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

IN RE AUTOMOTIVE PARTS ANTITRUST LITIGATION	Master File No. 2:12-md-02311 Honorable Sean F. Cox
IN RE HYDRAULIC BRAKING SYSTEMS	Case No. 21-cv-12002
IN RE ELECTRONIC BRAKING SYSTEMS	Case No. 21-cv-12000
THIS DOCUMENT RELATES TO: AUTOMOBILE DEALERSHIP ACTIONS	

AUTOMOBILE DEALER PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF PROPOSED SETTLEMENT WITH BOSCH DEFENDANTS AND PROVISIONAL CERTIFICATION OF SETTLEMENT CLASSES

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

(1) Preliminarily approve the proposed settlement of the above-captioned litigation with Robert Bosch GmbH and Robert Bosch LLC (collectively "Bosch");

(2) Provisionally approve the proposed Settlement Classes;

(3) Stay the proceedings against the Bosch Defendants in accordance with the terms of the Settlement Agreement;

(4) Authorize Automobile Dealer Plaintiffs to provide notice of the Settlement Agreement to members of the Settlement Classes in a form approved by the Court at a later time; and

(5) Appoint Cuneo, Gilbert & LaDuca, Barrett Law Group, P.A., and Larson · King, LLP as Settlement Class Counsel for purposes of this settlement.

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

The parties do not request a hearing for this motion. The Bosch Defendants consent to this motion and to the entry of the proposed order.

Dated: August 27, 2021

By: */s/ Gerard V. Mantese*

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MEMORANDUM IN SUPPORT OF AUTOMOBILE DEALER PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF PROPOSED SETTLEMENT WITH BOSCH DEFENDANTS AND PROVISIONAL CERTIFICATION OF SETTLEMENT CLASSES

STATEMENT OF ISSUES PRESENTED

1. Whether Automobile Dealer Plaintiffs' ("ADs") settlement with Robert Bosch GmbH and Robert Bosch LLC (collectively "Bosch"), embodied in the Settlement Agreement entered into on December 21, 2020 ("Settlement Agreement") and attached hereto as Exhibit 1, 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 ADs against Bosch in accordance with the terms of the Settlement Agreement;

4. Whether the Court should authorize Settlement Class Counsel to provide notice of the Settlement Agreement to Members of the Settlement Classes (as defined in the Settlement Agreement) at a later time;[1] and

5. Whether the Court should appoint Interim Co-Lead Class Counsel for ADs 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 (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)

Sheick v. Auto Component Carrier LCC, 2010 U.S. Dist. LEXIS 110411 (E.D. Mich. Oct. 18, 2010)

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Automobile Dealership Plaintiffs ("ADs"), 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 Robert Bosch GmbH and Robert Bosch LLC (collectively "Bosch") and provisional certification of the proposed Settlement Classes.

PRELIMINARY STATEMENT

Hydraulic Braking Systems and Electronic Braking Systems and Electronic Braking Systems are among the Automotive Parts at issue in these coordinated proceedings, *In re Automotive Parts Antitrust Litigation* ("Auto Parts"), MDL No. 2311. For this settlement, the following definitions apply:

> "Hydraulic Braking Systems" consist of an actuation system and a foundation system. The actuation system is made up of a brake booster and main brake cylinder, while the foundation system is made up of a disc brake with saddle or drum brake and wheel brake cylinder. Hydraulic Braking Systems use fluid to transfer pressure to the vehicle's braking mechanism, slowing the vehicle.
>
> "Electronic Braking Systems" prevent cars from skidding by providing electronic stability controls when braking (ABS) or under all driving conditions (ESC).

Settlement Agreement ¶ 8; *see also* Hydraulic Braking Systems Complaint at ¶ 41 and Electronic Braking Systems Complaint at ¶ 38. These coordinated actions involve alleged conspiracies among some of the automotive industry's largest manufacturers, marketers, and sellers of Hydraulic Braking Systems and Electronic Braking Systems to fix the prices, rig bids, and allocate the market and customers in the United States for

such products. For pretrial purposes, this Court previously consolidated and coordinated the ADs cases. The Court also appointed the undersigned firms Interim Co-Lead Class Counsel and Interim Liaison Counsel for the Automobile Dealer Actions in the Master Docket for MDL No. 2311. *See* Case Management Order, Master Docket No. 12-md-2311 (Aug. 7, 2012, ECF no. 271). Throughout these cases, Interim Co-Lead Class Counsel has represented the interests of ADs, including in settlement negotiations with Bosch. This proposed settlement is a result of those efforts.

The United States Department of Justice ("DOJ") has been investigating conspiracies in the market for automotive parts since at least as early as February 2010, and the Federal Bureau of Investigation ("FBI") has conducted an ongoing federal antitrust investigation into price fixing, bid rigging and other anticompetitive conduct in the automotive parts industry.

The settlement between the ADs and Bosch will result in a payment of $708,000.00 to ADs. The settlement also requires Bosch to provide cooperation in the form of attorney proffers, interviews with and depositions of witnesses, and the production of certain documents (including transactional data), related to the claims asserted in this case. Such cooperation will assist the ADs in this litigation and the ability to obtain such information informally is valuable.

As with other AD settlements, Bosch's sales will remain in the case for purposes of computing the treble damages claim against any non-settling Defendants and shall be part of any joint and several liability claims against any future Defendants. *See*

Settlement Agreement ¶ 54. The ADs and the proposed Settlement Classes retain their ability to recover from the remaining or future Defendants, the entire damages caused by the alleged conspiracies, even those attributable to Bosch, less only the amount paid by Bosch in settlement.

ADs and their Interim Lead Counsel believe, for all the reasons set forth, the settlement with Bosch is in the best interest of the proposed members of the Settlement Classes and merits the Court's preliminary approval. ADs therefore request the entry of an Order:

1. Preliminarily approving the Settlement;

2. Provisionally certifying the proposed Settlement Classes;

3. Staying the proceedings against Bosch in accordance with the terms of the Settlement Agreement;

4. Authorizing Settlement Class Counsel to defer providing notice of the Settlement Agreement to class members until a later time; and

5. Appointing Interim Co-Lead Class Counsel for ADs as Settlement Class Counsel for this Settlement.

THE BASIC TERMS AND BACKGROUND OF THE SETTLEMENT AGREEMENT

The Settlement Agreement with Bosch arises from extensive arm's length and good faith negotiations. In addition to substantial litigation with the Defendants in this

MDL, counsel participated in fact-gathering sessions and informational meetings, as well as negotiations that took place through telephone calls, in-person meetings, and other communications.

Settlement Classes: The Settlement Agreement defines the Hydraulic Braking Systems Settlement Class in this action as:

> All Automobile Dealerships that, during the period from and including February 13, 2007 through December 31, 2017, (a) indirectly purchased one or more Hydraulic Braking System(s), which were manufactured or sold by a Defendant, any current or former subsidiary of a Defendant, or any co-conspirator of a Defendant, or (b) purchased Vehicles for resale that contained one or more Hydraulic Braking System(s), which were manufactured or sold by a Defendant, any current or former subsidiary of a Defendant, or any co-conspirator of a Defendant. Excluded from the Settlement Class are Defendants, their parent companies, subsidiaries and affiliates, and co-conspirators, federal governmental entities and instrumentalities of the federal government, and states and their subdivisions, agencies and instrumentalities.
>
> The Electronic Braking Systems Settlement Class is defined as:
>
> All Automobile Dealerships that, during the period from and including September 29, 2010 through December 31, 2017, (a) indirectly purchased one or more Electronic Braking System(s), which were manufactured or sold by a Defendant, any current or former subsidiary of a Defendant, or any co-conspirator of a Defendant, or (b) purchased Vehicles for resale that contained Electronic Braking System(s), which were manufactured or sold by a Defendant, any current or former subsidiary of a Defendant, or any co-conspirator of a Defendant. Excluded from the Settlement Class are Defendants, their parent companies, subsidiaries and affiliates, and co-conspirators, federal governmental entities and instrumentalities of the federal government, and states and their subdivisions, agencies and instrumentalities.

Settlement Agreement ¶ 13.

Settlement Amount: Bosch has agreed to pay $708,000.00 within thirty (30) days following the later of (i) the entry of an order preliminarily approving the Agreement or (ii) the date Bosch is provided with the account number, account name and wiring transfer information for the Escrow account. *Id.* ¶ 26. The Settlement Amount shall be paid into an interesting-bearing escrow account at Huntington National Bank. *Id.* ¶ 27.

Cooperation: Bosch has agreed to provide cooperation to the proposed Settlement Classes. A general summary of Bosch'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. Bosch's obligation to cooperate includes, among other things, the duty to provide a list of vehicles containing Bosch Hydraulic Braking Systems and Electronic Braking Systems, to the best of its knowledge, and further cooperation as requested by ADs.

> 39. *Identity of Individuals.*
>
> Within fifteen (15) business days of Settlement Class Counsel's request, Counsel for Bosch shall provide Settlement Class Counsel with the identity of all current and former employees, directors and officers of Bosch who: (1) were interviewed and/or prosecuted by any Government Entity in connection with alleged price-fixing, bid rigging, and market allocation of Hydraulic Braking Systems and/or Electronic Braking Systems; (2) appeared before the grand jury in the DOJ's investigation into alleged antitrust violations with respect to Hydraulic Braking Systems and/or Electronic Braking Systems; and/or (3) Bosch knows were disclosed to the DOJ as having knowledge of information relating to the DOJ's investigation into alleged antitrust violations with respect to Hydraulic Braking Systems and/or Electronic Braking Systems.
>
> 40. *Transactional Data*.

Subject to meeting and conferring with Automobile Dealership Plaintiffs as to the reasonable scope and timing of the production, within forty-five (45) days of Settlement Class Counsel's request, Bosch will use reasonable best efforts to complete the production of pre-existing transactional data in the format maintained in the ordinary course of business concerning Bosch's sales of (i) Hydraulic Braking Systems sold to Original Equipment Manufacturers, or other purchasers of Hydraulic Braking Systems, from February 13, 2005 through December 31, 2019; (ii) Electronic Braking Systems sold to Original Equipment Manufacturers, or other purchasers of Electronic Braking Systems, from September 29, 2008 through December 31, 2019. Bosch will produce transactional data only from existing electronic transactional databases, except that, to the extent Bosch has not recorded or maintained electronic transactional data for any period between February 13, 2005 through December 31, 2017 for Hydraulic Braking Systems, or September 29, 2008 through December 31, 2017 for Electronic Braking Systems, then Bosch will use reasonable efforts to produce existing hard copy records of sales transactions not recorded or maintained electronically in the existing electronic sales transactional database.

41. *Documents.*

Within forty-five (45) days of Settlement Class Counsel's request, Bosch will use reasonable best efforts to complete the production of the following Documents, other than the Protected Documents, including English translations to the extent they exist, and subject to the requirements of the European General Data Protection Regulation, 2016 O.J. (L119) 1: (1) Documents provided to or seized by Government Entities relating to their investigation into alleged competition violations with respect to Hydraulic Braking Systems and Electronic Braking Systems; (2) non-privileged Documents concerning Hydraulic Braking Systems and Electronic Braking Systems collected and reviewed in connection with a communication, meeting, or agreement regarding Hydraulic Braking Systems and Electronic Braking Systems, by any employee, officer or director of Bosch with any employee, officer, or director of another manufacturer or seller of Hydraulic Braking Systems and Electronic Braking Systems, but that were not provided to or seized by Government Entities; (3) Documents sufficient to show Bosch's general methodology for determination of their prices for Hydraulic Braking Systems and Electronic Braking Systems; and (4) Documents concerning (i) requests for quotation ("RFQ"), (ii) bids submitted in response to RFQs, (iii) RFQ award notifications, and (iv) post-award price

adjustments for Hydraulic Braking Systems and Electronic Braking Systems, including any Annual Price Reduction (APR) Documents, provided that for each (i) through (iv) were subject to competitor communications. As to non-privileged Documents in Bosch's possession, custody, or control that are not listed above, Bosch will consider in good faith any reasonable request by Automobile Dealership Plaintiffs to collect and produce such Documents provided the request would not impose an undue burden on Bosch.

43. *Attorney Proffers and Witness Interviews.*

Within thirty (30) days of Settlement Class Counsel's request:

(a) Bosch's counsel will make themselves available at a mutually agreed location in the United States for up to two (2) meetings of one business day each to provide an attorneys' proffer of facts known to them. Thereafter, Bosch's counsel will make themselves available for reasonable follow-up conversations in connection with the attorney's proffers and will use best efforts to respond to questions posed by Settlement Class Counsel. Settlement Class Counsel will make reasonable best efforts to limit the cost of any proffers and interviews, including conducting them by videoconference where possible.

(b) Bosch further agrees to make best efforts to make three (3) persons available for interviews and depositions, provide three (3) declarations or affidavits from the same persons, and make those persons available to testify at trial to the extent legally permissible. The interviews and depositions shall be conducted at a mutually agreed-upon location in the United States, and each deposition shall be limited to a total of seven (7) hours over one (1) day unless the deposition is in a language other than English, in which case the deposition shall be limited to a total of thirteen (13) hours over two (2) days. Settlement Class Counsel will make reasonable best efforts to limit the cost of any depositions or interviews, including conducting them by videoconference where possible. If the deposition or trial takes place in person outside the country of the witness's residence, Settlement Class Counsel and End-Payor Settlement Class Counsel shall together reimburse half the reasonable travel costs incurred by such persons for time or services rendered. Such travel expenses may include economy airfare, meals, lodging and ground transportation, but not airfare for business or first class seats. Reimbursable expenses shall not exceed $1,500 per deponent or trial witness. If the interview and the above-described deposition occur during the same trip, the above-limitations will apply to that trip.

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

Settlement Agreement at ¶¶ 39-43.

Released Claims: The Settlement Agreement releases only Bosch (and its respective past and present direct and indirect, parents, subsidiary companies and affiliates, and all other partnerships or corporations with whom any of the foregoing have been, or are now, affiliated including all of the foregoing's respective predecessors, successors and assigns and each and all of the present and former principals, partners, officers, directors, supervisors, employees, agents, stockholders, members, representatives, insurers, attorneys, heirs, executors, administrators, and assigns of each of the persons and entities described above) from, *inter* alia, all Settlement Class Member and their respective Releasors' claims arising out of or relating in any way to any conduct alleged in the Consolidated Amended Complaint, or any act or omission of Bosch, concerning Hydraulic Braking Systems and Electronic Braking Systems. *Id* at ¶¶ 11, 24-25.

The release does not include: (1) any claims made by direct purchasers of Hydraulic Braking Systems or Electronic Braking Systems; (2) any claims made by end payors that are indirect purchasers of Hydraulic Braking Systems or Electronic Braking

Systems; (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 Hydraulic Braking Systems or Electronic Braking Systems; (5) claims concerning any automotive part other than Hydraulic Braking Systems or Electronic Braking Systems; (6) claims under laws other than those of the United States relating to purchases of Hydraulic Braking Systems or Electronic Braking Systems 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 unless this Agreement is, for any reason, not finally approved or terminated. *Id.*

ARGUMENT

The Settlement Agreement is fair, reasonable, and adequate—resulting from extensive, arm's length negotiations by experienced counsel—and is an excellent resolution of the proposed Settlement Classes' claims that maximizes their recovery and

guarantees cooperation by Bosch that may prove valuable in the continued prosecution of ADs' claims in this multidistrict litigation.

I. The Court Should Grant Preliminary Approval Because the Proposed Settlement Satisfies the Requirements of Rule 23 and Sixth Circuit Precedent.

Rule 23(e) directs the Court to review a motion for preliminary approval to determine whether the settlement is fair, reasonable and adequate; that certification for purposes of settlement is warranted; and that notice is justified because the Court will likely grant final approval to the settlement. All such factors weigh in favor of preliminary approval here.

Before authorizing ADs to disseminate notice of the Settlement Agreement to the Settlement Classes, ADs must demonstrate "that the Court will likely be able to (i) approve the [Settlement Agreement] under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the [Settlement Agreement]." Fed. R. Civ. P. 23(e)(1)(B).

Under Rule 23(e)(2), a Court may only approve a settlement based on a finding that the proposed settlement is "fair, reasonable and adequate" after considering whether:

> (A) the class representatives and class counsel have adequately represented the class;
> (B) the proposal was negotiated at arm's length;
> (C) the relief provided for the class is adequate, taking into account:
> (i) the costs, risks, and delay of trial and appeal;
> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class member claims;
> (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
> (iv) any agreement required to be identified under Rule 23(e)(3); and
> (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e). These factors overlap with the factors that courts in the Sixth circuit have considered on preliminary and final approval, which include:

> (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.

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

A court is not required at the preliminary approval stage to determine whether it will ultimately approve the settlement, but only whether "the proposed settlement will likely earn final approval." *See* Adv. Comm. Note at 27. As set forth in detail below, preliminary consideration of the Rule 23(e) factors and the Sixth Circuit factors support preliminary approval here.

II. Preliminary Approval Should Be Granted Because the Proposed Settlement Falls Well Within the Range of Possible Approval.

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*") ("[S]ettlement 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"). Throughout this litigation, motions have 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]

Bosch has and 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

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

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 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, a settlement providing the substantial benefits afforded here represents an excellent result for the members of the proposed Settlement Classes. Bosch's $240,000.00 payment provides compensation that will be available years earlier than if litigation against Bosch continued through trial and appeal. Settlements of this type create value beyond their direct pecuniary benefit to the class. *See In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 643 (E.D. Pa. 2003); *In re Corrugated Container Antitrust Litig.*, 1981 WL 2093, *16 (S.D. Tex. Jan. 27, 1981 ("*Corrugated Container*").

The Settlement Agreement requires Bosch to provide cooperation to the ADs' counsel. *See* Settlement Agreement § F (¶¶ 34-48). This cooperation is valuable and will afford the ADs access to information without further litigation 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 Settlement Agreement does not alter joint and several liability of any current or future Defendants for the full damages caused by the alleged conspiracies. *See* Settlement Agreement ¶ 54. In this regard, the Settlement Agreement is similar to other settlements approved in this litigation and 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 other current or future 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).

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)

[3] The attorneys who negotiated the Settlement Agreement on behalf of both ADs and Bosch are highly experienced and capable. *See* Automobile Dealer 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.

(quoting *IUE-CWA*, 238 F.R.D. at 597); *see 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). The Settlement Agreement here is the result of substantial negotiations between counsel experienced in complex antitrust and consumer class action litigation. The amount of the settlement and the Settlement Agreement terms were negotiated by Interim Co-Lead Class Counsel and counsel for Bosch. 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 before negotiating this deal.

Counsel for the ADs were well-informed about the facts and the strength of the claims asserted when the terms of the Settlement Agreement were initially negotiated and the information available to ADs and litigation progress far exceeded what has been approved by other courts. *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 during the negotiations or the substance of the settlement that "disclose[s] grounds to doubt its fairness." *Manual* § 30.41.

C. No Other Agreements Exist in Connection with This Settlement and the Settlement Proceeds Will be Distributed Pursuant to Court-Approved Allocation Plans.

ADs have attached the Settlement Agreement entered between the parties as Exhibit 1. There are no additional agreements between the parties concerning the settlement for which ADs seek approval.[4] See Fed. R. Civ. P. 23(e)(2)(C)(iv). As with prior AD settlements, the Court will be presented with Plans of Allocation generated

[4] The Sixth Circuit's Fifth Factor, "reaction of absent class members," is not yet relevant as the Court has not yet authorized notice of the Proposed Settlement. The Sixth Circuit's Seventh Factor, "the public interest," weighs in favor of approval for the reasons described above. The Sixth Circuit's Fourth Factor, "the amount of discovery engaged in by the parties," weighs in favor of the settlement because ADs have benefited from significant discovery in the Hydraulic Braking Systems and Electronic Braking Systems and other actions, including but not limited to documents, information cooperation, and depositions. This discovery has informed the settlement and counsel's opinion that it is fair, reasonable, and adequate.

by the ADs' consultant and endorsed by Class Counsel for the ADs. In their first four rounds of settlements, the ADs have developed and carried out an effective method of distributing the settlement benefits to eligible new car automobile dealerships who filed valid claims. That process has worked well and would be used for this settlement with Bosch. See Fed. R. Civ. P. 23(e)(2)(C)(ii).

III. 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 classes 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. ADs' 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 Class Members 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).

The proposed settlement classes at issue in this action involve all automobile dealerships in the U.S. from September 29, 2010 through December 31, 2017 that purchased one or more new automobiles containing Hydraulic Braking Systems and Electronic Braking Systems or that indirectly purchased one or more Hydraulic Braking Systems and Electronic Braking Systems as replacement parts. Because there are thousands of such automobile dealerships geographically distributed throughout the United States, joinder is highly impractical, if not impossible, for all the proposed Settlement Classes.

ii. Automobile Dealer 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").

Through the course of this litigation, ADs have already identified the following issues common to the proposed Settlement Classes:

- Whether the Defendants and their co-conspirators engaged in a combination and conspiracy among themselves to fix, raise, maintain, or stabilize the prices of Hydraulic Braking Systems and Electronic Braking Systems sold in the United States;

- The identity of the participants of the alleged conspiracy;

- The duration of the alleged conspiracy and the acts carried out by Defendants and their co-conspirators in furtherance of the conspiracy;

- Whether the alleged conspiracy violated the Sherman Act, as alleged in the First Claim for Relief;

- Whether the alleged conspiracy violated state antitrust, unfair competition, and/or consumer protection laws, as alleged in the Second and Third Claims for Relief;

- Whether the Defendants unjustly enriched themselves to the detriment of the Plaintiffs and the members of the Class, thereby entitling Plaintiffs and the members of the Class to disgorgement of all benefits derived by Defendants, as alleged in the Fourth Claim for Relief;

- Whether the conduct of the Defendants and their co-conspirators, as alleged in this Complaint, caused injury to the business or property of Plaintiffs and the members of the Class;

- The effect of the alleged conspiracy on the prices of Hydraulic Braking Systems and Electronic Braking Systems sold in the United States during the Class Period;

- Whether Plaintiffs and the members of the Class had any reason to know or suspect the conspiracy, or any means to discover the conspiracy;

- Whether the Defendants and their co-conspirators fraudulently concealed the conspiracy's existence from Plaintiffs and the members of the Class;

- The appropriate injunctive and related equitable relief for the Nationwide Class; and

- The appropriate class-wide measure of damages for the Damages Class.

(Hydraulic Braking Systems and Electronic Braking Systems Compl. ¶ 226). Any one of these substantive issues would, standing alone, establish the requisite commonality under Rule 23(a)(2).

iii. Automobile Dealer 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 AD Plaintiff Class representatives and the members of the proposed Settlement Classes believe they are all victims of the conspiracies to fix prices, rig bids, and allocate the market and customers for Hydraulic Braking Systems and Electronic Braking Systems 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 Automobile Dealer 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)).

There are no conflicts between the ADs and the co-proposed Settlement Classes because ADs and members of the proposed Settlement Classes: (i) purchased in the United States new automobiles containing Hydraulic Braking Systems and Electronic Braking Systems and/or (ii) indirectly purchased Hydraulic Braking Systems and Electronic Braking Systems have the same interest in establishing liability, and 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)). ADs and the members of the proposed Settlement Classes also share a common interest in obtaining Bosch's cooperation.

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 class 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 Cuneo Gilbert & LaDuca, LLP, Barrett Law Group, P.A., and Larson • King, LLP as Interim Co-Lead Class Counsel in this action 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 ADs' request here to provisionally certify the proposed Settlement Classes under Rule 23(b)(3), the Supreme Court 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.[5]

Because the proposed Settlement Classes allege conduct from which all proposed Settlement Class Members' alleged 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'

[5] The Supreme Court's 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 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 Class' claimed damages—the overcharge suffered as a result of inflated automobile components—stem from the Defendants' alleged price-fixing conspiracies.

conspiracy or conspiracies, and the aggregate amount of damage suffered by the class 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) ("[A]s 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).[6] Furthermore, here the evidence that will prove a violation as to one Settlement Class Member is common to the others and will be sufficient to prove it as to all—the anticompetitive conduct is not dependent on the

[6] 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*, 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.

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 ADs 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 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). Thousands of new-car dealerships purchased automobiles containing Hydraulic Braking Systems and Electronic Braking Systems as a component part or indirectly purchased Hydraulic Braking Systems and Electronic Braking Systems as a replacement part for an automobile during the class period; 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").[7]

C. The Proposed Settlement Classes Meet the Requirements of Rule 23(b)(2).

If the requirements of Rule 23(a) are met, the Court may also certify a class under Rule 23 (b)(2) where: "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole . . ." Claims for non-monetary relief, like those asserted under state laws that do not recognize claims for money damages by indirect purchaser in antitrust actions, are properly certified under Rule 23(b)(2).

IV. Notice to the Class Members.

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 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).

[7] 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").

"[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 request that the Court allow them to defer providing notice of this settlement until a later time. ADs will submit a motion for leave to disseminate notice and that motion will include a proposed form of, method for, and date of dissemination of notice.

CONCLUSION

For the foregoing reasons, ADs 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 Bosch in accordance with the terms of the Settlement Agreement;
4. Authorizing Settlement Class Counsel to provide notice of the Settlement Agreement to members of the Settlement Classes at a later time; and
5. Appointing Interim Co-Lead Class Counsel for the ADs as Settlement Class Counsel for this settlement.

Dated: August 27, 2021

By: */s/ Gerard V. Mantese*

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Interim Co-Lead Counsel for the Automobile Dealer Plaintiffs

CERTIFICATE OF SERVICE

I, Gerard V. Mantese, hereby certify that I caused a true and correct copy of **MOTION AND MEMORANDUM IN SUPPORT OF AUTOMOBILE DEALER PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF PROPOSED SETTLEMENT WITH BOSCH DEFENDANTS AND PROVISIONAL CERTIFICATION OF SETTLEMENT CLASSES** to be served via e-mail upon all registered counsel of record via the Court's CM/ECF system on August 27, 2021.

/s/ Gerard V. Mantese
Gerard V. Mantese

EXHIBIT 1

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

IN RE AUTOMOTIVE PARTS ANTITRUST LITIGATION	Master File No. 2:12-md-02311 Honorable Sean F. Cox
IN RE HYDRAULIC BRAKING SYSTEMS IN RE ELECTRONIC BRAKING SYSTEMS	Case No. __-cv-_____ Case No. __-cv-_____
THIS DOCUMENT RELATES TO: AUTOMOBILE DEALERSHIP ACTIONS	

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and entered into this 21st day of December 2020 ("Execution Date") by Robert Bosch GmbH and Robert Bosch LLC (together, "Bosch") and Automobile Dealership Plaintiff Class Representatives ("Automobile Dealership Plaintiffs"), both individually and on behalf of classes of indirect purchasers of Hydraulic Braking Systems and Electronic Braking Systems ("Settlement Classes"), as more particularly defined in Paragraph 13 below.

WHEREAS, Automobile Dealership Plaintiffs are prosecuting the above *In re Automotive Parts Antitrust Litigation*, Master File No. 12-md-02311 (E.D. Mich.) ("MDL Litigation") and the above actions, *In re Hydraulic Braking Systems* and *In re Electronic Braking Systems* ("Actions"), on their own behalf and on behalf of the Settlement Classes;

WHEREAS, Automobile Dealership Plaintiffs allege that they were injured as a result of Bosch's participation in an unlawful conspiracy to raise, fix, maintain, and/or stabilize prices, rig bids, and allocate markets and customers for Hydraulic Braking Systems and Electronic

Braking Systems (as defined in Paragraph 7) 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 Automobile Dealership Plaintiffs' Class Action Complaints ("Complaints") concurrently filed herewith;

WHEREAS, Bosch denies Automobile Dealership Plaintiffs' allegations and has asserted defenses to Automobile Dealership Plaintiffs' claims in the Actions;

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

WHEREAS, Automobile Dealership Plaintiffs, through Settlement Class Counsel, have conducted an investigation into the facts and the law regarding the Actions and have concluded that resolving the claims against Bosch, according to the terms set forth below, is in the best interests of Automobile Dealership Plaintiffs and the Settlement Classes because of the payment of the Settlement Amount and the value of the Injunctive Relief and Cooperation (as those terms are defined below) that Bosch has agreed to provide pursuant to this Agreement;

WHEREAS, Bosch, 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 Bosch with respect to Hydraulic Braking Systems and Electronic Braking Systems based on the allegations in the Actions, as more particularly set out below.

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

A. Definitions.

1. "Automobile Dealership" or "Dealer" means a franchised entity or person authorized to engage in the business of selling and / or leasing Vehicles at retail in the United States.

2. "Automobile Dealership Plaintiff Class Representatives" means those Settlement Class Members, as defined in Paragraph 15, below, who are named plaintiffs in the Complaints.

3. "Cooperation" shall refer to those provisions set forth below in Paragraphs 34-48.

4. "Cooperation Materials" means any information, testimony, Documents (as defined below) or other material provided by Bosch under the terms of this Agreement.

5. "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 ("Rule") 23(e).

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

7. "Indirect Purchaser States" means Arizona, Arkansas, California, District of Columbia, Florida, Hawaii, Illinois, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota,

Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, South Carolina, South Dakota, Tennessee, Utah, Vermont, West Virginia, and Wisconsin.

8. "Hydraulic Braking Systems" and "Electronic Braking Systems" shall have the meaning set forth in the respective Complaints.

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

10. "Released Claims" means the Claims described in Paragraphs 24-25.

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

12. "Releasors" shall refer to Automobile Dealership Plaintiffs Class Representatives and the Settlement Class Members, as defined in Paragraph 13, below, and to their past and present officers, directors, supervisors, employees, agents, stockholders, members, attorneys, servants, representatives, parents, subsidiaries, divisions, affiliates, principals, partners, insurers and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and the predecessors, successors, heirs, executors, administrators and assigns of any of the foregoing.

13. For purposes of this Agreement, the "Hydraulic Braking Systems Settlement Class" is defined as:

> All Automobile Dealerships that, during the period from and including February 13, 2007 through December 31, 2017, (a) indirectly purchased one or more Hydraulic Braking System(s), which were manufactured or sold by a Defendant, any current or former subsidiary of a Defendant, or any co-conspirator of a Defendant, or (b) purchased Vehicles for resale that contained one or more Hydraulic Braking System(s), which were manufactured or sold by a Defendant, any current or former subsidiary of a Defendant, or any co-conspirator of a Defendant. Excluded from the Settlement Class are Defendants, their parent companies, subsidiaries and affiliates, and co-conspirators, federal governmental entities and instrumentalities of the federal government, and states and their subdivisions, agencies and instrumentalities.

The "Electronic Braking Systems Settlement Class" is defined as:

> All Automobile Dealerships that, during the period from and including September 29, 2010 through December 31, 2017, (a) indirectly purchased one or more Electronic Braking System(s), which were manufactured or sold by a Defendant, any current or former subsidiary of a Defendant, or any co-conspirator of a Defendant, or (b) purchased Vehicles for resale that contained Electronic Braking System(s), which were manufactured or sold by a Defendant, any current or former subsidiary of a Defendant, or any co-conspirator of a Defendant. Excluded from the Settlement Class are Defendants, their parent companies, subsidiaries and affiliates, and co-conspirators, federal governmental entities and instrumentalities of the federal government, and states and their subdivisions, agencies and instrumentalities.

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

> BARRETT LAW GROUP, P.A.
> P.O. Box 927
> 404 Court Square
> Lexington, MS 39095
>
> CUNEO GILBERT & LaDUCA, LLP
> Suite 200
> 4725 Wisconsin Avenue, NW
> Washington, DC 20016

LARSON • KING, LLP
2800 Wells Fargo Place
30 East Seventh Street
St. Paul, MN 55101

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 $708,000.00 and the "Settlement Fund" shall be the Settlement Amount plus any income or accrued interest earned on that amount as set forth in Paragraph 27.

(a) For the Hydraulic Braking Systems Settlement Class, $40,456.49 plus accrued interest on said deposit set forth in Paragraph 27.

(b) For the Electronic Braking Systems Settlement Class, $667,543.51 plus accrued interest on said deposit set forth in Paragraph 27.

17. "Vehicles" shall refer to new four-wheeled passenger automobiles, vans, sports utility vehicles, and crossover or pick-up trucks.

B. Approval of this Agreement and Dismissal of Claims Against Bosch.

18. Automobile Dealership Plaintiffs and Bosch shall use their best efforts to effectuate this Agreement, including cooperating in seeking the Court's approval for the establishment of procedures (including the giving of class notice under Rules 23(c) and (e)) to secure the complete, and final dismissal with prejudice of the Actions as to the Releasees only.

19. Within thirty (30) days after the execution of this Agreement, Automobile Dealership Plaintiffs shall submit to the Court a motion seeking preliminary approval of this Agreement ("Preliminary Approval Motion"). The Preliminary Approval Motion shall include (i) the proposed form of an order preliminarily approving this Agreement, and (ii) a proposed form of order and final judgment that shall include at least the terms set forth in Paragraph 21 below.

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

21. Automobile Dealership Plaintiffs shall seek, and Bosch will not object unreasonably to, the entry of an order and final judgment in the Actions. The terms of that proposed order and final judgment will include, at a minimum, the substance of the following provisions:

(a) certifying the Settlement Classes described in Paragraph 13, pursuant to Rule 23, solely for purposes of this settlement as Settlement Classes for the Actions;

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

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

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

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

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

22. This Agreement shall become final when (i) the Court has entered a final order certifying the Settlement Classes described in Paragraph 13 and approving this Agreement under Rule 23(e) and has entered a final judgment dismissing the Actions with prejudice as to Bosch 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 Bosch described in (i) above has expired or, if appealed, approval of this Agreement and the final judgment in the Actions as to Bosch has been affirmed in its entirety by the Court of last resort to which such appeal has been taken, and such affirmance has become no longer subject to further appeal or review, and no other motion or pleading is pending in any court. It is agreed that the provisions of Rule 60 shall not be taken into account in determining the above-stated times. On the date that Automobile Dealership Plaintiffs and Bosch have executed this Agreement, Automobile Dealership Plaintiffs and Bosch shall be bound by its terms and this Agreement shall not be rescinded except in accordance with Paragraphs 27(h) or 49 of this Agreement.

23. Neither this Agreement (whether or not it should become final) nor the final judgment, nor any and all negotiations, Documents, or discussions associated with them (including Cooperation Materials produced pursuant to Paragraphs 34-48), shall be deemed or construed to be an admission by Bosch, or evidence of any violation of any statute or law or of any liability or wrongdoing whatsoever by Bosch, or of the truth of any of the claims or allegations contained in any complaint or any other pleading filed in the MDL Litigation, and evidence thereof shall not be discoverable or used in any way, whether in the MDL Litigation, or any other arbitration, action or proceeding whatsoever, against Bosch. Nothing in this Paragraph shall prevent Automobile Dealership Plaintiffs from using and/or introducing into evidence Cooperation Materials produced pursuant to Paragraphs 34-48, subject to the limitations in those Paragraphs, against any other defendants in the MDL Litigation or in confidential settlement discussions, or to develop and promulgate a plan of allocation and distribution. Neither this Agreement, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any other action taken to carry out this Agreement by Bosch, 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.

24. 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 22 of this Agreement, and in consideration of payment of the Settlement Amount, as specified in Paragraph 26 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 Releasors, or any of them, ever had, now has, or hereafter can, shall, or may ever have, that now exist or may exist in the future, on account of, or in any way arising out of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected, actual or contingent, liquidated or unliquidated claims, injuries, damages, and the consequences thereof in any way arising out of or relating in any way to (i) any conduct alleged in the Complaints, and/or (ii) any act or omission of the Releasees (or any of them) concerning Hydraulic Braking or Electronic Braking Systems, including, but not limited to, any conduct and causes of action alleged or asserted or that could have been alleged or asserted, in any class action or other complaint filed in the Actions ("Released Claims"), provided however, that nothing herein shall release: (1) any claims made by direct purchasers of Hydraulic Braking Systems or Electronic Braking Systems; (2) any claims made by end payors that are indirect purchasers of Hydraulic Braking Systems or Electronic Braking Systems; (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 Hydraulic Braking Systems or Electronic Braking Systems; (5) claims concerning any automotive part other than Hydraulic Braking Systems or Electronic Braking Systems; (6) claims under laws other than those of the United States relating to purchases of Hydraulic Braking Systems or Electronic Braking Systems 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 unless this Agreement is, for any reason, not finally approved or terminated.

25. In addition to the provisions of Paragraph 24 of this Agreement, Releasors hereby expressly waive and release, upon this Agreement becoming final, as set out in Paragraph 22 of this Agreement, any and all provisions, rights, and benefits, as to their claims concerning Hydraulic Braking Systems and Electronic Braking Systems 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 THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY;

or by any equivalent law or statute of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code. Each Releasor may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the claims which are released pursuant to the provisions of Paragraph 24 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 Bosch and Automobile Dealership Plaintiffs have agreed to release pursuant to Paragraph 24, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

D. Settlement Amount.

26. Subject to the provisions hereof, and in full, complete, and final settlement of the Actions as provided herein, Bosch, shall pay or cause to be paid the Settlement Amount of U.S.

$708,000.00. The Settlement Amount shall be paid in U.S. dollars into an escrow account to be administered in accordance with the provisions of Paragraph 27 of this Agreement ("Escrow Account") within thirty (30) days following the later of (i) entry of an order preliminarily approving this Agreement or (ii) the date Bosch is provided with the account number, account name and wiring transfer information for the Escrow Account.

27. Escrow Account.

(a) The Escrow Account will be established at Huntington National Bank with such Bank serving as escrow agent ("Escrow Agent") subject to escrow instructions regarding investment types and reinvestment of income and proceeds mutually acceptable to Settlement Class Counsel and Bosch, 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. Bosch shall bear no risk related to the management and investment of the Settlement Fund.

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

(d) Automobile Dealership Plaintiffs and Bosch agree to treat the Settlement Fund as being at all times a qualified settlement fund within the meaning of Treas. Reg. § 1.468B-1. In addition, Settlement Class Counsel shall timely make such elections as necessary or advisable to carry out the provisions of this Paragraph 27, including the relation-back election (as defined in Treas. Reg. § 1.468B-1(j)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of Settlement Class Counsel to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur. All provisions of this Agreement shall be interpreted in a manner that is consistent with the Settlement Amount being a "Qualified Settlement Fund" within the meaning of Treasury Regulation § 1.468B-1.

(e) For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the administrator of the Settlement Fund shall be Settlement Class Counsel. Settlement Class Counsel shall timely and properly file all information and other tax returns necessary or advisable with respect to the Settlement Fund (including without limitation the returns described in Treas. Reg. § 1.468B-2(k), (1)). Such returns (as well as the election described in Paragraph 27(d) above) shall be consistent with Paragraph 27(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 27(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 Bosch 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 27(d) through 27(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 27(e) ("Tax Expenses")), shall be paid out of the Settlement Fund.

(g) Neither Bosch 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(l)(2). Bosch shall not be responsible or have any liability therefor. Automobile Dealership Plaintiffs and Bosch 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 27(d) through 27(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 a class action for settlement purposes, then all amounts paid by Bosch into the Settlement Fund (other than costs expended or incurred in accordance with Paragraphs 27 and 30), shall be returned to Bosch from the Escrow Account by the Escrow Agent, along with any interest accrued thereon,

within thirty (30) calendar days of the court's final determination denying final approval of the Agreement and/or Settlement Classes.

28. Injunctive Relief.

Subject to the provisions hereof, and in full, complete, and final settlement of the Actions as provided herein, Bosch further agrees that it will not engage in conduct that constitutes a *per se* violation of Section 1 of the Sherman Act (whether characterized as price fixing, market allocation, bid rigging, or otherwise) with respect to the sale of Hydraulic Braking Systems and Electronic Braking Systems for a period of twenty-four (24) months from the date of the entry of final judgment.

29. Exclusions from the Settlement Classes.

Subject to Court approval, any person or entity seeking exclusion from the Settlement Classes must timely file a written request for exclusion by the Opt-Out Deadline. Any person or entity that files such a request shall be excluded from the Settlement 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 Bosch with a list and copies of all opt out requests it receives in the Actions and shall file with the Court a list of all Settlement Class Members who timely and validly opted out of the settlement.

(a) Subject to Court Approval, any member of the Settlement Classes who submits a valid and timely request for exclusion from the Settlement Classes will not be a Settlement Class Member and shall not be bound by the terms of this Agreement. Bosch 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 Hydraulic Braking Systems or Electronic Braking Systems or has standing to bring any claim against Bosch.

(b) Subject to Court Approval, in the written request for exclusion, the member of the Settlement Classes must state his, her, or its full name, street address, and telephone number. Further, the member of the Settlement Classes must include a statement in the written request for exclusion that he, she, or it wishes to be excluded from the Settlement Classes. Any member of the Settlement Classes that submits a written request for exclusion may also identify the number of Vehicles purchased with Bosch hydraulic braking systems from February 13, 2007 through December 31, 2017 and/or Bosch Electronic Braking Systems from September 29, 2010 through December 31, 2017 as requested in the notice to the Settlement Classes as provided in Paragraph 20.

(c) Bosch 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.

30. Payment of Expenses.

(a) Bosch agrees to permit a maximum of U.S. $158,000.00 of the Settlement Fund to be used towards notice to the Settlement Classes and the costs of administration of the Settlement Fund. The notice and administration expenses (up to the maximum of USD $158,000.00) are not recoverable if this settlement does not become final or is terminated to the extent such funds have actually been expended or incurred for notice and administration costs. Other than as set forth in Paragraphs 27 and 30, Bosch shall not be liable for any of the costs or

expenses of the litigation of the Actions, including attorneys' fees, fees and expenses of expert witnesses and consultants, and costs and expenses associated with discovery, motion practice, hearings before the Court or Special Master, appeals, trials, or the negotiation of other settlements, or for class administration and costs.

(b) To mitigate the costs of notice and administration, Automobile Dealership Plaintiffs shall use their best efforts, if practicable, to disseminate notice with any other settlements reached with other defendants in the MDL Litigation and to apportion the costs of notice and administration on a pro rata basis across the applicable settlements.

E. The Settlement Fund.

31. After this Agreement becomes final within the meaning of Paragraph 22, 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 30 of this Agreement.

32. Automobile Dealership 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. Bosch and the other Releasees shall not be liable for any costs, fees, or expenses of any of Automobile Dealership 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.

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

(a) Settlement Class Counsel may, at a time to be determined in its sole discretion after preliminary approval, submit an application or applications to the Court ("Fee and Expense Application") for: (i) an award of attorneys' fees not in excess of one-third of the Settlement Fund; plus (ii) reimbursement of expenses and costs incurred in connection with prosecuting the Actions and incentive awards, plus interest on such attorneys' fees, costs, and expenses at the same rate and for the same period as earned by the Settlement Fund (until paid), as may be awarded by the Court ("Fee and Expense Award"). Settlement Class Counsel reserves the right to make additional applications for Court approval of fees and expenses incurred and reasonable incentive awards, but in no event shall Bosch 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, Automobile Dealership Plaintiffs and Settlement Class Counsel shall be reimbursed and paid solely out of the Settlement Fund for all expenses including, but not limited to, attorneys' fees and past, current, or future litigation expenses and incentive awards. Attorneys' fees and expenses awarded by the Court shall be payable from the Settlement Fund upon award, notwithstanding the existence of any timely filed objections thereto, or potential appeal therefrom, or collateral attack on the settlement or any part thereof, subject to Settlement Class Counsel's obligation to make appropriate refunds or repayments to the Settlement Fund with interest, if and when, as a result of any appeal and/or further proceedings on remand, or successful collateral attack, the fee or award of expenses is reduced or reversed, or in the event the Agreement is rescinded or terminated pursuant to Paragraph 27(h) or Paragraph 50.

(c) The procedure for and the allowance or disallowance by the Court of the application by Settlement Class Counsel for attorneys' fees, costs, and expenses, and incentive

awards for class representatives to be paid out of the Settlement Fund is not part of this Agreement, and is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement. Any order or proceeding relating to the Fee and Expense Application, or any appeal from any such order shall not operate to terminate or cancel this Agreement, or affect the finality of the final approval of the settlement.

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

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

F. Cooperation.

34. In return for the release and discharge provided herein, Bosch agrees to pay the Settlement Amount and be bound by the Injunctive Relief described in Paragraph 28, and further agrees to use its best efforts to provide satisfactory and timely Cooperation, as set forth specifically in Paragraphs 35-48 below, until the later of the entry of the final judgment or judgments with respect to all Defendants in the Actions or dismissal with prejudice of those defendants and when such judgments or dismissal become "final" as set forth in Paragraph 22. Cooperation will take place consistent with the timing set forth specifically below, and in a manner that is in compliance with Bosch's obligations to Government Entities (defined as the United States Department of Justice ("DOJ"), the European Commission, the Japanese Fair Trade Commission, or any other government entity). Bosch shall not be required to produce any Documents protected by the work

product doctrine or attorney client privilege, or disclosure of which is prohibited by any relevant law (including, but not limited to, foreign laws), Government Entities, or court order ("Protected Documents").

35. After conducting a reasonable search, Bosch shall, to the best of its knowledge and within thirty (30) days of the Execution Date, identify (i) those Vehicles sold in the United States from February 13, 2007 through December 31, 2017 that contain Hydraulic Braking Systems sold by Bosch and (ii) those Vehicles sold in the United States from September 29, 2010 through December 31, 2017 that contain Electronic Braking Systems sold by Bosch. Bosch will use best efforts to complete this vehicle list with the data available to Bosch in the ordinary course of business, although Bosch does not sell vehicles and does not have complete knowledge of all regions where vehicles containing its products are sold by customers.

36. In the event that Bosch produces Documents, including translations, or provides declarations or written responses to discovery to any party or nonparty in the actions in the MDL Litigation, concerning or relating to the Electronic Braking Systems or Hydraulic Braking Systems Actions ("Relevant Production"), Bosch shall produce all such Documents, declarations or written discovery responses to Automobile Dealership Plaintiffs contemporaneously with making the Relevant Production to the extent such Documents, declarations or written discovery responses have not previously been produced by Bosch to Automobile Dealership Plaintiffs. In addition, Bosch shall provide Automobile Dealership Plaintiffs with all cooperation it provides pursuant to any settlement agreement with any other party in this MDL Litigation relating to Electronic Braking Systems or Hydraulic Braking Systems, including, but not limited to, the Direct Purchaser Plaintiffs. To the extent that such cooperation includes any attorney proffer, witness interviews, or depositions of witnesses in addition to those already provided for in Paragraph 43, Settlement

Class Counsel shall be permitted to attend and/or participate in such attorney proffer, witness interviews or depositions, and shall be entitled to ask questions for a period up to three (3) hours at any interview or deposition (provided that this shall not expand the time permitted for any deposition). All such additional Cooperation shall be coordinated, to the extent reasonably practicable, between Settlement Class Counsel, settlement class counsel for End Payor Plaintiffs ("End Payor Settlement Class Counsel"), and settlement class counsel for the Direct Purchaser Plaintiffs, or such other party whom such cooperation is provided pursuant to a settlement agreement. Automobile Dealership Plaintiffs' receipt of, or participation in, cooperation provided by Bosch shall not in any way limit Automobile Dealership Plaintiffs' entitlement to receive Cooperation as set forth in this Section F, including, but not limited to, attorney proffers, witness interviews, and depositions.

37. This Agreement does not restrict Settlement Class Counsel from noticing, attending and/or participating in any deposition in the MDL Litigation. Settlement Class Counsel may notice, attend, cross-notice and/or participate in any depositions of Bosch's witnesses in addition to the depositions set forth in Paragraph 43, and Settlement Class Counsel together with End Payor Settlement Class Counsel may ask questions for a combined total of three (3) hours at such deposition, provided that the time for participation of Settlement Class Counsel and End Payor Settlement Class Counsel shall not expand the time permitted for the deposition as may be provided by the Court, and Settlement Class Counsel will not ask the Court to enlarge the time of any deposition noticed of a Bosch current or former employee. Participation by Settlement Class Counsel in the depositions discussed in this Paragraph will not limit the number of depositions to be provided under Paragraph 43. Automobile Dealership Plaintiffs and Settlement Class Counsel agree to use their best efforts to ensure that any depositions taken under Paragraph 43 are

coordinated with any other deposition noticed in the MDL Litigation to avoid unnecessary duplication and expense. In the event Automobile Dealership Plaintiffs have settled with all Defendants in an Action, Automobile Dealership Plaintiffs will forgo participating in depositions of Bosch witnesses scheduled by other plaintiff groups in that Action provided that if: (1) this Agreement does not receive Final Approval, or (2) or any other settlement in that Action does not receive final approval, then Automobile Dealership Plaintiffs may, at a later date, take depositions of any Bosch witnesses who were previously deposed in that Action subject to the limitations of this Paragraph. Nothing herein shall alter, limit or otherwise affect rights of Automobile Dealership Plaintiffs to take depositions of Bosch employees subject to Paragraph 39(a) of this Agreement.

38. Settlement Class Counsel agree to request the additional cooperation set forth in Paragraphs 39-41 below ("Additional Cooperation") only if such Additional Cooperation is reasonably necessary for the prosecution of the Actions for any reason, such as in the case that Automobile Dealership Plaintiffs amend the Complaints to name additional defendants or one or more of the settlements in the Actions do not receive final approval.

39. *Identity of Individuals*. Within fifteen (15) business days of Settlement Class Counsel's request, Counsel for Bosch shall provide Settlement Class Counsel with the identity of all current and former employees, directors and officers of Bosch who: (1) were interviewed and/or prosecuted by any Government Entity in connection with alleged price-fixing, bid rigging, and market allocation of Hydraulic Braking Systems and/or Electronic Braking Systems; (2) appeared before the grand jury in the DOJ's investigation into alleged antitrust violations with respect to Hydraulic Braking Systems and/or Electronic Braking Systems; and/or (3) Bosch knows were disclosed to the DOJ as having knowledge of information relating to the DOJ's investigation into

alleged antitrust violations with respect to Hydraulic Braking Systems and/or Electronic Braking Systems.

40. *Transactional Data*. Subject to meeting and conferring with Automobile Dealership Plaintiffs as to the reasonable scope and timing of the production, within forty-five (45) days of Settlement Class Counsel's request, Bosch will use reasonable best efforts to complete the production of pre-existing transactional data in the format maintained in the ordinary course of business concerning Bosch's sales of (i) Hydraulic Braking Systems sold to Original Equipment Manufacturers, or other purchasers of Hydraulic Braking Systems, from February 13, 2005 through December 31, 2019; (ii) Electronic Braking Systems sold to Original Equipment Manufacturers, or other purchasers of Electronic Braking Systems, from September 29, 2008 through December 31, 2019. Bosch will produce transactional data only from existing electronic transactional databases, except that, to the extent Bosch has not recorded or maintained electronic transactional data for any period between February 13, 2005 through December 31, 2017 for Hydraulic Braking Systems, or September 29, 2008 through December 31, 2017 for Electronic Braking Systems, then Bosch will use reasonable efforts to produce existing hard copy records of sales transactions not recorded or maintained electronically in the existing electronic sales transactional database.

41. *Documents*. Within forty-five (45) days of Settlement Class Counsel's request, Bosch will use reasonable best efforts to complete the production of the following Documents, other than the Protected Documents, including English translations to the extent they exist, and subject to the requirements of the European General Data Protection Regulation, 2016 O.J. (L119) 1: (1) Documents provided to or seized by Government Entities relating to their investigation into alleged competition violations with respect to Hydraulic Braking Systems and Electronic Braking

Systems; (2) non-privileged Documents concerning Hydraulic Braking Systems and Electronic Braking Systems collected and reviewed in connection with a communication, meeting, or agreement regarding Hydraulic Braking Systems and Electronic Braking Systems, by any employee, officer or director of Bosch with any employee, officer, or director of another manufacturer or seller of Hydraulic Braking Systems and Electronic Braking Systems, but that were not provided to or seized by Government Entities; (3) Documents sufficient to show Bosch's general methodology for determination of their prices for Hydraulic Braking Systems and Electronic Braking Systems; and (4) Documents concerning (i) requests for quotation ("RFQ"), (ii) bids submitted in response to RFQs, (iii) RFQ award notifications, and (iv) post-award price adjustments for Hydraulic Braking Systems and Electronic Braking Systems, including any Annual Price Reduction (APR) Documents, provided that for each (i) through (iv) were subject to competitor communications. As to non-privileged Documents in Bosch's possession, custody, or control that are not listed above, Bosch will consider in good faith any reasonable request by Automobile Dealership Plaintiffs to collect and produce such Documents provided the request would not impose an undue burden on Bosch.

42. If any Document protected by the attorney-client privilege, attorney work-product protection, or any other privilege is accidentally or inadvertently produced, its production shall in no way be construed to have waived any privilege or protection attached to such Document. Upon notice by Bosch of such inadvertent production, the Document shall promptly be destroyed and/or returned to Bosch and shall not be used by Settlement Class Counsel for any purpose. This Agreement, together with the Protective Order in the MDL Litigation, brings any inadvertent production by Bosch within the protections of Federal Rule of Evidence 502(d), and Settlement Class Counsel will not argue that production to any person or entity made at any time suggests

otherwise. Upon reasonable request, for all Documents withheld from production, Bosch shall provide a privilege log describing such Documents in sufficient detail as to explain the nature of the privilege asserted or the basis of any other law or rule protecting such Documents.

43. *Attorney Proffers and Witness Interviews*. Within thirty (30) days of Settlement Class Counsel's request:

(a) Bosch's counsel will make themselves available at a mutually agreed location in the United States for up to two (2) meetings of one business day each to provide an attorneys' proffer of facts known to them. Thereafter, Bosch's counsel will make themselves available for reasonable follow-up conversations in connection with the attorney's proffers and will use best efforts to respond to questions posed by Settlement Class Counsel. Settlement Class Counsel will make reasonable best efforts to limit the cost of any proffers and interviews, including conducting them by videoconference where possible.

(b) Bosch further agrees to make best efforts to make three (3) persons available for interviews and depositions, provide three (3) declarations or affidavits from the same persons, and make those persons available to testify at trial to the extent legally permissible. The interviews and depositions shall be conducted at a mutually agreed-upon location in the United States, and each deposition shall be limited to a total of seven (7) hours over one (1) day unless the deposition is in a language other than English, in which case the deposition shall be limited to a total of thirteen (13) hours over two (2) days. Settlement Class Counsel will make reasonable best efforts to limit the cost of any depositions or interviews, including conducting them by videoconference where possible. If the deposition or trial takes place in person outside the country of the witness's residence, Settlement Class Counsel and End-Payor Settlement Class Counsel shall together reimburse half the reasonable travel costs incurred by such persons for time or services rendered.

Such travel expenses may include economy airfare, meals, lodging and ground transportation, but not airfare for business or first class seats. Reimbursable expenses shall not exceed $1,500 per deponent or trial witness. If the interview and the above-described deposition occur during the same trip, the above-limitations will apply to that trip.

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

44. Automobile Dealership Plaintiffs and Settlement Class Counsel agree they will not use the information provided by Bosch or the Releasees or their representatives under this Section for any purpose other than the prosecution of the MDL Litigation, provided they do not employ such information against Bosch, and will not use it beyond what is reasonably necessary for the prosecution of the actions in the MDL Litigation or as otherwise required by law. Automobile Dealership Plaintiffs can, however, use such information if it is otherwise available. All Documents and other information provided pursuant to this Agreement will be deemed "Highly Confidential," as said designation is defined in the Protective Order entered in the MDL Litigation. Automobile Dealership Plaintiffs shall certify destruction of all Cooperation Materials and information if the Settlement Classes are not certified, if the Actions are finally resolved in their entirety, or if the Agreement is terminated by Automobile Dealership Plaintiffs in accordance with this Agreement. All Cooperation shall be coordinated so as to avoid all unnecessary duplication

and expense, shall otherwise be reasonable, and shall not impose undue burden and expense on Bosch to the extent practicable.

45. Bosch'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, Bosch's obligations to provide Cooperation under this Agreement shall continue only until otherwise ordered by the Court, or the date that final judgment has been entered in all Actions against all Defendants. For purposes of this Paragraph, the term "final" shall have the same meaning as set forth in Paragraph 22.

46. In the event that this Agreement fails to receive final approval by the Court, including final approval of the Settlement Classes as defined in Paragraph 13, or in the event that it is terminated by either party under any provision herein, the parties agree that neither Automobile Dealership Plaintiffs nor Settlement Class Counsel shall be permitted to introduce into evidence against Bosch, 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 Actions, any Documents provided by Bosch and/or the other Releasees, their counsel, or any individual made available by Bosch pursuant to Cooperation (as opposed to from any other source or pursuant to a court order), or any other material provided by Bosch as part of the Cooperation. This limitation shall not apply to any discovery of Bosch which Settlement Class Counsel participate in as part of the MDL Litigation. Notwithstanding anything contained herein, Automobile Dealership Plaintiffs and the Settlement Classes are not relinquishing any rights to pursue discovery against Bosch in the event that this Agreement fails to receive final approval by the Court, including final approval of the Settlement Classes as defined in Paragraph 22, or in the event that it is terminated by either party under any provision herein.

47. Bosch and other Releasees need not respond to formal discovery requests from Automobile Dealership Plaintiffs or otherwise participate in the Actions during the pendency of this Agreement, with the exception of the Cooperation provisions set forth in Paragraphs 34-48. Other than to enforce the terms of this Agreement, neither Bosch nor Automobile Dealership Plaintiffs shall file motions against the other, in the Actions, during the pendency of this Agreement.

48. If Settlement Class Counsel believes that Bosch or any current or former employee, officer or director of Bosch has failed to cooperate under the terms of this Agreement, Settlement Class Counsel may seek an Order from the Court compelling such Cooperation. Nothing in this provision shall limit in any way Bosch'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.

49. If the Court refuses to approve this Agreement or any part hereof, including if the Court does not certify the Settlement Classes in accordance with the specific Settlement Class definitions set forth in this Agreement, or if such approval is modified or set aside on appeal, or if the Court does not enter the final judgment provided for in Paragraph 22 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 their entirety, then Bosch and Automobile Dealership Plaintiffs shall each, in their sole discretion, have the option to rescind this Agreement in its entirety. Written notice of the exercise of any such right to rescind shall be made according to the terms of Paragraph 60. A modification or reversal on appeal of any amount of Settlement Class Counsel's fees and expenses awarded by the Court from the Settlement Fund shall not be deemed a modification of all or a part of the terms of this Agreement or such final judgment.

50. In the event that this Agreement does not become final as set forth in Paragraph 22, or this Agreement otherwise is terminated pursuant to Paragraph 49, 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 Bosch less only disbursements made in accordance with Paragraphs 27 and 30 of this Agreement. Bosch expressly reserves all rights and defenses if this Agreement does not become final.

51. Further, and in any event, Automobile Dealership Plaintiffs and Bosch 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 Bosch, or the other Releasees, to be used against Bosch, 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 Bosch, and evidence thereof shall not be discoverable or used in any way, whether in the MDL Litigation or in any other action or proceeding, against Bosch. Nothing in this Paragraph shall prevent Automobile Dealership Plaintiffs from using Cooperation Materials produced by Bosch against any other defendants in any actions in the MDL Litigation or in confidential settlement discussions to establish (i) or (ii) above.

52. 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.

53. The parties to this Agreement contemplate and agree that, prior to final approval of the settlement as provided for in Paragraphs 18-22 hereof, appropriate notice (1) of the settlement;

and (2) of a hearing at which the Court will consider the approval of this Agreement, will be given to the Settlement Classes.

H. Miscellaneous.

53. Bosch shall submit all materials required to be sent to appropriate Federal and State officials pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

54. This Agreement does not settle or compromise any claim by Automobile Dealership 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 Bosch. All rights against such other Defendants or alleged co-conspirators are specifically reserved by Automobile Dealership 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 Bosch and the other Releasees, for sales made by Bosch and Bosch's alleged illegal conduct are specifically reserved by Automobile Dealership Plaintiffs and Settlement Class Members. Bosch'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 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 Bosch's and the other Releasees. Bosch shall not be responsible for any payment to Automobile Dealership Plaintiffs other than the amount specifically agreed to in Paragraph 26 of this Agreement.

55. The United States District Court for the Eastern District of Michigan shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement or the applicability of this Agreement that cannot be resolved by negotiation and agreement by Automobile Dealership Plaintiffs and Bosch, including challenges to the

reasonableness of any party's actions required by this Agreement. This Agreement shall be governed by and interpreted according to the substantive laws of the state of Michigan without regard to its choice of law or conflict of laws principles. Bosch will not object to complying with any of the provisions outlined in this Agreement on the basis of jurisdiction.

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

57. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Automobile Dealership Plaintiffs and Bosch. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by Automobile Dealership Plaintiffs or Settlement Class Counsel shall be binding upon all Settlement Class Members and Releasors. The Releasees (other than Bosch entities which are parties hereto) are third-party beneficiaries of this Agreement and are authorized to enforce its terms applicable to them.

58. This Agreement may be executed in counterparts by Automobile Dealership Plaintiffs and Bosch, and a facsimile signature shall be deemed an original signature for purposes of executing this Agreement.

59. Neither Automobile Dealership Plaintiffs nor Bosch shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule

of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

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

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

[signature pages follow]

Dated: December 21, 2020

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