IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

NATIONAL TRUCKING FINANCIAL RECLAMATION SERVICES, LLC, individually and on behalf of all others similarly situated, Plaintiff v. ESPAR INC., ESPAR NORTH AMERICA, INC., and ESPAR PRODUCTS INC., Defendants.	Case No. **CLASS ACTION COMPLAINT** DEMAND FOR JURY TRIAL

INTRODUCTION

1. Plaintiff National Trucking Financial Reclamation Services, LLC ("Plaintiff"), brings this action on behalf of itself and on behalf of a Class of direct purchasers (sometimes hereinafter referred to as "Class Members") of Parking Heaters (including the heaters, accessories for the heaters and packaged kits containing heaters and selected accessories) in the United States sold by Defendant Espar Inc., Espar North America, Inc. or Espar Products Inc. ("Defendants") from at least as early as October 1, 2007 through at least December 31, 2012. Plaintiff seeks to recover damages incurred by the Class Members due to Defendants' and their co-conspirators' violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, by engaging in a conspiracy to fix prices for Parking Heaters. Plaintiff makes the allegations herein based on

personal knowledge of matters relating to itself and upon information and belief as to all other matters.

NATURE OF THE CASE

2. Plaintiff alleges that Defendants have engaged in a conspiracy to fix the prices of Parking Heaters in the U.S. in violation of Section 1 of the Sherman Act. But for Defendants' price-fixing conspiracy, direct purchasers would have paid lower prices for Parking Heaters.

3. The term "Parking Heaters" as used herein includes the heaters themselves, accessories sold for use with the heaters, and packages containing heaters and selected accessories, or "parking heater kits."

4. Plaintiff and Class Members sustained damages as a result of Defendants' anticompetitive conduct as alleged herein.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this action as it arises under Section 1 of the Sherman Act, 15 U.S.C. § 1, and Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15, 26. Further, this Court has jurisdiction under 28 U.S.C. §§ 1331, 1337(a).

6. Venue is proper in this District pursuant to 15 U.S.C. §§ 15 and 22 and 28 U.S.C. § 1391(b) and (c) because during the Class Period, the Defendants transacted business in this district.

7. This Court has personal jurisdiction over each Defendant because, inter alia, each Defendant: (a) transacted business throughout the U.S., including in this district; (b) participated in the sale and distribution of Parking Heaters throughout the U.S., including in this district; (c) had substantial contacts with the U.S., including in this district; and/or (d) was engaged in an

illegal price fixing conspiracy that was directed at and had the intended effect of causing injury to persons residing in, located in, or doing business throughout the U.S., including in this district.

THE PARTIES

8. Plaintiff National Trucking Financial Reclamation Services, LLC is a limited liability company located in Little Rock, Arkansas. Plaintiff is the assignee of the legal interest and claims of a company that purchased Parking Heaters and Parking Heater accessories sold by Espar during the Class Period, which company, as a result of the conspiracy described herein, was damaged and paid more for Parking Heaters than it would have in the absence of the price-fixing conspiracy.

9. Defendant Espar Inc. is an Illinois corporation with its corporate headquarters located in Chicago, Illinois. At all relevant times, Defendant Espar Inc. was a wholly-owned subsidiary of Eberspaecher Climate Control Systems International Beteiligungs-GmbH of Esslingen, Germany. Defendant Espar Inc. pled guilty for price-fixing under the Sherman Act on March 12, 2015. *United States v. Espar Inc*., 1:15-cr-00028 (E.D.N.Y.).

10. Defendant Espar North America Inc. is a wholly-owned subsidiary of the "Eberspaecher Group" with its principal place of business located in Novi, Michigan.

11. Defendant Espar Products Inc. is an affiliate of Espar Inc. and Espar North America Inc. and is a Canadian corporation located at 6099A Vipond Drive, Mississauga, Ontario L5T 2B2, Canada. As outlined below, the DOJ's criminal information filing noted that the conspiracy spanned domestic sales as well as imports of Parking Heaters. Defendants' website indicates they compete in a single North American market. *See* http://www.eberspaecher-na.com/fileadmin/data/corporatesite/pdf/en/7_company/jees_annual_report_2013_us.pdf at 8.

12. Defendants have engaged in the conduct alleged in this Complaint, and the Defendants' officers, agents, employees, or representatives have engaged in the alleged conduct while actively involved in the management of Defendants' business and affairs.

UNIDENTIFIED CO-CONSPIRATORS

13. Various other persons, firms, and corporations, not named as Defendants in this Complaint, have participated as co-conspirators with Defendants in the violations alleged herein, and aided, abetted and performed acts and made statements in furtherance of the conspiracy.

14. The true names and capacities, whether individual, corporate, associate, or representative is unknown to Plaintiff at this time. Plaintiff may amend this Complaint, as necessary, to allege the true names and capacities of additional co-conspirators as their identities become known.

15. The acts alleged herein that were done by each of the co-conspirators were fully authorized by each of those co-conspirators, or ordered, or committed by duly authorized officers, managers, agents, employees or representatives of each co-conspirator while actively engaged in the management, direction, or control of its affairs.

FACTUAL ALLEGATIONS

16. Parking Heaters are widely used in commercial vehicles and provide safety and comfort for the operators when they are resting. Parking Heaters operate independently of a vehicle's engine, and generally work by drawing cool interior or outside air into the heating unit, heating the air, and then returning the heated air to the vehicle's interior. Parking Heaters include two primary types: (1) air heaters, which work by heating interior or outside air drawn into the heater unit, and (2) water or "coolant" heaters which are integrated into the engine coolant circuit and heat the engine as well as the interior compartment.

A. U.S. DOJ INVESTIGATION AND ESPAR'S GUILTY PLEA

17. On March 12, 2015, U.S. Department of Justice ("DOJ"), Antitrust Division, Defendant announced that Espar Inc. pled guilty to one count of violating the Sherman Act. *United States v. Espar Inc*., 1:15-cr-00028 (E.D.N.Y.). The DOJ charged Defendant Espar Inc. with one count of conspiracy to restrain trade in interstate and foreign commerce under Section 1 of the Sherman Act by participating with co-conspirators in a combination and conspiracy to eliminate competition for the sale of parking heaters for commercial vehicles sold to aftermarket customers in the U.S. and elsewhere in North America from at least October 1, 2007 through December 31, 2012. *Id*.

18. The DOJ's Criminal Information filing states that, "[d]uring the relevant period covered by this Information, the defendant and its co-conspirators sold and shipped parking heaters for commercial vehicles in a continuous and uninterrupted flow of interstate and foreign trade and commerce to aftermarket customers located in states and countries outside the place of origin of the shipments. In addition, substantial quantities of equipment and supplies necessary to the production and distribution of such parking heaters, as well as payments for those parking heaters, traveled in interstate and foreign trade and commerce." *Id*.

19. According to the DOJ's press release, "Espar and its co-conspirators discussed parking heater prices for commercial vehicles, agreed to set a price floor for parking heater kits for commercial vehicles sold to aftermarket customers, and agreed to coordinate the timing and amount of price increases for parking heaters for commercial vehicles sold to aftermarket customers. The companies carried out the agreement and exchanged information for the purpose of monitoring and enforcing adherence to the agreement." "Parking Heater Company Pleads Guilty in Price-Fixing Scheme," available at http://www.justice.gov/atr/public/press_releases/

2015/312477.htm.

20. Defendant Espar Inc., Defendant Espar Products Inc., Espar Inc.'s immediate parent corporation, Eberspaecher Climate Control Systems International Beteiligungs-GmbH, and Espar Inc.'s indirect parent corporations, Eberspaecher Climate Control Systems GmbH & Co. KG (formerly known as Eberspaecher GmbH & Co. KG) and Eberspaecher Gruppe GmbH & Co. KG, all agreed to fully cooperate in the DOJ's ongoing investigation. Plea Agreement at ¶ 13, *United States v. Espar Inc.*, 1:15-cr-00028 (E.D.N.Y.).

21. Espar Inc.'s Plea Agreement states that "[d]uring the relevant period, the defendant's sales of parking heaters to U.S. aftermarket customers totaled at least $62.4 million." Plea Agreement at ¶ 4(c), *United States v. Espar Inc.*, 1:15-cr-00028 (E.D.N.Y.).

22. Defendant Espar Inc. agreed to a criminal fine of $14,790,000.00, which is guaranteed by Espar Inc.'s parent company, Eberspaecher Climate Control Systems International Beteiligungs-GmbH. Plea Agreement, Attachment B, *United States v. Espar Inc.*, 1:15-cr-00028 (E.D.N.Y.).

23. Defendant Espar Inc. will be sentenced on June 5, 2015 in a Brooklyn, New York federal court.

B. MARKET FOR PARKING HEATERS

24. Parking Heaters are in demand for commercial vehicles due to anti-idling laws passed by States and municipalities.

25. In addition, Parking Heaters provide fuel savings and safety benefits for commercial vehicle operators.

26. As noted in its Plea Agreement, Espar Inc. had over $62 million in sales of Parking Heaters in the U.S. during the relevant time period of this Complaint, and Espar Inc. is

one of the largest suppliers of Parking Heaters in North America. Frank Stolodsky, *et al*., Analysis of technology Options to Reduce the Fuel Consumption of Idling Trucks (June 2000) at 9; Trucking Efficiency, Confidence report: Idle-reduction Solutions (2014), at 34-37.

27. Espar Inc. markets its Parking Heaters as providing "heat on call" for safe and comfortable heat independent of the vehicle engine. See http://www.eberspaecher-na.com/business-units/fuel-operated-heaters/applications.html. Espar Inc.'s products for trucks include the Hydronic 5, Hydronic 10, Airtronic D2, and Airtronic D4 models of Parking Heaters. *See* http://www.eberspaecher-na.com/business-units/fuel-operated-heaters/applications/trucks/suitable-units.html.

28. Espar Inc.'s Airtronic products "operate like forced air furnaces. The Airtronic heats and propels air into the vehicle compartment through dedicated venting. These heaters cycle quietly through four levels to maintain a desired temperature range without idling." *See* http://www.eberspaecher-na.com/fileadmin/data/countrysites/EB_Kanada/pdf/EB_Parking_Brochure_WEB_READY_03_19_15.pdf. While in Espar Inc.'s Hydronic products, "combustion air from the environment and fuel from the vehicle tank are mixed and ignited in the combustion chamber. The heat exchanger transfers the heat energy to the vehicle's own coolant system. The vehicle's heated coolant then circulates and preheats the engine." *See* http://www.eberspaecher-na.com/fileadmin/data/countrysites/EB_Kanada/pdf/EB_Parking_Brochure_WEB_READY_03_19_15.pdf.

29. Espar Inc. states that its Airtronic D2 product "dramatically reduces engine idling used to provide heat to the sleeper and cab. This means decreased engine wear and fuel consumption. The AIRTRONIC D2 employs great advancements in heater technology to warm

passenger compartments – efficiently, economically and quietly." *See* http://www.eberspaecher-na.com/business-units/fuel-operated-heaters/applications/trucks/bunk-heat.html.

30. Espar Inc. enters contracts with "Master Service Dealers" who have assigned market territories in which they sell, install and repair Parking Heaters. Master Service Dealers are required to purchase a certain amount of Espar Inc.'s Parking Heater products, to promote the products at trade fairs, and to maintain a network of subdealers and warranty depots to support sales. Espar Inc. has a network of 250 dealers in the U.S.

C. COLLUSIVE NATURE OF PARKING HEATER INDUSTRY

31. Due to the commodity characteristics of Parking Heater products, a highly concentrated market and high barriers to market entry, the Parking Heater market is conducive to anticompetitive collusion by competitors.

32. Three Parking Heater manufacturers control a majority of the market for Parking Heaters: (1) Espar Inc., (2) Webasto Product North America, Inc. and Webasto Thermo & Comfort North America, Inc. ("Webasto"), and (3) Marine Canada Acquisition Inc. ("Proheat"). Marek Krasusi, "Evolving Technologies Dominate Industry", Western Trucking News (Dec. 2011).

33. Webasto's parent company is Webasto Thermo & Comfort SE of Gilching, Germany. Webasto manufactures air and coolant Parking Heaters. For example, Webasto manufactures the Air Top 2000 ST and Air Top Evo 40/55 Parking Heaters for commercial vehicles. Webasto is a global corporation and advertises that it is a "world market leader" and that it "develops and produces air heaters for interior cab comfort and coolant heaters for engine pre-heat." *See* http://www.webasto.com/us/markets-products/truck/heating-systems/. Webasto controls 75% of the global Parking Heater market.

34. Espar Inc. and Webasto manufacture the two market-leading fuel-operated Parking Heaters, Espar Inc.'s Airtronic D2 and Webasto's Air Top 2000, both using one gallon of fuel over 20+ hours of operation, using a built-in thermostat and similar operation, and drawing air and fuel into a heat exchanger. See Overdrive staff, Cold Remedy, overdriveonline.com (Dec. 12, 2008), available at http://www.overdriveonline.com/cold-remedy/. Espar Inc. and Webasto are the key suppliers of Parking Heaters in the aftermarket and to original equipment manufacturers. Major truck manufacturers offer factory-installed Espar Inc. or Webasto Parking Heaters. Trucking Efficiency, Confidence report: Idle-Reduction Solutions (2014), at 69.

35. Proheat is headquartered in British Columbia, Canada and is "a global leader in advanced auxiliary heaters. [Proheat's] customers include aftermarket vehicle dealers and service organizations as well as manufacturers of transport trucks, buses, off-highway, and military vehicles." *See* http://www.proheat.com/. Proheat manufactures the Proheat Air Parking Heater and Proheat X45 coolant Parking Heaters.

36. Espar's Parking Heaters are interchangeable with the Parking Heaters of its competitors, Webasto and Proheat. Because Parking Heater products manufactured by different companies are comparable in function, fuel consumption rates, heat output, electrical consumption and weight, purchasers are likely to be influenced by the price of a Parking Heater product when making purchase decisions. Thus, Parking Heaters have commodity attributes.

37. Parking Heaters are a distinct product market with unique features. Alternative technologies to Parking Heaters, auxiliary power units ("APUs") or generator set systems ("gen-sets"), cost significantly more than Parking Heaters. *See* Trucking Efficiency, Confidence report: Idle-Reduction Solutions (2014), at 34-35. While a Parking Heater generally costs

$1,500 or less, a gen-set may cost more than $8,000. In addition, APUs and gen-sets are heavier, require more maintenance and take longer to install. *Id*. Parking Heaters can be installed relatively easily by running fuel lines to the parking Heater and drilling holes for mounting. *Id*.

38. High barriers to entry exist in the Parking Heater market with respect to technical know-how, manufacturing expertise involved in making efficient and safe Parking Heaters, and access to distribution channels. For example, Espar's Master Service Dealers are not allowed to manufacture, distribute or promote competitors' products in their designated territories, precluding potential competitors' access to distribution channels. *See* Espar MSD Program & Policy Manual (July 30, 2010), available at http://www.espar.com/fileadmin/data/countrysites/EB_Kanada/pdf/QSF-146_Rev_2_Espar_MSD_Contract_2010_2011.pdf.

39. Industry trade shows have provided Defendants with the opportunity to communicate and conspire with competitors. Espar Inc. and Webasto attended the NTEA Work Truck Show® on March 4-7, 2014 in Indianapolis, Indiana. Also in 2014, Espar Inc. and Webasto attended the American Trucking Association's TMC Annual Meeting & Transportation Technology Exhibition on March 10-13, 2014 in Nashville, Tennessee, and Truck-World-Canada's National Truck Show on April 10-12, 2014 in Toronto, Canada.

40. Espar Inc., Webasto and Proheat were scheduled to attend the Mid-America Trucking Show on March 26-28, 2015 in Louisville, Kentucky.

CLASS ACTION ALLEGATIONS

41. Pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3), Plaintiff brings this action on behalf of a class defined as follows:

> All persons and entities in the United States who or that directly purchased a Parking Heater from one or more of the Defendants from October 1, 2007 to December 31, 2012.

> Excluded from the Class are Defendants and their officers, directors, management, employees, subsidiaries, or affiliates, and all federal governmental entities.

42. Members of the Class are so numerous that joinder is impracticable. Plaintiff believes that there are hundreds of Class Members. Further, the Class is readily identifiable from information and records maintained by Defendants.

43. Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and the Class Members were damaged by the same wrongful conduct of Defendants.

44. Plaintiff will fairly and adequately protect and represent the interests of the Class. The interests of the Plaintiff are coincident with, and not antagonistic to, those of the Class.

45. Plaintiff is represented by counsel who are experienced and competent in the prosecution of class action litigation, and who have particular experience with class action litigation involving the antitrust laws.

46. Questions of law and fact common to the members of the Class predominate over questions that may affect only individual Class members because Defendants have acted on grounds generally applicable to the entire Class, thereby determining damages with respect to the Class as a whole is appropriate. Such generally applicable conduct is inherent in Defendants' wrongful conduct.

47. Questions of law and fact common to the Class include:

(a) whether Defendants engaged in a contract, combination or conspiracy to fix, raise, maintain and stabilize prices of Parking Heaters sold in or into the U.S.;

(b) the duration and extent of the alleged contract, combination or conspiracy;

(c) whether Defendants and their co-conspirators were participants in the contract, combination or conspiracy as alleged herein;

(d) the identity of the co-conspirators;

(e) the effect of the contract, combination or conspiracy on the prices of Parking Heaters sold to direct purchasers in the U.S. during the Class Period;

(f) whether Defendants engaged in fraudulent concealment;

(g) whether the alleged contract, combination or conspiracy violated the Sherman Act, § 1; and

(h) the nature and extent of damages and injunctive relief to which Plaintiff and the Class Members are entitled.

48. Class action treatment is a superior method for the fair and efficient adjudication of the controversy. Such treatment will permit a large number of similarly situated persons or entities to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort, or expense that numerous individual actions would engender. The benefits of proceeding through the class mechanism, including providing injured persons or entities a method for obtaining redress on claims that could not practicably be pursued individually, substantially outweigh potential difficulties in management of this class action.

49. Plaintiff knows of no special difficulty to be encountered in the maintenance of this action that would preclude its maintenance as a class action.

ANTITRUST INJURY

50. The effect of Defendants' and co-conspirators' anticompetitive conduct as alleged herein has been to artificially inflate the prices of Parking Heaters in the U.S. By engaging in a successful price-fixing conspiracy, prices have been supported at artificially high levels

throughout the U.S., and as a result, direct purchasers of Parking Heaters have paid more for Parking Heaters than they would have in the absence of the price-fixing conspiracy.

FRAUDULENT CONCEALMENT

51. Throughout the Class Period, Defendants affirmatively and fraudulently concealed their unlawful conduct. Plaintiff and Class Members could not have discovered the Defendants' price-fixing scheme until the DOJ's press release announcing Defendant Espar Inc.'s guilty plea on March 12, 2015.

52. Accordingly, Plaintiff and Class Members could not have discovered the violations alleged herein until shortly before filing this Complaint. Defendants secretly conducted their price-fixing scheme, concealed the nature of their unlawful conduct and acts in furtherance thereof, and fraudulently concealed their activities through various other means and methods designed to avoid detection.

53. As a result of Defendants' fraudulent concealment, all applicable statutes of limitations affecting the Plaintiff's and Class Members' claims have been tolled. Plaintiff and the Class Members did not discover, nor could have discovered through reasonable diligence, that Defendants were engaged in a price-fixing scheme as alleged herein. Plaintiff and Class Members could not have discovered the existence of the price-fixing scheme alleged herein at an earlier date by the exercise of reasonable due diligence because of the deceptive practices and techniques of secrecy employed by Defendants to avoid detection and affirmatively conceal such violations.

54. As a result of the Defendants' fraudulent concealment of their wrongful conduct, Plaintiff asserts the tolling of any applicable statute of limitations affecting the cause of action brought by Plaintiff and the Class Members.

CLAIM FOR RELIEF – VIOLATION OF SECTION 1 OF THE SHERMAN ACT, 15 U.S.C. § 1

55. Plaintiff incorporates and realleges, as though fully set forth herein, each of the paragraphs set forth above.

56. Defendants are per se liable under Section 1 of the Sherman Act for the injuries and damages caused by their contract, combination or conspiracy in restraint of trade in interstate and foreign commerce as alleged herein.

57. The Defendants and their co-conspirators, in connection with the aforesaid contract, combination or conspiracy:

(a) Participated in communications, discussions, and meetings in the U.S. and elsewhere to discuss prices for Parking Heaters for commercial vehicles;

(b) Agreed, during those conversations and meetings, to set a price floor for Parking Heater kits for commercial vehicles sold to customers in the U.S.;

(c) Agreed, during those conversations and meetings, to coordinate the timing and amount of price increases for Parking Heaters for commercial vehicles sold to customers in the U.S.;

(d) Exchanged information during those conversations and meetings for the purpose of monitoring and enforcing adherence to the agreements;

(e) Sold Parking Heaters for commercial vehicles to customers at collusive and non-competitive prices in the U.S.;

(f) Fixed, raised, stabilized and maintained at artificially high and supracompetitive levels the prices for Parking Heaters sold to direct purchasers in the U.S.;

(g) Caused direct purchasers to pay more for Parking Heaters than they would have paid in the absence of a price-fixing conspiracy; and

(h) Restrained, suppressed and eliminated price competition in the sale of Parking Heaters in interstate and foreign commerce.

58. As a direct and proximate result of Defendants' and their co-conspirators' unlawful conduct, direct purchasers have been injured in their business and property in that they have paid more for Parking Heaters than they otherwise would have paid in the absence of Defendants' unlawful conduct. The full amount of such damages is presently unknown but will be determined after discovery and upon proof at trial.

59. Defendants' unlawful conduct as alleged herein poses a significant, continuing threat of antitrust injury for which injunctive relief is appropriate under Section 16 of the Clayton Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and Class Members pray for relief as set forth below:

A. Certification of the action as a Class Action pursuant to Federal Rule of Civil Procedure 23, and appointment of Plaintiff as Class Representative and its counsel as Class Counsel;

B. Permanent injunctive relief which enjoins Defendants from violating the antitrust laws;

C. That the acts alleged herein be adjudged and decreed to be per se unlawful restraints of trade in interstate and foreign commerce in violation of the Sherman Act, 15 U.S.C. § 1;

D. A judgment for the damages sustained by Plaintiff and the Class defined herein, and for any additional damages, penalties and other monetary relief provided by applicable law, including treble damages;

E. Awarding Plaintiff and Class Members pre-judgment and post-judgment interest as provided by law, and that such interest be awarded at the highest legal rate from and after the date of service of the complaint in this action;

F. The costs of this suit, including reasonable attorneys' fees; and

G. Such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of itself and others similarly situated, hereby requests a jury trial, pursuant to Federal Rule of Civil Procedure 38, on any and all claims so triable.

DATED: April 22, 2015

s/ Jonathan W. Cuneo

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