

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

In re: PARKING HEATERS ANTITRUST
LITIGATION,

Case No. 1:15-mc-00940-DLI-RER

THIS DOCUMENT RELATES TO:

All Direct Purchaser Class Actions in

15-cv-01343 (DLI) (RER)

15-cv-02310 (DLI) (RER)

15-cv-02411 (DLI) (RER)

15-cv-03872 (DLI) (RER)

**DIRECT PURCHASER PLAINTIFFS’
MOTION FOR *CY PRES* DISTRIBUTION OF SETTLEMENT FUNDS**

Upon the Memorandum of Law in Support of the Direct Purchaser Plaintiffs’ Motion for the *Cy Pres* Distribution of Settlement Funds and related Declaration of Peter T. Sperry, Plaintiffs Triple Cities Acquisition LLC d/b/a Cook Brothers Truck Parts, National Trucking Financial Reclamation Services, LLC, TrailerCraft Inc., and Myers Equipment Corporation (collectively, “Direct Purchaser Plaintiffs” or “DPPs”) move this Court as soon as is convenient for the Court, before the Honorable Dora L. Irizarry, United States District Court Judge, at the United States Courthouse, 225 Cadman Plaza East, Courtroom 11D South, Brooklyn, New York, for entry of an order granting DPPs’ motion for a *cy pres* distribution of remaining funds obtained as a result of settlements with Webasto Products North America, Inc., Webasto Thermo & Comfort North America, Inc., and Webasto Thermo & Comfort SE (collectively, “Webasto”)

and Eberspaecher Climate Control Systems GmbH & Co. KG, Espar, Inc., and Espar Products Inc. (collectively, "Espar") to the 501(c)(3) non-profit organization Citymeals on Wheels.

A proposed order is submitted herewith.

Dated: October 3, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 3, 2023, I caused a true and correct copy of the foregoing document to be served upon counsel of record via the Court's ECF filing system.

/s/ Brent W. Landau
Brent W. Landau

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

In re: PARKING HEATERS ANTITRUST
LITIGATION,

Case No. 1:15-mc-00940-DLI-RER

THIS DOCUMENT RELATES TO:

All Direct Purchaser Class Actions in

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15-cv-03872 (DLI) (RER)

**MEMORANDUM OF LAW IN SUPPORT OF DIRECT PURCHASER
PLAINTIFFS' MOTION FOR *CY PRES* DISTRIBUTION OF SETTLEMENT FUNDS**

I. INTRODUCTION

On September 30, 2019, following an August 15, 2019 Report and Recommendation, the Court granted final approval of the Settlements between Direct Purchaser Plaintiffs (“DPPs”)¹ and Defendants Webasto² and Espar.³

Pursuant to the Webasto and Espar settlement agreements and the Court’s orders, DPPs, through their claims administrator Epiq Class Action & Claims Solutions, Inc. (“Epiq”), conducted two distributions of the settlement funds to eligible Class Members. After these two distributions, payments totaling \$2,176.25 to 15 eligible Class Members were uncashed and have now been voided. Declaration of Peter T. Sperry Regarding Remaining Settlement Funds, September 18, 2023 (“Sperry Decl. Sept. 2023”), ¶¶ 7-10. According to the Webasto and Espar settlement agreements, these remaining funds are now eligible for *cy pres* distribution to a non-profit organization.

DPPs thus request that the Court authorize a *cy pres* distribution of the remaining settlement funds to Citymeals on Wheels, a non-profit organization that delivers meals to elderly homebound people in New York.

II. FIRST DISTRIBUTION

Defendants agreed to pay a \$12.2 million to Class Members, with Webasto agreeing to pay \$7 million and Espar agreeing to pay \$5.2 million. *See* Declaration of Peter T. Sperry Regarding Second Distribution, March 22, 2022, ECF 180-3 (“Sperry Decl. Mar. 2022”), ¶ 3.

¹ Triple Cities Acquisition LLC d/b/a Cook Brothers Truck Parts, National Trucking Financial Reclamation Services, LLC, TrailerCraft Inc., and Myers Equipment Corporation (collectively, “Direct Purchaser Plaintiffs” or “DPPs”).

² Webasto Products North America, Inc., Webasto Thermo & Comfort North America, Inc., and Webasto Thermo & Comfort SE (collectively, “Webasto”).

³ Eberspaecher Climate Control Systems GmbH & Co. KG, Espar, Inc., and Espar Products Inc. (collectively, “Espar,” and with Webasto, “Defendants”).

Following revisions to those totals, including increases for interest received and reductions for attorney fees and administrative costs, \$3,391,739.40 was available to eligible Class Members from the Espar Settlement Fund and \$4,566,855.78 from the Webasto Settlement Fund. *See id.* ¶¶ 3-4. On March 18, 2020, 293 eligible Class Members were issued approved monetary awards totaling \$7,958,593.74. *See id.* ¶ 6.

Most eligible Class Members cashed their distributions soon thereafter, with checks valued at \$5,954,286.29 cashed by June 2020. *See Sperry Decl. Mar. 2022*, ¶ 7. Seventy-two eligible Class Members failed to cash checks, however, requiring extensive outreach from Epiq to have the remaining eligible Class Members cash their checks. *See id.* ¶ 8. Despite these efforts—including additional reminder letters in 2021 and direct outreach from Class Co-Lead Counsel to the five highest value awards issued that remained outstanding—62 eligible Class Member payments totaling \$259,319.52 were uncashed and voided. *See id.* ¶¶ 9-12.

III. SECOND DISTRIBUTION

The Webasto and Espar Settlement Agreements both provide for a second distribution in the event there is a remaining balance in the Net Settlement Fund following distribution. *Sperry Decl. Sept. 2023* ¶ 3. The Court granted DPPs' motion for a second distribution of funds to eligible Class Members on April 28, 2022.

Epiq issued a secondary distribution, incorporating a \$25 base award and adding unallocated interest and tax refunds, resulting in \$148,005.83 total funds available for distribution from the Espar Settlement Fund and \$143,048.63 total funds available for distribution from the Webasto Settlement Fund. *Sperry Decl. Sept. 2023* ¶ 6. On May 27, 2022, Epiq issued 226 check payments totaling \$291,052.86 to eligible Class Members. *Id.* ¶ 7.

Again, most eligible Class Members cashed their distributions soon after this issuance, with 204 checks totaling \$283,225.30 cashed by February 2023. Sperry Decl. Sept. 2023 ¶ 8. However, 22 checks were uncashed, requiring Epiq to take additional steps to encourage eligible Class Members cash their checks, including reissuing uncashed payments in March 2023 and attempting to contact eligible Class Members that had not cashed their checks through publicly available phone numbers. Sperry Decl. Sept. 2023 ¶ 9. Despite these efforts, checks issued to 15 eligible Class Members totaling \$2,176.25 were uncashed as of August 9, 2023, and have now been voided. *Id.* ¶ 10.

IV. PROPOSED *CY PRES* DISTRIBUTION

The Webasto and Espar Agreements both provide for the *cy pres* allocation of settlement funds to an appropriate non-profit where *de minimis* funds remain after distribution to eligible Class Members. *See* Sperry Decl. Sept. 2023 ¶ 11; Settlement Agreement Between Direct Purchaser Plaintiffs and Webasto Defendants ¶ 46; Settlement Agreement Between Direct Purchase Plaintiffs and Espar Defendants ¶ 50. DPPs and their counsel now propose a *cy pres* designation to the non-profit organization Citymeals on Wheels because the remaining \$2,176.25 funds are *de minimis* and Citymeals on Wheels is an appropriate *cy pres* recipient.

A *cy pres* allocation is warranted because the remaining \$2,176.25 funds are *de minimis*, as the amount that would be redistributed to each eligible Class Member is small relative to the administrative costs of redistribution. Sperry Decl. Sept. 2023 ¶ 11; *see In re MetLife Demutualization Litig.*, 689 F. Supp. 2d 297, 343 (E.D.N.Y. 2010) (collecting cases) (“A *cy pres* payment . . . is warranted where the amount to be distributed to the remaining class members is small relative to the administrative costs of a direct distribution.”).

The non-profit organization Citymeals on Wheels is an appropriate *cy pres* donee because its philanthropic meal-delivery services are related to this lawsuit and to the interests of Class Members. *See In re Holocaust Victim Assets Litig.*, 424 F.3d 132, 141 n.10 (2d Cir. 2005) (“unclaimed funds should be distributed for a purpose as near as possible to the legitimate objectives underlying the lawsuit [and] the interests of class members”); *Chen v. XpresSpa at Terminal 4 JFK LLC*, No. 15 CV 1347 (CLP), 2021 WL 4487835, at *6 (E.D.N.Y. Oct. 1, 2021) (“a proposed *cy pres* designation is appropriate if its interests ‘reasonably approximate the interests of the class’”) (citation omitted). Citymeals on Wheels is a 501(c)(3) non-profit, New York State-registered organization that delivers meals to elderly homebound people in New York, including in this District, “on foot and by car.” *See* Citymeals on Wheels, Financial Information, <https://www.citymeals.org/about-us/financials> (last visited Oct. 3, 2023); Citymeals on Wheels, What We Deliver, <https://www.citymeals.org/about-us/what-we-deliver> (last visited Oct. 3, 2023); Citymeals on Wheels, Brooklyn, <https://www.citymeals.org/brooklyn> (last visited Oct. 3, 2023) (“Brooklyn accounts for 30% of the city’s older adult population. Lacking reliable access to affordable and nutritious food, Brooklyn’s homebound elderly depend on the lifeline Citymeals provides. Last year, we delivered over 620,000 meals to 3,700 of our older neighbors in Brooklyn, the borough with the most Citymeals recipients”). This includes delivering meals to homebound elderly people on weekends, holidays, and “during emergencies and in advance of harsh winter weather.” Citymeals on Wheels, About Us, <https://www.citymeals.org/about-us> (last visited Oct. 3, 2023).

Citymeals on Wheels’ work depends on the availability of vehicles for transportation to meal centers and meal delivery to individuals, which relates to this lawsuit and the interests of the eligible Class Members in maintaining competitive prices on parts for commercial vehicles.

See, e.g., Citymeals on Wheels, Elderly New Yorkers Receive Fresh Produce Deliveries, <https://www.citymeals.org/elderly-new-yorkers-receive-fresh-produce-deliveries> (last visited Oct. 3, 2023) (“From June through November, hundreds of pounds of produce from Greenmarket Co. and FarmersWeb is delivered to our Brooklyn warehouse each week. Workers pack the produce, load it onto our refrigerated truck and distribute the fruit and vegetables to local meal centers in Manhattan and Queens.”); *see also In re MetLife Demutualization Litig.*, 689 F. Supp. 2d 297, 343 (E.D.N.Y. 2010) (a non-profit organization is an appropriate *cy pres* donee for a class of insurance policyholders alleging harm from the insurer’s demutualization, because “[t]he research it finances is health-related”); *Chen* 2021 WL 4487835, at *6 (a non-profit organization focused on Chinese workers with the goal of “bringing together workers across trades to fight for change in the workplace” is an appropriate *cy pres* donee for a class alleging labor violations and where “many of the Class members are Chinese”). Additionally, “courts should defer to the *cy pres* selection of plaintiffs and their counsel unless there is good cause not to defer.” *Chen*, 2021 WL 4487835, at *6 (citing *Godson v. Eltman, Eltman, & Cooper, P.C.*, 328 F.R.D. 35, 59 (W.D.N.Y. 2018)).

V. CONCLUSION

For the foregoing reasons, DPPs respectfully request that the Court authorize a final distribution of the remaining net Settlement Funds to the 501(c)(3) non-profit organization Citymeals on Wheels.

Dated: October 3, 2023

Respectfully submitted,

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On behalf of Direct Purchaser Plaintiffs and the Settlement Class

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

CASE NO. 1:15-MC-0940 (DLI) (JO)

In Re: Parking Heaters Antitrust Litigation

This document relates to:

All Direct Purchaser Class Actions

**DECLARATION OF PETER T. SPERRY REGARDING REMAINING SETTLEMENT
FUNDS**

I, Peter T. Sperry, hereby declare as follows:

1. I am a Project Manager for Epiq Class Action & Claims Solutions, Inc. (“Epiq”). I have over eight years of experience handling all aspects of settlement administrations. The following statements are based on my personal knowledge and information provided by other Epiq employees working under my supervision, and if called on to do so, I could and would testify competently about these issues.

2. Epiq was appointed as the Settlement Administrator in the above-captioned litigation in accordance with terms outlined in the Settlement Agreement between Direct Purchaser Plaintiffs and Espar Defendants (“Espar Settlement”) and the Settlement Agreement between Direct Purchaser Plaintiffs and Webasto Defendants (“Webasto Settlement”).

Second Class Distribution

3. Both the Espar Settlement (paragraph 50.) and Webasto Settlement (paragraph 46.) established that if there is a balance remaining in the Net Settlement Funds following distribution of the Net Settlement Funds, Epiq shall reallocate balances among eligible Class Members.

4. Following discussions with Class Co-Lead Counsel, Epiq was directed to reallocate

funds to eligible Class Members whose original check was presented for payment. The following criteria were applied:

- a. Espar Settlement – (1) Removing eligible Class Member records whose original payment was cashed that did not receive a payment from Espar Settlement Funds during the First Distribution¹, (2) dividing the remaining Espar Settlement Funds by the combined total dollar amount of valid Parking Heater sales by eligible Class Members whose original check was cashed and was not removed in first step, and then (3) multiplying the resulting ratio by the amount of each total eligible Class Member’s Parking Heater sales from Espar and/or Webasto who were eligible to be paid from the remaining Espar Settlement Funds.
- b. Webasto Settlement – (1) Dividing the remaining Webasto Settlement Funds by the combined total dollar amount of valid Parking Heater sales by eligible Class Members whose First Distribution payment was cashed and then (2) multiplying the resulting ratio by the amount of each total eligible Class Member’s Parking Heater sales from Espar and/or Webasto.
- c. Once an eligible Class Member’s compensation was determined according to the above Paragraphs, the two amounts were summed to arrive at one total payment per eligible Class Member.

¹ The First Class Distribution from Espar Settlement Funds required that those eligible Class Members who had entered into a private settlement with Espar where the private settlement value exceeded their calculated Espar Settlement payment were ineligible for payment from the Espar Settlement Funds. Those eligible Class Members whose private settlement value did not exceed the estimated Espar Settlement payment were paid, with a reduction of their calculated Espar Settlement payment by the total value of their private settlement. Due to the value of remaining Espar Settlement funds, Epiq was unable to apply the same calculation method as any eligible Class Member with a private settlement with Espar would be ineligible for Second Distribution from remaining Espar Settlement Funds. In consultation with Class Co-Lead Counsel, it was determined that any eligible Class Member that received payment from Espar Settlement Funds during the First Distribution would receive fund from the Second Distribution.

5. Following allocation, Class Co-Lead Counsel and Epiq determined that where a Class Member's combined monetary award is less than \$25, the combined award would then be adjusted to a \$25 base award.

6. Epiq determined that the following fund totals were available for distribution to eligible Class Members:

d. Espar Settlement – \$134,525.38 in uncashed Settlement Funds and \$13,480.45 in unallocated interest and tax refunds, totaling \$148,005.83.

e. Webasto Settlement – \$124,794.14 in uncashed Settlement Funds and \$18,254.49 in unallocated interest and tax refunds, totaling \$143,048.63.

7. On May 27, 2022, 226 check payments were issued to eligible Class Members, totaling \$291,052.86 in approved monetary awards.²

8. By February 2023, eligible Class Members cashed 204 checks valued at \$283,225.30, but 22 checks remained outstanding.

9. Following direction by Class Co-Lead, all uncashed payments were reissued to Class Members in March 2023. Additionally, Epiq attempted to contact publicly available phone numbers to notify the Class Member of the reissued payment.

10. As of August 9, 2023, 211 eligible Class Members have presented their award, totaling \$288,876.61, but 15 eligible Class Member award payments totaling \$2,176.25 have gone uncashed and have now been voided.


Remaining Funds

11. A third distribution of the remaining \$2,176.25 funds to over 200 eligible Class Members would result in negligible payments for each eligible Class Member.

² Following allocation, \$1.60 combined funds remained from both the Espar and Webasto Settlement Funds due to rounding.

12. Following discussions with Class Co-Lead Counsel, Epiq has been notified that all remaining Espar and Webasto Settlement Funds (i.e. the uncashed payments totaling \$2,176.25) should be issued to a non-profit organization in accordance with the Espar Settlement (paragraph 50) and Webasto Settlement (paragraph 46).

I declare under penalty of perjury that the foregoing is true and correct. Executed on September 18, 2023, at Kent, Washington.


Peter Sperry
Senior Project Manager
Epiq Class Action & Claims Solutions

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

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15-cv-03872 (DLI) (RER)

**[PROPOSED] ORDER GRANTING DIRECT PURCHASER
PLAINTIFFS' MOTION FOR *CY PRES* DISTRIBUTION OF SETTLEMENT FUNDS**

On September 30, 2019, following an August 15, 2019 Report and Recommendation, the Court granted final approval of the Settlements between Direct Purchaser Plaintiffs (“DPPs”)¹ and Defendants Espar, Inc., Espar Products, Inc., and Eberspaecher Climate Control Systems GmbH & Co. KG (together, “Espar”) and Webasto Products North America, Inc., Webasto Thermo & Comfort North America, Inc., and Webasto Thermo & Comfort SE (collectively, “Webasto,” and with Espar, “Defendants”) and certified the below Settlement Class:

All persons or entities (but excluding federal and state government entities and Defendants, their officers, directors, and employees, as well as Defendants’ parents, predecessors, successors, subsidiaries, affiliates) that purchased Parking Heaters in the United States, its territories or possessions, directly from any Defendant, or from any of

¹ Triple Cities Acquisition LLC d/b/a Cook Brothers Truck Parts, National Trucking Financial Reclamation Services, LLC, TrailerCraft Inc., and Myers Equipment Corporation (collectively, “Direct Purchaser Plaintiffs” or “DPPs” or Representative Plaintiffs).

their parents, predecessors, successors, subsidiaries, or affiliates, at any time during the period from and including October 1, 2007 up to and including December 31, 2012

Pursuant to the Court's October 30, 2020 Order, which was effective *nunc pro tunc* to February 5, 2020, DPPs, through their claims administrator Epiq Class Action & Claims Solutions, Inc. ("Epiq") distributed funds to eligible Class Members, after which \$259,319.52 in payments to 62 Eligible Class Members were uncashed and consequently voided. Declaration of Peter T. Sperry Regarding Second Distribution, March 22, 2022, ECF 180-3, ¶ 3. Pursuant to the Court's April 28, 2022, Order and the Espar and Webasto settlement agreements, DPPs through Epiq conducted a second distribution of the remaining funds, after which \$2,176.25 to 15 eligible Class Members were uncashed and have now been voided. Declaration of Peter T. Sperry Regarding Settlement Funds, September 18, 2023, ¶¶ 3-7. Pursuant to the settlement agreements with Espar and Webasto, those funds are now eligible for *cy pres* distribution to an appropriate non-profit organization.

NOW, upon consideration of DPPs' Motion for *Cy Pres* Distribution of Settlement Funds ("Motion"), it is hereby **ORDERED** as follows:

1. The Motion is hereby **GRANTED**.
2. All remaining settlement funds are hereby authorized to be issued to the 501(c)(3) non-profit organization Citymeals on Wheels.

IT IS SO ORDERED

Dated: _____

HON. DORA L. IRIZARRY
UNITED STATES MAGISTRATE JUDGE