs, and expenses at the same rate and for the same period as earned by the Settlement Fund (until paid), as may be awarded by the Court ("Fee and Expense Award"). Settlement Class Counsel reserves the right to make additional applications for Court approval of fees and expenses incurred and reasonable incentive awards, but in no event shall NRC 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 28(h) or Paragraph 48.

(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 NRC nor any other Releasee under this Agreement shall have any responsibility for, or interest in, or liability whatsoever with respect to any payment to Settlement Class Counsel and/or End-Payor Plaintiffs of any Fee and Expense Award in the Action.

(e) Neither NRC 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 Action.

F. Cooperation.

36. In return for the release and discharge provided herein, NRC agrees: (i) to pay the Settlement Amount and be bound by the Conduct Relief described in Paragraph 29, (ii) to use its reasonable best efforts to provide satisfactory and timely Cooperation, as set forth specifically in Paragraphs 36-47 below, and (iii) to use its best efforts to secure satisfactory and timely provision of Cooperation by the other Nishikawa Defendants.

(a) For the avoidance of doubt, the parties affirm that the only parties to this Agreement are NRC and the End-Payor Plaintiffs. The parties' use of the term "the Nishikawa Defendants" in Paragraphs 36-47 does not indicate that any of the Nishikawa Defendants other than NRC is assuming obligations under this Agreement. The parties agree, however, that any other Nishikawa Defendant that chooses to provide Cooperation will be entitled to the same rights and protections that are granted to NRC in Paragraphs 36-47.

(b) Cooperation will take place consistent with the timing set forth specifically below, and in a manner that is in compliance with NRC's obligations to Government Entities (defined to include the United States Department of Justice ("DOJ"), the Canadian Competition Bureau, and any other government entity that regulates competition or enforces competition law). NRC will not take any steps to cooperate with End-Payor Plaintiffs that conflict with its obligations to the DOJ pursuant to NRC's Plea Agreement. If the DOJ objects in writing to NRC's performance of any Cooperation obligation (in whole or in part) under this Agreement, then the parties agree that NRC shall not be required to perform the specific obligation (or part of an obligation) as to which the DOJ has objected until the DOJ's objection has been resolved. The

pendency of a DOJ objection shall not relieve NRC of the duty to perform any and all obligations (or parts of obligations) as to which the DOJ has not objected.

(c) NRC also shall not be required to provide Documents or information protected by the attorney-client privilege, the attorney work product doctrine, any applicable privilege under foreign law, or whose disclosure is prohibited by relevant Government Entities or by the law of relevant foreign jurisdictions, or prohibited by court order, in providing Cooperation under this Agreement. Upon reasonable request, for all Documents withheld from production, NRC shall provide a privilege log describing such Documents in sufficient detail as to explain the nature of the privilege asserted or the basis of any other law or rule protecting such Documents, except that nothing in this subparagraph (b) shall require NRC or any other Nishikawa Defendant to disclose information which is legally prohibited from being disclosed.

(d) All Documents produced pursuant to this Agreement, all attorney proffers and all witness interviews shall be designated and treated as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in accordance with the Protective Order.

(e) End-Payor Plaintiffs and Settlement Class Counsel shall use reasonable best efforts to coordinate all Cooperation with Automobile Dealership Plaintiffs in such a manner so that all unnecessary duplication and expense is avoided. Any attorney proffers, witness interviews, or depositions provided pursuant to Cooperation provisions shall be coordinated with, and occur at the same time as, the attorney proffers, witness interviews, and depositions to be provided by NRC to the Automobile Dealership Plaintiffs and, if agreed upon by the parties hereto, any other party with whom NRC reaches a separate settlement agreement related to claims of a subject matter similar to those raised in the Action. End-Payor Plaintiffs and Settlement Class Counsel may share information obtained from attorney proffers with Automobile Dealership

Plaintiffs (and their counsel) and with the Attorneys General of Florida and California. End-Payor Plaintiffs and Settlement Class Counsel will not attribute any factual information obtained from Attorney Proffers to NRC, any other Releasee, or their counsel. Notwithstanding anything herein, Settlement Class Counsel may use information contained in such statements in the prosecution of the Action, and rely on such information to certify that, to the best of Settlement Class Counsel's knowledge, information and belief, such information has evidentiary support or will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.

(f) Settlement Class Counsel and NRC shall work together in good faith to schedule witness interviews, depositions and trial testimony. In scheduling interviews and depositions, Settlement Class Counsel shall provide written notice offering no fewer than three (3) proposed dates, each of which dates shall be a regular business day in the U.S. and in Japan, and each of which shall be no fewer than thirty (30) days after the date on which notice is provided. In scheduling trial testimony, Settlement Class Counsel shall identify to NRC each present or former NRC employee whom Settlement Class Counsel may call as a witness and provide the anticipated date(s) on which he or she will be called to testify no fewer than thirty (30) days before the final pretrial conference.

37. Identity of Individuals. Within ten (10) business days of the Execution Date of this Agreement, Counsel for NRC shall provide Settlement Class Counsel with the identity of all current and former employees, directors and officers of the Nishikawa Defendants who: (1) were interviewed and/or prosecuted by any Government Entity in connection with alleged price-fixing, bid rigging and market allocation of Body Sealings; (2) appeared before the grand jury in the DOJ's investigation into alleged antitrust violations with respect to Body Sealings; 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 Body Sealings.

38. Transactional Data. NRC will use its reasonable best efforts to begin a rolling production of transactional data within thirty (30) days of the Execution Date, concerning the Nishikawa Defendants' sales of Body Sealings for use in Vehicles sold in the U.S. to Original Equipment Manufacturers, or other purchasers of Body Sealings from January 1, 1998 through the Execution Date. NRC shall use its reasonable best efforts to complete its rolling production of this pre-existing and reasonably accessible transactional data within one hundred twenty (120) days of the Execution Date, and the End-Payor Plaintiffs will consider in good faith requests for reasonable extensions of this deadline. In addition, NRC will provide, in response to a written request from Settlement Class Counsel, a single production of electronic transactional data concerning the Nishikawa Defendants' sales of Body Sealings for use in Vehicles sold in the U.S. generated during the two years after the Execution Date of this Agreement concerning Body Sealings, as it exists in NRC's electronic databases at the time of the request, within sixty (60) days of the receipt of such request. NRC shall arrange for the preservation of such transactional data until two (2) years after the Execution Date of this Agreement. NRC will produce transaction data only from existing and reasonably-accessible electronic transaction databases, except that, to the extent that NRC has not recorded or maintained electronic transaction data for any period between January 1, 1998 and two (2) years from the Execution Date of this Agreement, then NRC 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.

39. In addition, after conducting a reasonable search, NRC shall, to the best of its knowledge, identify those Vehicles sold in the United States from January 1, 2000 through the

Execution Date of this Agreement that contain Body Sealings sold by the Nishikawa Defendants. NRC further agrees to generate a version of this list that that Settlement Class Counsel can use as a basis for posting a publicly-available list of vehicles on a website used to provide notice and information to potential members of the Settlement Class.

40. *Documents*. At the request of End-Payor Plaintiffs and subject to a meet and confer with NRC regarding the details and timing of the completion of production, NRC will use its reasonable best efforts to begin a rolling production of the following Documents, including any existing English translations, to the extent they are located following a reasonable search of the set of Documents that the Nishikawa Defendants have collected as of the date of this Agreement and Documents in other reasonably accessible locations, within sixty (60) days after receiving a written request from Settlement Class Counsel: (1) Documents provided in response to requests by Government Entities or seized by Government Entities relating to their investigation into alleged competition violations with respect to Body Sealings; (2) non-privileged Documents that evidence a communication, meeting, or agreement regarding Body Sealings, by any employee, officer or director of the Nishikawa Defendants with any employee, officer, or director of another manufacturer or seller of Body Sealings, but that were not provided to or seized by Government Entities, if any; (3) Documents sufficient to identify the Nishikawa Defendants' general methodology for pricing and bidding for Body Sealings relating to vehicle models to be sold in the U.S.; (4) Documents soliciting requests for quotation relating to models to be sold in the U.S. ("U.S. RFQs"), bids submitted in response to U.S. RFQs, U.S. RFQ award notifications, and post-award price adjustments for Body Sealings that relate to U.S. RFQs, including any Annual Price Reduction ("APR") Documents; and (5) Documents or non-public information regarding collusion with respect to any other automotive part that is the subject of the MDL Litigation. NRC shall use

its reasonable best efforts to complete this rolling production within one hundred eighty (180) days of the written request from Settlement Class Counsel. As to Documents in NRC's possession, custody, or control that are not listed above, NRC will consider in good faith any reasonable written request by End-Payor Plaintiffs to collect and produce such Documents provided the request would not impose an undue burden on NRC.

41. Attorney Proffers and Witness Interviews. Additionally, NRC shall use its reasonable best efforts to cooperate with Settlement Class Counsel as set forth in Paragraphs 36-47.

(a) NRC's counsel will make themselves available at a mutually agreed location in the United States for up to four (4) meetings of up to one business day each to provide an attorneys' proffer of facts known to them regarding the allegations in the Complaint. Thereafter, NRC's counsel will make themselves available by telephone for reasonable follow-up conversations in connection with the attorney's proffers and will use reasonable best efforts to respond to questions posed by Settlement Class Counsel. The parties agree that any such proffers and follow-up discussions shall be treated as settlement communications under Federal Rule of Evidence 408 and *Goodyear Tire & Rubber Co. v. Chiles Power Supply, Inc.*, 332 F.3d 976 (6th Cir. 2003) and, as such, shall not be offered into evidence or used in any other way against NRC or any other Releasee if this Agreement is rescinded or terminated. NRC further agrees to use its reasonable best efforts to make seven (7) persons whom Settlement Class Counsel and counsel for the Automobile Dealership Plaintiffs jointly select available for (i) one interview each; (ii) one deposition each; (iii) the execution of not more than seven (7) declarations or affidavits collectively; and (iv) testimony in any trial or re-trial of the Action. Settlement Class Counsel agree to consider in good faith any proposal that any interview or deposition be conducted by

videoconference or other remote means; Settlement Class Counsel shall have the last word on whether any interview should be conducted in person. Absent agreement by the parties, however, the interviews and depositions shall be conducted at a mutually agreed-upon location in the United States. Each interview shall be limited to one (1) day, unless the interview is in a language other than English, in which case each interview shall be limited to two (2) days. Each deposition shall be limited to a total of seven (7) hours over one (1) day unless a deposition is in a language other than English, in which case the deposition shall be limited to a total of thirteen (13) hours over two (2) days. If the interview, deposition, or trial takes place outside the country of the witness's residence, Settlement Class Counsel and settlement class counsel for Automobile Dealership Plaintiffs shall together reimburse half the reasonable travel costs incurred by such persons for time or services rendered. Such travel expenses may include economy airfare, meals, lodging and ground transportation, but not airfare for business or first class seats. Reimbursable expenses shall not exceed \$1,500 per deponent or trial witness. If the interview and the above-described deposition occur during the same trip, the above-limitations will apply to that trip. At the Nishikawa Defendants' expense, U.S. and/or Japanese counsel for the Nishikawa Defendants may attend and participate in any interview or deposition of a Nishikawa Defendant witness provided under this Paragraph. The parties agree that any Cooperation provided by any Nishikawa Defendant under this Paragraph shall be considered as the Cooperation of NRC for the purpose of determining how many proffers, witnesses, interviews, depositions and affidavits the End Payor Plaintiffs have received.

(b) In addition to its other Cooperation obligations set forth herein, at the written request of Settlement Class Counsel, NRC agrees to use its reasonable best efforts 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 by any of the Nishikawa Defendants or to be produced by NRC. Settlement Class Counsel agrees to use their reasonable best efforts to obtain stipulations that would avoid the need to call the NRC witnesses at trial for the purpose of obtaining such evidentiary foundations.

42. In the event that NRC produces Documents, including translations, or provides declarations or written responses to discovery to any party or nonparty in the MDL Litigation, concerning or relating to the Action (“Relevant Production”), NRC shall produce all such Documents, declarations or written discovery responses to End-Payor Plaintiffs contemporaneously with making the Relevant Production. In addition, NRC shall provide End-Payor Plaintiffs with all cooperation it provides pursuant to any settlement agreement with any other party in the MDL Litigation relating to the Action, 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 Paragraph 41, 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 interview or deposition). All such additional Cooperation shall be coordinated, to the extent reasonably practicable, between Settlement Class Counsel, settlement class counsel for Automobile Dealership Plaintiffs, and settlement class counsel for the Direct Purchaser Plaintiffs, or such other party to whom such cooperation is provided pursuant to a settlement agreement. End-Payor Plaintiffs’ receipt of, or participation in, cooperation provided by NRC 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.

43. This Agreement does not restrict Settlement Class Counsel from noticing, attending and/or participating in any deposition in the MDL Litigation. Settlement Class Counsel may notice, attend, cross-notice and/or participate in any depositions of the Nishikawa Defendants' witnesses in addition to the depositions set forth in Paragraph 41, and Settlement Class Counsel together with settlement class counsel for the 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 Nishikawa Defendant's 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 41 above. End-Payor Plaintiffs and Settlement Class Counsel agree to use their reasonable best efforts to ensure that any depositions taken under Paragraph 41 above are coordinated with any other deposition noticed in the MDL Litigation to avoid unnecessary duplication.

44. Neither NRC's obligations to provide Cooperation nor its obligation to use its best efforts to secure satisfactory and timely provision of Cooperation by the other Nishikawa Defendants shall be affected by the releases set forth in this Settlement Agreement. Unless this Agreement is rescinded, disapproved, terminated, or otherwise fails to take effect, NRC's obligations to provide Cooperation under this Agreement and to use its best efforts to secure satisfactory and timely provision of Cooperation by the other Nishikawa Defendants shall continue

only until otherwise ordered by the Court, or until the date that final judgment has been entered in *In re Body Sealing Products*, No. 16-cv-03403 with respect to all claims against all Defendants in the Action. For purposes of this Paragraph, the term “final” shall have the same meaning as set forth in Paragraph 23.

45. In the event that this Agreement fails to receive final approval by the Court, including final approval of the Settlement Class as defined in Paragraph 14, or in the event that it is rescinded or 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 NRC or any other Releasee, at any hearing or trial, or in support of any motion, opposition or other pleading in the Action or in any other federal or state or foreign action alleging a violation of any law relating to the subject matter of the Action or to use for impeachment purposes or to refresh recollection, (i) any Documents provided by NRC and/or the other Releasees, their counsel, or any individual made available by NRC pursuant to Cooperation (as opposed to from any other source or pursuant to a court order), (ii) any recording, transcript or notes of any interview of any individual made available by NRC pursuant to Cooperation under this Agreement or any other settlement agreement entered into by any of the Nishikawa Defendants in the MDL Litigation or (iii) any notes of any attorney proffer made by counsel for NRC pursuant to Cooperation under this Agreement or any other settlement agreement entered into by any of the Nishikawa Defendants in the MDL Litigation. This limitation shall not apply to any discovery of the Nishikawa Defendants or the other Releasees which Settlement Class Counsel participate in as part of the MDL Litigation. End-Payor Plaintiffs and Settlement Class Counsel further agree that, within sixty (60) days after the rescission or termination of this Agreement, or after any final order of the Court rejecting approval of the Settlement Class, End-Payor Plaintiffs and Settlement Class Counsel

must destroy all Cooperation Materials received from the Releasees and certify to the Nishikawa Defendants in writing that they have complied with this obligation. Notwithstanding anything contained herein, End-Payor Plaintiffs and the Settlement Class are not relinquishing any rights to pursue discovery against NRC or any other Releasee in the event that this Agreement fails to receive final approval by the Court, including final approval of the Settlement Class as defined in Paragraph 23, or in the event that it is terminated by either party under any provision herein.

46. NRC and the 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 Paragraphs 36-47. Other than to enforce the terms of this Agreement, neither NRC nor End-Payor Plaintiffs shall file motions against the other, in the Action, during the pendency of this Agreement. NRC shall use its best efforts to secure the cooperation of the other Nishikawa Defendants in not filing motions against the End-Payor Plaintiffs, in the Action, during the pendency of this Agreement.

47. If Settlement Class Counsel believes that NRC or any current or former employee, officer or director of NRC 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 NRC'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. No Nishikawa Defendant witness shall be compelled to give substantive testimony in violation of his or her right against self-incrimination, nor shall the invocation of such right by a witness be deemed to constitute a failure to provide Cooperation.

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

48. If the Court refuses to approve this Agreement or any part hereof, including if the Court does not certify the Settlement Class 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 judgment provided for in Paragraph 23 of this Agreement, or if the Court enters the final judgment and appellate review is sought, and on such review, such final judgment is not affirmed in its entirety, then NRC 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 60. A modification or reversal on appeal of any amount of Settlement Class Counsel's fees and expenses awarded by the Court from the Settlement Fund shall not be deemed a modification of all or a part of the terms of this Agreement or such final judgment.

49. In the event that this Agreement does not become final as set forth in Paragraph 23, or this Agreement otherwise is rescinded or is terminated pursuant to Paragraph 48, then (i) this Agreement shall be of no force or effect, (ii) any and all parts of the Settlement Fund caused to be deposited in the Escrow Account (including interest earned thereon) shall be returned forthwith to NRC less only disbursements made in accordance with Paragraphs 28 and 31 of this Agreement, and (iii) Settlement Class Counsel shall reimburse NRC for any tax refunds relating to the Settlement Fund or the Settlement Amount less any Tax Expenses incurred by the Settlement Fund to the extent such Tax Expenses had not already been paid out of the Settlement Fund as of the time the Settlement Fund was returned to NRC pursuant to subparagraph 49(ii) above. NRC and the other Releasees expressly reserve all rights and defenses if this Agreement does not become final or is rescinded or terminated.

50. Further, and in any event, End-Payor Plaintiffs and NRC agree that this Agreement, whether or not it shall become final, and any and all negotiations, Documents, and discussions associated with it, shall not be deemed or construed to be an admission or evidence of (i) any

violation of any statute or law or of any liability or wrongdoing whatsoever by NRC or the other Releasees, to be used against NRC or the other Releasees, or of (ii) the truth of any of the claims or allegations contained in the Complaint or any other pleading filed in the MDL Litigation, to be used against NRC or the other Releasees, 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 NRC or the other Releasees. Nothing in this Paragraph shall prevent End-Payor Plaintiffs from using Cooperation Materials produced by NRC against any other defendants in any action in the MDL Litigation or in confidential settlement discussions to establish (i) or (ii) above.

51. 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.

52. The parties to this Agreement contemplate and agree that, prior to final approval of the settlement as provided for in Paragraphs 19-23 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 Class.

H. Miscellaneous.

53. NRC 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.

54. This Agreement does not settle or compromise any claim by End-Payor Plaintiffs or any Settlement Class Member asserted in the Complaint or, if amended, any subsequent complaint, against any Defendant or alleged co-conspirator other than NRC and the other Releasees. All rights against such other Defendants or alleged co-conspirators are specifically reserved by End-Payor Plaintiffs and the Settlement Class. All rights of any Settlement Class Member against any and all former, current, or future Defendants or co-conspirators or any other

person other than NRC and the other Releasees, for sales made by NRC or the other Releasees and the alleged conduct of NRC and the other Releasees are specifically reserved by End-Payor Plaintiffs and Settlement Class Members. The Nishikawa Defendants' sales to the Settlement Class and their alleged conduct shall, to the extent permitted or authorized by law, remain in the Action 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 Action or other persons or entities other than NRC and the other Releasees. NRC and the other Releasees shall not be responsible for any payment to End-Payor Plaintiffs other than the amount that NRC has specifically agreed to pay in Paragraph 27 of this Agreement.

55. 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 NRC, including challenges to the reasonableness of any party's actions or omissions under this Agreement. 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. NRC will not object to complying with any of the provisions outlined in this Agreement on the basis of lack of jurisdiction.

56. This Agreement constitutes the entire, complete and integrated agreement among End-Payor Plaintiffs and NRC pertaining to the settlement of the Action against the Nishikawa Defendants, and supersedes all prior and contemporaneous undertakings, communications, representations, understandings, negotiations and discussions, either oral or written, between End-

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

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

58. This Agreement may be executed in counterparts by End-Payor Plaintiffs and NRC, through their counsel of record in the Action, and a facsimile signature or an electronic scan of an ink signature shall be deemed an original signature for purposes of executing this Agreement.

59. Neither End-Payor Plaintiffs nor NRC 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.

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

61. 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: November 15, 2017

*Steven Williams / ETC*

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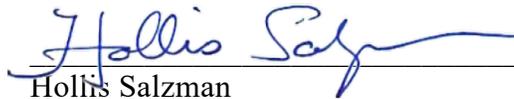
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