

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

IN RE AUTOMOTIVE PARTS	:	Master File No. 2:12-md-02311
ANTITRUST LITIGATION	:	Judge Marianne O. Battani
	:	Magistrate Judge Mona K. Majzoub

IN RE BEARINGS	:	Case No. 2:12-cv-00502
IN RE ELECTRONIC POWERED	:	Case No. 2:13-cv-01902
STEERING ASSEMBLIES	:	

THIS DOCUMENT RELATES TO:	:	
AUTOMOBILE DEALERSHIP ACTIONS	:	

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into this 21st day of July 2016 (“Execution Date”) by and between NSK Ltd., NSK Americas, Inc., NSK Steering Systems Co., Ltd., and NSK Steering Systems America, Inc. (together, “NSK”) and Automobile Dealership Plaintiff Class Representatives (“Automobile Dealership Plaintiffs”), both individually and on behalf of classes of indirect purchasers of BEARINGS and ELECTRONIC POWERED STEERING ASSEMBLIES (“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. 2:12-md-02311 (“MDL Litigation”), which includes Case No. 2:12-cv-00502 (“Bearings Action”) and Case No. 2:13-cv-01902 (“Electronic Powered Steering Assemblies Action”) (E.D. Mich.) (together, “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 NSK's participation in an unlawful conspiracy to raise, fix, maintain, and/or stabilize prices, rig bids, and allocate markets and customers for Bearings and Electronic Powered Steering Assemblies (as defined below) in violation of Section 1 of the Sherman Act and various state antitrust, unfair competition, unjust enrichment, and consumer protection laws as set forth in Automobile Dealership Plaintiffs' Consolidated Amended Class Action Complaint in the Bearings Action (ECF No. 67) and Automobile Dealership Plaintiffs' Consolidated Second Amended Class Action Complaint in the Electronic Powered Steering Assemblies Action (ECF No. 89) ("Complaints");

WHEREAS, NSK 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 NSK and this Agreement has been reached as a result of those negotiations;

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

WHEREAS, NSK, 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 release, order, and judgment contemplated by this Agreement, and to put to rest with finality all claims that have been or could have been asserted against NSK with respect to Bearings and Electronic Powered Steering Assemblies based on the allegations in the Actions, as more particularly set out below; and

WHEREAS, Automobile Dealership Plaintiffs recognize the benefits of NSK's Cooperation and Injunctive Relief and further recognize that because of joint and several liability, this Agreement with NSK does not impair Automobile Dealership Plaintiffs' ability to collect the full amount of damages to which they and the Settlement Classes may be entitled in the Actions, including any damages attributable to NSK's alleged conduct.

NOW, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, it is agreed by and among the undersigned that the 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 NSK, subject to the approval of the Court, on the following terms and conditions:

- A. Definitions.
1. "Cooperation" shall refer to those provisions set forth below in Section K.
 2. "Cooperation Materials" means any information, testimony, Documents (as defined below) or other material provided by NSK under the terms of this Agreement.
 3. "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).

4. “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.

5. “Automobile Dealership Plaintiff Class Representatives” mean those Settlement Class Members, as defined in Paragraph 15, below, who are named plaintiffs in the Complaints.

6. “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.

7. For purposes of this Agreement, “Bearings” and “Electronic Powered Steering Assemblies” shall have the same meaning as set forth in the operative Complaints at the time this Agreement is executed.

8. “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.

9. “Releasees” shall refer to NSK and to all of its respective past and present, direct and indirect, parents, subsidiaries, and affiliates, including but not limited to the predecessors, successors and assigns of each of the above; 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

foregoing. “Releasees” does not include any defendant in the MDL Litigation other than NSK and its related entities and individuals as described in this Paragraph.

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

11. “Settlement Funds” shall refer to the Settlement Amount deposited in the Escrow Accounts (defined below), together with all interest earned thereon.

12. “Vehicle(s)” shall refer to four-wheeled passenger automobiles, vans, sports utility vehicles, and crossover or pick-up trucks.

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

(a) “Bearings Settlement Class” is defined as:

All Automobile Dealerships that, during the period from and including January 1, 2000 through the Execution Date, indirectly (a) purchased Bearings manufactured by the Defendants or any current or former subsidiary or affiliate thereof or any co-conspirator, or (b) purchased new vehicles containing Bearings manufactured by the Defendants or any current or former subsidiary, affiliate thereof or co-conspirator. Excluded from the Class are Defendants, their parent companies, subsidiaries and affiliates, and co-conspirators, federal governmental entities and instrumentalities of the federal government, states and their subdivisions, agencies and instrumentalities, and persons who purchased Bearings directly or for resale.

(b) “Electronic Powered Steering Assemblies Settlement Class” is defined as:

All Automobile Dealerships that, from and including January 1, 2000 through the Execution Date, indirectly (a) purchased

Electronic Powered Steering Assemblies manufactured or sold by a Defendant, or any current or former subsidiary or affiliate thereof or any co-conspirator, or (b) purchased new vehicles containing Electronic Powered Steering Assemblies manufactured or sold by a Defendant or any current or former subsidiary, affiliate thereof or co-conspirator. Excluded from the Class are Defendants, their parent companies, subsidiaries and affiliates, any co-conspirators, federal governmental entities and instrumentalities of the federal government, states and their subdivisions, agencies and instrumentalities, and persons who purchased Electronic Powered Steering Assemblies directly or for resale.

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
507 C Street, N.E.
Washington, DC 20002

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.

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

16. Automobile Dealership Plaintiffs and NSK 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 Rule 23(c) and (e)) to secure the complete and final dismissal with prejudice of the Actions as to the Releasees only.

17. After reasonable notice to, and review and comment by, NSK, and promptly after the execution of this Agreement, Automobile Dealership Plaintiffs shall submit to the Court a

motion seeking preliminary approval of this Agreement (“Motion”). The Motion shall include (i) the proposed form of an order preliminarily approving this Agreement, and (ii) a proposed form of an order and final judgment that shall include at least the terms set forth in Paragraph 19 below.

18. Automobile Dealership Plaintiffs shall, after reasonable notice to NSK and at a time to be decided in Automobile Dealership Plaintiffs’ sole discretion, submit to the Court a motion for authorization to disseminate notice of the settlement and final judgment contemplated by this Agreement to all members of the Settlement Classes identified by Automobile Dealership Plaintiffs (“Notice Motion”). To mitigate the costs of notice, the Automobile Dealership Plaintiffs shall endeavor, if practicable, to disseminate notice with any other settlements that have been or are reached in the MDL Litigation at the time the Notice Motion is filed. The Notice Motion shall include a proposed form of, method for, and date of dissemination of notice in the Actions.

19. Automobile Dealership Plaintiffs shall seek the entry of an order and final judgment in each Action, the text of which Automobile Dealership Plaintiffs and NSK shall agree upon. The terms of such proposed orders 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) as to NSK, directing that the Actions be dismissed with prejudice and, except as provided for in this Agreement, without costs;

(d) reserving exclusive jurisdiction over the settlement and this Agreement, including the interpretation, administration, and consummation of this settlement, as well as over NSK, for the duration of its provision of Cooperation and Injunctive Relief pursuant to this Agreement, to the United States District Court for the Eastern District of Michigan;

(e) 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 NSK shall be final; and

(f) providing that (i) the Court's certification of the Settlement Classes is without prejudice to, or waiver of, the rights of any Defendant, including NSK, to contest certification of any other class proposed in the MDL Litigation, (ii) the Court's findings in this Order shall have no effect on the Court's ruling on any motion to certify any class in the MDL Litigation or on the Court's rulings concerning any Defendant's motion; and (iii) no party may cite or refer to the Court's approval of the Settlement Classes as persuasive or binding authority with respect to any motion to certify any such class or any Defendant's motion.

20. This Agreement shall become final when (i) the Court has entered in the Actions 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 in the Actions dismissing the Actions with prejudice as to NSK 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 NSK described in (i) hereof has expired in the Actions or, if appealed, approval of this Agreement and the final judgment in the Actions as to NSK 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. 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 NSK have executed this Agreement, Automobile Dealership Plaintiffs and NSK shall be bound by its terms and this Agreement shall not be rescinded except in accordance with Paragraphs 32 and 55.

21. Neither this Agreement (whether or not it should become final) nor the final judgment, nor any and all negotiations, documents and discussions associated with them (including Cooperation Materials produced pursuant to Section K), shall be deemed or construed to be an admission by NSK or any other Releasee, or evidence of any violation of any statute or law or of any liability or wrongdoing whatsoever by NSK or any other Releasee, 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 directly or indirectly, in any way, whether in the MDL Litigation, or any arbitration, action or proceeding whatsoever, against NSK or any other Releasee. Nothing in this Paragraph shall prevent Automobile Dealership Plaintiffs from using and/or introducing into evidence Cooperation Materials produced pursuant to Section K, subject to the limitations in those paragraphs, against any other defendants in the MDL Litigation, to establish any of the above; 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 NSK or any other Releasee, 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 (defined below), or as otherwise required by law.

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

22. 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 20, and in consideration of payment of the Settlement Amount, as specified in Paragraph 24, into the Escrow Accounts (defined below), and for other valuable consideration, the Releasees shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits, and causes of action, whether class, individual, or otherwise in nature (whether or not any Settlement Class Member has objected to the settlement or makes a claim upon or participates in the settlement, whether directly, representatively, derivatively or in any other capacity) under any federal, state or local law of any jurisdiction in the United States, that Releasors, or each 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 any conduct alleged in the Complaints or any act or omission of the Releasees (or any of them), concerning Releasees, including but not limited to any conduct and causes of action alleged or asserted in the Actions (“Released Claims”), provided however, that nothing herein shall release: (1) any claims made by direct purchasers of Bearings or Electronic Powered Steering Assemblies as to such direct purchases; (2) any claims made by End-Payor Plaintiffs that are indirect purchasers of Bearings or Electronic Powered Steering Assemblies; (3) any claims made by truck and equipment dealerships that are indirect purchasers of Bearings or Electronic Powered Steering Assemblies; (4) any claims made by any state, state agency, or instrumentality or political subdivision of a state as to government purchases and/or penalties; (5)

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 Bearings or Electronic Powered Steering Assemblies; (6) claims concerning any automotive part other than Bearings or Electronic Powered Steering Assemblies; (7) claims under laws other than those of the United States relating to purchases of Bearings or Electronic Powered Steering Assemblies made outside of the United States; and (8) damage claims under the state or local laws of any jurisdiction other than an Indirect Purchaser State. Releasors shall not, after the date of this Agreement, seek to establish liability against any Releasee as to, in whole or in part, any of the Released Claims.

23. In addition to the provisions of Paragraph 22, Releasors hereby expressly waive and release, upon this Agreement becoming final, as set out in Paragraph 20, any and all provisions, rights, and benefits, as to their claims concerning Bearings and Electronic Powered Steering Assemblies conferred by Section 1542 of the California Civil Code, which states:

CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR;

or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Section 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 22, 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 NSK and Automobile Dealership Plaintiffs have agreed to release pursuant to Paragraph 22, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

D. Settlement Amount.

24. Subject to the provisions hereof, and in full, complete and final settlement of the Actions as provided herein, NSK shall pay the Settlement Amount of US \$8,280,000.00 (“Settlement Amount”). The Settlement Amount shall be paid into Escrow Accounts in United States Dollars to be administered in accordance with the provisions of Section E (“Escrow Accounts”) within thirty (30) days following the later of (i) entry of an order preliminarily approving this Agreement by the Court, or (b) NSK being provided with the account number, account name, and wiring information for the Escrow Accounts. No part of the Settlement Amount paid by NSK shall constitute, nor shall it be construed or treated as constituting, a payment for treble damages, fines, penalties, forfeitures, or punitive recoveries. The allocation of the Settlement Amount to each Settlement Class as defined in Paragraph 13 above shall be determined by Settlement Class Counsel in consultation with NSK and subject to approval by the Court.

E. Escrow Accounts.

25. The Escrow Accounts will be established at Huntington National Bank with such bank serving as escrow agent (“Escrow Agent”) subject to escrow instructions which are mutually acceptable to Settlement Class Counsel and NSK, and with such escrow to be administered by the Escrow Agent under the Court’s continuing supervision and control.

26. The Escrow Agent shall cause the funds deposited in the Escrow Accounts to be invested in short-term instruments backed by the full faith and credit of the United States Government or fully insured in writing by the United States Government, or money market funds rated Aaa and AAA, respectively by Moody's 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. NSK shall bear no risk related to the Settlement Funds.

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

28. Automobile Dealership Plaintiffs and NSK agree to treat the Settlement Funds as being at all times qualified settlement funds within the meaning of Treasury Regulations Section 1.468B-1. In addition, Settlement Class Counsel shall timely make such elections as necessary or advisable to carry out the provisions of this Paragraph 28, including the relation-back election (as defined in Treasury Regulations Section 1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Settlement Class Counsel or Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

29. For the purpose of Section 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the administrator 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 Escrow Accounts (including without limitation the returns described in Treasury Regulations Section 1.468B-2(k)(1)). Such returns (as well as the election described in Paragraph 28) shall be consistent with Paragraph 28 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 Funds shall be paid out of the Escrow Accounts as provided in Paragraph 30 hereof.

30. All (i) taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the Settlement Funds, including any taxes or tax detriments that may be imposed upon NSK or any other Releasee with respect to any income earned by the Settlement Funds for any period during which the Settlement Funds does not qualify as qualified settlement funds for federal or state income tax purposes (“Taxes”); and (ii) expenses and costs incurred in connection with the operation and implementation of Paragraphs 25 through 32 (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing the returns described in Paragraph 29 (“Tax Expenses”)), shall be paid out of the Settlement Fund.

31. Neither NSK nor any other Releasee nor their respective counsel shall have any liability or responsibility for the Taxes or the Tax Expenses. Settlement Class Counsel shall indemnify and hold harmless the Releasees for Taxes and Tax Expenses. Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement Funds and shall be timely paid by the Escrow Agent out of the Settlement Funds 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 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 Treasury Regulations Section 1.468B-2(1)(2)). NSK shall not be responsible or have any liability therefor or for any reporting requirements that may relate thereto. Automobile Dealership Plaintiffs and NSK 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 25 through 32.

32. If this Agreement does not receive final Court approval, including final approval of the Settlement Classes as defined in Paragraph 13 and 20, or if the Actions are not certified as class actions for settlement purposes, then all amounts paid by NSK into the Settlement Funds (other than costs expended or incurred in accordance with Paragraphs 30 and 35), shall be returned to NSK from the Escrow Accounts by the Escrow Agent along with any interest accrued thereon within thirty (30) calendar days of the Court's denial of final approval of the Agreement and/or Settlement Classes.

F. Injunctive Relief.

33. Subject to the provisions hereof, and in full, complete and final settlement of the Actions as provided here, NSK agrees that it is enjoined for a period of 24 months from the date of the entry of final judgment from engaging in conduct that constitutes a *per se* violation of Section 1 of the Sherman Act (whether characterized as price-fixing, market allocation, bid-rigging, or otherwise) with respect to the sale of any Bearings and Electronic Powered Steering Assemblies.

G. Exclusions.

34. Subject to Court approval, any person or entity seeking exclusion from the Settlement Class(es) must file a written request for exclusion by the Opt-Out Deadline. Any

person or entity that timely files such a request shall be excluded from the Settlement Class(es) 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 this Agreement upon final Court approval. Settlement Class Counsel shall, within ten (10) business days of the Opt Out Deadline, provide NSK with a list and copies of all opt out requests it receives in each of the Actions and shall file under seal with the Court a list of all members of the Settlement Classes who timely and validly opted out of the settlement.

(a) Subject to Court approval, any member of the Settlement Class(es) who submits a valid and timely request for exclusion will not be a Settlement Class Member and shall not be bound by the terms of this Agreement. NSK reserve all of their 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 Bearings or Electronic Powered Steering Assemblies.

(b) Subject to Court approval, in the written request for exclusion, the member of the Settlement Classes must state his, her, or its full name, address, and telephone number. Further, the member of 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.

(c) NSK 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.

(d) With respect to each Settlement Class, within twenty (20) business days following the Opt-Out Deadline in accordance with the terms of this Paragraph 34, or as soon thereafter as practicable, the parties shall determine the total number of automobile dealer locations in the Indirect Purchaser States, during the relevant time period for each Settlement Class defined in Paragraph 13, that purchased Vehicles containing Released Parts (defined as the Total Number of Damages Class Members for each Settlement Class for purposes of calculating the Total Opt-Out Percentage defined below). The parties shall determine the Total Number of Damages Class Members with respect to each Settlement Class based upon reasonably available public information, and each dealership location shall be counted as a separate Settlement Class Member for the purposes of this calculation. In the event the parties mutually agree that non-public information is required to determine the Total Number of Damages Class Members for each Settlement Class, the parties shall identify an appropriate source of the necessary information and any costs or expenses associated with securing such information shall be paid pursuant to Paragraph 35 below. Within ten (10) business days following the determination of the Total Number of Damages Class Members for each Settlement Class, the parties shall calculate the percentage of the Total Number of Damages Class Members for each Settlement Class and the Total Number of Damages Class Members for each Settlement Class that have validly and timely requested to be excluded from the Settlement Class (“Total Opt-Out Percentage”), provided that NSK shall have the sole option to waive the calculation and, by doing so, waive their rights under this Paragraph. The Total Opt-Out Percentage is a fraction, the numerator of which is the Total Number of Damages Class Members for each Settlement Class that have validly and timely requested to be excluded from the Settlement Class, and the denominator of which is the Total Number of Damages Class Members for each Settlement

Class. If the parties are unable to agree on the Total Opt-Out Percentage for either Settlement Class, the Automobile Dealership Plaintiffs and NSK agree to submit their respective calculations of the Total Opt-Out Percentage for each Settlement Class to the Court for decision as to which of the competing calculations is most reasonable. Should the Total Opt-Out Percentage for either Settlement Class be more than ten percent (10%), NSK shall be paid out of the Settlement Fund for that Settlement Class an amount equal to the Settlement Fund multiplied by the difference between ten percent (10%) and the Total Opt-Out Percentage within ten (10) business days of the parties' agreement or the Court's determination of the Total Opt-Out Percentage calculation for each Settlement Class. As an example, for the avoidance of doubt, if the Total Opt-Out Percentage for the Bearings Settlement Class were twenty-five percent (25%), NSK would be paid fifteen percent (15%) of the Settlement Fund allocated to the Bearings Settlement Class.

H. Payment of Expenses.

35. NSK agrees to permit use of a maximum of US \$500,000 of the Settlement Funds towards notice to the Settlement Classes and the costs of administration of the Settlement Funds. The notice and administration expenses (up to the maximum of US \$500,000) 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. Any remaining expenses in excess of the maximum of US \$500,000 shall be recoverable if this Agreement does not become final or is terminated. Other than as set forth in this Paragraph, NSK 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.

36. To mitigate the costs of notice and administration, the 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.

I. The Settlement Funds.

37. Releasors' sole recourse for settlement and satisfaction against the Releasees of all Released Claims is against the Settlement Funds, and Releasors shall have no other recovery against NSK or any other Releasee.

38. After this Agreement becomes final within the meaning of Paragraph 20, the Settlement Funds shall be distributed in accordance with a plan to be submitted to the Court 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 Funds, including, but not limited to, the costs and expenses of such distribution and administration except as expressly otherwise provided in Paragraph 35.

39. Automobile Dealership Plaintiffs and Settlement Class Counsel shall be reimbursed and indemnified solely out of the Settlement Funds for all expenses and costs, as provided by Court Order. NSK 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 Funds.

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

40. Settlement Class Counsel may submit an application or applications to the Court ("Fee and Expense Application") for: (i) an award of attorneys' fees not in excess of one-third of the Settlement Funds; 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 Funds (until paid) as may be awarded by the Court ("Fee and Expense Award"). Settlement Class Counsel reserve the right to make additional applications for Court approval of fees and expenses incurred and reasonable incentive awards, but in no event shall NSK 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 Funds.

41. Subject to Court approval, Automobile Dealership Plaintiffs and Settlement Class Counsel shall be reimbursed and paid solely out of the Settlement Funds 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 Funds 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 Funds 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 32 or Paragraph 55.

42. 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 Funds are not part of this Agreement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the settlement, and any order or proceeding relating to the Fee and Expense Application, or any appeal from any such order shall not operate to terminate or cancel this Agreement, or affect or delay the finality of the judgment approving the settlement.

43. Neither NSK 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.

44. Neither NSK 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.

K. Cooperation.

45. In return for the release and discharge provided herein, NSK agrees to pay the Settlement Amount and be bound by the injunction described in Paragraph 33, and further agrees to use its reasonable best efforts to provide satisfactory and timely Cooperation, as set forth specifically in Section K . Specifically, NSK agrees to use its reasonable best efforts to provide satisfactory and timely cooperation in the Bearings Action until the later of the entry of the final

judgment or judgments with respect to all of the remaining defendants in the Bearings Action or dismissal with prejudice of those defendants and when such judgments or dismissals become “final” as described in Paragraph 20. NSK also agrees to use its reasonable best efforts to provide satisfactory and timely cooperation in the Electronic Powered Steering Assemblies Action until the later of the entry of the final judgment or judgments with respect to all of the remaining defendants in the Electronic Powered Steering Assemblies Action or dismissal with prejudice of those defendants and when such judgments or dismissals become “final” as described in Paragraph 20. Cooperation will take place consistent with the timing set forth specifically below, and in a manner that is in compliance with NSK’s obligations to any Government Entities (defined as the United States Department of Justice (“DOJ”), the Japanese Fair Trade Commission (“JFTC”), the European Commission (“EU”), or any other government entity). NSK shall not be required to provide documents protected by the work product doctrine or attorney client privilege, or disclosure of which is prohibited by the relevant antitrust agencies and/or by the law of the relevant foreign jurisdiction, or prohibited by court order.

46. Identity of Individuals. NSK will provide Settlement Class Counsel with the identity of all current and former employees, directors and officers of NSK who: (1) were interviewed by the DOJ, JFTC, or EU in connection with alleged anticompetitive activity; or (2) appeared before the grand jury in the DOJ investigation of conduct in the Bearings and/or Electronic Powered Steering Assemblies industries.

47. Documents. NSK will produce all potentially relevant Documents (“Relevant Documents”) to the Automobile Dealership Plaintiffs. As to Documents in their possession, custody, or control that are not Relevant Documents, NSK will consider in good faith any reasonable request by Automobile Dealership Plaintiffs to produce such Documents, provided

the request would not impose an undue burden on NSK. Such Relevant Documents include: (1) documents in the files of their custodians and in central files responsive to interrogatories and requests for production of documents served on it before the Execution Date of this Agreement; (2) documents concerning its determination of its prices for Bearings and Electronic Powered Steering Assemblies sold in the United States and/or for use in Vehicles to be sold in the United States; (3) documents showing how employees were trained or instructed to bid and set prices for Bearings or Electronic Powered Steering Assemblies in the United States and/or for use in Vehicles to be sold in the United States; and (4) documents relating to issued requests for quotation (“RFQ”), bids submitted in response to RFQs, RFQ award notifications, and post-award price adjustments in the United States and/or for Bearings or Electronic Powered Steering Assemblies for use in Vehicles to be sold in the United States. All currently pending discovery requests will be withdrawn, and no further discovery will be sought from any NSK entity other than as provided for in this Agreement.

48. Transactional Data. At the request of Automobile Dealership Plaintiffs and subject to meet and confer with NSK as to any reasonable limitations on this obligation, including in particular previous productions made by NSK that may partially or fully satisfy Automobile Dealership Plaintiffs’ requirements, NSK will produce pre-existing transactional data related to Bearings and Electronic Powered Steering Assemblies. This production will be made within sixty (60) days of the Automobile Dealership Plaintiffs’ request, or within sixty (60) days of the conclusion of any related meet and confer discussions regarding limitations on the production, whichever is later. The time period for this production will be from January 1, 1998 to a date no later than two years after the Execution Date of this Agreement for Bearings and from January 1, 1998 to a date no later than two years after the Execution Date of this

Agreement for Electronic Powered Steering Assemblies. The precise end-date for this production obligation will be agreed upon by the parties in subsequent meet and confer discussions, taking into account NSK's burden of producing the transactional data and the Automobile Dealership Plaintiffs' need for that data.

49. Attorney Proffers and Witness Interviews. Additionally, NSK shall use its reasonable best efforts to cooperate with Settlement Class Counsel as set forth below.

(a) NSK's counsel will make themselves available at a mutually agreed location in the United States for up to four meetings of one business day each to provide an attorney's proffer of facts known to them. NSK further agrees to make five (5) persons, the identity of which will be mutually agreed by NSK and the Automobile Dealership Plaintiffs, available for interviews and depositions, provide five (5) declarations or affidavits from the same persons, and make those persons available to testify at trial. Each deposition shall be conducted at a mutually agreed-upon location, and shall be limited to a total of seven (7) hours over one (1) day unless the deposition is in a language other than English, in which case each deposition shall be limited to a total of thirteen (13) hours over two (2) days.

(b) In addition to its Cooperation obligations set forth herein, at the request of Automobile Dealership Plaintiffs and subject to agreement with NSK, NSK agrees to produce through affidavit(s) or declaration(s) and/or at trial, at 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 NSK. Settlement Class Counsel agree to use their best efforts to obtain stipulations that would avoid the need to call NSK witnesses at trial for the purpose of obtaining such evidentiary foundations.

(c) In addition, after conducting a reasonable search, NSK shall, to the best of its knowledge, identify those Vehicles sold in the United States from 2000 through the Execution Date that contain Bearings sold by NSK and those Vehicles sold in the United States from 1998 through the Execution Date that contain Electronic Powered Steering Assemblies sold by NSK.

50. NSK's obligations to provide Cooperation shall not be affected by the releases set forth in this Agreement. Unless this Agreement is rescinded, disapproved, or otherwise fails to take effect, NSK's obligations to provide Cooperation under this Agreement shall continue only until otherwise ordered by the Court, or the date that final judgment has been entered in the Actions against all Defendants.

51. In the event that this Agreement fails to receive final approval by the Court, including final approval of the Settlement Classes as defined in Paragraphs 13 and 20, 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 NSK or the other Releasees, 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 NSK and/or the other Releasees, their counsel, or any individual made available by NSK pursuant to Cooperation (as opposed to from any other source or pursuant to a court order). Automobile Dealership Plaintiffs further agree that, within sixty (60) days after the termination of this Agreement, or after any final order of the Court rejecting approval of either Settlement Class, Automobile Dealership Plaintiffs must return or destroy all Cooperation Materials received from the Releasees (or, in the case of the rejection of only one Settlement Class, all Cooperation Materials received from the Releasees related to the product at issue in the

rejected Settlement Class). This limitation shall not apply to any discovery of NSK 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 NSK in the event that this Agreement fails to receive final approval by the Court, including final approval of the Settlement Classes as defined in Paragraphs 13 and 20, or in the event that it is terminated by either party under any provision herein.

52. NSK need not respond to discovery requests made pursuant to the Rules from Automobile Dealership Plaintiffs, meet and confer or otherwise negotiate with Automobile Dealership Plaintiffs regarding discovery requests previously served in the Actions or otherwise participate in the Actions during the pendency of the Agreement. Other than to enforce the terms of this Agreement, neither NSK nor Automobile Dealership Plaintiffs shall file motions against the other, in the Actions, during the pendency of the Agreement.

53. In the event that NSK produces Documents or provides declarations or written responses to discovery to any party or non-party in the Actions in the MDL Proceeding, concerning or relating to the Actions (“Relevant Production”), NSK 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 NSK to Automobile Dealership Plaintiffs. This Agreement does not restrict Settlement Class Counsel from noticing, attending and/or participating in any deposition in the MDL Proceeding. Settlement Class Counsel may notice, attend and/or participate in any depositions of NSK’s witnesses in addition to the depositions set forth in Paragraph 49, provided that the time for

participation of Settlement Class Counsel and Settlement Class Counsel for the Automobile Dealership Plaintiffs shall not expand the time permitted for the deposition as may be provided by the Court, and Settlement Class Counsel will not ask the Court to enlarge the time of any deposition noticed of a NSK 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 49 above. Automobile Dealership Plaintiffs and Settlement Class Counsel agree to use their best efforts to ensure that any depositions taken under Paragraph 49 above are coordinated with any other deposition noticed in the MDL Proceeding to avoid unnecessary duplication.

54. If Settlement Class Counsel believe that NSK or any current employee, officer or director of NSK has failed to cooperate under the terms of this Agreement, Settlement Class Counsel may seek an Order from the Court compelling such employee, officer, or director of NSK to provide discovery. Nothing in this provision shall limit in any way NSK'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.

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

55. 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 Classes 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 20, or if the Court enters the final judgment and appellate review is sought, and on such review, such final judgment is not affirmed in its entirety, then NSK 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 68. A modification or reversal on appeal of any amount of Settlement Class Counsel's fees and expenses awarded by the Court from the Settlement Funds shall not be deemed a modification of all or a part of the terms of this Agreement or such final judgment.

56. In the event that this Agreement does not become final as set forth in Paragraph 20, or this Agreement otherwise is terminated, then this Agreement shall be of no force or effect and any and all parts of the Settlement Funds caused to be deposited in the Escrow Accounts (including interest earned thereon) shall be returned forthwith to NSK less only disbursements made in accordance with Paragraphs 30 and 35. NSK expressly reserves all rights and defenses if this Agreement does not become final.

57. Further, and in any event, Automobile Dealership Plaintiffs and NSK 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 NSK or the other Releasees to be used against NSK or the Releasees, or of (ii) the truth of any of the claims or allegations contained in the Complaint or any other pleading filed in the MDL Litigation, to be used against NSK or the Releasees, and evidence thereof shall not be discoverable or used in any way, whether in the MDL Litigation or in any other action or proceeding, against NSK or the Releasees. Nothing in this Paragraph shall prevent Automobile Dealership Plaintiffs from using Cooperation Materials produced by NSK against any other Defendants in any Actions to establish any of the above.

58. This Agreement shall be construed and interpreted to effectuate the intent of the parties, which is to provide, through this Agreement, for a complete resolution of the relevant

claims with respect to each Releasee as provided in this Agreement as well as Cooperation by NSK.

59. The parties to this Agreement contemplate and agree that, prior to final approval of the settlement, 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.

60. NSK, Automobile Dealership Plaintiffs, and Settlement Class Counsel agree not to disclose publicly or to any other person, except to the Releasees or as otherwise required by law, statute, rule, or regulation in any jurisdiction, including as required under the Rules of the Tokyo Stock Exchange, the terms of this Agreement until this Agreement is submitted to the Court for preliminary approval.

61. NSK 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.

62. 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 NSK. 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 Releasees for sales made by Releasees relating to alleged illegal conduct are specifically reserved by Automobile Dealership Plaintiffs and Settlement Class Members. NSK sales to the Settlement Classes and NSK's alleged illegal conduct shall, to the extent permitted or authorized by law, remain in the Actions as a potential basis for damage claims and shall be part of any joint and several liability claims against other current or future Defendants in the Actions

or other persons or entities other than Releasees. Releasees shall not be responsible for any payment to Automobile Dealership Plaintiffs or Settlement Class Members other than the Settlement Amount specifically agreed to in Paragraph 24.

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

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

65. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Automobile Dealership Plaintiffs and NSK. 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

Releasers. The Releasees (other than NSK entities which are parties hereto) are third-party beneficiaries of this Agreement and are authorized to enforce its terms applicable to them.



66. This Agreement may be executed in counterparts by Settlement Class Counsel for Automobile Dealership Plaintiffs and NSK, and a facsimile signature shall be deemed an original signature for purposes of executing this Agreement.

67. Neither Automobile Dealership Plaintiffs nor NSK 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.

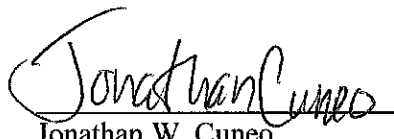
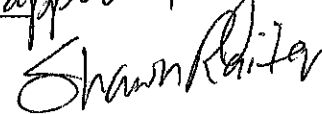
68. Where this Agreement requires either party to provide notice or any other communication or document to the other, such notice shall be in writing, and such notice, communication or document shall be provided by facsimile, or electronic mail, or letter by overnight delivery to the undersigned counsel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

69. 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.

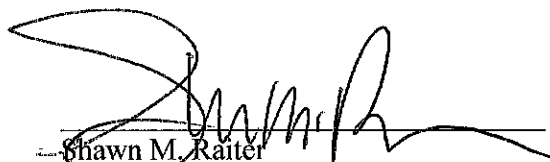
Date: July 21st, 2016

 w/ approval by 

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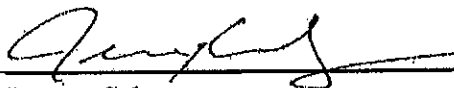
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