

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

IN RE: AUTOMOTIVE PARTS
ANTITRUST LITIGATION

:
: Master File No. 12-md-02311
: Hon. Marianne O. Battani
:

IN RE: RADIATORS

: 2:13-cv-01003-MOB-MKM

IN RE: ATF WARMERS

: 2:13-cv-10803-MOB-MKM

: 2:13-cv-02403-MOB

: 2:13-cv-14225-MOB-MKM

THIS DOCUMENT RELATES TO:

ALL END-PAYOR ACTIONS

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**END-PAYOR PLAINTIFFS' NOTICE OF MOTION FOR PRELIMINARY
APPROVAL OF PROPOSED SETTLEMENT WITH T.RAD AND
PROVISIONAL CERTIFICATION OF SETTLEMENT CLASS**

Pursuant to Federal Rule of Civil Procedure 23(c) and (e), End-Payor Plaintiffs hereby move the Court for an Order to:

(1) Preliminarily approve the proposed settlement of the above-captioned litigations with Defendants T.RAD Co., Ltd. and T.RAD North America, Inc., (together, "T.RAD");

(2) Provisionally approve the proposed Settlement Classes;

(3) Stay the proceedings against T.RAD in accordance with the terms of the Settlement Agreement;

(4) Authorize End-Payor Plaintiffs to provide notice of the Settlement Agreement to members of the Settlement Classes at a later date in a form and manner to be approved in advance by this Court; and

(5) Appoint Interim Co-Lead Class Counsel for End-Payor Plaintiffs as Settlement Class Counsel for purposes of this settlement.

In support of this Motion, End-Payor Plaintiffs rely upon and incorporate by reference herein the facts and legal arguments set forth in the accompanying Memorandum of Law.

T.RAD consents to this motion and to the entry of the proposed order.

Date: August 24, 2015

/s/ E. Powell Miller

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CERTIFICATE OF SERVICE

I, Omar Ochoa, hereby certify that I caused a true and correct copy of **END-PAYOR PLAINTIFFS' NOTICE OF MOTION FOR PRELIMINARY APPROVAL OF PROPOSED SETTLEMENT WITH T.RAD AND PROVISIONAL CERTIFICATION OF SETTLEMENT CLASS** to be served via e-mail upon all registered counsel of record via the Court's CM/ECF system on August 24, 2015.

/s/ Omar Ochoa
Omar Ochoa

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**MEMORANDUM OF LAW IN SUPPORT OF
END-PAYOR PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF
PROPOSED SETTLEMENT WITH T.RAD AND
PROVISIONAL CERTIFICATION OF SETTLEMENT CLASSES**

STATEMENT OF ISSUES PRESENTED

1. Whether End-Payor Plaintiffs' ("EPPs'") settlement with Defendants T.RAD Co., Ltd. and T.RAD North America, Inc. (together, "T.RAD"), embodied in the Settlement Agreement entered into on August 12, 2015 ("Settlement Agreement") and attached hereto as Exhibit A, is fair, reasonable, and adequate and should be preliminarily approved;
2. Whether the Court should provisionally certify the Settlement Classes under Federal Rule of Civil Procedure ("Rule") 23(a) and (b)(3);
3. Whether the Court should stay the proceedings by EPPs against T.RAD in accordance with the terms of the Settlement Agreement;
4. Whether the Court should authorize EPPs to provide notice of the Settlement Agreement to Settlement Class Members (as defined in the Settlement Agreement)¹ at a later date in a form and manner to be approved in advance by this Court; and
5. Whether the Court should appoint Interim Co-Lead Class Counsel for EPPs as Settlement Class Counsel for this settlement.

¹ Unless otherwise defined, capitalized terms shall have the meaning ascribed to them in the Settlement Agreement.

CONTROLLING OR MOST APPROPRIATE AUTHORITIES

Fed. R. Civ. P. 23

Amchem Prods., Inc. v. Windsor, 521 U.S. 591 (1997)

Amgen Inc. v. Conn. Ret. Plans & Trust Funds, 133 S. Ct. 1184 (2013)

Cason-Merenda v. VHS of Mich., Inc., 2013 U.S. Dist. LEXIS 131006, at *20-21 (E.D. Mich. Sept. 13, 2013)

Griffin v. Flagstar Bancorp, Inc., 2013 U.S. Dist. LEXIS 173702 (E.D. Mich. Dec. 12, 2013)

In re Am. Med. Sys., Inc., 75 F.3d 1069 (6th Cir. 1996)

In re Cardizem CD Antitrust Litig., 218 F.R.D. 508 (E.D. Mich. 2003)

In re Corrugated Container Antitrust Litig., 1981 WL 2093 (S.D. Tex. Jan. 27, 1981)

In re Foundry Resins Antitrust Litig., 242 F.R.D. 393 (S.D. Ohio 2007)

In re Linerboard Antitrust Litig., 292 F. Supp. 2d 631 (E.D. Pa. 2003)

In re Packaged Ice Antitrust Litig., 2011 U.S. Dist. LEXIS 17255 (E.D. Mich. Feb. 22, 2011)

In re Scrap Metal Antitrust Litig., 527 F.3d 517 (6th Cir. 2008)

In re Whirlpool Corp. Front-Loading Washer Prods. Liab. Litig., 722 F.3d 838 (6th Cir. 2013)

IUE-CWA v. Gen. Motors Corp., 238 F.R.D. 583 (E.D. Mich. 2006)

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EPPs, on behalf of themselves and all others similarly situated, by and through undersigned Interim Co-Lead Class Counsel, respectfully submit this memorandum in support of their motion seeking preliminary approval of a settlement with T.RAD and provisional certification of the proposed Settlement Classes.

PRELIMINARY STATEMENT

Radiators and ATF Warmers are among the automotive parts at issue in these coordinated proceedings, *In re Automotive Parts Antitrust Litigation* (“Auto Parts”), MDL No. 2311. Radiators include heat exchangers or other devices that help prevent automotive vehicle engines from overheating or otherwise regulate the temperature of the engine compartment of a vehicle and the fluids passing through it, including all devices physically attached to and sold by T.RAD as part of a radiator. For purposes of this settlement, radiators include but are not limited to heater cores, oil coolers, intercoolers, coolant pumps, fuel cell cooling units and radiator fans. ATF Warmers include automatic transmission fluid warmer or cooler devices located in the engine compartment of a vehicle that moderate the temperature of the automatic transmission fluid.

This action arises from an alleged conspiracy among some of the automotive industry’s largest manufacturers, marketers, and sellers of Radiators and ATF Warmers to fix the prices, rig bids, and allocate the market and customers in the United States for such products. The Radiators Defendants include: T.RAD Corporation, T.RAD Corporation of North America, Calsonic Kansei Corporation, and Denso Corp. The ATF Warmers Defendants include: T.RAD and other unnamed co-conspirators. EPPs filed the first class action involving Radiators on February 27, 2013 and involving ATF Warmers on October 3, 2013. EPPs subsequently filed Consolidated Amended Class Complaints (“Complaints”) and asserted claims for relief under the Sherman

Antitrust Act, 15 U.S.C. § 1, and various State antitrust, unjust enrichment, and consumer protection laws.

This Court consolidated and coordinated EPPs' actions for pretrial purposes. The Court also appointed the undersigned firms Interim Co-Lead Class Counsel and Interim Liaison Counsel for the End-Payor Actions in the Master Docket for MDL No. 2311. Master Docket No. 12-md-2311, No. 2:12-cv-00100 (Aug. 7, 2012, ECF No. 271). Throughout these cases, Interim Co-Lead Class Counsel has represented the interests of the class of EPPs in these actions, including in settlement negotiations with T.RAD. This proposed settlement is a result of those efforts.

EPPs and the classes they seek to represent are consumers who indirectly purchased and/or leased a new vehicle in the United States not for resale, which included one or more Radiators and ATF Warmers (i) as a component in a new vehicle or (ii) as a stand-alone product manufactured or sold by a Defendant. Settlement Agreement ¶ 13. Plaintiffs allege that, in furtherance of the alleged conspiracies, Defendants agreed, during meetings and conversations, to allocate the supply of Radiators and ATF Warmers on a model-by-model basis, and then sold those products at noncompetitive prices to automobile manufacturers in the United States and elsewhere. *See, e.g.*, EPPs' Consolidated Amended Complaint in *In re Radiators* ¶ 111.

The United States Department of Justice ("DOJ") and the Japanese Fair Trade Commission ("JFTC"), among other international law enforcement bodies, have been investigating conspiracies in the market for automotive parts since at least February 2011, and the Federal Bureau of Investigation ("FBI") has participated in raids and executed search warrants carried out in some of Defendants' offices. On September 26, 2013, the DOJ announced that Defendant T.RAD Co., Ltd. agreed to plead guilty and pay a \$13.75 million criminal fine for

its role in a conspiracy to rig bids for, and to fix, stabilize, and maintain the prices of automotive parts, including Radiators and ATF Warmers, sold to automobile manufacturers in the United States and elsewhere. *See* T.RAD Plea Agreement at ¶ 2, *United States v. T.RAD Corporation*, Case No. 2:13-cr-20708-GCS-PJK (E.D. Mich. Nov. 12, 2013) (ECF No. 8). As a result of the JFTC investigation, T.RAD Corporation, also agreed to pay an \$8.2 million fine.

T.RAD's plea agreement with the DOJ did not include an order for restitution because of the potential for recovery through civil causes of action. The instant settlement is the first in the Radiators and ATF Warmers cases. Though occurring early in this litigation, the settlement is substantial and will result in a payment of \$7,410,000 to the End-Payors in these cases. Standing alone, the recovery from T.RAD is significant. But the settlement is even more valuable to the EPPs because it also requires T.RAD to provide early and comprehensive cooperation in the form of, *inter alia*, attorney proffers, interviews with and depositions of witnesses, and the production of certain documents (including transactional data), related to the claims asserted in these cases. The ability to obtain such information without protracted and expensive discovery is quite valuable to EPPs. T.RAD's cooperation will greatly enhance Plaintiffs' ability to prosecute their claims against non-settling Defendants. Moreover, in addition, the settlement provides that T.RAD will not, for a period of 24 months from the date of the entry of final judgment, 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 any Radiators and ATF Warmers.

A payment of \$7,410,000 is a meaningful settlement and is a significant early achievement in this litigation. It also bears noting that the Settlement Agreement provides that T.RAD's sales will remain in the case for purposes of computing the treble damages claim

against the non-settling Defendants and shall be part of any joint and several liability claims against other current or future Defendants. *See* Settlement Agreement ¶ 50. In other words, EPPs and the proposed Settlement Classes retain their ability to recover from the remaining Defendants the entire damages caused by the alleged conspiracies, even those attributable to T.RAD, less only the amount paid by T.RAD in settlement.

It is respectfully submitted that, for all the reasons set forth, the settlement with T.RAD is in the best interest of the proposed Settlement Classes and merits the Court's preliminary approval. EPPs therefore request the entry of an Order:

1. Preliminarily approving the Settlement;
2. Provisionally certifying the proposed Settlement Classes;
3. Staying the proceedings against T.RAD in accordance with the terms of the Settlement Agreement;
4. Authorizing EPPs to provide notice of the Settlement Agreement to class members at a later date, in a form and manner to be approved in advance by this Court; and
5. Appointing Interim Co-Lead Class Counsel for EPPs as Settlement Class Counsel for this settlement.

THE BASIC TERMS AND BACKGROUND OF THE SETTLEMENT AGREEMENT

The Settlement Agreement with T.RAD arises from extensive arm's length and good faith negotiations. Counsel participated in fact-gathering sessions and informational meetings, as well as extensive negotiations that took place both in person and over the telephone.

The Settlement Classes: The Settlement Agreement defines the Settlement Classes as follows:

“Radiators Settlement Class” is defined as:

All persons and entities who, from February 1, 2001, through the execution date of this Agreement (the “Execution Date”), purchased or leased a new vehicle in the United States not for resale, which included one or more Radiator(s) as a component part, or indirectly purchased one or more Radiator(s) as a replacement part, which were manufactured or sold by a Defendant, any current or former subsidiary of a Defendant, or any co-conspirators of the Defendants. Excluded from the Radiators Settlement Class are Defendants, their parent companies, subsidiaries and affiliates, any co-conspirators, federal governmental entities and instrumentalities of the federal government, states and their subdivisions, agencies and instrumentalities, and persons who purchased Radiators directly or for resale.

Settlement Agreement ¶ 13(b).

“ATF Warmers Settlement Class” is defined as:

All persons and entities who, from November 1, 2002, through the execution date of this Agreement (the “Execution Date”) purchased or leased a new vehicle in the United States not for resale, which included one or more ATF Warmer(s) as a component part, or indirectly purchased one or more ATF Warmer(s) as a replacement part, which were manufactured or sold by a Defendant, any current or former subsidiary of a Defendant, or any co-conspirators of the Defendants. Excluded from the ATF Warmers Settlement Class are Defendants, their parent companies, subsidiaries and affiliates, any co-conspirators, federal governmental entities and instrumentalities of the federal government, states and their subdivisions, agencies and instrumentalities, and persons who purchased ATF Warmers directly or for resale.

Settlement Agreement ¶ 13(a).

Settlement Amount: T.RAD has agreed to pay \$7,410,000 within thirty days following the entry of an order by this Court preliminarily approving the settlement. *See id.* ¶ 23. The Settlement Amount shall be paid into an interest-bearing account at Wells Fargo & Company. *See id.* ¶ 24. Thereafter, EPPs shall allocate the Settlement Amount for deposit into separate accounts as follows: For the Radiators Settlement Class, USD 6,696,220.00 plus accrued interest; and for the ATF Warmers Settlement Class, USD 713,780.00 plus accrued interest. The allocation of the Settlement Amount to the Settlement Classes is subject to approval by the Court after notice to the Settlement Classes as directed by the Court.

Cooperation: T.RAD has agreed to provide extensive cooperation to the proposed Settlement Classes that will significantly aid in the prosecution of antitrust claims against the remaining Defendants. A general summary of T.RAD's cooperation obligations is provided below. The full extent of this cooperation is set forth in more detail in Section F of the Settlement Agreement. T.RAD is required to provide, in general, the following types of cooperation, as more specifically set forth in the Settlement Agreement:

- a. Transactional data concerning T.RAD's bids for and sales of Radiators and ATF Warmers to Original Equipment Manufacturers ("OEMs") or other purchasers of Radiators;
- b. Documents, if any, provided to or seized by Government Entities relating to their investigation into alleged competition violations with respect to Radiators and ATF Warmers;
- c. Non-privileged documents that relate to or concern the allegations in the Complaint or that relate to or concern an actual or potential communication, meeting, or agreements between T.RAD and its co-conspirators;
- d. Documents sufficient to show T.RAD's determination of its prices for Radiators and ATF Warmers that it sells;
- e. Non-privileged documents concerning Radiators and ATF Warmers that were collected and reviewed in connection with T.RAD's internal investigation but were not provided to or seized by Government Entities and that are relevant to the claims and allegations in the Complaint, or that relate to or concern an actual or potential communication, meeting, or agreement regarding Radiator and ATF Warmers; and
- f. Documents to show how T.RAD's employees were trained or instructed to bid and set prices submitted to purchasers or potential purchasers, for Radiators and ATF Warmers, or any other procurement process.

Released Claims: The Settlement Agreement releases only T.RAD (and its predecessors, successors, and assigns as well as each and all of its present and former principals, partners, officers, directors, supervisors, employees, agents, representatives, insurers, attorneys, heirs, executors, administrators, and assigns) from all Settlement Class Member claims arising out of or relating in any way to any conduct alleged in the Complaints or any act or omission of T.RAD, concerning Radiators and ATF Warmers. *See* Settlement Agreement ¶¶ 10, 23.

However, the release does not include (1) any claims made by direct purchasers of Radiators or ATF Warmers; (2) any claims made by automotive dealerships that are indirect purchasers of Radiators or ATF Warmers; (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 Radiators or ATF Warmers; (5) claims concerning any automotive part other than Radiators or ATF Warmers; (6) claims under laws other than those of the United States and the states thereof; and (7) claims for damages under the state law or local laws of any jurisdiction other than an Indirect Purchaser State. *See Id.* ¶ 21. Further, the Settlement Agreement provides that T.RAD's sales shall remain in the continuing litigation against the non-settling Defendants, who remain jointly and severally liable for all damages caused by the conspiracies. *See id.* ¶ 46, 48.

ARGUMENT

The Settlement Agreement is not only fair, reasonable and adequate resulting from extensive, arm's length negotiations by experienced counsel, but also a thoughtfully conceived resolution of the proposed Settlement Classes' claims that maximizes their recovery and guarantees early, significant cooperation by T.RAD in the continued prosecution of EPPs' claims, as well as enjoins T.RAD for a period of time from any *per se* violations of the Sherman Act with respect to the sale of Radiators and ATF Warmers.

I. Preliminary Approval Should Be Granted Because The Proposed Settlement Falls Well Within The Range Of Possible Approval

It is well-established in the Sixth Circuit that there is an overriding public interest in settling and quieting litigation, particularly class actions. *See Griffin v. Flagstar Bancorp, Inc.*, Case No. 2:10-cv-10610, 2013 U.S. Dist. LEXIS 173702, at *6 (E.D. Mich. Dec. 12, 2013)

(citing *UAW v. Gen. Motors. Corp.*, 497 F.3d 615, 631 (6th Cir. 2007) (noting “the federal policy favoring settlement of class actions”)); *see also IUE-CWA v. Gen. Motors Corp.*, 238 F.R.D. 583, 593 (E.D. Mich. 2006). “This policy applies with equal force whether the settlement is partial, involving only some of the defendants, or complete.” *In re Packaged Ice Antitrust Litig.*, Case No. 08-MD-01952, 2011 U.S. Dist. LEXIS 17255, at *44 (E.D. Mich. Feb. 22, 2011) (“*Packaged Ice*”); *see also Agretti v. ANR Freight Sys., Inc.*, 982 F.2d 242, 247 (7th Cir. 1992) (“In complex litigation with a plaintiff class, ‘partial settlements often play a vital role in resolving class actions’” (quoting MANUAL FOR COMPLEX LITIGATION (SECOND) § 30.46 (1986))). In fact, “settlement should be facilitated at as early a stage of the litigation as possible.” 6A CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1522, at 225-26 (2d ed. 1990) (citing 1983 Advisory Committee Notes); *see also* MANUAL FOR COMPLEX LITIGATION (FOURTH) § 13.12 (2004) (“*Manual*”) (“settlement should be explored early in the case”).

Approval of a proposed class action settlement proceeds in two steps. First, the court grants preliminary approval to the settlement and provisionally certifies a settlement class. Second, after notice of the settlement is provided to the class and the court conducts a fairness hearing, the court may grant final approval to the settlement. *See Manual* § 21.63; *see also Bobbitt v. Acad. of Reporting*, 2009 WL 2168833, at *1 (E.D. Mich. Jul. 21, 2009) (citing authorities).

A proposed settlement agreement should be preliminarily approved if “the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its fairness or other obvious deficiencies . . . and [the settlement] appears to fall within the range of possible approval.” *Manual* § 30.41 at 237; *see also Int’l Union, UAW v. Ford Motor Co.*, Case Nos. 05-

74730, 06-10331, 2006 U.S. Dist. LEXIS 70471 at *11 (E.D. Mich. July 13, 2006). The district court's role in reviewing settlements "must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Clark Equip. Co. v Int'l Union of Allied Industrial Workers of Am.*, 803 F.2d 878, 880 (6th Cir. 1986). Courts adhere to "an initial presumption of fairness when a proposed class settlement, which was negotiated at arm's length by counsel for the class, is presented for court approval." 4 HERBERT B. NEWBERG & ALBA CONTE, *NEWBERG ON CLASS ACTIONS* § 11.41 (4th ed. 2005) ("*Newberg*") (collecting cases); cf. *Rankin v. Rots*, No. 02-cv-71045, 2006 U.S. Dist. LEXIS 45706, at *9 (E.D. Mich. June 28, 2006) ("[T]he only question . . . is whether the settlement, taken as a whole, is so unfair on its face as to preclude judicial approval.") (internal quotation marks omitted).

In considering whether to grant preliminary approval, the court is not required at this point to make a final determination of the adequacy of the settlement or to delve extensively into the merits of the settlement. See *In re Sulzer Hip Prosthesis & Knee Prosthesis Liab. Litig.*, Case No. 1:01-CV-9000, 2001 U.S. Dist. LEXIS 26714, at *17 (E.D. Ohio Oct. 19, 2001) ("*Sulzer Hip*"). These inquiries are reserved for the final approval stage of the class settlement approval process. Nor will any class member's substantive rights be prejudiced by preliminary approval because the proposed preliminary approval is solely to provide authority for notifying the class of the terms of the settlement agreement to set the stage for review of its final approval. *Id.*; *Newburg* § 11.25. Consequently, courts generally engage only in a limited inquiry to determine whether a proposed settlement falls within the range of possible approval and thus should be preliminarily approved. *Sulzer Hip*, 2001 U.S. Dist. LEXIS 26714 at *17-18 (preliminary

approval may be based on “informal presentations” because of “substantial judicial processes that remain”) (quoting MANUAL FOR COMPLEX LITIGATION (THIRD) § 30.41, at 235 (1995)). *See also In re Packaged Ice Antitrust Litig.*, No. 08-MD-01952, 2010 WL 3070161, at *4 (E.D. Mich. Aug. 2, 2010), *quoting Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir. 1982) (inquiry limited to settlement’s potential for final approval and propriety of class notice and fairness hearing).

In evaluating whether a settlement is fair, reasonable and adequate, courts in the Sixth Circuit consider a number of factors:

(1) the likelihood of success on the merits weighed against the amount and form of relief in the settlement; (2) the complexity expense and likely duration of the litigation; (3) the opinions of class counsel and class representatives; (4) the amount of discovery engaged in by the parties; (5) the reaction of absent class members; (6) the risk of fraud or collusion; and (7) the public interest. The Court may choose to consider only those factors that are relevant to the settlement at hand and may weigh particular factors according to the demands of the case.

Packaged Ice, 2011 U.S. Dist. LEXIS 17255 at *46-47 (quotation marks and citations omitted).

A court is not required at the preliminary approval stage to determine whether it ultimately will finally approve the settlement. Nevertheless, as set forth in detail below, preliminary consideration of the factors a court considers when evaluating the fairness of a settlement for purposes of deciding whether to grant final approval supports this Court’s granting preliminary approval of the Settlement Agreement.

A. The Settlement Agreement Achieves An Excellent Result For The Proposed Settlement Classes, Particularly Given the Expense, Duration, and Uncertainty of Continued Litigation

Antitrust class actions are “arguably the most complex action(s) to prosecute. The legal and factual issues involved are always numerous and uncertain in outcome.” *In re Packaged Ice Antitrust Litig.*, Case No. 08-MDL-01952, 2011 U.S. Dist. LEXIS 150427, at *76 (E.D. Mich. Dec. 13, 2011) (quoting *Linerboard*, 292 F. Supp. at 639); *see also In re Cardizem CD Antitrust*

Litig., 218 F.R.D. 508, 533 (E.D. Mich. 2003) (“*Cardizem*”) (“Moreover, the complexity of this case cannot be overstated. Antitrust class actions are inherently complex”). Motions have already been vigorously contested, and the discovery process would be all the more complicated due to the unique issues that attend discovery against foreign parties.² Additionally, T.RAD would assert various defenses, and a jury trial might well turn on close questions of proof, many of which would be the subject of complicated expert testimony, particularly with regard to damages, making the outcome of such trial uncertain for both parties. *See, e.g., Cardizem*, 218 F.R.D. at 523 (in approving settlement, noting that “the prospect of a trial necessarily involves the risk that Plaintiffs would obtain little or no recovery and that “no matter how confident trial counsel may be, they cannot predict with 100% accuracy a jury’s favorable verdict, particularly in complex antitrust litigation”); *Packaged Ice*, 2011 U.S. Dist. LEXIS 17255 at *53-54 (noting the “undeniable inherent risks” in antitrust class action litigation including “whether the class will be certified and upheld on appeal, whether the conspiracies as alleged in the Complaint can be established, whether Plaintiffs will be able to demonstrate class wide antitrust impact and ultimately whether Plaintiffs will be able to prove damages”). *Id.* Given this uncertainty, “[a] very large bird in the hand in this litigation is surely worth more than whatever birds are lurking in the bushes.” *In re Chambers Dev. Sec. Litig.*, 912 F. Supp. 822, 838 (W.D. Pa. 1995).

Moreover, given the stakes involved, an appeal is nearly certain to follow regardless of the outcome at trial. This creates additional risk, as judgments following trial may be overturned on appeal. *See, e.g., In re Farmers Ins. Exchange, Claims Representatives’ Overtime Pay Litig.*, 481 F.3d 1119 (9th Cir. 2007) (\$52.5 million class action judgment following trial reversed on appeal); *Robbins v. Koger Props., Inc.*, 116 F.3d 1441 (11th Cir. 1997) (jury verdict of \$81

² Because Interim Co-Lead Class Counsel may have to litigate against the other Defendants through trial and appeal, their duties to the Classes preclude a more detailed discussion of their potential litigation risks.

million for plaintiffs reversed and judgment entered for defendant). And, even if class members were willing to assume all of the litigation risks, the passage of time would introduce still more risks in terms of appeals and possible changes in the law that would, in light of the time value of money, make future recoveries less valuable than recovery today. *See In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 536 (3d Cir. 2004) (“[I]t was inevitable that post-trial motions and appeals would not only further prolong the litigation but also reduce the value of any recovery to the class”); *In re Rent-Way Sec. Litig.*, 305 F. Supp. 2d 491, 501 (W.D. Pa. 2003) (“[A] future recovery, even one in excess of the proposed Settlement, may ultimately prove less valuable to the Classes than receiving the benefits of the proposed Settlement at this time”). Hence, “the certain and immediate benefits to the Class represented by the Settlement outweigh the possibility of obtaining a better result at trial, particularly when factoring in the additional expense and long delay inherent in prosecuting this complex litigation through trial and appeal.” *Cardizem*, 218 F.R.D. at 525.

Against this background, an early settlement providing the substantial benefits afforded here represents an excellent result for the members of the proposed Settlement Classes. T.RAD’s \$7,410,000 payment provides for significant compensation to the proposed Settlement Classes that will be available earlier – perhaps years earlier – than would be the case if litigation against T.RAD continued through trial and appeal. Moreover, courts have long recognized that early settlements of this type create value beyond their direct pecuniary benefit to the class. Early settlements can serve as “icebreaker” agreements, strengthening plaintiffs’ hand in the litigation and encouraging future settlements. *See Packaged Ice*, 2011 U.S. Dist. LEXIS 17255 at *50-51 (noting “significant value” of icebreaker settlement); *Linerboard*, 292 F. Supp. 2d at 643; *In re*

Corrugated Container Antitrust Litig., 1981 WL 2093, *16 (S.D. Tex. Jan. 27, 1981 (“*Corrugated Container*”).

Of particular importance is the fact that the Settlement Agreement further requires T.RAD to provide substantial cooperation to the EPPs’ counsel by providing factual proffers, interviews, documents, depositions, and trial testimony, among other cooperation. *See* Settlement Agreement § J. This cooperation is extremely valuable to the Settlement Classes. The effective early-stage cooperation facilitated by the Settlement Agreement will afford the EPPs access to documents and witnesses without protracted and expensive discovery – a significant class-wide benefit. *See, e.g., In re Packaged Ice Antitrust Litig.*, Case No. 08-MD-01952, 2010 U.S. Dist. LEXIS 77645, at *44 (E.D. Mich. Aug. 2, 2010) (“Particularly where, as here, there is the potential for a significant benefit to the class in the form of cooperation on the part of the settling Defendant, this Court is reluctant to refuse to consider the very preliminary approval that will trigger that cooperation”); *see also Linerboard*, 292 F. Supp. 2d at 643; *Corrugated Container*, 1981 WL 2093 at *16; *cf. In re Pressure Sensitive Labelstock Antitrust Litig.*, 584 F. Supp. 2d 697, 702 (M.D. Pa. 2008) (“[T]he benefit of obtaining the cooperation of the Settling Defendants tends to offset the fact that they would be able to withstand a larger judgment”).

The value of an early settlement can be so great that early-settling defendants often obtain a substantial discount relative to the remaining defendants. The *Linerboard* court, for example, approved a settlement with the first-settling defendant for less than one percent of sales and approximately one-third of the percentage of sales obtained from the other defendants. Compare *Linerboard*, 292 F. Supp. 2d at 643 (approving icebreaker settlement for approximately 0.4% of sales), with *In re Linerboard Antitrust Litig.*, 321 F. Supp. 2d 619, 633 (E.D. Pa. 2004) (approving settlements with final two defendants for 1.6% and 2% of sales). In accepting this

discounted recovery from the first-settling defendants, the *Linerboard* court emphasized the “substantial” intangible benefit to the class of the icebreaker agreement. 292 F. Supp. 2d at 643.

The Settlement Agreement also specifically provides that it does not purport to alter the non-settling Defendants’ joint and several liability for the full damages caused by the alleged conspiracies, including all sales made by these Defendants. *See* Settlement Agreement ¶ 50. In this regard, the Settlement Agreement is similar to one of the settlements approved in *Corrugated Container*, where the court noted the “valuable provision” under which plaintiffs reserved their right to recover full damages from the remaining defendants, less the actual amount of the initial settlement. 1981 WL 2093 at *17; *see also In re Uranium Antitrust Litig.*, 617 F.2d 1248 (7th Cir. 1980); *In re Ampicillin Antitrust Litig.*, 82 F.R.D. 652, 654 (D.D.C. 1979) (approving settlement where class will “relinquish no part of its potential recovery” due to joint and several liability). Here too, the EPPs will be able to pursue their full damages, with no diminution other than deduction of the actual T.RAD settlement amount.

B. The Settlement Agreement Is The Result Of Thorough Arm’s-Length Negotiations Conducted By Highly Experienced Counsel

This settlement is entitled to “an initial presumption of fairness” because it is the result of arm’s-length negotiations among experienced counsel.³ *Newberg* § 11.41. The judgment of proposed Settlement Class Counsel that the settlement is in the best interest of the proposed Settlement Classes “is entitled to significant weight, and supports the fairness of the class settlement.” *Sheick v. Auto Component Carrier LCC*, Case No. 2:09-cv-14429, 2010 U.S. Dist. LEXIS 110411, at *51 (E.D. Mich. Oct. 18, 2010) (quoting *IUE-CWA*, 238 F.R.D. at 597); *see*

³ There is no doubt that the counsel who negotiated the Settlement Agreement on behalf of both End-Payor Plaintiffs and T.RAD are highly experienced and capable. *See* End-Payor Plaintiffs’ Application For Appointment Of Interim Co-Lead Class Counsel And Liaison Counsel, *In re Automotive Wire Harness Sys. Antitrust Litig.*, Case No. 12-MD-02311 (E.D. Mich. Mar. 8, 2012), ECF No. 24.

also *Cardizem*, 218 F.R.D. at 525. Courts give great weight to the recommendation of experienced counsel for the parties in evaluating the adequacy of a settlement.

“Preliminary approval of a proposed settlement is based upon the court’s familiarity with the issues and evidence, as well as the arms-length nature of the negotiations prior to the proposed settlement, ensuring that the proposed settlement is not illegal or collusive.” *Thacker v. Chesapeake Appalachia, L.L.C.*, 259 F.R.D. 262 (E.D. Ky. 2009) (quoting *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 370 (S.D. Ohio 1990)). Here, the Settlement Agreement is the result of lengthy and hard-fought negotiations between counsel experienced in complex antitrust and consumer class action litigation. The Settlement Agreement, in its initial form, was negotiated over a period of several months by Interim Co-Lead Class Counsel in a process that involved multiple in-person meetings and calls with counsel for T.RAD. In preparation for such negotiations, Interim Co-Lead Class Counsel undertook a diligent and thorough investigation of the legal and factual issues posed by this litigation and consulted extensively with experienced economists.

Thus, despite the fact that the Settlement Agreement comes at an early stage of this multidistrict litigation, proposed Settlement Class Counsel was well-informed as to the facts of the case and the strength of the claims asserted when the terms of the Settlement Agreement were initially negotiated. *See Packaged Ice*, 2011 U.S. Dist. LEXIS 17255, at *56 (“[T]he absence of formal discovery is not an obstacle [to settlement approval] so long as the parties and the Court have adequate information in order to evaluate the relative position of the parties.”) (quotation marks and citation omitted); *Griffin v. Flagstar Bancorp, Inc.*, 2013 U.S. Dist. LEXIS 173702 (same).

Moreover, these negotiations were adversarial and conducted in the utmost good faith. “Courts presume the absence of fraud or collusion in class action settlements unless there is evidence to the contrary.” *Leonhardt v. ArvinMeritor, Inc.*, 581 F. Supp. 2d 818, 838 (E.D. Mich. 2008); *Bowers v. Windstream Ky. East, LLC*, Civil Action No. 3:09-CV-440-H, 2013 U.S. Dist. LEXIS 157242, at *5 (W.D. Ky. Nov. 1, 2013). There is nothing in the course of the negotiations or the substance of the settlement that “disclose[s] grounds to doubt its fairness.” *Manual* § 30.41.

II. The Proposed Settlement Classes Should Be Provisionally Certified Pursuant To Rule 23

The Manual notes the propriety of certifying a class solely for purposes of settlement, *see Manual* § 21.32, and courts in this Circuit routinely provisionally approve a proposed settlement class before deciding plaintiffs’ motion for class certification. *See, e.g., In re Delphi Corp. Sec. Derivatives & ERISA Litig.*, 248 F.R.D. 483, 486 n. 2 (E.D. Mich. 2008) (granting final approval to both ERISA and securities settlement classes, noting the court’s earlier, preliminary approval of the settlement classes granted prior to a hearing on defendants’ motions to dismiss); *Cardizem*, 218 F.R.D. at 516-17, 530 (granting final approval of proposed settlement, noting its earlier preliminary approval of both the proposed settlement class and the proposed settlement agreement granted prior to class certification and prior to hearing on motions to dismiss). A court may grant provisional certification where, as here, the proposed settlement classes satisfy the four prerequisites of Rule 23(a) (numerosity, commonality, typicality and adequacy), as well as one of the three subsections of Rule 23(b). *See In re Packaged Ice Antitrust Litig.*, No. 08-MD-01952, 2010 U.S. Dist. LEXIS 140235, at *27-28 (E.D. Mich. Sept. 2, 2010).

While the Supreme Court recently reiterated that a trial court must conduct a “rigorous analysis” to confirm that the requirements of Rule 23 have been met, *Wal-Mart Stores, Inc. v.*

Dukes, 131 S.Ct. 2541, 2551 (2011), “the requisite ‘rigorous analysis’ of the record and consideration of the merits must be focused on and limited to the question whether the Rule’s requirements have been established.” *Cason-Merenda v. VHS of Mich., Inc.*, 2013 U.S. Dist. LEXIS 131006, at *20-21 (E.D. Mich. Sept. 13, 2013) (citing *In re Whirlpool Corp. Front-Loading Washer Prods. Liab. Litig.*, 722 F.3d 838, 851-52 (6th Cir. 2013)). Permissible inquiry into the merits of plaintiffs’ claims at the class certification stage is limited:

Rule 23 grants courts no license to engage in free-ranging merits inquiries at the class certification stage. Merits questions may be considered to the extent – but only to the extent – that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied.

Amgen Inc. v. Conn. Ret. Plans & Trust Funds, 133 S. Ct. 1184, 1194-95 (2013) (“*Amgen*”) (citing *Dukes*, 131 S.Ct. at 2552 n.6). “In other words, district courts may not turn the class certification proceedings into a dress rehearsal for the trial on the merits.” *In re Whirlpool Corp.*, 722 F.3d 838, 851-52 (internal quotation marks and citation omitted). Here, as demonstrated below, even under a “rigorous analysis,” the requirements of Rule 23 are easily met.

A. The Proposed Settlement Classes Meet The Requirements Of Rule 23(a)

Horizontal price fixing class actions are routinely certified in this District and elsewhere. EPPs’ allegations of “a per se violation of the antitrust laws are exactly the kind of allegations which may be proven on a class-wide basis through common proof.” *In re Southeastern Milk Antitrust Litig.*, Master File No. 2:09-MD-1000, 2010 U.S. Dist. LEXIS 94223, at *35 (E.D. Tenn. Sept. 7, 2010). “Courts have held that the existence of a conspiracy is the predominant issue in price fixing cases, warranting certification of the class even where significant individual issues are present.” *Id.* at *33 (internal quotation marks and citations omitted). “As a rule of thumb, a price fixing antitrust conspiracy model is generally regarded as well suited for class treatment.” *In re Foundry Resins Antitrust Litig.*, 242 F.R.D. 393, 409 (S.D. Ohio 2007); *see also*

Hyland v. Homeservices of Am., Inc., Case No. 3:05-CV-612-R, 2008 U.S. Dist. LEXIS 90892, at *12 (W.D. Ky. Nov. 6, 2008).

i. The Proposed Settlement Classes Are So Numerous That It Is Impracticable To Bring All Class Members Before The Court

No magic number is required to satisfy the numerosity requirement of Rule 23(a)(1). *Miller v. Univ. of Cincinnati*, 241 F.R.D. 285, 288 (S.D. Ohio 2006). A class representative need only show that joining all members of the potential class is extremely difficult or inconvenient. *Golden v. City of Columbus*, 404 F.3d 950, 965 (6th Cir. 2005). The “sheer number of potential litigants in a class, especially if it is more than several hundred, can be the only factor needed to satisfy Rule 23(a)(1).” *In re Foundry Resins Antitrust Litig.*, 242 F.R.D. at 403 (citing *Bacon v. Honda of America Mfg., Inc.*, 370 F.3d 565, 570 (6th Cir. 2004)); see also *In re Am. Med. Sys., Inc.*, 75 F.3d 1069, 1079 (6th Cir. 1996).

Here, the proposed Settlement Classes consist of persons and entities who, from February 1, 2001, up to and including the Execution Date, purchased or leased a new vehicle in the United States not for resale that included one or more Radiators or ATF Warmers as a component part, or indirectly purchased one or more Radiators or ATF Warmers as a replacement part, from February 1, 2001 through the Execution Date, which were manufactured or sold by a Defendant, any current or former parent, subsidiary, or affiliate of Defendant or any co-conspirator of the Defendants. Since then, it is beyond dispute that millions of persons and entities throughout the United States have purchased or leased new vehicles, not for resale, containing Radiators or ATF Warmers. Because of the large number of putative class members and their geographical distribution throughout the United States, joinder is highly impractical, if not impossible.

ii. End-Payor Plaintiff Class Representatives And The Proposed Settlement Classes Share Common Legal And Factual Questions

Commonality only requires that “there are questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). While Rule 23(a)(2) speaks of questions of law or fact in the plural, “there need be only one common question to certify a class.” *In re Whirlpool Corp. Front-Loading Washer Prods. Liab. Litig.*, 722 F.3d at 853; *see also Cason-Merenda*, 2013 U.S. Dist. LEXIS 131006, at *22 (one common question of law or fact is sufficient); *Griffin v. Flagstar Bancorp Inc.*, 2013 U.S. Dist. LEXIS 173702 (same); *Date v. Sony Elecs., Inc.*, Case No. 07-15474, 2013 U.S. Dist. LEXIS 108095, at *10 (E.D. Mich. July 31, 2013) (same).

This prerequisite is readily satisfied here because “antitrust price-fixing conspiracy cases, by their nature, deal with common legal and factual questions about the existence, scope and effect of the alleged conspiracy.” *In re Aluminum Phosphide Antitrust Litig.*, 160 F.R.D. 609, 613 (D. Kan. 1995). Thus, in price fixing cases, courts “have consistently held that the very nature of a conspiracy in an antitrust action compels a finding that common questions of law and fact exist.” *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, No. M 02-1486 PJH, 2006 U.S. Dist. LEXIS 39841 (N.D. Cal. June 5, 2006); *see also Newberg* § 3:10 at 278 (“[In an] antitrust action on behalf of purchasers who have bought defendants’ products at prices that have been maintained above competitive levels by unlawful conduct, the courts have held that the existence of an alleged conspiracy or monopoly is a common issue that will satisfy the Rule 23(a)(2) prerequisite”).

Here, EPPs have identified the following issues common to the proposed Settlement Classes:

- Whether Defendants engaged in combinations and conspiracies among themselves to fix, raise, maintain, or stabilize the prices of Radiators and ATF Warmers sold in the United States;
- Whether Defendants engaged in combinations and conspiracies among themselves to rig bids quoted to customers of Radiators and ATF Warmers sold in the United States;

- Whether Defendants engaged in combinations and conspiracies to allocate customers and the markets for Radiators and ATF Warmers sold in the United States;
- The duration of the illegal contracts, combinations, and/or conspiracies;
- Whether Defendants' conduct resulted in unlawful overcharges on the prices of Radiators and ATF Warmers; and
- Whether unlawful overcharges on the price of Radiators and ATF Warmers were passed-through to the indirect purchasers of Radiators and ATF Warmers, and if so, the appropriate measure of damages.

Any one of these substantive issues would, standing alone, establish the requisite commonality under Rule 23(a)(2).

iii. End-Payor Plaintiff Class Representatives' Claims Are Typical Of The Claims Of The Members Of The Proposed Settlement Classes

Third, Rule 23(a) requires typicality of the class representatives' claims. *See* Fed. R. Civ. P. 23(a)(3). "The [typicality] requirement is not onerous," *Int'l Union, UAW v. Ford Motor Co.*, 2006 U.S. Dist. LEXIS 70471 at *54, and courts liberally construe it. *See In re Foundry Resins Antitrust Litig.*, 242 F.R.D. at 403. "In the antitrust context, typicality is established when the named plaintiffs and all class members allege[] the same antitrust violation by defendants." *Cason-Merenda*, 2013 U.S. Dist. LEXIS 131006 at *25 (quoting *In re Foundry Resins Antitrust Litig.*, 242 F.R.D. at 405); *see also Stout v. J.D. Byrider*, 228 F.3d 709, 717 (6th Cir. 2000); *In re Am. Med. Sys.*, 75 F.3d at 1082; *Packaged Ice*, 2011 U.S. Dist. LEXIS 17255 at *40-41. "If there is a strong similarity of legal theories, the requirement [of typicality] is met, even if there are factual distinctions among named and absent class members." *Griffin v. Flagstar Bancorp, Inc.*, 2013 U.S. Dist. LEXIS 173702, at *17-18 (quotation marks and citation omitted); *Packaged Ice*, 2011 U.S. Dist. LEXIS 17255, at *40 (same).

Because the End-Payor Plaintiff Class representatives and the members of the proposed Settlement Classes were all victims of the conspiracies to fix prices, rig bids, and allocate the market and customers for Radiators and ATF Warmers and seek the same relief, Rule 23(a)(3) is satisfied. *See Cason-Merenda*, 2013 U.S. Dist. LEXIS 131006 at *26 (finding typicality met where “the claims of the named Plaintiffs and those of the remaining members of the proposed class all arise from the same conspiracy and are based on the same theory of liability under the Sherman Act.”) (internal quotation marks and citation omitted)); *Packaged Ice*, 2011 U.S. Dist. LEXIS 17255 at *40-41 (“Because all Class Members’ claims arise from . . . a conspiracy to allocate markets in violation of the Sherman Act, their claims are based on the same legal theory and the typicality requirement . . . is met”).

iv. Proposed Settlement Class Counsel and End-Payor Plaintiff Class Representatives Will Fairly and Adequately Protect The Interests Of The Proposed Settlement Classes

The final requirement of Rule 23(a) is that the representative parties “fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). The Sixth Circuit has articulated two criteria for determining adequacy of representation: “‘1) [t]he representative must have common interests with unnamed members of the class, and 2) it must appear that the representatives will vigorously prosecute the interests of the class through qualified counsel.’” *In re Foundry Resins Antitrust Litig.*, 242 F.R.D. at 407 (quoting *Senter v. Gen. Motors Corp.*, 532 F.2d 511, 525 (6th Cir. 1976)). EPPs submit that there are no conflicts between them and the proposed Settlement Classes because EPPs and members of the proposed Settlement Classes: (i) purchased or leased in the United States new motor vehicles, not for resale, containing Radiators or ATF Warmers; and/or (ii) Radiators or ATF Warmers as a stand-alone replacement product, that they have the same interest in establishing liability, and that they all seek damages for the ensuing overcharge. *See In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 208 (5th Cir.

1981) (certifying settlement class and holding that “so long as all class members are united in asserting a common right, such as achieving the maximum possible recovery for the class, the class interests are not antagonistic for representation purposes” (internal quotation marks and citation omitted)). EPPs and the members of the proposed Settlement Classes also share a common interest in obtaining T.RAD’s early and substantial cooperation in prosecuting the claims against the non-settling Defendants.

Rule 23(g) requires the Court to examine the capabilities and resources of class counsel to determine whether they will provide adequate representation to the class. The proposed Settlement Classes are represented by counsel with extensive experience in antitrust and class action litigation. They have vigorously prosecuted the classes’ claims, and they will continue to do so through all phases of the litigation, including trial. *See Marcus v. Dep’t of Revenue*, 206 F.R.D. 509, 512 (D. Kan. 2002) (“In absence of evidence to the contrary, courts will presume the proposed class counsel is adequately competent to conduct the proposed litigation”). The Court appointed Cotchett, Pitre & McCarthy, LLP, Robins Kaplan LLP, and Susman Godfrey L.L.P. as Interim Co-Lead Class Counsel in these actions and the other automotive parts antitrust cases within Master File No. 2:12-md-2311. *See* Case Management Order No. 3 filed as ECF No. 271. For the same reasons that the Court appointed them to this position, it should appoint them Settlement Class Counsel here.

B. The Proposed Settlement Classes Meet The Requirements Of Rule 23(b)(3)

To qualify for certification under Rule 23(b)(3), a class must meet two requirements beyond the Rule 23(a) prerequisites: common questions must predominate over any questions affecting only individual members; and class resolution must be superior to other available methods for the fair and efficient adjudication of the controversy. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 615 (1997) (“*Amchem*”); *see also In re Scrap Metal Antitrust Litig.*, 527

F.3d 517, 535 (6th Cir. 2008). With respect to both requirements, the Court need not inquire whether the “case, if tried, would present intractable management problems, for the proposal is that there be no trial.” *Amchem*, 521 U.S. at 620 (internal citations omitted).

i. Common Questions of Law and Fact Predominate

“Rule 23(b)(3) does not mandate that a plaintiff seeking class certification prove that each element of the claim is susceptible to classwide proof.” *In re Whirlpool Corp.*, 722 F.3d at 859. Instead, “[a] claim will meet the predominance requirement when there exists generalized evidence which proves or disproves an element on a simultaneous, class-wide basis, since such proof obviates the need to examine each class member’s individualized position.” *In re Foundry Resins Antitrust Litig.*, 242 F.R.D. at 408 (quoting *In re Cardizem CD Antitrust Litig.*, 200 F.R.D. at 307). Common questions need only predominate; they need not be dispositive of the litigation. *Id.* (citing *In re Potash Antitrust Litig.*, 159 F.R.D. 682, 693 (D. Minn. 1995)); *cf. In re Scrap Metal Antitrust Litig.*, 527 F.3d at 535-36 (holding issues regarding the amount of damages do not destroy predominance). “[T]he mere fact that questions peculiar to each individual member of the class action remain after the common questions of the defendant’s liability have been resolved does not dictate the conclusion that a class action is impermissible.” *Cason-Merenda v. VHS of Mich., Inc.*, 2013 U.S. Dist. LEXIS 131006, at *19-20 (quoting *Powers v. Hamilton Cnty. Public Defender Comm.*, 501 F.3d 595, 619 (6th Cir. 2007)). As pertinent to EPPs’ request here to provisionally certify the proposed Settlement Classes under Rule 23(b)(3), the Supreme Court very recently instructed that “Rule 23(b)(3) requires a showing that *questions* common to the class predominate, not that those questions will be answered, on the merits, in favor of the class.” *Amgen*, 133 S.Ct. at 1191.⁴

⁴ The Supreme Court’s recent decision in *Comcast Corp. v. Behrend*, 133 S.Ct. 1426 (2013), supports the appropriateness of class certification under Rule 23(b)(3) here. In *Comcast*, the

Because the proposed Settlement Classes allege actions from which all proposed Settlement Class Members' injuries arise, issues common to the proposed Settlement Class Members – for example, the existence and scope of the alleged price-fixing conspiracy or conspiracies among Defendants, the market impact of Defendants' conspiracy or conspiracies, and the aggregate amount of damage suffered by the Classes as a result of the alleged antitrust violations – predominate over any individual questions, and therefore class treatment of the claims is appropriate for purposes of this settlement. *See Amchem*, 521 U.S. at 625 (“Predominance is a test readily met in certain cases alleging . . . violations of the antitrust laws.”); *see also In re Vitamins Antitrust Litig.*, 209 F.R.D. 251, 254 (D.D.C. 2002) (“as a rule, the allegation of a price-fixing conspiracy is sufficient to establish predominance of common questions”) (quoting NEWBERG ON CLASS ACTIONS § 18.28 at 18-98 (3d ed. 1992)). This Circuit has also held “[p]redominance is a test readily met in certain cases alleging . . . violations of the antitrust laws, because proof of the *conspiracy* is a common question that is thought to predominate over the other issues of the case.” *In re Scrap Metal Antitrust Litig.*, 527 F.3d at 535 (quoting *Amchem*, 521 U.S. at 625).⁵ Furthermore, here the evidence that will prove a violation

Supreme Court found that the plaintiffs failed to establish that damages could be measured on a class-wide basis because only one of the plaintiffs' four theories of antitrust impact could be proved in a manner common to the class. 133 S.Ct. at 1429-31. Under *Comcast*, plaintiffs must be able to show that their damages stemmed from the defendant's actions that created the legal liability. *See Levva v. Medline Indus, Inc.*, 716 F.3d 510 (9th Cir. 2013). Here, all of the proposed Settlement Classes' claimed damages – the overcharge suffered as a result of inflated prices for Radiators and ATF Warmers – stem from the Defendants' alleged price-fixing conspiracies.

⁵ Similarly, other courts have recognized that the existence and scope of an alleged antitrust conspiracy are matters susceptible to class-wide proof, and thus tend to support a finding that common issues predominate over individual ones as to at least the first element of an antitrust conspiracy claim. *See, e.g., Cordes & Co. Financial Services, Inc. v. A.G. Edwards & Sons, Inc.*, 502 F.3d 91, 105 (2d Cir. 2007); *Blades v. Monsanto Co.*, 400 F.3d 562, 572 (8th Cir. 2005); *In re Visa Check/MasterMoney Antitrust Litig.*, 280 F.3d 124, 136 (2d Cir. 2001); *In re Blood Reagents Antitrust Litig.*, 283 F.R.D. 222, 234 (E.D. Pa. 2012); *Reed v. Advocate Health Care*,

as to one Settlement Class Member is common to the Class and will be sufficient to prove it as to all – the anticompetitive conduct is not dependent on the separate conduct of the individual Settlement Class Members. *See Packaged Ice*, 2011 U.S. Dist. LEXIS 17255 at *43.

This is true even if there are individual state law issues, as long as the common issues still outweigh the individual ones, *e.g.*, as long as a common theory can be alleged as to liability and impact that can be pursued by the class. *See, e.g., In re Whirlpool Corp.*, 722 F.3d at 861 (“[I]t remains the ‘black letter rule’ that a class may obtain certification under Rule 23(b)(3) when liability questions common to the class predominate over damages questions unique to class members.” (internal quotation marks and citation omitted)); *Scrap Metal*, 527 F.3d at 535 (where common issues determine liability, fact that damages calculation may involve individualized issues does not defeat predominance). Issues common to the proposed Settlement Classes predominate in this case – all EPPs allegedly paid overcharges that were caused by the Defendants’ price-fixing activities. The presence of these common issues of liability and impact predominates over any individual issues and strongly support provisional certification of the proposed Settlement Classes.

ii. A Class Action Is The Superior Method To Adjudicate These Claims

Rule 23(b)(3) also requires that a class action be superior to other available methods of fairly adjudicating the controversy. The superiority of class certification over other available methods is measured by consideration of certain factors, including: the class members’ interests in controlling the prosecution of individual actions; the extent and nature of any litigation concerning the controversy already begun by or against class members; the desirability of concentrating the litigation of various claims in the particular forum; and the likely difficulties in

268 F.R.D. 573, 581 (N.D. Ill. 2009); *In re Urethane Antitrust Litig.*, 251 F.R.D. 629, 634 (D. Kan. 2008); *Foundry Resins*, 242 F.R.D. at 408.

managing a class action. *Dillworth v. Case Farms Processing, Inc.*, No. 5:08-cv-1694, 2010 U.S. Dist. LEXIS 20446 (N.D. Ohio Mar. 8, 2010).

Courts consistently hold that class actions are a superior method of resolving antitrust claims like those alleged here. *See In re Universal Serv. Fund Tel. Billing Practices Litig.*, 219 F.R.D. 661, 678 (D. Kan. 2004) (noting that individual litigation of antitrust claims would be “grossly inefficient, costly, and time consuming”). Here, the interests of Settlement Class Members in individually controlling the prosecution of separate claims are outweighed by the efficiency of the class mechanism. *Cardizem*, 200 F.R.D. at 325-26 (finding that class action is superior because it ensures fair and efficient adjudication). Millions of persons and entities purchased or leased new vehicles containing Radiators or ATF Warmers as a component part or purchased Radiators or ATF Warmers as a replacement part for a vehicle during the Settlement Class Periods; resolving these claims in the context of a class action would conserve both judicial and private resources and would hasten the class members’ recovery. *See, e.g., In re Foundry Resins*, 242 F.R.D. at 411-12 (“Repeatedly litigating the same issues in individual suits would produce duplicate efforts, unnecessarily increase litigation costs, impose an unwarranted burden on this Court and other courts, and create a risk of inconsistent results”).⁶

III. Notice To The Settlement Classes

Rule 23(c)(2)(B) requires the Court to “direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” With regard to class action claims that are settled, Rule

⁶ Another criterion of Rule 23(b)(3) is manageability. The Supreme Court has made clear that manageability need not be considered where, as here, a class is being certified for settlement purposes. *Amchem*, 521 U.S. at 620 (“Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, see Fed. R. Civ. P. 23(b)(3)(D), for the proposal is that there be no trial”).

23(e) instructs courts to “direct notice in a reasonable manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1). “[D]ue process does not require actual notice, but rather a good faith effort to provide actual notice.” *Thacker*, 259 F.R.D. at 271-72. To comport with the requirements of due process, notice must be “reasonably calculated to reach interested parties.” *Fidel v. Farley*, 534 F.3d 508, 514 (6th Cir. 2008) (citing *Karkoukli’s, Inc. v. Dohany*, 409 F.3d 279, 283 (6th Cir. 2005)).

Interim Co-Lead Class Counsel anticipates additional settlements with Defendants in these actions. Because it would be most cost-effective and efficient to disseminate notice of this settlement together with notice of other settlements, the parties have agreed to defer dissemination of notice. As set forth in the Settlement Agreement,

End-Payor Plaintiffs, at a time to be decided in their sole discretion, shall in each Action submit to the Court a motion for authorization to disseminate notice of the settlement and final judgment contemplated by this Agreement to all Settlement Class Members identified by End-Payor Plaintiffs (the “Notice Motion”). In order to mitigate the costs of notice, the End-Payor Plaintiffs shall endeavor, if practicable, to disseminate notice of this settlement with notice of any other settlements reached. The Notice Motion shall include a proposed form of, method for, and date of dissemination of notice.

Settlement Agreement ¶ 19. Accordingly, with the Court’s permission, proposed Settlement Class Counsel will submit a proposed motion for authorization to disseminate notice at a later date.

CONCLUSION

For the foregoing reasons, EPPs respectfully request that the motion for preliminary approval be granted and that the Court enter the accompanying Proposed Order:

1. Preliminarily approving the Settlement Agreement;
2. Provisionally certifying the proposed Settlement Classes;

3. Staying the proceedings against T.RAD in accordance with the terms of the Settlement Agreement;
4. Authorizing EPPs to provide notice of the Settlement Agreement to members of the Settlement Classes at a later date, in a form to be approved in advance by this Court; and
5. Appointing Interim Co-Lead Class Counsel for the EPPs as Settlement Class Counsel for this settlement.

Date: August 24, 2015

/s/ E. Powell Miller
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*Interim Co-Lead Class Counsel for the
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CERTIFICATE OF SERVICE

I, Omar Ochoa, hereby certify that I caused a true and correct copy of **MEMORANDUM OF LAW IN SUPPORT OF END-PAYOR PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF PROPOSED SETTLEMENT WITH T.RAD AND PROVISIONAL CERTIFICATION OF SETTLEMENT CLASS** to be served via e-mail upon all registered counsel of record via the Court's CM/ECF system on August 24, 2015.

/s/ Omar Ochoa
Omar Ochoa

EXHIBIT A

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

IN RE: AUTOMOTIVE PARTS
ANTITRUST LITIGATION

Master File No. 12-md-02311

PRODUCT(S):

RADIATORS & ATF WARMERS

2:13-cv-01003-MOB-MKM
2:13-cv-10803-MOB-MKM
2:13-cv-14225-MOB-MKM

THIS DOCUMENT APPLIES TO:
ALL END-PAYOR ACTIONS

Hon. Marianne O. Battani

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and entered into this 30th day of July, 2015 ("Execution Date") by and between T.RAD Co., Ltd. and T.RAD North America, Inc. (together, "T.RAD"), and End-Payor Plaintiffs Class Representatives (collectively, "End-Payor Plaintiffs"), both individually and on behalf of a class of end-payor indirect purchasers of ATF Warmers and Radiators (the "Settlement Classes"), as more particularly defined below.

WHEREAS, End-Payor Plaintiffs are prosecuting the above *In Re Automotive Parts Litigation*, Master File No. 12-md-02311 (E.D. Mich.) (the "MDL Litigation"), Case No. 12-cv-01003 and Case No. 2:13-cv-14225-MOB-MKM (the "Actions") on their own behalf and on behalf of the Settlement Classes against, among others, T.RAD;

WHEREAS, End-Payor Plaintiffs allege that they were injured as a result of T.RAD's participation in an unlawful conspiracy to raise, fix, maintain, and/or stabilize prices, rig bids, allocate markets and customers for ATF Warmers (as defined below) and

Radiators (as defined below) in violation of Section 1 of the Sherman Act and various state antitrust, unfair competition, unjust enrichment, and consumer protection laws as set forth in End-Payor Plaintiffs' operative complaints in the Actions (the "Complaints");

WHEREAS, T.RAD denies End-Payor Plaintiffs' allegations and has asserted defenses to End-Payor Plaintiffs' claims;

WHEREAS, arm's-length settlement negotiations have taken place between Settlement Class Counsel (as defined below) and counsel for T.RAD and this Agreement has been reached as a result of those negotiations;

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

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

WHEREAS, T.RAD, 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 T.RAD with respect to Radiators based on the allegations in the Action, as more particularly set out below;

WHEREAS, T.RAD has agreed to provide Cooperation to End-Payor Plaintiffs in the ongoing prosecution of the Actions as set forth in this Agreement, and such Cooperation will reduce End-Payor Plaintiffs' substantial burden and expense associated with prosecuting the Actions; and

WHEREAS, End-Payor Plaintiffs recognize the benefits of T.RAD's Cooperation and recognize that because of joint and several liability, this Agreement with T.RAD does not impair End-Payor Plaintiffs' ability to collect the full amount of damages to which they and the Settlement Classes may be entitled in the Actions:

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 T.RAD, subject to the approval of the Court, on the following terms and conditions:

A. Definitions.

1. "ATF Warmers" shall refer to automatic transmission fluid warmer or cooler devices located in the engine compartment of a vehicle that moderate the temperature of the automatic transmission fluid.
2. "Cooperation" shall refer to those provisions set forth below in Paragraphs 33-43.
3. "Cooperation Materials" means any information, testimony, Documents (as defined below) or other material provided by T.RAD 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 Paragraph 13 and approving this Agreement under Federal Rule of Civil Procedure 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) of the Federal Rules of Civil Procedure, including without limitation, electronically stored information. A draft or non-identical copy is a separate document within the meaning of this term. For purposes of this Agreement, English language translations in TRAD's possession, custody or control are included.

6. "End-Payor Plaintiff Class Representatives" means those Settlement Class Members, as defined in Paragraph 15 below, who are named plaintiffs in the Complaints.

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. "Protective Order" means the Confidentiality Agreement and Protective Order between T.RAD and the End-Payor Plaintiffs and Automobile Dealership Plaintiffs governing the provision of information pursuant to the cooperation obligations of this Agreement and the corresponding section of T.RAD's settlement agreement with the Automobile Dealership Plaintiffs, and to be submitted for approval by the Court in the MDL Litigation simultaneously with the motion for preliminary approval of this Agreement. Unless and until such Protective Order is entered by the Court, the provisions of the protective order in the Wire Harness Cases, 2:12-cv-00103 (the "Wire Harness Protective Order" shall apply to such provision of

information, except that nothing in the Wire Harness Protective Order shall prevent the End-Payor Plaintiffs from using such information in the prosecution of claims in the MDL Litigation.

9. “Radiators” means any and all heat exchangers or other devices that help prevent automotive vehicle engines from overheating or otherwise regulate the temperature of the engine compartment of a vehicle and the fluids passing through it, including all devices physically attached to and sold by T.RAD as part of a radiator. Radiators includes but is not limited to heater cores, oil coolers, intercoolers, coolant pumps, fuel cell cooling units and radiator fans.

10. “Released Claims” means the Claims described in Paragraph 23.

11. “Releasees” means (i) T.RAD, (ii) all of T.RAD’s past and present direct and indirect parent and 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 T.RAD.

12. “Releasors” shall refer to End-Payor Plaintiff Class Representatives and the members of the Settlement Classes, as defined in Paragraph 13, below, and to their past and present officers, directors, employees, agents, stockholders, members, attorneys, servants, representatives, parents, subsidiaries, affiliates, partners, insurers and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and the predecessors, successors, heirs, executors, administrators and assigns of any of the foregoing.

13. For purposes of this Agreement, the “Settlement Classes” are defined as follows:

(a) “ATF Warmers Settlement Class” is defined as:

All persons and entities who, from November 1, 2002, through the execution date of this Agreement (the "Execution Date") purchased or leased a new vehicle in the United States not for resale, which included one or more ATF Warmer(s) as a component part, or indirectly purchased one or more ATF Warmer(s) as a replacement part, which were manufactured or sold by a Defendant, any current or former subsidiary of a Defendant, or any co-conspirators of the Defendants. Excluded from the ATF Warmers Settlement Class are Defendants, their parent companies, subsidiaries and affiliates, any co-conspirators, federal governmental entities and instrumentalities of the federal government, states and their subdivisions, agencies and instrumentalities, and persons who purchased ATF Warmers directly or for resale.

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

All persons and entities who, from February 1, 2001, through the execution date of this Agreement (the "Execution Date"), purchased or leased a new vehicle in the United States not for resale, which included one or more Radiator(s) as a component part, or indirectly purchased one or more Radiator(s) as a replacement part, which were manufactured or sold by a Defendant, any current or former subsidiary of a Defendant, or any co-conspirators of the Defendants. Excluded from the Radiators Settlement Class are Defendants, their parent companies, subsidiaries and affiliates, any co-conspirators, federal governmental entities and instrumentalities of the federal government, states and their subdivisions, agencies and instrumentalities, and persons who purchased Radiators directly or for resale.

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

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

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

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

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

16. "Settlement Amount" shall be US \$7,410,000, and the "Settlement Fund" shall be the Settlement Amount plus any income or accrued interest earned on that amount as set forth in Paragraph 25. The allocation of the Settlement Fund to the Settlement Classes defined in Paragraph 13 above shall be determined by Settlement Class Counsel and subject to approval by the Court after notice to the Settlement Classes as directed by the Court.

B. Approval of this Agreement and Dismissal of Claims Against T.RAD.

17. End-Payor Plaintiffs and T.RAD shall use their best efforts to effectuate this Agreement, including cooperating in seeking the Court's approval for the establishment of procedures (including the giving of class notice under Federal Rules of Civil Procedure 23(c) and (e)) to secure the complete, and final dismissal with prejudice of the Actions as to the Releasees only.

18. Within thirty (30) days after the execution of this Agreement, End-Payor Plaintiffs shall submit to the Court motions seeking preliminary approval of this Agreement (the "Preliminary Approval Motions"). The Preliminary Approval Motions shall include the

proposed form of an order preliminarily approving this Agreement. The text of this proposed order shall be agreed upon by End-Payor Plaintiffs and T.RAD before submission of the Preliminary Approval Motion.

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

20. End-Payor Plaintiffs shall seek, and T.RAD will not object unreasonably to, the entry of an order and final judgment in each Action, the text of which End-Payor Plaintiffs and T.RAD 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, pursuant to Rule 23 of the Federal Rules of Civil Procedure, solely for purposes of this settlement as settlement classes;

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

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

(d) solely as to T.RAD, 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 Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing that the judgment of dismissal as to T.RAD 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 T.RAD, to contest certification of any other class proposed in the MDL Litigation, (ii) the Court's findings in this Order shall have no effect on the Court's ruling on any motion to certify any class in the MDL Litigation or on the Court's rulings concerning any Defendant's motion; and (iii) no party may cite or refer to the Court's approval of the Settlement Classes as persuasive or binding authority with respect to any motion to certify any such class or any Defendant's motion.

21. This Agreement shall become final when (i) the Court has entered a final order in each Action certifying the Settlement Classes described in Paragraph 13 and approving this Agreement under Federal Rule of Civil Procedure 23(e) and has entered a final judgment in each Action dismissing the Action with prejudice as to T.RAD 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 T.RAD described in (i) above in each Action has expired or, if appealed, approval of this Agreement and the final judgment in each Action as to T.RAD have been affirmed in their entirety by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to

further appeal or review. It is agreed that the provisions of Rule 60 of the Federal Rules of Civil Procedure shall not be taken into account in determining the above-stated times. On the date that End-Payor Plaintiffs and T.RAD have executed this Agreement, End-Payor Plaintiffs and T.RAD shall be bound by its terms and this Agreement shall not be rescinded except in accordance with Paragraphs 26(h) or 44 of this Agreement.

22. Neither this Agreement (whether or not it should become final) nor the final judgment, nor any and all negotiations, documents and discussions associated with them (including Cooperation Materials produced pursuant to Paragraphs 33-43), shall be deemed or construed to be (i) an admission by T.RAD, (ii) evidence of any violation of any statute or law or of any liability or wrongdoing whatsoever by T.RAD to be used against T.RAD, or (iii) evidence to be used to establish against T.RAD the truth of any of the claims or allegations contained in any complaint or any other pleading filed in the MDL Litigation. Nor shall any of those matters be discoverable or used in any way, whether in the MDL Litigation, arbitration, or proceeding, against T.RAD. Nothing in this Paragraph shall prevent End-Payor Plaintiffs from using and/or introducing into evidence Cooperation Materials produced pursuant to Paragraphs 33-43, against any other defendants in the MDL Litigation to establish any of the above, subject to the terms and conditions set forth in the Protective Order, except as stated in Paragraph 38(a) and (f). 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 T.RAD, shall be referred to, offered as evidence or received in evidence in any pending or future civil, criminal, or administrative action, arbitration, or proceedings, except in a proceeding to enforce this Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law.

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

23. In addition to the effect of any final judgment entered in accordance with this Agreement, upon this Agreement becoming final, as set out in Paragraph 21 of this Agreement, and in consideration of payment of the Settlement Amount, as specified in Paragraph 25 of this Agreement, into the Settlement Fund, and for other valuable consideration, the Releasees shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits, causes of action, whether class, individual, or otherwise in nature (whether or not any Settlement Class Member has objected to the settlement or makes a claim upon or participates in the Settlement Fund, whether directly, representatively, derivatively or in any other capacity) 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 Radiators or ATF Warmers, including but not limited to any conduct and causes of action alleged or asserted or that could have been alleged or asserted, in any class action or other complaints filed in the Actions (the "Released Claims"), provided however, that nothing herein shall release: (1) any claims made by direct purchasers of Radiators or ATF Warmers with respect to such direct purchasers; (2) any claims made by automotive dealerships that are indirect purchasers of Radiators or ATF Warmers; (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 Radiators or ATF

Warmers; (5) claims concerning any automotive part other than Radiators or ATF Warmers; (6) claims under laws other than those of the United States or any state or municipality in the United States relating to purchases of Radiators or ATF Warmers made by any Releasor 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. 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.

24. In addition to the provisions of Paragraph 23 of this Agreement, Releasors hereby expressly waive and release, upon this Agreement becoming final, any and all provisions, rights, and benefits, as to their claims concerning Radiators or ATF Warmers 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 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR;

or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code. Each Releasor may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the claims which are released pursuant to the provisions of Paragraph 23 of this Agreement, but each Releasor hereby expressly waives and fully, finally, and forever settles and releases, upon this Agreement becoming final, any known or unknown, suspected or unsuspected, contingent or non-contingent claim that T.RAD and End-Payor Plaintiffs have agreed to release pursuant to Paragraph 23, whether or not concealed or

hidden, without regard to the subsequent discovery or existence of such different or additional facts.

D. Settlement Amount.

25. Subject to the provisions hereof, and in full, complete and final settlement of the Actions as provided herein, Defendant T.RAD Corporation, on behalf of the T.RAD defendants, shall pay the Settlement Amount of US \$7,410,000 (the "Settlement Amount"). The Settlement Amount shall be paid into an escrow account in United States Dollars to be administered in accordance with the provisions of Paragraph 26 of this Agreement (the "Escrow Account") within 10 days following entry of an order preliminarily approving this Agreement.

26. Escrow Account.

(a) The Escrow Account will be established at Wells Fargo & Company with such Bank serving as escrow agent ("Escrow Agent") subject to escrow instructions mutually acceptable to Settlement Class Counsel and T.RAD, such escrow to be administered by the Escrow Agent under the Court's continuing supervision and control.

(b) The Escrow Agent shall cause the funds deposited in the Escrow 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.

(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 T.RAD 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, the Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this Paragraph 26, including the relation-back election (as defined in Treas. Reg. § 1.468B-1(j)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur. 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 shall be the Escrow Agent for the Escrow Account(s). The Escrow Agent 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 25(d)) shall be consistent with Paragraph 26(d) and in all events shall reflect that all Taxes, as defined below (including any estimated Taxes, interest or penalties), on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided in Paragraph 26(f) hereof.

(f) All (i) taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund, including any taxes or tax detriments that may be imposed upon T.RAD or any other Releasee with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a qualified settlement fund for federal or state income tax purposes ("Taxes"); and (ii) expenses and costs incurred in connection with the operation and implementation of Paragraphs 26(d) through 26(f) (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in Paragraph 26(e) ("Tax Expenses")), shall be paid out of the Settlement Fund.

(g) Neither T.RAD 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)). T.RAD shall not be responsible or have any liability therefor. End-Payor Plaintiffs and T.RAD agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of Paragraphs 26(d) through 26(f).

(h) If this Agreement does not receive final Court approval, including final approval of the Settlement Classes as defined in Paragraph 13, or if the Actions are not certified

as class actions for settlement purposes, then all amounts paid by T.RAD into the Settlement Fund (other than costs expended or incurred in accordance with Paragraph 28), shall be returned to T.RAD from the Escrow Account by the Escrow Agent along with any interest accrued thereon within thirty (30) calendar days of the Court's denial of final approval of the Agreement and/or Settlement Classes.

27. 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 class member must request exclusion from the Settlement Class(es). 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 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 T.RAD with a list and copies of all opt out requests it receives and shall file under seal with the Court a list of all members of the Settlement 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 Settlement Class Member and shall not be bound by the terms of this Agreement. T.RAD 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 Radiators or ATF Warmers or has standing to bring any claim against T.RAD.

(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, 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.

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

28. Payment of Expenses.

(a) T.RAD agrees to permit use of a portion of the Settlement Fund towards notice to the Settlement Classes and the costs of administration of the Settlement Fund. 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. Other than as set forth in this Paragraph 28 and Paragraph 38, T.RAD shall not be liable for any of the costs or expenses of the litigation of the Action, including attorneys' fees, fees and expenses of expert witnesses and consultants, and costs and expenses associated with discovery, motion practice, hearings before the Court or any Special Master, appeals, trials or the negotiation of other settlements, or for class administration and costs.

(b) In order to mitigate the costs of notice and administration, the End-Payor Plaintiffs shall use their best efforts, if practicable, to disseminate notice with any other

settlements reached with T.RAD or 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.

29. Releasors' sole recourse for settlement and satisfaction against the Releasees of all Released Claims is against the Settlement Fund, and Releasors shall have no other recovery against T.RAD or any other Releasee.

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

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

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

(a) Settlement Class Counsel may submit an application or applications to the Court (the "Fee and Expense Application") for: (i) an award of attorneys' fees not in excess of one-third of the settlement fund; plus (ii) reimbursement of expenses and costs incurred in

connection with prosecuting the 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 (the "Fee and Expense Award"). Settlement Class Counsel reserve the right to make additional applications for Court approval of fees and expenses incurred and reasonable incentive awards, but in no event shall T.RAD or any other Releasees be responsible to pay any such additional fees and expenses except to the extent they are paid out of the Settlement Fund.

(b) Subject to Court approval, End-Payor Plaintiffs and Settlement Class Counsel shall be reimbursed and paid solely out of the Settlement Fund for all expenses including, but not limited to, attorneys' fees and past, current, or future litigation expenses. Attorneys' fees and expenses awarded by the Court shall be payable from the Settlement Fund upon award, notwithstanding the existence of any timely filed objections thereto, or potential appeal therefrom, or collateral attack on the settlement or any part thereof, subject to Settlement Class Counsel's obligation to make appropriate refunds or repayments to the Settlement Fund with interest, if and when, as a result of any appeal and/or further proceedings on remand, or successful collateral attack, the fee or award of expenses is reduced or reversed, or in the event the Agreement is rescinded or terminated pursuant to Paragraph 26(h) or Paragraph 44.

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

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

(d) Neither T.RAD nor any other Releasee under this Agreement shall have any responsibility for, or interest in, or liability whatsoever with respect to any payment to Settlement Class Counsel of any Fee and Expense Award in the Actions.

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

F. Cooperation.

33. T.RAD agrees to use commercially reasonable efforts to provide timely Cooperation to End-Payor Plaintiffs, as set forth specifically below. Cooperation will take place in a manner that is in compliance with T.RAD's obligations to any Government Entities (as defined below). All Cooperation shall be coordinated so as to avoid all unnecessary duplication and expense. None of the Cooperation obligations below limits Plaintiffs' ability to serve, or T.RAD's ability to object to, any other discovery request permitted under the Federal Rules of Civil Procedure.

34. Within thirty (30) business days after Preliminary Approval, counsel for T.RAD shall provide Settlement Class Counsel with the identity of all current and former employees, directors and officers of T.RAD who: (1) were interviewed and/or prosecuted by the United States Department of Justice ("DOJ"), the Japanese Fair Trade Commission, and/or the European Commission (collectively referred to herein as "Government Entities") in connection with alleged price-fixing, bid rigging, market allocation, and/or other unlawful anticompetitive activity concerning the sale of Radiators or ATF Warmers to the extent such interviews or

prosecutions related in any way, directly or indirectly, to automobiles manufactured and sold in the United States; (2) appeared before the grand jury in the DOJ's investigation into alleged antitrust violations with respect to Radiators or ATF Warmers; and/or (3) were disclosed to a Government Entity as having knowledge or information relating to alleged violations with respect to Radiators or ATF Warmers.

35. T.RAD will use commercially reasonable efforts to substantially complete the production of the following Documents in T.RAD's possession, custody or control, set forth in subparagraphs (a) – (c) no later than one hundred fifty (150) calendar days after Preliminary Approval by the Court of this Agreement:

(a) Certain automobile-related transactional data that are kept in the ordinary course of T.RAD's business, are reasonably available, and concern T.RAD's bids for and sales of Radiators and/or ATF Warmers to Original Equipment Manufacturers ("OEMs") or other purchasers of Radiators or ATF Warmers ("Transactional Data") from July 1, 1999, to August 30, 2011 (and to December 31, 2013 to the extent such information has already been compiled), including the following information: (1) the date for each bid, price submission, or sale; (2) the price submitted in each bid or price submission; (3) bids and price submissions formulated but not submitted due to agreements or understandings with co-conspirators; (4) the final price of each sale; (5) the purchaser to whom each bid or price submission was submitted and each sale was made; (6) the model, model year(s) and brand of car for which each bid or price submission was submitted and each sale was made, as well as the country of sale of said cars; (7) the total amount of Radiators or ATF Warmers sold in each sale; (8) the location where each bid or price submission was submitted and each sale was made; (9) the T.RAD entity which submitted each bid or price submission and made each sale; (10) the sale agreements and contracts for each sale;

(11) value engineering and/or other non-cash consideration that served as an element of value delivered in each sale; (12) any ancillary costs associated with each sale such as tooling costs; (13) the identity of any other bids submitted by competitors (to the extent known), including each winning bid; (14) the specifications for each bid or price submission; (15) adjustments made to each bid as it was being formulated; (16) T.RAD's profits, losses and margins on the products comprising Radiators or ATF Warmers and other reasonably available financial information, *e.g.*, balance sheets and ledger data; (17) data showing T.RAD's costs to produce the products comprising Radiators or ATF Warmers; (18) product description and identification information (including codes, identifiers, and/or part numbers); and (19) any other Transactional Data reasonably agreed to in writing between T.RAD's counsel and Settlement Class Counsel. T.RAD maintains that materials prior to July 1, 1999, are not readily available and cannot be compiled without unreasonable effort. Notwithstanding any other provision in this Agreement, Settlement Class Counsel agrees that it shall maintain all data that T.RAD will produce as "Highly Confidential," as said designation is described in the Protective Order, subject to any challenge that any party may make subject to the Protective Order and any orders of the Court.

(b) Documents relevant to the claims alleged in the Complaints or that relate to or concern an actual or potential communication, meeting, or agreement between T.RAD and one or more of its competitors, regarding Radiators or ATF Warmers.

(c) To the extent not already produced, Documents, if any, produced to, or seized by, Government Entities and relevant in any way, directly or indirectly, to the claims alleged in the Complaints and relating to their investigation into alleged competition violations with respect to Radiators or ATF Warmers installed in vehicles sold in the United States.

(d) Documents concerning T.RAD's determinations of its prices for Radiators and ATF Warmers that it sells, including pricing policies, formulas and guidelines, including Documents concerning the relationship between prices charged or submitted to different OEMs or to the same OEM for different models.

(e) Non-privileged documents, if any, concerning ATF Warmers and/or Radiators that were collected and reviewed in connection with T.RAD's internal investigation but were not provided to or seized by Government Entities and that are relevant to the claims and allegations in the Complaint or that relate to or concern an actual or potential communication, meeting, or agreement regarding Radiators by any employee, officer or director of T.RAD with any employee, officer or director of another manufacturer or seller of ATF Warmers or Radiators.

(f) Documents, if any, showing how T.RAD's employees were trained or instructed to bid and set prices submitted to purchasers or potential purchasers, for Released Parts, in RFQs, or any other procurement process, including documents stating the lowest bid or price employees were authorized to submit, how to determine the lowest allowable bid or price, and when and how to increase or decrease a proposed bid or price.

36. For all Documents withheld from production pursuant to (1) the attorney-client privilege; (2) the work-product doctrine; (3) a protective order, or (4) any other applicable privilege or doctrine protecting documents from disclosure, T.RAD shall provide a privilege log, to the extent it already exists or comes into existence as a result of the MDL Litigation or otherwise ("Existing Privilege Log"), describing such Documents in sufficient detail as to explain the nature of the privilege asserted or the basis of any other law or rule protecting such Documents. No Document shall be withheld under a claim of privilege if Produced to any

Government Entity. If any Document protected by the attorney-client privilege, attorney work-product protection or any other privilege is accidentally or inadvertently produced to Settlement Class Counsel, upon notice by T.RAD of such inadvertent production, the Document shall promptly be destroyed and/or returned to T.RAD, the Document shall not be used by Settlement Class Counsel for any purpose, and its production shall in no way be construed to have waived any privilege or protection attached to such Document. Any dispute regarding any claim of privilege shall be resolved by motion to the Court under Paragraph 51 of this Agreement.

37. In the event that T.RAD produces Documents or provides declarations or written responses to discovery to any Government Entity or party in the MDL Litigation concerning or relating to the Actions (a "Relevant Production"), T.RAD shall produce all such Documents, declarations or written discovery responses to Settlement Class Counsel contemporaneously with making the Relevant Production to the extent such Documents, declarations or written discovery responses have not previously been produced by T.RAD to Settlement Class Counsel. This Agreement does not restrict Settlement Class Counsel from attending and/or participating in any depositions in the Actions. T.RAD will not object to Settlement Class Counsel and settlement class counsel for the automobile dealerships ("Automobile Dealership Settlement Class Counsel") in the actions in the MDL Litigation captioned *Martens Cars of Washington, Inc. v. T.RAD Co., Ltd.* (14-cv-10593-MOB-MKM) and its dealership class case (13-cv-02402) and *Martens Cars of Washington, Inc. v. Calsonic Kansei Corp.* (13-cv-11590-MOB-MKM) and its dealership class case (13-cv-01002) ("Automobile Dealership Actions") attending and/or participating in depositions of T.RAD witnesses in addition to the depositions set forth in Paragraph 38(c), to the extent Settlement Class Counsel and Automobile Dealership Settlement

Class Counsel participation does not expand the time allotted for the deposition pursuant to applicable stipulations or orders in the MDL Litigation.

38. In addition, T.RAD shall use reasonable efforts to cooperate with Settlement Class Counsel as set forth in Paragraphs 38(a)-(e). Upon reasonable notice after preliminary approval of the Settlement Agreement, T.RAD shall make available for interviews with and depositions by with Settlement Class Counsel, jointly with Automobile Dealership Settlement Class Counsel, a reasonable number of individuals, expressly subject to the right of Settlement Class Counsel and Automotive Dealership Settlement Class Counsel to also attend and/or participate in any depositions in the MDL Litigation. Only the same individuals identified pursuant to Paragraph 38(b) can be identified as the individuals pursuant to Paragraph 38(c).

(a) Commencing 30 days after the Court enters an Order granting preliminary approval of this Agreement, T.RAD's counsel will make themselves reasonably available in the United States for meetings to provide an attorney's proffer jointly to Settlement Class Counsel and Automobile Dealership Settlement Class Counsel of facts known to them regarding Documents, witnesses, meetings, communications, agreements with competitors, events, background information and any other relevant topics not covered by privilege or other protections available under any applicable statute or United States law. Thereafter, T.RAD's counsel will make themselves available for reasonable follow-up conversations. Notwithstanding any other provision in this Agreement, Settlement Class Counsel shall maintain all statements made by T.RAD's counsel as "Highly Confidential," as said designation is described in the Protective Order, and shall not use the information so received for any purpose other than the prosecution of the claims in the Actions and the MDL Litigation, except as stated in Paragraph 38(a) and (f). The parties further agree that any statements made by T.RAD's counsel in

connection with and/or as part of this settlement, including the attorney's proffer(s) referred to in Paragraph 38(a), shall not be disclosed to any other party and shall be governed by Federal Rule of Evidence 408 and, shall not be deemed admissible into evidence or to be subject to further discovery. Notwithstanding anything herein, Settlement Class Counsel may use information contained in such statements in the prosecution of the Actions and the MDL Litigation, and rely on such information to certify that, to the best of Settlement Class Counsel's knowledge, information and belief, such information has evidentiary support or will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.

(b) Upon reasonable notice after Preliminary Approval of this Agreement, T.RAD shall make reasonable efforts (not to include actual or threatened employee disciplinary action) to make available for interviews, depositions, and testimony at hearings or trial, via videoconference or at a mutually agreed-upon location or locations (except for testimony at hearings or trial), a reasonable number of persons for interviews and depositions (as set forth in Paragraphs 38(b) and (c)) to be agreed upon, and a reasonable number of persons for trial (as set forth in Paragraph 38(d)) whom Settlement Class Counsel and Automobile Dealership Settlement Class Counsel select, and who may consist of current directors, officers, and/or employees of T.RAD whom Settlement Class Counsel reasonably and in good faith believe possess knowledge of facts or information that would reasonably assist End-Payor Plaintiffs in the prosecution of the MDL Litigation. Interviews shall each be limited to a total of seven (7) hours over one day. To the extent that the person to be interviewed requests an interpreter, (x) interviews shall be limited to a total of twelve (12) hours, which would occur over two (2) consecutive days, but for no more than seven (7) hours in any one day, and (y) Settlement Class Counsel shall retain or reimburse the reasonable expenses of retaining the interpreter. Upon

reasonable notice by Settlement Class Counsel, T.RAD shall use reasonable efforts to make available by telephone the persons who have been interviewed as set forth in this Paragraph to answer follow-up questions for a period not to exceed two (2) hours. Unless otherwise agreed, the interview will take place in the United States at a mutually agreeable location. If the interviews take place outside of the country of the witness's residence, Settlement Class Counsel shall reimburse T.RAD for such person's economy class fare and \$450 per day for lodging and expenses, but in no event shall Settlement Class Counsel be responsible for reimbursing such persons for time or services rendered. Reimbursable expenses shall not exceed \$1,500 per interviewee. If the interview and the below-described deposition occur during the same trip, the above-limitations will apply to that trip. Nothing in this provision shall prevent T.RAD from objecting to the reasonableness of the number of persons selected by Settlement Class Counsel and Automobile Dealership Settlement Class Counsel to appear as trial witnesses.

(c) Upon reasonable notice, T.RAD shall, at Settlement Class Counsel's request, make reasonable efforts (not to include actual or threatened employee disciplinary action) to make available to appear for deposition (i) a reasonable number of persons to be agreed upon whom Settlement Class Counsel and Automobile Dealership Settlement Class Counsel select from among the persons who have been chosen for interviews pursuant to Paragraph 38(b), and to provide (ii) a reasonable number of declarations/affidavits from among the same persons who have been chosen for interviews and depositions pursuant to Paragraph 38(b) and Paragraph 38(c). Each deposition shall be conducted at a mutually agreed-upon location in the United States, and shall each be limited to a total of seven (7) hours over one day. To the extent that the person to be deposed requests an interpreter, (x) the deposition shall be limited to a total of twelve (12) hours, which would occur over two (2) consecutive days, but for

no more than seven (7) hours in any one day, and (y) Settlement Class Counsel shall retain or reimburse the reasonable expenses of retaining the interpreter. Written notice by Settlement Class Counsel to T.RAD's counsel shall constitute sufficient service of notice for such depositions. If Settlement Class Counsel request declarations/affidavits, such affidavits and declarations will be provided in English. If any deposition takes place outside of the country of the witness's residence, Settlement Class Counsel shall reimburse T.RAD for such person's economy class fare and \$450 per day for lodging and expenses, but in no event shall Settlement Class Counsel be responsible for reimbursing such persons for time or services rendered. Reimbursable expenses shall not exceed \$1,500 per witness.

(d) Upon reasonable notice, T.RAD shall make reasonable efforts to provide, for trial testimony, if necessary, a reasonable number of T.RAD persons from among the persons who have been interviewed or deposed pursuant to Paragraphs 38(b) and 38(c) or otherwise deposed in the MDL Litigation, as referenced in Paragraph 37, which may consist of current directors, officers, and/or employees of T.RAD whom Settlement Class Counsel, in consultation with counsel for T.RAD, reasonably and in good faith believe possess knowledge of facts or information that would reasonably assist End-Payor Plaintiffs as a trial witness in the Actions. Nothing in this provision shall prevent T.RAD from objecting to the reasonableness of the number of persons selected by Settlement Class Counsel and Automobile Dealership Settlement Class Counsel. If any requested trial testimony takes place outside of the country of the witness's residence, Settlement Class Counsel shall reimburse T.RAD for such person's economy class fare and \$450 per day for lodging and expenses, but in no event shall Settlement Class Counsel be responsible for reimbursing such persons for time or services rendered. Reimbursable expenses shall not exceed \$1,500 per witness. In addition, if the witness requests

an interpreter and one is not provided by the Court, Settlement Class Counsel shall retain or reimburse the reasonable expenses of retaining the interpreter.

(e) In addition to its Cooperation obligations set forth herein, T.RAD agrees to produce through affidavit(s) or 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 of T.RAD's Documents and Transactional Data produced or to be produced, and to the extent possible, any Documents produced by Defendants or third-parties in the Actions. Settlement Class Counsel agree to use reasonable efforts to obtain stipulations that would avoid the need to call T.RAD witnesses at trial for the purpose of obtaining such evidentiary foundations.

(f) End-Payor Plaintiffs and Settlement Class Counsel agree they will not use the information provided by T.RAD or the other Releasees or their representatives under this Agreement for any purpose other than the prosecution of claims in the MDL Litigation, and will use it in the Actions consistent with the Protective Order, and will not use it beyond what is reasonably necessary for the prosecution of claims in the MDL Litigation or as otherwise required by law. All Documents and other information provided pursuant to this Agreement will be deemed "Highly Confidential", as said designation is described in the Protective Order as if they had been produced in response to discovery requests and so designated.

39. T.RAD'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, T.RAD's obligations to provide Cooperation under this Agreement shall continue only until otherwise ordered by the Court, or the date that final judgment has been entered in the Actions against all Defendants, whichever occurs earlier.

40. In the event that this Agreement fails to receive final approval by the Court as contemplated in Paragraphs 17-21 hereof, including final approval of “the Settlement Classes” as defined in Paragraph 13, 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 T.RAD, at any hearing or trial, or in support of any motion, opposition or other pleading in the Actions or in any other federal or state or foreign action alleging a violation of any law relating to the subject matter of the Action, any deposition testimony or any documents provided by T.RAD and/or the other Releasees, their counsel, or any individual made available by T.RAD 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 T.RAD which Settlement Class Counsel participates 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 T.RAD in the event that this Agreement fails to receive final approval in each Action by the Court as contemplated in Paragraphs 17-21 hereof, including final approval of “the Settlement Classes” as defined in Paragraph 13, or in the event that it is terminated by either party under any provision herein.

41. T.RAD need not respond to discovery requests made pursuant to the Federal Rules of Civil Procedure from End-Payor Plaintiffs or otherwise participate in the Actions pending the Court’s final approval of the Agreement. Other than to enforce the terms of this Agreement, neither T.RAD nor End-Payor Plaintiffs shall file motions against the other, in the Actions, during the pendency of the Agreement.

42. T.RAD, End-Payor Plaintiffs, and Settlement Class Counsel agree not to disclose publicly or to any other person the terms of this Agreement that were not already disclosed as

part of disclosure of the parties' prior Memorandum of Understanding until this Agreement is fully executed by all parties.

43. If Settlement Class Counsel believes that T.RAD has refused to cooperate under the terms of this Agreement, Settlement Class Counsel may seek an Order from the Court compelling T.RAD to provide such cooperation. Nothing in this provision shall limit in any way T.RAD'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

44. If the Court refuses to approve this Agreement or any part hereof, including if the Court does not certify settlement classes in accordance with the specific Settlement Class definitions set forth in this Agreement, or if such approval is modified or set aside on appeal, or if the Court does not enter the final judgment provided for in Paragraph 21 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 T.RAD 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 56. 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.

45. In the event that this Agreement does not become final as set forth in Paragraph 21, or this Agreement otherwise is terminated pursuant to Paragraph 44, then this Agreement shall be of no force or effect and any and all parts of the Settlement Fund caused to be deposited in the Escrow Account (including interest earned thereon) shall be returned forthwith to T.RAD

less only disbursements made in accordance with Paragraph 28 of this Agreement. T.RAD expressly reserves all rights and defenses if this Agreement does not become final.

46. Further, and in any event, End-Payor Plaintiffs and T.RAD 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 T.RAD, or the other Releasees to be used against T.RAD, or of (ii) the truth of any of the claims or allegations contained in the Complaints or any other pleading filed in the MDL Litigation, to be used against T.RAD, and evidence thereof shall not be discoverable or used in any way, in the MDL Litigation, against T.RAD. Nothing in this Paragraph shall prevent End-Payor Plaintiffs from using Cooperation Materials produced pursuant to Paragraphs 33-43, against any other defendants in any actions to establish any of the above.

47. This Agreement shall be construed and interpreted to effectuate the intent of the parties, which is to provide, through this Agreement, for a complete resolution of the relevant claims with respect to each Releasee as provided in this Agreement as well as cooperation by T.RAD.

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

H. Miscellaneous.

49. T.RAD 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.

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

51. The United States District Court for the Eastern District of Michigan shall retain jurisdiction over the implementation, interpretation, 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 T.RAD, 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. T.RAD will not object to complying with any of the provisions outlined in this Agreement on the basis of jurisdiction.

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

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

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

55. Neither End-Payor Plaintiffs nor T.RAD 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.

56. 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 no

notice of rejection or non-delivery notification is received), or letter by overnight delivery to the undersigned counsel of record for the party to whom notice is being provided.

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]

August 12
Date: July __, 2015

/s/ Marc M. Seltzer

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*Interim Co-Lead Class Counsel and Settlement
Class Counsel*

Dated: July 30, 2015

T.RAD CO., LTD.

By: H. Kano
Hiromi Kano
President & Representative Director

T.RAD NORTH AMERICA, INC.

By: H. Kano
Hiromi Kano
Authorized Signer

/s/ Peter L. Simmons
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*Attorneys for T.RAD Co., Ltd. and
T.RAD North America, Inc.*

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

IN RE: AUTOMOTIVE PARTS
ANTITRUST LITIGATION

:
: Master File No. 12-md-02311
: Hon. Marianne O. Battani
:

IN RE: ATF WARMERS

:
: 2:13-cv-02403-MOB
: 2:13-cv-14225-MOB-MKM
:

THIS DOCUMENT RELATES TO:

ALL END-PAYOR ACTIONS

:
:
:
:
:
:

**[PROPOSED] ORDER GRANTING END-PAYOR PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF PROPOSED SETTLEMENT WITH T.RAD
AND PROVISIONAL CERTIFICATION OF SETTLEMENT CLASS**

Upon consideration of End-Payor Plaintiffs' Motion for Preliminary Approval of Proposed Settlement with T.RAD Co., Ltd. and T.RAD North America, Inc. (together, "T.RAD") and Provisional Certification of Settlement Class ("Motion"), it is hereby **ORDERED** as follows:

1. The Motion is hereby **GRANTED**.
2. Unless otherwise set forth herein, defined terms in this Order shall have the same meaning ascribed to them in the Settlement Agreement.

Preliminary Approval of Settlement Agreement

3. The terms of the Settlement Agreement are hereby preliminarily approved, including the release contained therein, as being fair, reasonable, and adequate to the Settlement Class. The Court finds that the Settlement Agreement was entered into at arm's length by

experienced counsel and is sufficiently within the range of reasonableness that notice of the Settlement Agreement should be given, pursuant to a plan to be submitted by Settlement Class Counsel and approved by the Court at a later date as provided in this Order.

Class Certification

4. Pursuant to Federal Rule of Civil Procedure (“Rule”) 23, and in light of the proposed settlement, the Court hereby finds that the prerequisites for a class action have been met and provisionally certifies the following class for settlement purposes (“Settlement Class”):

All persons and entities who, from November 1, 2002, through the execution date of this Agreement (the “Execution Date”) purchased or leased a new vehicle in the United States not for resale, which included one or more ATF Warmer(s) as a component part, or indirectly purchased one or more ATF Warmer(s) as a replacement part, which were manufactured or sold by a Defendant, any current or former subsidiary of a Defendant, or any co-conspirators of the Defendants. Excluded from the ATF Warmers Settlement Class are Defendants, their parent companies, subsidiaries and affiliates, any co-conspirators, federal governmental entities and instrumentalities of the federal government, states and their subdivisions, agencies and instrumentalities, and persons who purchased ATF Warmers directly or for resale.

5. The Court finds that provisional certification of the Settlement Class is warranted in light of the Settlement Agreement because: (a) the Settlement Class is so numerous that joinder is impracticable; (b) End-Payor Plaintiffs’ claims present common issues and are typical of the Settlement Class; (c) End-Payor Plaintiffs and Settlement Class Counsel (defined below) will fairly and adequately represent the Settlement Class; and (d) common issues predominate over any individual issues affecting the members of the Settlement Class. The Court further finds that End-Payor Plaintiffs’ interests are aligned with the interests of all other members of the Settlement Class. The Court also finds settlement of these actions on a class basis superior to other means of resolving the matter.

Appointment of Settlement Class Counsel

6. The Court hereby appoints Cotchett, Pitre & McCarthy LLP, Robins Kaplan LLP, and Susman Godfrey L.L.P. as Settlement Class Counsel, having determined that the requirements of Rule 23(g) are fully satisfied by this appointment.

7. Each End-Payor Plaintiff class representative named in the Complaints in the above actions will serve as End-Payor Plaintiff class representative on behalf of the Settlement Class.

Notice to Potential Class Members

8. Prior to the Fairness Hearing, Settlement Class Counsel shall provide notice of the Settlement Agreement and the Fairness Hearing to all persons affected by and/or entitled to participate in the Settlement Agreement in compliance with the notice requirements of Rule 23 and due process of law. Such means of providing notice will be addressed in a subsequent Order following submission by End-Payor Plaintiffs at a later date of a proposal for notice to the Settlement Class and related forms for notice, claims and distribution ("Notice Motion").

9. The Notice Motion shall include a proposed form of, method for, and date of dissemination of notice and the date on which the notice is mailed shall be the "Notice Date."

Other Provisions

10. Pursuant to the Settlement Agreement, T.RAD agrees for a period of 24 months from the date of the entry of final judgment not to 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 any ATF Warmers as such term is defined in the Settlement Agreement entered into between T.RAD and End-Payor Plaintiffs dated August 12, 2015.

11. As more fully set forth in the Agreement, T.RAD agrees to cooperate with Plaintiffs in connection with the continued prosecution of the Action.

12. In the event that the Settlement Agreement is terminated in accordance with its provisions, the Settlement Agreement and all proceedings had in connection therewith shall be null and void, except insofar as expressly provided to the contrary in the Settlement Agreement, and without prejudice to the status quo and rights of End-Payor Plaintiffs, T.RAD, and the members of the Settlement Class.

13. The Court's provisional certification of the Settlement Class as provided herein is without prejudice to, or waiver of, the rights of any Defendants to contest certification of any other class proposed in these coordinated actions. The Court's findings in this Order shall have no effect on the Court's ruling on any motion to certify any class in these actions or on the Court's ruling(s) concerning any Defendant's motion; and 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.

14. The Court approves the establishment of escrow accounts under the Settlement Agreement as qualified settlement funds ("QSF") pursuant to Internal Revenue Code Section 468B and the Treasury Regulations promulgated thereunder, and retains continuing jurisdiction as to any issue that may arise in connection with the formation and/or administration of the QSF. Settlement Class Counsel are, in accordance with the Settlement Agreement, authorized to expend funds from the QSF for the payment of the costs of notice, payment of taxes, and settlement administration costs.

15. The litigation against T.RAD is stayed except to the extent necessary to effectuate the Settlement Agreement.

Dated: _____, 2015

HON. MARIANNE O. BATTANI
U.S. DISTRICT JUDGE