

CERTIFIED
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de Justice

Court File No. 534/15 CP

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE
JUSTICE R. RAIKES

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Monday , THE 14th DAY
OF December , 2020

BETWEEN:

JOHN DEVRIES

Plaintiff

-and-

ESPAR INC.; ESPAR PRODUCTS INC.; EBERSPAECHER CLIMATE CONTROL
SYSTEMS INTERNATIONAL BETEILIGUNGS-GMBH; EBERSPAECHER CLIMATE
CONTROL SYSTEMS GMBH & CO. KG (FORMERLY KNOWN AS J. EBERSPAECHER
GMBH AND CO. KG); EBERSPAECHER GRUPPE GMBH AND CO. KG; WEBASTO
THERMO AND COMFORT NORTH AMERICA INC.; ~~MARINE CANADA ACQUISITION
INC. (O/A SEASTAR SOLUTIONS)~~; VOLKER HOHENSEE; WEBASTO SE; and WEBASTO
THERMO & COMFORT SE

Defendants

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT*, 1992, S.O. 1992, c.6

ORDER

THIS MOTION made by the Plaintiff, John Devries, for an Order certifying the within action (the "Action") as a class proceeding pursuant to the *Class Proceedings Act*, 1992, S.O. 1992, c.6 (the "CPA") was heard this day at the Court House, 80 Dundas Street, London, Ontario.

ON READING the materials filed, on being advised that the Plaintiff and the Defendants, other than Volker Hohensee, consent to this order and on hearing the submissions from counsel for the consenting parties:

1. **THIS COURT ORDERS** that the Action is certified as a class proceeding pursuant to s. 5 of the *CPA*.

2. **THIS COURT ORDERS** that the certified Class is defined as:

"All Direct Purchasers and/or Indirect Purchasers of a Parking Heater other than all Direct Purchasers and Indirect Purchasers of a Parking Heater in Québec."

"Parking Heater" means a parking heater, including the heater itself, accessories and parts sold for use with heaters, packages containing heaters, and accessories and/or parts for parking heaters (parking heater 'kits'), which was manufactured or sold by the Defendants for use in a commercial vehicle between September 13, 2001 and December 31, 2012.

"Direct Purchasers" means all persons or entities in Canada who purchased a Parking Heater directly.

"Indirect Purchasers" means all persons or entities in Canada who purchased a Parking Heater from someone other than a Defendant including any person or entity who purchased, leased and sub-leased a commercial vehicle containing a Parking Heater.

3. **THIS COURT ORDERS** that the following issues are common to the Class:

Breach of the Competition Act

- (a) Did the Defendants, or any of them, engage in conduct which is contrary to s. 45 of the *Competition Act*?
- (b) What damages, if any, are payable by the Defendants, or any of them, to the Class Members pursuant to s. 36 of the *Competition Act*?
- (c) Should the Defendants, or any of them, pay the full costs, or any, of the investigation into this matter and of the proceedings pursuant to s. 36 of the *Competition Act* and if so, in what amount?

Conspiracy

- (d) Did the Defendants, or any of them, conspire to harm the Class Members?
- (e) Did the Defendants, or any of them, act in furtherance of the conspiracy?
- (f) Was the predominant purpose of the conspiracy to harm the Class Members?

- (g) Did the conspiracy involve unlawful acts?
- (h) Did the Defendants, or any of them, know that the conspiracy would likely cause injury to the Class Members?
- (i) Did the Class Members suffer economic loss?
- (j) Over what period of time did the conspiracy take place?
- (k) Did the Defendants, or any of them, take affirmative or fraudulent steps to conceal the conspiracy?
- (l) What damages, if any, are payable by the Defendants, or any of them, to the Class Members?
- (m) Can the amount of damages be determined on an aggregate basis and if so, in what amount?

Unlawful Means Tort and Unjust Enrichment

- (n) Did the Defendants commit unlawful acts which were intended to cause the Plaintiff and other Class Members economic loss or were a necessary means of enriching the defendants?
- (o) Have the Defendants, or any of them, been unjustly enriched by the receipt of overcharges on the sale of Parking Heaters?
- (p) Have the Class Members suffered a corresponding deprivation in the amount of the overcharges on the sale of Parking Heaters?
- (q) Is there a juristic reason why the Defendants, or any of them, should be entitled to retain the overcharges on the sale of Parking Heaters?

- (r) If the Defendants, or any of them, have been unjustly enriched, are the Class Members entitled to restitution?
- (s) Are the Class Members entitled to an equitable accounting, disgorgement of unlawful revenue or other equitable relief?
- (t) What restitution, if any, is payable by the Defendants to the Class Members because of their unlawful conduct?
- (u) Can the amount of restitution be determined on an aggregate basis and if so, in what amount?

Punitive Damages

- (v) Was the conduct of any or all of the Defendants sufficiently reprehensible or high-handed to warrant punishment?
 - (w) If the conduct of any or all of the Defendants warrants punishment, should an award of punitive or exemplary damages be made against any or all of those Defendants and, if so, in what amount?
- 4. **THIS COURT ORDERS** that the Plaintiff, John Devries, is appointed as the Representative Plaintiff for the Class.
 - 5. **THIS COURT ORDERS** that the nature of the claim asserted on behalf of the Class is breach of s. 45 of the Part VI of the *Competition Act*, RSC 1985, c. C 34, as amended, conspiracy, unlawful means tort and unjust enrichment.
 - 6. **THIS COURT ORDERS** that the plaintiff shall be granted leave to issue the Third Fresh as Amended Statement of Claim in accordance with **Schedule "A"** attached hereto.

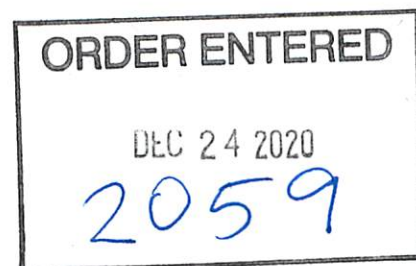
7. **THIS COURT ORDERS** that the relief sought by the Class is set out in the Third Fresh as Amended Statement of Claim attached hereto as **Schedule "A"**.
8. **THIS COURT ORDERS** that the Defendants produce to Plaintiff's counsel a complete and accurate list of every Class Member's name, address, and most current contact information (including available e-mail, phone, and mobile phone numbers) for the purpose of notice dissemination to the extent that such information is currently within the Defendants' power, possession or control.
9. **THIS COURT ORDERS** that the Litigation Plan of the Plaintiff is approved in the form attached hereto as **Schedule "B"** and may be revised as necessary under the continuing case management authority of the Court.
10. **THIS COURT ORDERS** that Class Members who wish to opt-out of this Action must do so by sending a written election to opt-out, signed by the Class Member or the Class Member's designee, to class counsel or their duly appointed agent by pre-paid mail, courier, fax or e-mail received on or before sixty (60) days following the commencement of the court-approved notice plan.
11. **THIS COURT ORDERS** that any Class Member who has validly opted-out of this Action shall no longer participate or have the opportunity in the future to participate in this Action.
12. **THIS COURT ORDERS** that any Class Member who has not validly opted-out of this Action may not opt-out of this Action in the future.
13. **THIS COURT ORDERS** that the proposed newspaper publication, short-form, long form, press release and banner ad notices of certification (the "Notices") are hereby approved substantially in the form attached hereto as **Schedules "C", "D", "E", "F" and "G"** respectively.

14. **THIS COURT ORDERS** that the plan of dissemination of the Notices (the "Plan of Dissemination") is hereby approved in the form attached hereto as **Schedule "H"** and that the Notices shall be disseminated in accordance with the Plan of Dissemination.
15. **THIS COURT ORDERS** that RicePoint Administration Inc. be appointed to disseminate the Notices in accordance with the Plan of Dissemination.
16. **THIS COURT ORDERS** that class counsel shall pay the costs of the Notices and the Plan of Dissemination and any required costs of translation, as a disbursement of the Action, as they become due.
17. **THIS COURT ORDERS** that this Order is contingent upon orders being made by the BC Court to stay the two parallel BC Actions (*Dumas Trucking Ltd. v. Espar Inc.*, BCSC Action No. S153182, and *Dumas Trucking Ltd. v. Webasto SE*, BCSC Action No. S175623) and the terms of this Order shall not be effective unless and until such orders are made by the BC Court.
18. **THIS COURT ORDERS** that no costs are payable in respect of the within motion.

Date: December 14, 2020



The Honourable Justice Russell Raikes



SCHEDULE "A"

Court File No. 534/15 CP

ONTARIO SUPERIOR COURT OF JUSTICE

BETWEEN:

JOHN DEVRIES

Plaintiff

-and-

ESPAR INC.; ESPAR PRODUCTS INC.; EBERSPAECHER CLIMATE CONTROL
SYSTEMS INTERNATIONAL BETEILIGUNGS-GMBH; EBERSPAECHER CLIMATE
CONTROL SYSTEMS GMBH & CO. KG (FORMERLY KNOWN AS J. EBERSPAECHER
GMBH AND CO. KG); EBERSPAECHER GRUPPE GMBH AND CO. KG; WEBASTO
THERMO AND COMFORT NORTH AMERICA INC.; VOLKER HOHENSEE; WEBASTO
SE; and WEBASTO THERMO & COMFORT SE

Defendants

Proceeding Under the Class Proceedings Act, 1992, S.O. 1992, c. 6

THIRD FRESH AS AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

If you wish to defend this proceeding but are unable to pay legal fees, legal aid may be available to you by contacting a local legal aid office.

Date: March 18, 2015

Issued by: _____

80 Dundas Street
London, ON

TO: Espar Inc.
29101 Haggerty Road
Novi, Michigan 48377-2913
United States

AND TO: Espar Products Inc.
6099A Vipond Drive
Mississauga, Ontario L5T 2B2

AND TO: Eberspaecher Climate Control Systems International Beteiligungs-GmbH
Eberspacherstrasse 24
73730 Esslingen
Germany

AND TO: Eberspaecher Climate Control Systems GmbH & Co. KG (formerly known as
J. Eberspaecher GmbH and Co. KG)
Eberspacherstrasse 24
73730 Esslingen
Germany

AND TO: Eberspaecher Gruppe GmbH & Co. KG
Eberspacherstrasse 24
73730 Esslingen
Germany

AND TO: Webasto Thermo and Comfort North America Inc.
30600 Telegraph Road Ste 2345
Bingham Farms, Michigan 48025
United States

AND TO: Volker Hohensee
83 South Harbor Road
Bobcaygeon, ON K0M 1A0

AND TO: Webasto SE
Kraillinger Straße 5
D-82131 Stockdorf
Germany

AND TO: Webasto Thermo & Comfort SE
Friedrichshafener Straße 9
D-82205 Gilching
Germany

CLAIM

1. **THE PLAINTIFF CLAIMS** on behalf of himself and the class:

- a. an Order pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, C. 6 (the "CPA"), certifying this action as a class proceeding and appointing the Plaintiff as the Representative Plaintiff on behalf of the Class;
- b. general damages calculated on an aggregate basis or otherwise for breach of the *Competition Act*, RSC 1985, c. C-34 (the "*Competition Act*"), conspiracy, unlawful means tort and unjust enrichment, in an amount sufficient to compensate the Plaintiff and the other Class Members for the harm done to them as a result of the Defendants' unlawful conduct;
- c. punitive damages in an amount to be determined at trial;
- d. an equitable rate of interest on all sums found due and owing to the Plaintiff and other Class Members or, in the alternative, pre- and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, Chapter C.43;
- e. an accounting, restitution, and disgorgement for common law conspiracy, unjust enrichment, and unlawful means tort;
- f. an Order compelling the creation of a litigation trust to hold and distribute the monetary relief awarded pursuant to a plan of administration and distribution under sections 25 and 26 of the CPA;
- g. an injunction enjoining the Defendants from conspiring or agreeing with each other, or others, to raise, maintain, fix, or stabilize the price of Parking Heaters;

- h. an Order compelling the creation of a conspicuous notice program to Class Members pursuant to section 19 of the *CPA* in order to facilitate the plan of distribution claimed herein;
- i. costs of investigation and prosecution of this proceeding pursuant to section 36 of the *Competition Act*;
- j. costs for the administration of the plan of distribution for relief obtained in this action;
- k. costs of this action on a substantial indemnity scale including applicable taxes; and
- l. such further and other relief as this Honourable Court deems just.

THE NATURE OF THE ACTION

- 2. This action arises from a conspiracy to fix, raise, maintain, or stabilize the price of parking heaters, including the heaters themselves, accessories and parts sold for use with heaters, packages containing heaters, and accessories and/or parts for parking heaters (parking heater "kits") (collectively, "Parking Heaters") sold directly or indirectly in the Canadian market and throughout the world for use in commercial vehicles during the class period.
- 3. The Defendants, and their unnamed co-conspirators, manufactured and/or sold Parking Heaters in the Canadian market and throughout the world for use in commercial vehicles. Parking Heaters are used in a wide variety of commercial vehicles to warm the engine and cabin, in lieu of idling the vehicle.

4. The Defendants and their unnamed co-conspirators conspired to fix prices for both air parking heaters and water/coolant parking heaters.
5. During the period commencing September 13, 2001 and continuing up to December 31, 2012 (the "Class Period"), it is alleged that the Defendants and their senior executives participated in illegal and secretive meetings and made unlawful agreements relating to the prices of Parking Heaters.
6. The conduct of the Defendants and their unnamed co-conspirators caused injury to the Plaintiff and the Class Members, namely that they were compelled to pay, and did pay, artificially inflated prices, directly or indirectly for Parking Heaters (the "Overcharge.")
7. Damages and equitable remedies are claimed.

THE PLAINTIFF AND THE CLASS

8. The plaintiff, John Devries, is an individual residing in Strathroy, Ontario ("the Plaintiff"). The Plaintiff purchased a Webasto Parking Heater in 2012 which was installed in his commercial vehicle shortly after purchase, in that same year. As such, the Plaintiff indirectly purchased a Parking Heater from the Defendants and/or one of their unnamed co-conspirators during the Class Period.
9. The Plaintiff seeks to represent a class consisting of:

All Direct Purchasers and/or Indirect Purchasers of a Parking Heater other than all Direct Purchasers and Indirect Purchasers of a Parking Heater in Quebec (the "Class Members").

"Parking Heater" means a parking heater, including the heater itself, accessories and parts sold for use with heaters, packages containing

heaters, and accessories and/or parts for parking heaters (parking heater 'kits'), which was manufactured or sold by the Defendants for use in a commercial vehicle between September 13, 2001 and December 31, 2012 (the "Class Period").

"Direct Purchasers" means all persons or entities in Canada who purchased a Parking Heater directly.

"Indirect Purchasers" means all persons or entities in Canada who purchased a Parking Heater from someone other than a Defendant including any person or entity who purchased, leased and sub-leased a commercial vehicle containing a Parking Heater.

THE DEFENDANTS

10. The Defendants and their unnamed co-conspirators manufactured and/or sold, directly or indirectly, Parking Heaters in the Canadian market and throughout the world for use in commercial vehicles during the Class Period.
11. The price-fixing conspiracy, which the Defendants and their unnamed co-conspirators arranged and orchestrated, enabled the Defendants to charge more for Parking Heaters to the Plaintiff and the Class Members than they would have absent the conspiracy.
12. The Defendants are jointly and severally liable for the actions of, and damages allocable to, their co-conspirators, including the unnamed co-conspirators.
13. Where a particular entity within a corporate family of the Defendants engaged in anti-competitive conduct, it did so on behalf of all entities within that corporate family. The individual participants in the conspiratorial meetings and discussions entered into agreements on behalf of, and reported these meetings and discussions to, their respective corporate families.

14. Various persons, partnerships, sole proprietors, firms, corporations and individuals not named as Defendants in this lawsuit, the identities of which are presently unknown to the Plaintiff but are within the knowledge of the Defendants, have participated as co-conspirators with the Defendants in the unlawful behaviour alleged herein, and have performed acts and made statements in furtherance of the conspiracy or in furtherance of the anticompetitive conduct.
15. Government investigations into anticompetitive conduct in the market for Parking Heaters by both the United States Department of Justice and The European Commission have resulted in guilty pleas and the laying of criminal fines against various Defendants. Investigations into the anticompetitive conduct remain ongoing.

The Eberspaecher Defendants

16. The Defendants, Eberspaecher Climate Control Systems International Beteiligungs-GmbH, Eberspaecher Climate Control Systems GmbH & Co. KG (formerly known as J. Eberspaecher GmbH and Co. KG) and Eberspaecher Gruppe GmbH & Co. KG (collectively, "the Eberspaecher Defendants") are inter-related and affiliated German corporations and the parent companies of Espar Inc., and Espar Products Inc. The Eberspaecher Defendants are affiliated with, and their business activities are interrelated with, that of the Defendants Espar Inc. and Espar Products Inc.
17. The Eberspaecher Defendants either directly or indirectly manufactured and/or sold Parking Heaters in the Canadian market and throughout the world during the Class Period and engaged in the anti-competitive conduct alleged herein. The Eberspaecher Defendants directed the commerce of their subsidiary and related companies in the market.

18. On or about June 17, 2015, The European Commission announced that it had launched an investigation into the activities of the Eberspaecher Defendants and their co-conspirators.
19. The European Commission's investigation revealed that over a period of ten years, from September 13, 2001 to September 15, 2011, the Eberspaecher Defendants and their co-conspirators engaged in anti-competitive conduct and colluded to avoid competing with one another.
20. The European Commission imposed a fine of € 68 175 000 on the Eberspaecher Defendants for their actions in the conspiracy alleged herein. Their co-conspirators were not fined on account of having revealed the existence of the conspiracy.

The Espar Defendants

21. The Defendant Espar Inc. is an American corporation with its principal place of business at 29101 Haggerty Road Novi, MI 48377-2913. Espar Inc. directly or indirectly manufactured and/or sold Parking Heaters in the Canadian market and throughout the world during the Class Period and engaged in the anticompetitive conducted alleged herein. Espar Inc. is affiliated with, and its business activities are interrelated with, that of the Eberspaecher Defendants and the Defendant Espar Products Inc.
22. On March 12, 2015, Espar Inc. pleaded guilty in the United States for its role in the conspiracy alleged herein and executed a plea agreement with the United States Department of Justice. Espar Inc. pleaded guilty to one count of violating American antitrust laws, specifically, the *Sherman Antitrust Act*, 15 U.S.C. s.1. The elements of the charge to which Espar Inc. pleaded guilty are as follows:

- a. the conspiracy existed as early as October 1, 2007 and lasted until December 31, 2012;
 - b. Espar Inc. knowingly became a member of the conspiracy; and
 - c. the conspiracy as described either substantially affected North American commerce in goods or services or occurred within the flow of interstate commerce in goods and services.
23. On June 25, 2015, Espar Inc. was sentenced to pay a USD \$14.9 million criminal fine in relation to its guilty plea.
24. The Defendant, Espar Products Inc. is an Ontario corporation with its principal place of business at 6099A Vipond Drive, Mississauga L5T 2B2. Espar Products Inc. directly or indirectly manufactured and/or sold Parking Heaters in the Canadian market and throughout the world during the Class Period and engaged in the anticompetitive conduct alleged herein.
25. Espar Products Inc. is affiliated with and its business activities are interrelated with that of the Eberspaecher Defendants and Espar Inc. From time to time Espar Inc. and Espar Products Inc. (collectively "the Espar Defendants") and the Eberspaecher Defendants conduct business in Canada in the Parking Heaters industry through the trade name Espar Climate Control Systems.
26. It is alleged that the businesses of the Eberspaecher Defendants and the Espar Defendants directly or indirectly manufactured and/or sold Parking Heaters in the Canadian market and throughout the world during the Class Period. It is further alleged that their businesses are inextricably interwoven with that of the other and

each is the agent of the other for the purposes of manufacturing and selling Parking Heaters.

Volker Hohensee

27. The Defendant, Volker Hohensee ("Mr. Hohensee") is a German citizen who resides in Ontario, Canada. Mr. Hohensee was a senior executive with various entities in the Espar and Eberspaecher corporate families, during all relevant times, which included holding the position of President of Espar Inc. during the Class Period.
28. On December 9, 2015, the United States Department of Justice announced that a federal grand jury in Detroit had indicted Mr. Hohensee, along with two other former executives of the Eberspaecher defendants, Frank Haeusler and Harald Sailer.
29. The Grand Jury Indictment charges that Mr. Hohensee, together with Mr. Haeusler, Mr. Sailer, and others worked together to artificially set prices for Parking Heaters in the United States and elsewhere from as early as October 2007 and continuing until at least November 19, 2012. It is further alleged that they met to discuss the price of Parking Heaters, agreed to set a price floor, and agreed to coordinate the timing and amount of price increases for Parking Heaters.
30. It is alleged that Mr. Hohensee, along with Mr. Haeusler, Mr. Sailer, and others, conspired to fix, stabilize, and maintain prices of Parking Heaters by, including but not limited to:
 - a. communicating, discussing, and meeting to discuss prices for Parking Heaters;

- b. during those communications, discussions, and meetings, agreeing to set a price floor for Parking Heaters and to coordinate the timing and amount of price increases for Parking Heaters;
- c. exchanging information for the purposes of monitoring and enforcing adherence to those agreements; and
- d. selling Parking Heaters at coordinated, collusive, and non-competitive prices.

In doing so, Mr. Hohensee, Mr. Hauesler, Mr. Sailer, and others shipped Parking Heaters in substantial quantities throughout Canada and across Canadian borders to the United States, Germany, and elsewhere. Necessary equipment and supplies relating to the manufacture and sale of Parking Heaters were also shipped. The business activities of Mr. Hohensee, Mr. Hauesler, Mr. Sailer, and others were in the flow of, and significantly affected, Canadian and international trade and commerce.

The Webasto Defendants

- 31. The Defendant, Webasto Thermo and Comfort North America Inc., is an American corporation with its principal place of business at 30600 Telegraph Road Ste, 2345 Bingham Farms, MI 48025.
- 32. Webasto Thermo and Comfort North America Inc. either indirectly or directly manufactured and/or sold Parking Heaters in the Canadian market and throughout the world during the Class Period and engaged in the anti-competitive conduct alleged herein.
- 33. The Defendant, Webasto SE, is a German corporation with its principal place of business at Kraillinger Straße 5, D-82131 Stockdorf and is affiliated with and its

business activities are interrelated with that of the Defendants, Webasto Thermo and Comfort North America Inc. and Webasto Thermo & Comfort SE.

34. Webasto SE directly and/or indirectly manufactured and/or sold Parking Heaters in the Canadian market and throughout the world during the Class Period and engaged in the anti-competitive conduct alleged herein.
35. The Defendant, Webasto Thermo & Comfort SE, is a German corporation with its principal place of business at Kraillinger Friedrichshafener Straße 9, D-82205 Gilching and is affiliated with and its business activities are interrelated with that of the Defendants, Webasto Thermo and Comfort North America Inc. and Webasto SE.
36. Webasto Thermo & Comfort SE directly and/or indirectly manufactured and/or sold Parking Heaters in the Canadian market and throughout the world during the Class Period and engaged in the anti-competitive conduct alleged herein.
37. On June 17, 2015, the European Commission found that Webasto SE, Webasto Thermo and Comfort SE, and other unnamed entities in the Webasto corporate family, together with their named and unnamed co-conspirators, had breached antitrust rules prohibiting cartels and restrictive business practices of the European Union in relation to coordinating prices of Parking Heaters and in violation of Article 101 of the Treaty on the Functioning of the European Union.
38. Entities within the Webasto corporate family were not fined by the European Commission because full immunity was granted to them in exchange for information revealing the existence of the anticompetitive conspiracy to authorities.
39. The European Commission showed that over a period of ten years, from September 13, 2001 to September 15, 2011 Webasto SE, Webasto Thermo & Comfort SE, other

unnamed entities in the Webasto corporate family, and their named and unnamed co-conspirators, had coordinated prices and allocated customers across the entire European Economic Area.

Unnamed Co-Conspirators

40. Other entities, business corporations, and individuals not named as Defendants herein but whose identities are within the knowledge of the Defendants participated as co-conspirators in the acts alleged and performed acts that aided, abetted, and furthered, the alleged conspiracy.

FACTUAL BACKGROUND

Parking Heaters

41. The structure and characteristics of the market for Parking Heaters in Canada and throughout the world is conducive to the conspiracy alleged herein.
42. Operators of commercial vehicles, such as large, long-distance, commercial trucks, or other pieces of heavy equipment, must often idle their vehicles for rest breaks and other purposes in order to keep or preheat the engine, and/or to keep the cabin, warm. Idling helps to ensure that the engine will safely and reliably start in cold weather. For many operators, idling the vehicle itself may be the only method to provide heat to the engine and cabin of the vehicle. Such idling, however, burns fuel, resulting in higher fuel and operating costs and the greater release of carbon dioxide and other greenhouse gases into the environment. In some locations and jurisdictions, such idling may be in violation of anti-idling laws.

43. Parking Heaters offer a solution to the idling problem by providing heat to the engine and cabin without the need to idle. In short, the Defendants' Parking Heaters preheat the engine and the cabin, without the need to start the vehicle's engine or the use of an electrical plug-in.
44. The Defendants and their competitors sell two primary types of Parking Heaters: Air Heaters and Water/Coolant Heaters.

Air Heaters

45. Air Heaters work by drawing in cool room or outside air to the heater unit. Much like a small furnace, the air is then warmed. The Defendants' Air Heaters have a heating element and a blower to provide heat either through a direct duct or through the vehicle's HVAC ducting.

Water/Coolant Heaters

46. Water/Coolant Heaters are integrated into the engine's cooling system. They function much like the operation of a residential hot water furnace. Air and water are combined, generating heat in the combustion chamber. The thermal energy gained is distributed through the vehicle's own heat exchanger as forced hot air, heating the interior of the vehicle through the air vents. The engine is warmed with residual heat in the cooling water.
47. Both types of the Defendants' Parking Heaters require much less fuel and power than idling a vehicle's engine. They are designed to be a cheaper and more economical method of keeping both the interior cabin of the vehicle and the engine warm, without idling the vehicle's engine.

48. Together the Defendants and their unnamed co-conspirators dominate both the Canadian and worldwide markets for the Parking Heaters.

The Conspiracy to Fix the Price of Parking Heaters

49. The acts alleged under this heading are, collectively, the "Conspiracy Acts."
50. During the Class Period, the Defendants and their unnamed co-conspirators conspired and/or agreed with each other to fix, maintain, increase, or control the price for Parking Heaters, and/or to enhance unreasonably the prices of Parking Heaters, and/or to unduly lessen competition in the sale of Parking Heaters in Canada.
51. During the Class Period, senior executives and employees of the Defendants, acting in their capacities as agents for the Defendants, engaged in communications, conversations, and attended meetings with each other at various times and places, some of which are unknown to the Plaintiff. As a result of the communications and meetings the Defendants and their unnamed co-conspirators unlawfully conspired and/or agreed to:
- a. unreasonably enhance the prices of Parking Heaters in Canada;
 - b. fix, maintain, increase, or control the prices of Parking Heaters in Canada;
 - c. monitor and enforce adherence to an agreed-upon pricing scheme;
 - d. restrain trade in the sale of Parking Heaters in Canada; and
 - e. unduly lessen competition in the sale of Parking Heaters in Canada.

52. In furtherance of the conspiracy, during the Class Period the Defendants and/or their servants and agents:
- a. fixed, maintained, increased, controlled, and/or enhanced unreasonably the prices of Parking Heaters in Canada;
 - b. communicated secretly in person, electronically, by telephone, and otherwise, to discuss and fix prices of Parking Heaters;
 - c. made formal agreements with respect to the prices of Parking Heaters;
 - d. exchanged information regarding the pricing of Parking Heaters for the purposes of monitoring and enforcing adherence to the agreed-upon prices;
 - e. rigged bids for the sale of Parking Heaters;
 - f. allocated sales, territories, customers, or markets for supply of Parking Heaters;
 - g. fixed, maintained, controlled, prevented or lessened the supply of Parking Heaters; and
 - h. disciplined any conspirator which failed to comply with the conspiracy.
53. During the Class Period and continuing to the present, the Defendants and/or their servants and agents, took active steps to, and did, conceal the unlawful conspiracy from the Plaintiff and the other Class Members.
54. The Defendants were motivated to conspire and their predominant purposes and predominant concerns were to harm the Plaintiff and the other Class Members who purchased Parking Heaters by requiring them to pay unlawfully high prices for Parking Heaters.

55. The subsidiaries of the foreign Defendants participated in and furthered the objectives of the conspiracy by knowingly modifying their competitive behaviour in accordance with instructions received from their respective parent companies, and thereby acted as their agents in carrying out the conspiracy and are liable for such acts:
56. The Conspiracy Acts alleged in this claim to have been done by each Defendant were authorized, ordered, and done by each of the Defendants' officers, directors, agents, employees, or representatives while engaged in the management, direction, control, or transaction of its business affairs.

The United States Department of Justice Investigation into Espar Inc.

57. The United States Department of Justice Antitrust Division launched an investigation into price fixing in the Parking Heater industry, which resulted in a criminal charge against Espar Inc.
58. The United States investigation found that Espar Inc. and its co-conspirators discussed Parking Heater prices for commercial vehicles, agreed to set a price floor for Parking Heater kits (which include certain accessories used when a Parking Heater is installed) sold for use in commercial vehicles in the aftermarket, and agreed to coordinate the time and amount of price increases.
59. Espar Inc. and its co-conspirators also agreed to exchange, and did exchange, information in order to monitor and enforce adherence to the agreement.

60. On March 12, 2015, the United States Department of Justice Antitrust Division announced that Espar Inc. had pleaded guilty to violating one count of the *Sherman Act* for participation in the conspiracy alleged herein.
61. As a condition of its plea agreement, Espar Inc. and its related entities, including the related entities named herein, agreed to cooperate fully and truthfully in the investigation with the United States Department of Justice, and in its prosecution of the case involving the sale of Parking Heaters to customers in the United States and elsewhere in North America, including Canada.
62. On June 25, 2015, Espar Inc. was sentenced to pay a criminal fine of USD \$14.9 million. The United States Investigation remains ongoing.

The United States Department of Justice Investigation into Volker Hohensee and Others

63. On December 9, 2015, the United States Department of Justice announced that it had indicted executives Volker Hohensee, Frank Haeusler, and Harald Sailer, all of whom were employed as senior executives by Espar Inc. and/or the Eberspaecher Defendants. From at least as early as October 2007 and continuing until at least November 19, 2012, the exact dates being unknown, Mr. Hohensee, Mr. Haeusler, Mr. Sailer, and their co-conspirators participated in a combination and conspiracy to suppress and eliminate competition for the sale of Parking Heaters for commercial vehicles to aftermarket and Original Equipment Service ("OES") customers, by agreeing to fix, stabilize, and maintain the price of Parking Heaters for commercial vehicles sold to aftermarket and OES customers in the United States and elsewhere.

64. The charged conspiracy unreasonably restrained trade, both interstate and United States import trade and commerce in violation of Section 1 of the *Sherman Act*. The conspiracy involved interstate and United States import trade and commerce, and consisted of continuing agreement, understanding, and concert of action among the Defendants and their co-conspirators, the substantial terms of which were to fix, stabilize, and maintain prices of Parking Heaters for commercial vehicles sold to aftermarket and OES customers in the United States and elsewhere.
65. The indictment also charges that Mr. Hohensee, Mr. Haeusler, and Mr. Sailer sold to aftermarket and OES customers in the United States substantial quantities of Parking Heaters shipped from outside the United States and from other states, in a continuous and uninterrupted flow of interstate and United States import trade and commerce. Substantial quantities of equipment and supplies necessary to the production and distribution of Parking Heaters, as well as payments for Parking Heaters, traveled interstate and in United States import trade and commerce.
66. The United States Department of Justice's investigation remains ongoing.

The European Commission Investigation

67. On June 17, 2015, after an unannounced inspection at the premises of the Eberspaecher entities, the European Commission found that the Eberspaecher parties, along with Webasto SE, Webasto Thermo & Comfort SE, and/or other unnamed entities in the Webasto corporate family, had breached antitrust rules prohibiting cartels and restrictive business practices of the European Union in violation of Article 101 of the Treaty on the Functioning of the European Union.

68. The European Commission found that the anticompetitive conduct by the Eberspacher entities, Webasto SE, Webasto Thermo & Comfort SE, and subsidiary and related companies within their corporate families, and which is alleged herein, extended over the entire European Economic Area.
69. Webasto SE and its subsidiary and related companies received full immunity for revealing the anticompetitive conduct.

CAUSES OF ACTION

Breach of the Competition Act

70. The Conspiracy Acts are in breach of section 45 of Part VI of the *Competition Act*. The Conspiracy Acts caused injury to the Plaintiff and the other Class Members, and render the Defendants jointly and severally liable to pay damages and costs of investigation pursuant to section 36 of the *Competition Act*.
71. The Plaintiff and the other Class Members did not discover, and could not discover through the exercise of reasonable diligence, the existence of the claims sued upon until recently, because the Defendants and their co-conspirators actively, intentionally, and purposively concealed the existence of the combination and conspiracy from the Plaintiff and the other Class Members.
72. Further, the Canadian subsidiaries of the foreign Defendants are liable to the Plaintiff and the other Class Members pursuant to section 36 of the *Competition Act* for acts in contravention of section 45(1) of the *Competition Act*.

Civil Conspiracy

73. Further, and in the alternative, the Conspiracy Acts were unlawful acts under the *Competition Act* and/or in restraint of trade directed towards the Plaintiff and the other Class Members. The Defendants and their co-conspirators knew that the unlawful acts alleged herein would likely cause injury to the Plaintiff and the other Class Members and, as such, the Defendants are jointly and severally liable for the tort of civil conspiracy. Further, or alternatively, the predominant purpose of the Conspiracy Acts was to injure the Plaintiff and the other Class Members, and the Defendants are jointly and severally liable for the tort of conspiracy to injure.
74. The Plaintiff and the other Class Members suffered damages as a result of the Defendants' conspiracy.

Unlawful Means Tort

75. Further, and in the alternative, the Conspiracy Acts were unlawful acts intended to cause the Plaintiff and the other Class Members economic loss, as an end in itself or as a necessary means of enriching the Defendants.
76. The Conspiracy Acts taken by the Defendants were unlawful under the laws of the jurisdictions where the Conspiracy Acts took place and are actionable by secondary market vendors of Parking Heaters and purchasers of vehicles with Parking Heaters located outside of Canada, or would be actionable by the OEMs located outside of Canada if they had suffered a loss. As such, the Defendants are jointly and severally liable for the unlawful means tort.

77. The Plaintiff and the other Class Members suffered damages as a result of the Defendants' unlawful means tort and each of the Defendants is jointly and severally liable to pay the resulting damages.

Unjust Enrichment

78. The Defendants have each been unjustly enriched by the receipt of the Overcharge. The Plaintiff and the other Class Members have suffered a corresponding deprivation in the amount of such Overcharge.
79. Since the Overcharge that was received by the Defendants from the Plaintiff and the other Class Members resulted from the Defendants' wrongful or unlawful acts, there is and can be no juridical reason justifying the Defendants retaining any part of it.
80. The Defendants are required to make restitution to the Plaintiff and the other Class Members for the entire Overcharge because, among other reasons:
- a. the Defendants were unjustly enriched by receipt of the Overcharge;
 - b. the Plaintiff and the other Class Members suffered a deprivation by paying the Overcharge;
 - c. the Defendants engaged in inappropriate conduct and committed wrongful acts by engaging in the conspiracies alleged in this claim;
 - d. the Overcharge was acquired in such circumstances that the Defendants may not in good conscience retain it;
 - e. justice and good conscience require restitution;
 - f. the integrity of the marketplace would be undermined if the court did not order restitution; and

- g. there are no factors that would, in respect of the artificially induced Overcharge, render restitution unjust.

Equity and good conscience requires that the Defendants make restitution to the Plaintiff and the other Class Members of the artificially-induced Overcharge from the sale of Parking Heaters, or alternatively to disgorge that amount to the Plaintiff and the other Class Members.

REMEDIES

Damages

- 81. As a result of the Conspiracy Acts:
 - a. the price of Parking Heaters have been enhanced unreasonably and/or fixed at artificially high and non-competitive levels; and
 - b. competition in the sale of Parking Heaters has been unduly restrained.
- 82. During the Class Period, the Plaintiff and the other Class Members purchased Parking Heaters. By reason of the alleged violations of the *Competition Act* and the common law, the Plaintiff and the other Class Members have been overcharged for those Parking Heaters by paying more than they would have paid in the absence of the illegal conspiracy and, as a result, the Plaintiff and the other Class Members have suffered damages.
- 83. The Plaintiff asserts that the Overcharge is capable of being quantified on an aggregate basis as the difference between the prices actually paid by the Plaintiff and the Class Members and the prices which would have been paid in the absence of the unlawful conspiracy.

84. All amounts payable to the Plaintiff and the other Class Members on account of damages and disgorgement should be calculated on an aggregate basis pursuant to section 24 of the *CPA*, or otherwise.

Punitive Damages

85. The Plaintiff asserts that the Defendants' conduct was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, willful, in contemptuous disregard of the Plaintiff's rights and the rights of the other Class Members, and as such, renders the Defendants liable to pay aggravated, exemplary and punitive damages.

Plan of Distribution

86. Such damages ought to be held in a litigation trust and distributed pursuant to a plan of distribution under sections 25 and 26 of the *CPA*.

Injunction

87. The Plaintiff claims that the Defendants be permanently enjoined from carrying on business in contravention of the applicable laws.

Conspicuous Notice Plan

88. The Plaintiff requests the creation of a conspicuous and comprehensive notice program affording notice to the Class Members of the illegality of the Overcharge, interest, and other amounts paid by them and the amounts owing to them by the Defendants pursuant to section 19 of the *CPA*.

STATUTES RELIED UPON

89. The Plaintiff pleads and relies upon the *Class Proceedings Act*, 1992, S.O. 1992, c.6 as amended, the *Competition Act*, R.S.C. 1985, c.34 as amended, and the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

SERVICE OUTSIDE ONTARIO

90. This originating process may be served without Court order outside of Ontario in that the claim is:
- a. in respect of a tort committed in Ontario (Rule 17.02 (g));
 - b. in respect of damages sustained in Ontario arising from a tort or a breach of contract wherever committed (Rule 17.02 (h));
 - c. against a person outside of Ontario who is a necessary and proper party to this proceeding properly brought against another person served in Ontario (Rule 17.02(o)); and
 - d. against a person carrying on business in Ontario (Rule 17.02 (p)).
91. The Plaintiff proposes that this action be tried in the City of London, in the Province of Ontario.

March 18, 2015

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Lawyers for the Plaintiff

JOHN DEVRIES
Plaintiff

v. ESPAR INC., et al.
Defendants

Court File No. 534/15 CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT LONDON

Proceeding Under the Class Proceedings Act, 1992

**THIRD FRESH AS AMENDED STATEMENT OF
CLAIM**

**FOREMAN & COMPANY
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Lawyers for the Plaintiff

SCHEDULE "B"

Court File No. 534/15 CP

ONTARIO SUPERIOR COURT OF JUSTICE

BETWEEN:

JOHN DEVRIES

Plaintiff

-and-

ESPAR INC.; ESPAR PRODUCTS INC.; EBERSPAECHER CLIMATE CONTROL
SYSTEMS INTERNATIONAL BETEILIGUNGS-GMBH; EBERSPAECHER CLIMATE
CONTROL SYSTEMS GMBH & CO. KG (FORMERLY KNOWN AS J. EBERSPAECHER
GMBH AND CO. KG); EBERSPAECHER GRUPPE GMBH AND CO. KG; WEBASTO
THERMO AND COMFORT NORTH AMERICA INC.; ~~MARINE CANADA ACQUISITION
INC. (O/A SEASTAR SOLUTIONS)~~; VOLKER HOHENSEE; WEBASTO SE; and WEBASTO
THERMO & COMFORT SE

Defendants

Proceeding Under the Class Proceedings Act, 1992, S.O. 1992, c.6

PLAINTIFF'S LITIGATION PLAN (pursuant to Section 5(1)(e)(ii) of the *Class Proceedings Act, 1992*)

COMMUNICATION WITH PUTATIVE CLASS MEMBERS:

1. Information will be made available online at www.foremancompany.com/parking-heaters-price-fixing for this proposed class proceeding. Current information on the status of this action will be posted on the site and will be updated as the matter progresses. Court documents, notices and any other documents or materials regarding the action will be accessible from the website. The telephone number and e-mail contact information for Class Counsel will also be made available, as will an electronic form that persons can complete in order to receive updates about the class action.

PLEADINGS:

2. The defendants shall deliver their Statements of Defence no later than thirty (30) days following the certification order in the event that they were not delivered at an earlier time.

Any reply by the plaintiff will follow within the time frame prescribed in the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 (the "*Rules*").

DOCUMENTARY DISCOVERY AND PRODUCTION:

3. The discovery for this action (the "Ontario Action") will be consolidated with the discovery in the related Québec action bearing QCSC Action No. 500-06-000736-153 (the "Québec Action") as set out in the Canadian Parking Heater Class Action Litigation National Discovery Protocol (the "National Discovery Protocol"), (the "Consolidated Discovery").
4. Pursuant to the National Discovery Protocol, the defendants' documents provided in the Québec Action pursuant to the Québec plaintiff's Request for Documents, dated December 15, 2019, will be provided or made available to the plaintiff for use in the Ontario Action within three (3) days of the finalization of the National Discovery Protocol.
5. To the extent that the defendants have additional documents that are relevant to the Ontario Action that have not been provided in the Québec Action, the parties will undertake a meet and confer process to determine the scope and timing of the supplementary discovery. The defendants will provide the plaintiff with the supplemental discovery within ninety (90) days of the finalization of the National Discovery Protocol.
6. The plaintiff in the Ontario Action shall produce his documents to the defendants in accordance with the Ontario *Rules* within ninety (90) days of the finalization of the National Discovery Protocol.
7. The plaintiff proposes that all productions be organized and produced electronically.
8. The parties will conduct the discovery process in accordance with a timeline to be agreed upon between the parties. Failing agreement, the timeline will be set by a case management order of any of the Courts. Any dispute arising in respect of any

supplementary discovery and the defendants' objections thereto will be determined pursuant to Ontario Law.

9. The parties will otherwise endeavour to have any dispute regarding discovery rights and obligations in the Consolidated Discovery process determined once by either the Ontario Court or the Québec Court, as appropriate, subject to direction from the Courts.

EXAMINATIONS FOR DISCOVERY:

10. Following the production of documents described above, the defendants will each identify one (1) representative to be examined on behalf of each defendant corporate group on all of the facts relevant to the Ontario Action and the Québec Action. The plaintiffs in the Ontario Action and the Québec Action do not waive their right to examine a representative of their choice, or of each defendant, pursuant to the Québec Law, or a waiver of the defendants' right to oppose such examinations.
11. The examinations for discovery will be conducted pursuant to the Québec rules with reasonable flexibility to permit scope of examination to those witnesses under the Ontario *Rules* for the purposes of the Ontario Action.
12. The parties have the right to apply for an additional witness or witnesses and each party has the right to oppose such application. The plaintiff in the Ontario Action can ask the Ontario Court for an order allowing more than seven (7) hours of cross-examination.
13. The defendants have the right to examine the Ontario plaintiff and to move for further discovery of class members in the Ontario Action in accordance with the applicable Ontario *Rules*.
14. The plaintiff anticipates that the examination for discovery of all parties will take a maximum of seven (7) days subject to refusals and undertakings. The plaintiff proposes that counsel work together to determine the location of each examination and the

anticipated duration of each examination. If there are areas of disagreement, any of the parties may seek direction from the Courts.

15. The parties to the Ontario Action can select to conduct examination for discovery by written questions in accordance with Rule 35 of the *Rules*.
16. The parties to the Ontario Action can agree to conduct some or all examinations for discovery by way of video conference.
17. The transcripts of the examinations for discovery can be used and/or filed into the court record of either or both the Ontario Action and the Québec Action in accordance with the rules of the respective Courts.
18. The plaintiff in the Ontario Action proposes that all answers to undertakings be provided within sixty (60) days of the conclusion of the examinations for discovery.

NOTICE TO CLASS MEMBERS AND OPT-OUT PROCEDURE:

19. The plaintiff will ask the Court to:
 - a. settle the form and content of the notice of certification and opt-out (the "Notice of Certification");
 - b. settle the means by which the Notice of Certification shall be disseminated to class members (the "Plan of Dissemination"); and
 - c. set a date for the expiry of the opt-out period of sixty (60) days following the commencement of the notice program.
20. The defendants will produce to the plaintiff a complete and accurate list of every class member's name, address, and most current contact information (including available e-mail, phone and mobile phone numbers) for the purpose of notice dissemination to the

extent that such information is currently within the defendants' power, possession or control.

21. A comprehensive multi-media Plan of Dissemination which is tailored to the characteristics of the proposed class will be sought. The plaintiff will seek approval of a Plan of Dissemination substantially in the following form:

- a. by posting the Notice of Certification on Class Counsels' dedicated case webpage;
- b. by a news posting on Class Counsels' respective dedicated "news" webpages;
- c. by a posting to Class Counsels' respective social media accounts;
- d. distribution to major news and broadcast outlets across Canada through a press release by Canada Newswire with promotion through Canada Newswire's social media feeds;
- e. publication in national newspapers once in print, in the legal section, subject to each having reasonable publication deadlines, including but not limited to:
 - (i) The Globe and Mail (National Edition);
 - (ii) The National Post; and
 - (iii) The Vancouver Sun;
- f. distribution of the Notice of Certification to industry associations for voluntary distribution to their membership and/or posting on their websites, including but not limited to: Canadian Trucking Alliance (including each respective provincial association excluding Québec), Canadian Truckers Association, Private Motor Truck Council of Canada, and Toronto Trucking Association;

- g. distribution of the Notice of Certification to various consumer associations including but not limited to: the Consumers' Council of Canada and The Consumer's Association of Canada;
- h. through a nationally syndicated digital distribution of a banner ad on regional and community news outlets within the Postmedia Network Inc.;
- i. direct communication to persons who registered to Class Counsel's website to receive updates regarding the class action; and
- j. direct communication to Canadian customers, excluding Québec, as disclosed by the defendants, to the extent that such information is currently within the defendants' power, possession or control.

OPTING-OUT

- 22. The Notice of Certification shall advise putative class members of their right to opt-out of the Ontario Action.
- 23. The plaintiff proposes the following opt-out procedure:
 - a. a person may opt-out of the class proceeding by sending a written election to opt-out to a person designated by the Court before a date fixed by the Court; and
 - b. no member of the class may opt-out of the class proceeding after the expiration of the opt-out period set by the Court except by Court order.
- 24. The plaintiff will ask the Court to appoint Foreman & Company Professional Corporation or an administrator retained by them, to receive the written elections to opt-out of the Ontario Action and, within thirty (30) days after the expiration of the opt-out period, to

deliver to the Court and to the Defendants an affidavit providing information respecting the number of persons who have opted-out of the class proceeding.

25. Class Counsel shall pay the costs of the Notice of Certification and the Plan of Dissemination, and any required costs of translation, as a disbursement of the Ontario Action, as they become due.

CASE MANAGEMENT

26. The plaintiff proposes to advance the matter in a fair and expeditious manner utilizing the case management tools contained in the *Class Proceedings Act, 1992*, SO 1992, c 6.
27. The plaintiff will also seek to coordinate the progress of this case with other, related proceedings, in Canada in order to avoid the duplication of work of both counsel and the judiciary, the risk of inconsistent judicial findings and the overall efficient prosecution of this case on a Canada-wide basis.
28. The plaintiff proposes to schedule case management conferences as necessary between the parties and the Court to advise the Court on the progress of the litigation. It is also anticipated that case management conferences will be scheduled with and between all supervising courts in Canada to ensure the efficiencies referred to in paragraph 27.
29. The plaintiff does not anticipate any motions at this time other than the motion for certification. The plaintiff acknowledges that motions may be necessary as the case progresses and proposes that each can be scheduled if and when issues arise.

DISPUTE RESOLUTION:

30. The plaintiff is willing to participate with the defendants in a non-binding alternative dispute resolution mechanism following certification and the conclusion of documentary and oral discovery.

EXPERT ASSISTANCE:

31. The plaintiff anticipates that expert witnesses will be retained in various fields. Each witness will provide expert testimony at the trial of the common issues. It is anticipated that the defendants will require expert testimony as well. The plaintiff proposes the early exchange of expert reports guided by case management. Failing agreement, the plaintiff will seek case management assistance in order to achieve an early and organized exchange of expert materials.

TRIAL OF THE COMMON ISSUES:

32. The plaintiff will ask the Court to fix the date for the trial of the common issues promptly following the conclusion of examinations for discovery, delivery of undertakings and any motions for refusals.
33. The National Discovery Protocol is limited to the discovery process only. The Ontario Court retains jurisdiction over the Ontario Action and the Québec Court retains jurisdiction over the Québec Action. Notwithstanding the limited scope of the National Discovery Protocol, the parties agree to work in good faith to develop a detailed and efficient protocol that sets out the process for the common issues trial(s). Unless otherwise agreed to by the parties, the parties further agree that any such protocol will ensure that any trials will not proceed concurrently.
34. The plaintiff proposes the creation of a Trial Management Plan in advance of the trial under the supervision of the Case Management Judge. The Trial Management Plan shall pertain to the following issues, including but not limited to:
- a. Joint Document Brief;
 - b. Chronology and Glossary;
 - c. Discovery Read-Ins;
 - d. Request to Admit and Notices;

- e. List of Anticipated Witnesses;
- f. Written Opening Briefs;
- g. Trial Schedule;
- h. Written Closing Submissions;
- i. Digital Trial Management;
- j. Protective Order; and,
- k. Further Directions.

35. It is currently anticipated that the common issues trial will last approximately 3-5 weeks in duration. The plaintiff proposes to work with the defendants' counsel to establish and organize the trial schedule to the greatest extent possible in the context of the Trial Management Plan.
36. If the plaintiff is successful at the trial of the common issues, it is anticipated that the resolution of the common issues will conclude the litigation, including settling on the manner in which each class member is to benefit from the remedies obtained. If damages are ordered by the Court, the plaintiff anticipates that such damages can be calculated and distributed to the class members based on information in the possession of the defendants, which is subject to confirmation by class members, and, if necessary, through an aggregate plan of distribution pursuant to s. 24 of the *Class Proceedings Act, 1992*.
37. In the event that there are issues which are specific to individuals or subgroups of individuals as amongst the class, the plaintiff proposes that the Court should utilize the tools provided under ss. 25 and 26 of the *Class Proceedings Act*.
38. The plaintiff proposes that the claims administration process shall provide for the following:
- a. proactive identification and payment of claims by the claims administrator where information permits;

- b. the creation of a dedicated claims administration website featuring a claims portal for the receipt of claims and the provision of claims information from class members;
- c. the claims process shall utilize a single, consistent common point of entry with respect to the necessary data to be filed in support of a claim;
- d. the claims process shall feature simple user-friendly claims documentation crafted in plain language without "legalese"; and
- e. the claims period shall feature a lengthy and generous time period within which to claim.

NOTICE OF SETTLEMENT OR JUDGMENT

- 39. Upon the completion of the trial of the common issues, the plaintiff will ask the Court to settle the general form and content of a notice to be delivered to class members (the "Notice of Resolution").
- 40. The plaintiff will ask the Court to order that the Notice of Resolution be distributed to class members substantially in accordance with the Plan of Dissemination for the Notice of Certification as set out herein. The Plan of Dissemination will be sustained and repeated at appropriate intervals in order to maintain the necessary rate of communication with class members in order to facilitate the making of claims and the distribution of the judgment.

ADMINISTRATIVE COSTS

- 41. The plaintiff will ask the Court to order that the defendants pay all administration costs, including the costs of the Notice of Resolution. If the Court does not so order, the plaintiff will seek an order that these costs be paid out of the total recovery after payment of

counsel fees, disbursements and applicable taxes but before any distribution to the eligible class members.

REVIEW OF LITIGATION PLAN:

42. The plaintiff proposes that this litigation plan should be reconsidered and revised as necessary under the continuing case management authority of the Court pursuant to the *Class Proceedings Act, 1992*, SO 1992, c 6.

SCHEDULE "C"

CERTIFICATION GRANTED IN THE PARKING HEATERS PRICE-FIXING CLASS ACTION

The Parking Heaters price-fixing class action has been certified by the Court and a settlement agreement has been reached with an individual defendant who was a former executive of one of the defendants.

If you are a Canadian resident, outside of Québec, who purchased a Parking Heater or purchased, leased or sub-leased a vehicle containing a Parking Heater between September 13, 2001 and December 31, 2012 **your rights may be affected.**

WHAT HAPPENS NOW?

The parties will now exchange documents and certain representatives for each side will be asked questions in a process known as examinations for discovery. The matter will then proceed to trial. At trial, a judge will decide, among other things, if the defendants participated in an illegal conspiracy to fix the price of Parking Heaters in Canada and if they did, what damages, if any, class members suffered.

A settlement approval hearing will also take place with respect to the settlement reached with the individual defendant, Volker Hohensee on [date and time] at [location].

If you are a Class Member that wants to be included in the Class Action, and you do not oppose the settlement, you do not need to do anything at this time.

If you do not want to be included in this Class Action or if you wish to comment on the settlement agreement, you must do so by **[date]**. Consult the website below or contact Class Counsel for more details.

For more information, please visit:

<https://www.foremancompany.com/parking-heaters-price-fixing> or call: 1.855.814.4575 ext. 107

SCHEDULE D

LEGAL NOTICE AUTHORIZED BY THE ONTARIO SUPERIOR COURT OF JUSTICE

CANADIAN PARKING HEATERS CLASS ACTION

Did you purchase a parking heater, or purchase, lease or sub-lease a vehicle containing a parking heater, between September 13, 2001 and December 31, 2012? If so, your legal rights could be affected.

What is this Class Action about?

A class action was initiated in Ontario against Espar¹ and Webasto², who are manufacturers of Parking Heaters. The case was initiated on behalf of all Canadians, excluding Québec residents (a separate lawsuit was commenced in Québec on behalf of Québec residents), who purchased parking heaters, or purchased, leased or subleased a vehicle containing a parking heater, between September 13, 2001 and December 31, 2012 (the "Class Period") (the "Class Members").

A "Parking Heater" means a parking heater, accessories and parts sold for use with heaters, packages containing heaters and accessories and/or parts for parking heaters which were manufactured or sold by the Defendants for use in a commercial vehicle during the Class Period.

The lawsuit alleges that the defendants participated in an unlawful conspiracy to fix, raise, maintain or stabilize the price of Parking Heaters in Canada, amongst other allegations (the "Class Action"). •

Certification

The Ontario Court has "certified" the Class Action meaning the Court has agreed that the lawsuit is suitable to proceed to trial as a class action.

Certification is not a ruling on the merits of the case, and the Court has not yet made a decision on the allegations made in the Class Action.

What happens next?

The parties will now engage in a process known as discovery where they exchange relevant documents and examine representative witnesses for each side.

The matter will then proceed to trial. At trial, a judge will decide, whether or not the claims will be successful and whether remedies should be ordered in favour of Class Members.

Settlement reached with Volker Hohensee

A settlement has been reached with the individual defendant Volker Hohensee, a former executive of the defendant Espar, in which Mr. Hohensee has agreed to provide the plaintiff with early cooperation and evidence in respect of the alleged conspiracy by the defendants. In exchange, Mr. Hohensee will be provided with a release of the claims against him in the Class Action. The settlement must be approved by the court before it becomes effective.

A settlement approval hearing will take place before the Ontario Superior Court of Justice on April 29, 2021 at 9:00 a.m. to determine if the settlement is fair, reasonable and in the best interest of Class Members. The settlement approval hearing is presently expected to be conducted by Zoom and can be accessed through: <https://zoom.us/j/91972027948> or (Tel): 647.374.4685; Meeting ID: 919 7202 7948. Please visit www.foremancompany.com/parking-heaters-price-fixing for more information.

If you do not oppose the proposed settlement agreement, you do not need to appear at the hearing or take any other action at this time. If you want to tell the court what you think about the proposed

settlement, you must send a written submission to Class Counsel by [date].

Does this cost me anything?

You do not have to pay the lawyers working on the Class Action any money. The lawyers only get paid if the Class Action is successful, and if so, they are paid out of any recovery that is achieved on behalf of the Class Members.

The lawyers working on the Class Action will seek a legal fee of up to 30% of the value of the results obtained, plus out of pocket case expenses and applicable taxes. Lawyers' fees and expenses, if any, are subject to Court approval.

Participating in the Class Action

If you want to be included in this Class Action, you do not need to do anything at this time.

You will be automatically included in the Class Action and may eventually receive money or other benefits from the Class Action.

If you participate in the Class Action, you will not be able to pursue your own case against the defendants regarding the claims at issue. You will be bound by the results of the Class Action, win or lose.

Opting-Out of the Class Action

Class Members have the right to exclude themselves from the Class Action by opting-out.

If you opt-out, you will not be eligible to participate in or receive any money or other remedies from the Class Action.

You may be able to start or continue your own case regarding the claims at issue at your own obligation and expense. If you wish to pursue your claims on an individual basis, you should consider consulting with a lawyer to discuss your options and any applicable deadlines for commencing your action.

If you do not want to be a Class Member in the Class Action, your opt-out must be received **by [date] at the latest.** Completed opt-outs can be sent to Class Counsel at the contact particulars below. For complete instructions on how to opt-out, please view the long-form notice on the website listed below or contact Class Counsel.

More Information

A copy of the complete certification order, settlement agreement, long-form notice and other important documents can be viewed at: www.foremancompany.com/parking-heaters-price-fixing

Class Counsel

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E-mail: info@cfmlawyers.ca

¹ Espar means: Espar Inc., Espar Products Inc., Eberspaecher Climate Control Systems International Beteiligungs-GmbH, Eberspaecher Climate Control Systems GmbH & Co. KG (formerly known as J. Eberspaecher GmbH and Co.

KG), Eberspaecher Gruppe GmbH and Co. KG.

² Webasto means: Webasto Thermo and Comfort North America Inc., Webasto SE and Webasto Thermo & Comfort SE

SCHEDULE "E"

1

NOTICE OF CERTIFICATION IN THE PARKING HEATERS CLASS ACTION

TO: All persons in Canada, excluding Québec, who purchased a Parking Heater, or purchased, leased or sub-leased a vehicle containing a Parking Heater, between September 13, 2001 and December 31, 2012 (the "Class Members").

PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS

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What is a Class Action?

A class action is a lawsuit filed by one person on behalf of a large group of people known as the "class" who share "common issues" in the lawsuit. The lawsuit must be "certified" by a Canadian court in order to be deemed a class action.

What is a Parking Heater and what is this Class Action about?

A "Parking Heater" is a component used in commercial vehicles to warm the engine and cabin in lieu of idling the vehicle. Parking Heaters are primarily sold in two varieties: "air heaters" or "water/coolant heaters". The Class Action has defined a Parking Heater to mean a parking heater, accessories and parts sold for use with heaters, packages containing heaters and accessories and/or parts for parking heaters that were manufactured or sold by the Defendants for use in a commercial vehicle during the Class Period.

In 2015, a class action was initiated in Ontario on behalf of Canadians, excluding residents of Québec, who purchased a Parking Heater or purchased, leased or sub-leased a vehicle containing a Parking Heater during the Class Period (the "Class Action"). The Class Action claims

Questions? Visit www.foremancompany.com/parking-heaters-price-fixing
or call 1.855.814.4575 ext. 107 (toll free)

that the companies who manufacture and sell Parking Heaters were involved in a conspiracy to unlawfully increase the prices of Parking Heaters.

Separate actions were commenced in British Columbia, but those actions have been stayed and the BC class members will be represented in the Ontario action.

A separate lawsuit was initiated in Québec on behalf of Québec residents who purchased a Parking Heater or purchased, leased or sub-leased a vehicle containing a Parking Heater during the same Class Period (the "Québec Action"). The Québec Action has been authorized (certified) by the Québec Court and the opt out period for the Québec Action has expired.

The named defendants are: Espar Inc., Espar Products Inc., Eberspaecher Climate Control Systems International Beteiligungs-GMBH, Eberspaecher Climate Control Systems GMBH & Co. KG (formerly known as J. Eberspaecher GMBH and Co. KG), Eberspaecher Gruppe GMBC and Co. KG, Webasto Thermo and Comfort North America Inc., Webasto SE and Webasto Thermo & Comfort SE.

Foreman & Company is counsel to the plaintiff in the Class Action. Foreman & Company is working in concert with Camp Fiorante Matthews Mogerman ^{LLP} in British Columbia to prosecute the Class Action ("Class Counsel") and with Belleau Lapointe s.e.n.c.r.l. in Québec to coordinate the Québec Action with the Class Action.

What is Certification?

The Court has "certified" the Class Action meaning the Court has agreed that the lawsuit is suitable to proceed to trial as a class action.

Certification is not a ruling on the merits of the case and the Court has not yet made a decision on the allegations made in the Class Action.

What is a Settlement and what Settlements have been reached in the Class Action?

A settlement occurs when the parties in litigation agree to resolve the dispute between them on terms that are established through negotiations.

A settlement has been reached with the defendant Volker Hohensee in the Class Action. Mr. Hohensee is a former executive who worked for one of the Espar defendants. Mr. Hohensee is not one of the corporate defendants. He was named as a defendant in the Ontario action by the plaintiff based on his potential knowledge of the facts surrounding the allegations in the case. The Class Action will continue against the other named defendants.

Mr. Hohensee has agreed to provide early cooperation and assistance to the plaintiffs in Ontario and Québec by providing evidence in respect of the alleged conspiracy by the defendants. In exchange, Mr. Hohensee will be provided with a release of the claims against him.

The settlement is not an admission by Mr. Hohensee of liability, fault, or wrongdoing, but is a compromise of the disputed claims.

The settlement is subject to court approval. A settlement approval hearing will take place before the Ontario Superior Court of Justice on April 29, 2021 at 9:00 a.m.. It is currently anticipated that the hearing will be conducted virtually by Zoom. You can participate in the hearing by using the

following information: <https://zoom.us/j/91972027948> or (tel): 647.374.4685; Meeting ID: 919 7202 7948. Alternative local phone numbers can be found at <https://zoom.us/u/acdgcyHvar>. Any updates with respect to the hearing will be posted on www.foremancompany.com/parking-heaters-price-fixing. Please check the website or contact Class Counsel for further information in advance of the settlement approval hearing.

At the hearing, the court will decide whether the settlement is fair, reasonable and in the best interest of Class Members. If the settlement is not approved the litigation will continue against Mr. Hohensee.

What happens next?

The plaintiff and the Defendants in the Class Action will now engage in a process known as discovery where they exchange relevant documents and examine representative witnesses for each side.

The matter will then proceed to trial. At trial, a judge will decide, whether or not the claims will be successful and whether remedies should be ordered in favour of Class Members.

Who is a Class Member in the Class Action?

You are a class member if between September 13, 2001 and December 31, 2012 you:

- Purchased a Parking Heater or you purchased, leased or sub-leased a vehicle containing a Parking Heater which was manufactured or sold by a defendant for use in a commercial vehicle; and
- You are a Canadian resident, excluding residents of Québec.

What do I need to do at this time?

If you do not oppose the proposed settlement and you wish to be included in the Class Action you do not need to appear at the hearings or take any other action at this time to indicate your desire to participate in the lawsuit.

If you do nothing:

- You will be eligible to participate in the Class Action; and
- You may receive money from the Class Action if the lawsuit is successful; but
- You will not be able to start or continue your own lawsuit against the defendants regarding the claims at issue in the Class Action; and
- You will be bound by the results of the Class Action, win or lose.

If you wish to receive future court-approved notices and updates regarding this Class Action directly, please send an e-mail with your full name, mailing address and telephone number to classactions@foremancompany.com

If you want to tell the court what you think about the proposed settlement or speak to the court at the hearing mentioned above, you must send your written submissions to Class Counsel by •. Contact information for Class Counsel can be found below. Class Counsel will file all submissions with the court.

What if I don't want to be in the Class Action?

If you do not want to be a member of the Class Action, you must exclude yourself from the Class Action by opting out by • at the latest.

You can opt out by sending a signed letter to Class Counsel, by pre-paid mail, courier, fax or e-mail at the following address:

Foreman & Company
 Attention: Jonathan Foreman
 Mail: 4 Covent Market Place, London, ON N6A 1E2
 Fax: 1.226.884.5340
 E-mail: classactions@foremancompany.com

All opt outs must contain the following information:

- Your full name, current address and telephone number;
- If you are writing on behalf of a company, the name of the company and your position at the company;
- A statement saying that you (or the company) want to opt out of the Parking Heaters Class Action; and
- Your signature.

Your opt out must be received **no later than •**.

If you exclude yourself by opting out:

- You will not be eligible to participate in the Class Action;
- You will not receive any money from the Class Action; but
- You may be able to start or continue your own lawsuit against the defendants, at your own obligation and expense, regarding the claims at issue in the Class Action. If you wish to pursue your claims on an individual basis, you should consider consulting with a lawyer to discuss your options and any applicable deadlines for commencing your action.

This is your only chance to exclude yourself by opting out of the Class Action. You will not have another opportunity to opt out of the Class Action in the future. If you have questions about the Class Action or the opt out process, you are encouraged to contact Class Counsel using the contact particulars described below. More information concerning opt outs is also available at www.foremancompany.com/parking-heaters-price-fixing.

Can I be a member of the class and still comment on the proposed settlement?

Yes, if you do not opt-out of the Class Action, you will be a member of the class. As a member of the class, you have the right to comment on the proposed settlement with Mr. Hohensee. If you want to tell the court what you think about the proposed settlement or speak to the court at the hearing mentioned above, you must send your written submissions to Class Counsel by •. Contact information for Class Counsel can be found below. Class Counsel will file all submissions with the court.

What do I have to pay?

You do not have to pay the lawyers working on the Class Action any money. Class Counsel will only get paid if the Class Action is successful, and if so, they are paid out of any recovery that is achieved on behalf of Class Members. The Court will be asked to decide how much Class Counsel will be paid. Class Counsel will seek a legal fee of up to 30% of the value of the results obtained, plus disbursements (out of pocket expenses) and applicable taxes at the appropriate time. Class Counsel is not seeking legal fees at this time.

Who are the lawyers working on the Class Action?

- Foreman & Company represents Class Members in all provinces other than Québec. Foreman & Company can be reached at:

Tel: 1.855.814.4575 ext. 107 (toll free)

Fax: 1.226.884.5340

E-mail: classactions@foremancompany.com

Mail: 4 Covent Market Place, London, ON N6A 1E2, Attention: Jonathan Foreman.

- Camp Fiorante Matthews Mogerman ^{LLP} is working in concert with Foreman & Company. Camp Fiorante Matthews Mogerman ^{LLP} can be reached at:

Tel: 1.800.689.2322 (toll free)

Fax: 1.604.698.7554

E-mail: info@cfmlawyers.ca

Mail: Suite 400, 856 Homer Street, Vancouver, BC V6B 2W5, Attention: Aisling Slevin

- Belleau LaPointe s.e.n.c.r.l. represents Class Members in Québec. Belleau LaPointe s.e.n.c.r.l. can be reached at:

Tel: 1.888.987.6701 (toll free)

Fax: 1.514.987.6996

E-mail: info@belleaulapointe.com

Mail: 300, Place d'Youville, Bureau B-10, Montréal, Québec H2Y 2B6, Attention: •

Where can I ask more questions?

A copy of the Certification Order, Settlement Agreement and other important documents can be viewed on the dedicated Parking Heaters Class Action website at www.foremancompany.com/parking-heaters-price-fixing. If you would like a copy of the Certification Order, Settlement Agreement, or have questions that are not answered online, please contact the lawyers identified above. Inquiries should not be directed to the Court.

Interpretation

This notice contains a summary of some of the terms in the Certification Order and Settlement Agreement. If there is a conflict between the provisions of this notice and the Certification Order and/or the Settlement Agreement, the terms of the Certification Order and/or Settlement Agreement shall prevail.

SCHEDULE "F"

Parking Heaters Price-Fixing Class Action Certified by the Court

LONDON, ON - ●, ●, 2020. An Ontario class action has been certified to proceed to trial. The case alleges that certain manufacturers of Parking Heaters for trucks and commercial vehicles participated in an unlawful price-fixing conspiracy to fix, raise, maintain or stabilize the price of those Parking Heaters and certain related kits, parts and accessories. The action has been certified by the Court on behalf of all Canadian residents, excluding Québec, who purchased a Parking Heater or purchased, leased or sub-leased a vehicle containing a Parking Heater between September 13, 2001 and December 31, 2012 (the "Class Period"). Separate actions were commenced in British Columbia, but those actions have been stayed and the BC class members will be represented in the Ontario action. A separate action has also been commenced in Québec on behalf of Québec resident class members. That action has previously been authorized to proceed to trial as a class action. The Ontario and Québec actions will move forward on a coordinated basis under the guidance of the Courts in both Provinces.

A settlement has also been reached with the individual defendant Volker Hohensee, a former executive of the defendant Espar Inc. Mr. Hohensee has agreed to provide the plaintiff with early cooperation and evidence in respect of the alleged conspiracy by the defendants in exchange for a release from the claims made against him. The settlement must be approved by the court before it becomes effective.

A "Parking Heater" means a parking heater, accessories and parts sold for use with heaters, packages containing heaters and accessories and/or parts for parking heaters which were manufactured or sold by the defendants for use in a commercial vehicle during the Class Period.

The parties will now engage in a process known as "discovery" where they exchange relevant documents and examine representative witnesses for each side regarding the allegations made in the case. The matter may then proceed to trial. At trial, a judge will decide, whether or not the claims will be successful and whether remedies should be ordered in favour of Class Members.

For more detailed information about the case, including the certification orders, the settlement agreement, the court-approved notices, and an explanation of the rights of class members at this juncture of the case, please visit www.foremancompany.com/parking-heaters-price-fixing.

Class Members are represented by:

Foreman & Company
Camp Fiorante Matthews Mogerman ^{LLP}

Media Contact:

Jonathan Foreman – classactions@foremancompany.com

SCHEDULE "G"

Banner Ad Content

**Are you a Canadian resident, outside of Québec, who purchased a Parking Heater
or purchased, leased or sub-leased a vehicle containing a Parking Heater
between September 13, 2001 and December 31, 2012?**

**IF SO, YOUR LEGAL RIGHTS MAY BE AFFECTED BY THE CERTIFICATION RULING
IN THE PARKING HEATERS PRICE FIXING CLASS ACTION. LEARN MORE**

SCHEDULE "H"

Parking Heaters Plan of Dissemination

The Notice of Certification will be distributed in publication, short-form, long-form, press release, and banner ad format (collectively the "Notices"). The Notices will be delivered via the following media:

1. The short- and long-form notices, a copy of the certification orders, and a copy of the settlement agreement reached with the defendant Volker Hohensee (the "Settlement Agreement") will be posted, in English, on counsel in the Ontario Action's dedicated Parking Heaters Class Action webpage: www.foremancompany.com/parking-heaters-price-fixing.
2. A news posting with information about, and a link to, the Notices, the certification orders, and the Settlement Agreement will also be posted on counsel in the Ontario Action and counsel in the BC Actions' (collectively "Class Counsel") respective "News" webpages: www.foremancompany.com/news and www.cfmlawyers.ca/news/.
3. A link to the dedicated Parking Heaters Class Action webpage will be posted on Class Counsel's respective social media accounts (including but not limited to LinkedIn and Twitter).
4. By distribution to major news and broadcast outlets across Canada, in English, through a press release on Canada Newswire with promotion through Canada Newswire's social media feeds.
5. The publication notice will be published once in print, in the legal section, in the following national newspapers, in English, subject to each having reasonable publication deadlines:
 - a. The Globe and Mail (National Edition);

- b. The National Post; and
 - c. The Vancouver Sun.
6. The short-form notice will be provided to the following organizations and membership associations, in English, requesting voluntary distribution to their membership and/or that a copy of the short-form notice or information about the Ontario Action be posted on their website:
- a. Canadian Trucking Alliance, including their respective provincial associations:
 - i. Alberta Motor Transport Association;
 - ii. Atlantic Provinces Trucking Association;
 - iii. BC Trucking Association;
 - iv. Manitoba Trucking Association;
 - v. Ontario Trucking Association; and
 - vi. Saskatchewan Trucking Association;
 - b. Canadian Truckers Association;
 - c. Private Motor Truck Council of Canada;
 - d. Toronto Trucking Association;
 - e. The Consumers' Association of Canada; and
 - f. The Consumers' Council of Canada.

The manner by which any Notices and/or information are distributed, if any, will be at the discretion of each organization.

7. There will be a nationally syndicated digital distribution of the banner ad on regional and community news outlets within the Postmedia Network Inc. The banner ad will be provided in English and may be modified as necessary to fit the dimensions and specifications as required by particular websites and media providers. The banner ad will redirect class members to the dedicated Parking Heaters Class Action webpage where they will be able to consult the short- and long-form notices as well as a copy of the certification orders and Settlement Agreement. The banner ad will run for seventy-five (75) day period, targeting a Canadian audience, excluding Québec, through publication on news media webpages. The banner ad will be posted a total of approximately 200,000 times over the seventy-five (75) day timeframe.
8. Within seven (7) days of the first publication of the Notices, the short-form notice will be sent by direct mail, fax and/or e-mail to:
 - a. all persons who have registered to receive updates from Class Counsel about the litigation; and
 - b. to all Canadian customers, excluding Québec residents, who are identified by the Defendants to Class Counsel for the purposes of dissemination of Notices, to the extent that such information is currently within the Defendants' power, possession or control.

JOHN DEVRIES

v.

ESPAR INC., et al.

Court File No. 534/15 CP

Plaintiff

Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT LONDON

Proceeding Under the *Class Proceedings Act*, 1992

ORDER
(Motion for Certification as a Class Proceeding)

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