

**IN 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-JO

THIS DOCUMENT RELATES TO:

HON. JAMES ORENSTEIN

All Direct Purchaser Class Actions

**[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL
OF CLASS SETTLEMENTS WITH ESPAR AND WEBASTO DEFENDANTS**

Upon consideration of Direct Purchaser Plaintiffs' Motion for Preliminary Approval of Proposed Settlement with 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 certification of the settlement class ("Motion"), it is hereby **ORDERED** as follows:

1. The Motion is hereby **GRANTED**.

Unless otherwise set forth herein, defined terms in this Order shall have the same meaning ascribed to them in the settlement agreements between Direct Purchaser Plaintiffs and Defendants (hereinafter, "the Settlement Agreements"). As provided for in the Settlement Agreements and as used in the class definitions below, "Parking Heaters" means parking heaters used for commercial

vehicles sold in the aftermarket in the United States, including the heaters themselves, accessories sold for use with the heaters, and parking heater kits containing heaters and selected accessories, to keep the cabin or other compartment of the vehicle warm independent of the operation of the vehicle's engine.

Preliminary Approval of Settlement Agreements

2. The terms of the Settlement Agreements are hereby preliminarily approved, including the releases contained therein, as being fair, reasonable, and adequate to the Settlement Class, subject to a Fairness Hearing. The Court finds that both Settlement Agreements were entered into at arm's length by experienced counsel, each with the assistance of separate mediators, and are sufficiently within the range of reasonableness that notice of both Settlement Agreements should be given to members of the proposed Settlement Class, pursuant to the plan submitted by Settlement Class Counsel and approved by the Court, as provided in this Order.

Class Certification

3. Pursuant to Federal Rule of Civil Procedure 23 ("Rule 23"), and to facilitate the proposed settlements, the Court hereby finds that the prerequisites for a class action have been met and certifies for settlement purposes only the following class (the "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 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.

4. The Court finds that certification of the Settlement Class is warranted because: (a) the Settlement Class is so numerous that joinder is impracticable; (b) Direct Purchaser Plaintiffs' claims present common issues and are typical of the Settlement Class; (c) Direct Purchaser

Plaintiffs and Settlement Class Counsel (defined below) will fairly and adequately represent the Settlement Class; and (d) common issues predominate over any individual issues affecting the members of the Settlement Class. The Court further finds that Direct Purchaser Plaintiffs' interests are aligned with the interests of all other members of the Settlement Class. The Court also finds settlement of this action on a class basis superior to other means of resolving the matter.

Appointment of Settlement Class Counsel, Class Representatives,
Settlement Administrator, and Escrow Agent

5. The Court hereby appoints Hausfeld, LLP and Roberts Law Firm, P.A. as Settlement Class Counsel, having determined that the requirements of Rule 23(g) are fully satisfied by this appointment.

6. The Court hereby appoints Direct Purchaser Plaintiffs Triple Cities Acquisition LLC d/b/a Cook Brothers Truck Parts, National Trucking Financial Reclamation Services, TrailerCraft Inc., and Myers Equipment Corporation as class representatives on behalf of the Settlement Class.

7. The Court hereby appoints Epiq Systems, Inc. as the Settlement Administrator and Huntington National Bank as the Escrow Agent for the Direct Purchaser Plaintiffs' settlements with both Espar and Webasto.

Notice to Potential Class Members

8. Prior to the Fairness Hearing, Settlement Class Counsel shall provide notice of the Settlement Agreements and the Fairness Hearing to all persons affected by and/or entitled to participate in the Settlement Agreements in compliance with the notice requirements of Rule 23 and due process of law.

9. The Court finds that there is sufficient basis for notifying the Settlement Class of the proposed settlements.

10. The Court finds that Direct Purchaser Plaintiffs' proposed notice program will inform potential Settlement Class members about how to obtain additional information about the Settlement Agreements, and apprise each member of the Settlement Class of his, her, or its right to exclude themselves from, or object to, one or both of the settlements. The notices therefore comply with the requirements of Rule 23.

11. Further, the manner and form of proposed notice is hereby approved. Specifically, the form of mail notice and publication notice attached as Exhibits 2 and 3 to the Declaration of Cameron R. Azari, submitted with Direct Purchaser Plaintiffs' motion for preliminary approval (ECF No. 146-3), are hereby approved, as is the publication of notice in *Fleet Owner* (a trade magazine that caters to business that are likely to be members of the proposed Settlement Class).

The notices:

- a. describe the lawsuit;
- b. explain what a class member must do to file a claim, object to the settlements, or opt out; and
- c. provide contact information for additional information.

12. By October 1, 2018, Direct Purchaser Plaintiffs, in conjunction with the Claims Administrator, are hereby ordered to begin implementing the notice program to direct purchasers.

Fairness Hearing

13. The Court will conduct a Fairness Hearing on __: __ am/pm on __ __, 2018 to determine the following:

- a. Whether the proposed settlements are fair, reasonable, and adequate and should be granted final approval;

- b. Whether final judgment should be entered dismissing the claims of the Settlement Class against Espar and Webasto with prejudice as required by the Settlement Agreements; and
- c. Such other matters as the Court may deem appropriate.

Other Provisions

14. Any member of the Settlement Class that does not properly and timely request exclusion from the Settlement Class shall, upon final approval of the settlements, be bound by the terms and provisions of the Settlement Agreements, whether or not such person or entity objected to one or both of the settlements and whether or not such person or entity makes a claim upon the Settlement Funds.

15. In the event that either Settlement Agreement is terminated in accordance with its provisions, that Settlement Agreement and all proceedings had in connection therewith shall be null and void, except insofar as expressly provided to the contrary in that Settlement Agreement, and without prejudice to the status quo and rights of Direct Purchaser Plaintiffs, the members of the Settlement Class, and the Defendant (either Webasto or Espar) that has had its Settlement Agreement either terminated or rescinded. The termination or rescission of one Settlement Agreement shall have no impact on the viability of the other Settlement Agreement.

16. Should either or both Settlement Agreements be terminated or rescinded, the Court's findings in this Order shall have no effect on the Court's ruling on any subsequent motion to certify any class in these actions or on the Court's ruling(s) concerning any Defendant's motion; and no party may cite or refer to the Court's approval of the Settlement Class as persuasive or binding authority with respect to any motion to certify any such class or any Defendant's motion.

17. The Court approves the establishment of the Settlement Funds pursuant to the Settlement Agreements as a qualified settlement fund ("QSF") pursuant to Internal Revenue Code

Section 468B and the Treasury Regulations promulgated thereunder, and retains continuing jurisdiction as to any issue that may arise in connection with the formation and/or administration of the QSF. Settlement Class Counsel are, in accordance with the Settlement Agreements, authorized to expend funds from the QSF for the payment of the costs of notice, payment of taxes, and settlement administration costs.

18. The litigation against Released Parties (as defined in the Settlement Agreements) is stayed except to the extent necessary to effectuate the Settlement Agreements. All deadlines previously set by the Court (including those related to discovery and class certification) are hereby vacated.

19. The Court retains exclusive jurisdiction over this action to consider all further matters arising out of or connected with the Settlement Agreements, except as explicitly agreed otherwise by the parties in the Settlement Agreements.

IT IS SO ORDERED

Dated:

HON. JAMES ORENSTEIN
UNITED STATES MAGISTRATE JUDGE