IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

GARRISON SOUTHFIELD PARK LLC, Plaintiff, v. CLOSED LOOP REFINING AND RECOVERY, INC., *et al*., Defendants.	Case No. 2:17-cv-783-EAS-EPD JUDGE EDMUND A. SARGUS, JR. CHIEF MAGISTRATE JUDGE ELIZABETH PRESTON DEAVERS

OLYMBEC USA LLC, Plaintiff, v. CLOSED LOOP REFINING AND RECOVERY, INC., *et al*., Defendants.	Case No. 2:19-cv-1041-EAS-EPD JUDGE EDMUND A. SARGUS, JR. CHIEF MAGISTRATE JUDGE ELIZABETH PRESTON DEAVERS

EXHIBIT D
(Defendant's Declaration)

OF THE MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT EXECUTED BY PLAINTIFF GARRISON SOUTHFIELD PARK LLC, PLAINTIFF OLYMBEC USA LLC, AND DEFENDANT SONY ELECTRONICS INC.

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DECLARATION OF SCOTT FURMAN IN SUPPORT OF MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT EXECUTED BY PLAINTIFF GARRISON SOUTHFIELD PARK LLC, PLAINTIFF OLYMBEC USA LLC, AND DEFENDANT SONY ELECTRONICS INC.

Pursuant to 28 U.S.C. § 1746, Scott Furman declares the following:

1. I offer this declaration in support of the settlement agreement executed by Plaintiff Garrison Southfield Park LLC ("Garrison"), Plaintiff Olymbec USA LLC ("Olymbec," along with

Garrison referred to as the "Plaintiffs"), and Defendant Sony Electronics Inc. (the "Settlor"). I have personal knowledge of the facts stated herein.

2. I represent Settlor in this matter.

3. My familiarity with this matter arises out of my representation of Settlor in these consolidated cases.

4. The Settlement Agreement between Plaintiffs and Settlor was negotiated independently by Plaintiffs' counsel and Settlor's counsel.

5. In negotiating the Settlement Agreement, Settlor considered its potential liability, the evidence tying Settlor to Plaintiffs' warehouses, Settlor's defenses, the potential legal fees and costs if settlements were not reached, and the past and projected cleanup costs for Plaintiffs' warehouses. Settlor also evaluated the basis for prior settlements in this case and determined that a market share approach to the allocation of liability would be more suitable for Settlor than the cost recovery formula used for prior settlements, for at least two reasons:

    a. First, OEMs like Settlor are a different class of Defendants as compared to prior Settlors in terms of the factual underpinnings of their alleged liability. Plaintiffs' theory of liability for OEMs rests in part on the fact that OEMs are subject to various state EPR laws requiring them to provide for the disposition and treatment of E-Waste in exchange for authorization to sell electronic equipment in that state. Plaintiffs contend that state EPR laws thus create a basis for CERCLA arranger liability for those OEMs that elect to participate in the electronic equipment market, but in a way that is different from CERCLA arranger liability for the prior Settlors, which contracted directly with Defendant Closed Loop. An OEM's EPR obligation to any given state is generally based on the OEM's market share. Pennsylvania, for

example, requires OEMs to "establish, conduct and manage a plan to collect, transport and recycle a quantity of covered devices equal to the manufacturer's market share." 35 PA. STAT. CONS. STAT. § 6031.305(a)(1). An OEM seeking to sell electronic equipment in states like Pennsylvania must therefore accept financial responsibility to provide for the disposition and treatment of a certain quantity of E-Waste commensurate with its market share. Consideration of an OEM's market share therefore aligns with Plaintiffs' theory of liability, which rests in part on the allegation that OEMs exert market power and influence by virtue of state EPR laws.

b. Second, the manner in which the EPR obligations are discharged make it exceedingly difficult to ascribe specific weights of E-Waste at the Facility to specific OEMs with any reasonable degree of certainty to support application of the same cost recovery formula that Plaintiffs have used for prior Settlors. The discovery necessary to attempt to attribute specific weights of E-Waste at the Facility to Settlor would be costly and potentially inconclusive. OEMs demonstrate compliance with EPR laws by providing for the disposition of E-Waste through third parties, which complicates E-Waste tracking. In many cases, OEMs contract with third parties to provide for E-Waste to be transported to one location, where some disassembly takes place, and with the residuals transported by yet other third parties to another location. The bill of lading for any given load of E-Waste transported to the Facility, for example, does not identify whether any OEM claimed EPR credit for all or a part of that shipment, making it difficult to attribute individual shipments E-Waste to any particular OEM. Further complicating the analysis is the fact that OEMs like Settlor "buy" weight for purposes of meeting their EPR obligations as opposed to full loads; E-Waste subject

to an OEM's EPR credits can therefore be commingled on the same truck with other E-Waste and delivered on the same bill of lading. OEMs in general, and Settlor in particular, also typically relied on representations made by third parties shipping E-Waste for purposes of securing EPR credits, without any reliable accounting controls or other means of independent verification. This approach of buying weight differs markedly from arranging for the transportation of E-Waste, particularly because the Settlor is not the source of and does not possess any actual records associated with the source of the E-Waste.

6. Based on these considerations, Settlor believes that the Settlement Agreement is fair, adequate, and reasonable.

7. I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 3, 2020.

/s/ Scott Furman
Scott Furman