

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

In Re: PARKING HEATERS ANTITRUST LITIGATION	Case No. 15-MC-940 (DLI) (JO)
THIS DOCUMENT RELATES TO: <i>All Direct Purchaser Class Actions</i>	

**JOINT DECLARATION OF CO-LEAD CLASS COUNSEL
IN SUPPORT OF DIRECT PURCHASER PLAINTIFFS' MOTION
FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT
OF EXPENSES, AND INCENTIVE AWARDS TO NAMED PLAINTIFFS**

We, Seth R. Gassman and Michael L. Roberts, declare as follows:

1. Pursuant to this Court's August 11, 2015 Order, our firms were both appointed as co-lead interim counsel for the direct purchaser plaintiff ("DPP") class in this matter. *See* ECF No. 49, at 8. We submit this joint declaration in support of DPP's motion for an award of attorneys' fees and expenses in connection with the services rendered, and costs and expenses incurred, in *In re Parking Heaters Antitrust Litigation*, 15-MC-940 (DLI) (JO) (E.D.N.Y).

Notice and Settlement Administration

2. Co-Lead Class Counsel hired Epiq Systems, Inc. ("Epiq") as the Settlement Administrator.

3. As set forth in more detail in the January 18, 2018 Declaration of Cameron R. Azari, Esq., on Settlement Notice Plan and Notices (the "Pre-Notice Declaration") (ECF No. 146-3), the elements of the Notice Plan included publishing advertising in a trade publication that directed people to the Settlement Website, notice via U.S. Mail, a dedicated website on which the notice

materials have been posted, a dedicated toll free telephone number to answer Settlement Class Member queries, and an informational release. Pre-Notice Declaration at ¶¶ 12-21.

4. Epiq has informed Co-Lead Class Counsel that, on October 1, 2018, Epiq mailed the Notice Packet to Settlement Class Members known or ascertainable through transaction data Defendants provided to Plaintiffs and Epiq.

5. Epiq has informed Co-Lead Class Counsel that, as described in the Pre-Notice Declaration, Epiq arranged for the Publication Notice to run in a trade journal that provides notice to entities that likely purchased Parking Heaters directly from Defendants during the Class Period. Epiq has confirmed with Co-Lead Class Counsel that Publication Notice was published in the October issue of *Fleet Owner*.

6. Epiq has informed Co-Lead Class Counsel that Epiq established and is maintaining both an official website and toll-free number dedicated to the Settlement Agreements, and that an information release was issued via PR Newswire nationally as well as to the specific “trucking” microlist on October 1, 2018. The website address and telephone number were included in the Publication Notice and the Notice Packet sent to Settlement Class Members and have been live since September 28, 2018. Epiq has confirmed that the Mail Notice, along with other relevant documents, is posted on the website, so that Settlement Class Members may review and download it, and that the website also includes relevant dates and other settlement-related information.

7. Settlement Class Members wishing to be excluded from one or both of the Settlements are required to submit written requests for exclusion to the Claims Administrator, postmarked no later than December 1, 2018.

8. Epiq has informed Co-Lead Class Counsel that, as of October 30, 2018, Epiq has received no requests to be excluded from either of the Settlement Agreements.

9. Settlement Class Members wishing to object to the terms of one or both of the Settlement Agreements must do so in writing and mail or deliver copies of such objection to Counsel for the Settling Parties and the Clerk of the Court by no later than December 1, 2018.

10. Epiq has also informed Co-Lead Class Counsel that, as of October 30, 2018, Epiq is not aware of any objections made to either of the Settlement Agreements.

11. Through September 2018, Epiq has invoiced approximately \$34,868.73 in expenses to notify the Settlement Class and begin administering the Settlements.

12. Co-Lead Class Counsel has conferred with Epiq regarding what further steps remain in connection with notice and administration of the Settlements. Based on those discussions, Epiq estimates that it will invoice approximately \$32,314.08 more to complete the administration of the settlement.

Fee and Expense Declarations from Plaintiffs' Counsel

13. Attached as Exhibit 1 hereto is a true and correct copy of the Declaration of Seth R. Gassman in Support of Plaintiffs' Motion for an Award of Attorneys' Fees and Expenses ("Gassman Declaration") and exhibits thereto detailing the time of Hausfeld LLP on this matter (Exhibit A) and the expenses Hausfeld LLP incurred in this matter (Exhibit B).

14. Attached as Exhibit 2 hereto is a true and correct copy of the Declaration of Michael L. Roberts in Support of Plaintiffs' Motion for an Award of Attorneys' Fees and Expenses ("Roberts Declaration") and exhibits thereto detailing the time of the Roberts Law Firm, P.A. on this matter (Exhibit A) and the expenses Roberts Law Firm, P.A. incurred in this matter (Exhibit B).

15. Attached as Exhibit 3 hereto is a true and correct copy of the Declaration of William E. Hoese in Support of Plaintiffs' Motion for an Award of Attorneys' Fees and Expenses and

exhibits thereto detailing the time of Kohn, Swift & Grat P.C. on this matter (Exhibit A) and the expenses Kohn, Swift & Grat P.C. incurred in this matter (Exhibit B).

16. Attached as Exhibit 4 hereto is a true and correct copy of the Declaration of Allan Steyer in Support of Plaintiffs' Motion for an Award of Attorneys' Fees and Expenses and exhibits thereto detailing the time of Steyer Lowenthal Boodrookas Alvarez & Smith LLP on this matter (Exhibit A) and the expenses Steyer Lowenthal Boodrookas Alvarez & Smith LLP incurred in this matter (Exhibit B).

17. Attached as Exhibit 5 hereto is a true and correct copy of the Declaration of Jonathan W. Cuneo in Support of Plaintiffs' Motion for an Award of Attorneys' Fees and Expenses and Exhibit A thereto detailing the time of Cuneo Gilbert & LaDuca LLP on this matter.

18. Attached as Exhibit 6 hereto is a true and correct copy of the Declaration of C. Andrew Dirksen in Support of Plaintiffs' Motion for an Award of Attorneys' Fees and Expenses and exhibits thereto detailing the time of Cera LLP on this matter (Exhibit A) and the expenses Cera LLP incurred in this matter (Exhibit B).

19. Attached as Exhibit 7 hereto is a true and correct copy of the Declaration of Arthur N. Bailey, Esq. in Support of Plaintiffs' Motion for an Award of Attorneys' Fees and Expenses and exhibits thereto detailing the time of Rupp Baase Pfalzgraf Cunningham, LLC on this matter (Exhibit A) and the expenses Rupp Baase Pfalzgraf Cunningham, LLC incurred in this matter (Exhibit B).

20. Attached as Exhibit 8 hereto is a true and correct copy of the Declaration of Jeffrey Klafter in Support of Plaintiffs' Motion for an Award of Attorneys' Fees and Expenses and exhibits thereto detailing the time of Klafter Olsen & Lesser LLP on this matter (Exhibit A) and the expenses Klafter Olsen & Lesser LLP incurred in this matter (Exhibit B).

21. As is reflected in the Exhibit Bs attached to both the Gassman Declaration and the Roberts Declaration, a majority of the \$155,275.52 in expenses was used to pay for travel expenses and the economic consultant who was critical to Co-Lead Class Counsel's ability to demonstrate impact and damages in this matter. Indeed, over \$120,000 of the total amount of expenses was expended just in these two critical categories. *See* Ex. 1, Gassman Declaration, Ex. B; Ex. 2, Roberts Declaration, Ex. B.

Prosecution of the Action on Behalf of the Settlement Class

22. Prior to filing the initial complaint in this matter, Co-Lead Class Counsel undertook an exhaustive investigation to learn about Parking Heaters, the market for Parking Heaters, and the extent to which a conspiracy was likely to have a deleterious impact on direct purchasers of Parking Heaters.

23. After drafting and filing the initial complaints, Co-Lead Class Counsel engaged in substantial formal and informal discovery with both 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," and with Webasto, "Defendants"). Each Defendant participated in attorney proffers with DPPs. When combined with the additional research Co-Lead Class Counsel conducted to understand the conspiracy, the narrative descriptions counsel for both Webasto and Espar provided of the conduct and its participants, including the identification of select relevant documents, assisted Co-Lead Class Counsel in filing a robust amended complaint.

24. In addition, both Defendants produced to DPPs all of the documents they produced to the Department of Justice ("DOJ"). Following extensive meet-and-confers, both Defendants

responded to DPPs' document requests and interrogatories and began producing responsive documents (in addition to the DOJ productions) in March 2017, including the production of their transactional data.

25. Defendants produced over 170,000 documents comprising over 500,000 pages. The produced documents include documents reflecting communications between the Defendants, documents concerning the marketing and sale of Parking Heaters, and transactional data reflecting Defendants' sales of Parking Heaters to Class members from 2003 through 2014.

26. Co-Lead Class Counsel conducted extensive legal and factual research related to various issues, including but not limited to research related to discovery issues and motions, to class certification, and to deposing witnesses who do not reside in the United States.

27. Co-Lead Class Counsel hired an expert consultant with substantial experience testifying in price fixing and other antitrust cases.

28. That expert analyzed the Defendants' transaction data, reviewed the documentary record, and examined publicly available data to determine potential damages should the litigation proceed. At the time of the settlement with Espar, which effectively ended active litigation pending Court approval of the Settlements, the expert consultant was preparing analyses for class certification.

29. While the case settled while deposition dates were being negotiated with counsel to Espar, the Class Representatives had already produced substantial documents in response to document requests from Defendants, including documents reflecting their purchases of Parking Heaters.

30. Co-Lead Class Counsel engaged in arm's-length settlement negotiations with Defendants that led to the Settlement Agreements, including multiple meetings and mediations with top executives of certain of the Defendants.

- For the Webasto Settlement, the parties engaged the Honorable William Cahill (ret.) to mediate after they had several unsuccessful settlement discussions. A mediation session was held with Judge Cahill on February 24, 2017, at which an agreement in principle was reached. Over the following months, the parties continued to negotiate, and finally came to agreement on one critical issue that allowed for the Settlement Agreement, for up to \$7 million minus potential reductions for opt outs, on August 16, 2017.
- For the Espar Settlement, the parties engaged the Honorable Vaughn Walker (ret.) to mediate. Following more than one year of negotiations, DPPs and Espar engaged the Honorable Vaughn Walker (Ret.) to mediate the settlement. The first mediation session with Judge Walker, which was unsuccessful, occurred on September 1, 2016. The parties continued to negotiate, but were still unable to come to an agreement. A second mediation with Judge Walker occurred on September 20, 2017, during which an agreement in principle was reached, but leaving several details that remained to be negotiated. The Espar Settlement Agreement was finally executed on November 29, 2017. It provided for up to \$8 million in recovery, but could be reduced to no less than \$5.2 million if Espar could verify that it reached private settlements with Settlement Class Members worth at least 35%, which it did.

31. One dispute that grew out of the meet and confer process with Espar was the extent to which Espar had to produce information related to private settlements it had entered into with

Settlement Class Members. DPPs successfully drafted and argued a motion to compel on the topic, which resulted in significant discovery on the private settlements and enhanced the ability to settle with Espar.

32. At the time DPPs settled with Espar, the parties were negotiating dates for deposition of both named plaintiffs and key personnel who worked for Espar. DPPs were preparing to take those depositions at the time of settlement.

33. Throughout the litigation, DPP counsel interacted with the named plaintiffs to keep them apprised of the status of the litigation. Plaintiffs' counsel also worked with the named plaintiffs to prepare responses to discovery Defendants propounded.

34. The named plaintiffs serving as Class Representatives have the same right to claim against the fund as other Settlement Class Members, and will participate in, and receive, their allotted share of, the Settlements, just as any other Settlement Class Member.

35. Over the course of several months, Co-Lead Class Counsel had several meet-and-confer sessions with counsel for Defendants to negotiate a proposed Document Preservation Stipulation and Order, an ESI Protocol, and an Scheduling Order, all of which were submitted to the Court on December 9, 2016 and entered by the Court on December 12, 2016.

Additional Exhibits

36. Attached as Exhibit 9 hereto is a true and correct copy of *In re U.S. Foodservice, Inc. Pricing Litig.*, No. 3:07-md-1894 (AWT), ECF No. 521 (D. Conn. 2014).

37. Attached as Exhibit 10 hereto is a true and correct copy of *In re Urethane Antitrust Litig.*, MDL No. 1616, No. 04-MD-1616-JWL-JPO, ECF No. 3276 (D. Kan. July 29, 2016).

38. Attached as Exhibit 11 hereto is a true and correct copy of *Dahl v. Bain Capital Partners, LLC*, No. 1:07-cv-12388-WGY, ECF Nos. 1051, 1095 (D. Mass. Feb. 2, 2015).

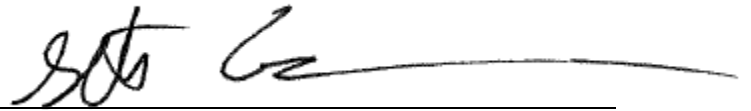
39. Attached as Exhibit 12 hereto is a true and correct copy of *In re Neurontin Antitrust Litig.*, Civil Action No. 02-1830, ECF No. 114 (D.N.J. Aug. 6, 2014).

40. Attached as Exhibit 13 hereto is a true and correct copy of *Standard Iron Works v. ArcelorMittal*, Case No. 08 C 5214, ECF No. 539 (N.D. Ill. Oct. 22, 2014).

41. Attached as Exhibit 14 hereto is a true and correct copy of *In re Tricor Direct Purchaser Antitrust Litig.*, No. 05-cv-00340, ECF No. 543 (D. Del. Apr. 23, 2009).

We declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 30th day of October, 2018.



Seth R. Gassman



Michael L. Roberts