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 CHIEF JUDGE EDMUND A. SARGUS, JR. 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 CHIEF JUDGE EDMUND A. SARGUS, JR. MAGISTRATE JUDGE ELIZABETH PRESTON DEAVERS

MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT EXECUTED BY PLAINTIFF GARRISON SOUTHFIELD PARK LLC, PLAINTIFF OLYMBEC USA LLC, AND DEFENDANT ECYCLESECURE, LLC

Plaintiff Garrison Southfield Park LLC ("Garrison"), Plaintiff Olymbec USA LLC ("Olymbec," along with Garrison referred to as the "Plaintiffs"), and Defendant eCycleSecure, LLC ("Settlor") move the Court to enter an Order approving the Settlement Agreement between Plaintiffs and Settlor. This motion is supported by the attached Memorandum and the attached Settlement Agreement.

For the Court's convenience, a proposed order has been attached hereto.

MEMORANDUM IN SUPPORT

I. Background

Plaintiffs and Settlor have negotiated a settlement and seek the Court's approval of the Settlement Agreement attached hereto as Exhibit A ("the Settlement Agreement"). The Settlement Agreement resolves Plaintiffs' claims against Settlor pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9607, and Ohio common law, for past and future costs to clean up cathode ray tubes and other electronic wastes (collectively, "E-Waste") at Garrison's two contiguous warehouses located at 1655 and 1675 Watkins Road in Columbus, Ohio and at Olymbec's warehouse located at 2200 Fairwood Avenue in Columbus, Ohio (collectively, the "Facility").

Defendant Closed Loop Refining and Recovery, Inc. ("Closed Loop") leased the Facility or portions thereof from the Plaintiffs, and Closed Loop and/or Closed Loop Glass Solutions (an affiliate of Closed Loop) then received, stockpiled, and abandoned E-Waste received from their customers at the Facility. Declaration of Karl R. Heisler ("Heisler Decl."), ¶¶ 4, 6 (Exhibit B); Declaration of Randall B. Womack (Womack Decl."), ¶¶ 4, 6 (Exhibit C). Plaintiffs allege that the E-Waste constitutes hazardous substances subject to CERCLA, based on total lead content from samples collected from the Facility and common industry knowledge. *Id*. at ¶ 7; Heisler Decl., ¶ 7. Plaintiffs retained consultants to estimate the total weight of E-Waste in the Facility and to estimate the necessary costs that Plaintiffs will incur to remove it, to lawfully dispose of it, and to decontaminate the Facility by removing the lead dust deposited on the floors, walls, columns, rafters, and contents, all consistent with the U.S. Environmental Protection Agency National Contingency Plan at 40 C.F.R. Part 300. *Id*. at ¶ 8; Womack Decl., ¶ 8. The consultants estimated that the Facility contains approximately 159,104,489 pounds (79,552 tons)

of E-Waste, and that the remediation costs will be approximately $18,371,174.98. *Id*. at ¶¶ 8, 11; Heisler Decl., ¶¶ 8, 11.

Plaintiffs have obtained Closed Loop records providing detailed accounts of the weight of E-Waste that Closed Loop received from its customers, including accounting spreadsheets, commodity purchase agreements, bills of lading, weight tickets, purchase orders, and related shipping documentation. *Id*. at ¶ 6; Womack Decl., ¶ 6. According to these records, and as confirmed by Settlor's reasonable inquiry, Settlor arranged for the transport of the weight of E-Waste to the Facility that appears in Appendix A to its Settlement Agreement. *Id*.; Heisler Decl., ¶ 6.

Plaintiffs are using a straightforward cost recovery formula in settlement negotiations that allocates a percentage to each potentially responsible party ("PRP") based on records that identify the total weight of E-Waste that the PRP shipped to the Facility, as compared to the total weight of the E-Waste shipped to the Facility by all PRPs.[1] *Id*. at ¶ 11; Womack Decl., ¶ 11. Plaintiffs then applied this percentage to the cleanup cost estimate of $18,371,174.98, which has served as the basis for settlements with PRPs to date. *Id*.; Heisler Decl., ¶ 11. Using this formula, Plaintiffs calculated Settlor's share for settlement purposes at $985,187.18. *Id*.; Womack Decl., ¶ 11. Plaintiffs, however, have taken into consideration additional information provided by Settlor that is relevant to the matter, including information regarding the identity and role of other PRPs, as well as Settlor's commitment to continue to cooperate with Plaintiff. Plaintiffs have also taken into consideration the fact that Settlor obtained and paid the premiums for pollution legal liability insurance that provided coverage for cleanup costs. Plaintiffs and

[1] Plaintiffs may make exceptions to this formula for some PRPs when circumstances warrant. As an example, it may be reasonable to accept a lower sum from a PRP that demonstrates an inability to pay its allocated share for purposes of settlement. Heisler Decl., ¶ 11, fn. 1; Womack Decl., ¶ 11, fn. 1.

Settlor have thereupon agreed to settle the claims against Settlor for over 91% of Settlor's calculated share -- $903,432.50. *Id.*; Heisler Decl., ¶ 11; Defendant's Decl., ¶ 5. Based on this information, the Settlement Agreement is fair, adequate, and reasonable.

It is also worth noting that the State of Ohio will not object to the Settlement Agreement and will consider Settlor's CERCLA liability to the State of Ohio satisfied, subject to certain preconditions, including this Court's issuance of contribution protection pursuant to CERCLA Section 113(f)(1). *See* Exhibit G.

Plaintiffs and Settlor now ask the Court to approve the Settlement Agreement. Pursuant to Section 6 of the Settlement Agreement, consummation of the settlement is contingent on the Court's entry of an Order providing that Settlor's settlement payments to Plaintiffs be credited *pro tanto*, and not *pro rata*, in determining the equitable share of defendants other than Settlor. Plaintiffs and Settlor ask the Court to enter an Order to that effect.

Plaintiffs and Settlor also request the Court to discharge and/or bar all past, present, and future counterclaims, cross-claims and other claims against Settlor relating to the Facility, including any claims which have been or which could be made by any party to this case or any other person, except for certain claims listed in Paragraphs 4 and 9 of the Settlement Agreement. These exceptions include a reopener in Paragraph 9 if new information reveals that Settlor contributed at least 500,000 pounds more than the weight of E-Waste currently attributed to that Settlor in Appendix A to its Settlement Agreement. This reopener is designed to make sure that Settlor pays its fair share even if evidence obtained in future discovery discloses that the Settlor is responsible for a quantity of E-Waste not considered in calculating the settlement amount in the Settlement Agreement.

II. Argument

A. The Settlement Agreement Should Be Approved By The Court Because Settlements Are Favored, And The Settlement Agreement Is Fair, Is Reasonable, And Satisfies The Requirements of CERCLA.

"The general policy of the law is to support voluntary settlements." *United States v. Cantrell*, 92 F. Supp.2d 718, 723 (S.D. Ohio 2000) (approving CERCLA consent decrees). *See also United States v. Cannons Eng'g Corp.*, 899 F.2d 79, 84 (1st Cir. 1990) ("In the first place, it is the policy of the law to encourage settlements"). While a trial court must evaluate a settlement agreement, "public policy generally supports 'a presumption in favor of voluntary settlement' of litigation." *United States v. Lexington-Fayette Urban County Gov't*, 591 F.3d 484, 490 (6th Cir. 2010), *quoting United States v. Akzo Coatings of Am., Inc.*, 949 F.2d 1409, 1436 (6th Cir. 1991).

The Sixth Circuit has stated that the district courts must evaluate a CERCLA settlement for "fairness, reasonableness and consistency with the statute." *Akzo Coatings*, 949 F.2d at 1426. *Accord, Cannons Eng'g*, 899 F.2d at 85. The same standards apply to CERCLA settlements between private parties. *Responsible Envtl. Solutions Alliance v. Waste Mgmt., Inc.*, 2011 WL 382617, No. 3:04-cv-013, *2 (S.D. Ohio, Feb. 3, 2011).

A district court is not required to delve into the fine points of a settlement, or to determine if other options are available. It is not the court's "function to determine whether [a settlement] is the best possible settlement that could have been obtained, but only whether it is fair, adequate and reasonable." *Akzo Coatings*, 949 F.2d at 1436. As explained in Subsections 1 through 4 below, the proposed settlement is fair, reasonable, and consistent with CERCLA.

1. The Settlement Negotiations Satisfy Procedural Fairness.

A CERCLA settlement "must be both procedurally and substantively fair." *Responsible Envtl. Solutions*, 2011 WL 382617 at *2, *citing Cannons Eng'g*, 899 F.2d at 86. With respect to procedural fairness, "[t]here is a strong presumption in favor of voluntary settlements in CERCLA litigation." *United States v. 3M Co.*, 2014 WL 1872914, at *5, No. 3:14-cv-32 (S.D. Ohio, May 8, 2014), *citing Akzo Coatings,* 949 F.2d at 1436.

The procedural component is satisfied if the negotiations were conducted fairly. "To measure procedural fairness, a court should ordinarily look to the negotiation process and attempt to gauge its candor, openness, and bargaining balance." *Cannons Eng'g*, 899 F.2d at 86. While "there can be no easy-to-apply check list of relevant factors" to measure fairness, one factor to be considered is whether all defendants have "had an opportunity to participate in the negotiations." *Id*. at 86-87. "The Court must determine that the negotiators bargained in good faith." *Cantrell,* 92 F. Supp.2d at 724, *citing Kelley v. Thomas Solvent Co.*, 717 F. Supp. 507, 517 (W.D. Mich. 1989). *See also Cantrell*, 92 F. Supp.2d at 724 ("The Court should gauge the candor, openness, and bargaining balance of the negotiations," *citing Cannons Eng'g*).

In this case, Plaintiffs have reviewed Closed Loop's records to identify the PRPs that arranged for E-Waste to be transported to the Facility. Heisler Decl., ¶¶ 6, 12; Womack Decl., ¶¶ 6, 12. Plaintiffs' counsel have, by letter, electronic mail, and/or telephone, invited all of these PRPs to negotiate settlements to pay for the removal and remediation of the E-Waste that they contributed to the Facility, except for bankrupt, dissolved, or defunct PRPs and PRPs that sent only a *de minimus* amount of Waste that will cost no more than $6000 to remediate. *Id*. at ¶ 12; Heisler Decl., ¶ 12. Plaintiffs have negotiated with all PRPs that have expressed an interest in negotiations, and those negotiations are continuing. *Id*.; Womack Decl., ¶ 12. These

negotiations led to the settlement with Settlor, and may result in other settlements. *Id.*; Heisler Decl., ¶ 12.

The parties to the Settlement Agreement were represented in negotiations by independent counsel. *Id.* at ¶ 13; Womack Decl., ¶ 13; Defendant's Declaration, ¶ 4 (Exhibit D). These negotiations included, but were not limited to, evaluations of Settlor's potential liability, the evidence tying Settlor to Plaintiffs' Facility, the defenses asserted by Settlor, the potential legal fees and costs if settlement does not occur, and past and projected future remediation costs. *Id.* at ¶ 5; Heisler Decl., ¶ 13; Womack Decl., ¶ 13. Thus, the settlement is the product of arm's length negotiations conducted in good faith. Plaintiffs' counsel have used and will continue to consider the same factors to negotiate settlements with other PRPs, except where warranted by unusual circumstances. *Id.*; Heisler Decl., ¶ 13. For this settlement, Plaintiffs also considered additional information provided by the Settlor as well as the availability of insurance proceeds in agreeing to a reduction from the allocation provided by the allocation formula. Thus, the procedural fairness test has been met.

2. <u>The Settlement Agreement Is Substantively Fair</u>.

The substantive fairness test relates to the actual harm caused by a party at the subject site. "[A] party should bear the cost of the harm for which it is legally responsible." *3M Co.*, 2014 WL 1872914 at *5, *quoting Cannons Eng'g*, 899 F.2d at 87. But "[t]here is no universally correct approach" to determining substantive fairness. *Atlas Lederer*, 494 F. Supp.2d 629, 636 (S.D. Ohio 2005), *quoting Cannons Eng'g*, 899 F.2d at 87.

Settlements must be "based upon, and roughly correlated with, some acceptable measure of comparative fault, apportioning liability among the settling parties according to rational (if necessarily imprecise) estimates of how much harm each PRP has done." *Cannons Eng'g*, 899

F.2d at 87. However, a settlement is not held to a rigid formula for comparing fault, but can "diverge from an apportionment formula in order to address special factors not conducive to regimented treatment," such as uncertainty about a settlor's liability and discounts for early settlements. *Id*. at 87-88. "There is no universally correct approach" for assessing comparative fault, and a settlement allocation with "a plausible explanation" will be approved. *Id*. at 87.

Consistent with these principles, Plaintiffs have developed a cost recovery formula for purposes of settlement negotiations that is fair, equitable, and straightforward. As described in Section I. above, Settlor has agreed to pay over 91% of the total cleanup costs attributable to the percentage of the E-Waste contributed by the Settlor. The Settlement Agreement contains reopeners that allow Plaintiffs to seek additional costs from Settlor if new evidence reveals that the amount of Settlor's E-Waste generates cleanup costs that are substantially higher than the amount of E-Waste currently attributed to Settlor. Thus, Plaintiffs and Settlor have entered into a Settlement Agreement that is fair to everyone and satisfies the substantive fairness test.

3. <u>The Settlement Agreement Is Reasonable Because It Reflects Settlor's Actual or Potential Liability</u>.

The Court has the task of determining if a Settlement Agreement compensates "for the actual (and anticipated) costs of remedial and response measures." *Cannons Eng'g,* 899 F.2d at 90. Plaintiffs have evaluated the alleged quantity of E-Waste disposed by Settlor, and have determined that Settlor's settlement amount is fair and reasonable given the past and projected future remediation costs and Settlor's connection to the Facility. Heisler Decl., ¶¶ 6, 11, 13; Womack Decl., ¶¶ 6, 11, 13.

The strength of the evidence and the probability of success on the merits also come into play in determining if a specific settlement agreement is reasonable. *Cannons Eng'g,* 899 F.2d at 90. Thus, a "reasonableness equation relates to the relative strengths of the parties' litigation

positions." *Id.* The strengths and weaknesses of plaintiffs' and defendants' evidence in a contribution action will by necessity impact the outcome of settlement negotiations.

The negotiations between Plaintiffs and Settlor included, but were not limited to, evaluations of Settlor's potential liability, the strengths and weaknesses of the evidence tying Settlor to Plaintiffs' Facility, the defenses asserted by Settlor, potential legal fees and costs if settlement does not occur, past and projected future remediation costs, the allocation formula for calculating Settlor's fair share of cleanup costs, and the amount of coverage available under Settlor's insurance policy. Heisler Decl., ¶ 13; Womack Decl., ¶ 13; Defendant's Declaration, ¶ 5. Based on these considerations, Plaintiffs and Settlor believe that the Settlement Agreement is fair, adequate, and reasonable. *Id*.; Womack Decl., ¶ 13; Heisler Decl., ¶ 13; Defendant's Declaration, ¶ 5. Thus, this settlement is reasonable, since it is based on the relative strengths and weaknesses of the evidence and the chances of prevailing on the merits for both Plaintiffs and Settlor.

4. <u>The Settlement Agreement Is Consistent With CERCLA</u>.

The primary policy underlying CERCLA's provisions is "to ensure prompt and efficient cleanup of hazardous waste sites and to place the costs of those cleanups on the PRPs." *Akzo Coatings*, 949 F.2d at 1417. Settlement agreements with PRPs further the primary policy of CERCLA to investigate and remediate hazardous substances in a prompt and efficient manner. Settlement funds help to continue the work commenced by Plaintiffs to address the E-Waste.

In addition, the settlement furthers CERCLA's goal of requiring that "those responsible for problems caused by the disposal … bear the costs and responsibility for remedying the harmful conditions they created." *3M Co.*, 2014 WL 1872914 at *7, *quoting Cannons Eng'g*, 899 F.2d at 90-91. *See Nurad, Inc. v. William E. Hooper & Sons Co.*, 966 F.2d 837, 841 (4th Cir.), *cert. denied*, 506 U.S. 940 (1992) ("The statute encourages private cleanup of such

[environmental] hazards by providing a cause of action for the recovery of costs incurred in responding to a 'release' of hazardous substances at any 'facility.'").

Finally, the Settlement Agreement relieves the settling parties and the Court of the burden of proceeding with the claims against Settlor all the way to trial, thereby conserving the Court's and the parties' resources in time and in money. The Settlement Agreement reached with Settlor is consistent with the underlying intent and policies of CERCLA.

B. The Court Should Approve the Contribution Bar in the Settlement Agreement.

The Court should approve the contribution bar in the Settlement Agreement so that Settlor can be dismissed from this case without facing claims from other PRPs. Defendants who wish to settle will have little incentive to do so if they cannot exit the litigation and avoid additional monetary claims from non-settlors, as aptly noted by one court that granted the settling parties' request for a contribution bar:

> Courts have recognized a strong federal interest in promoting settlement. This interest is especially pronounced in complex matters such as CERCLA claims, where the amount of evidence to be gathered for assessing liability is voluminous. It is hard to imagine that any defendant in a CERCLA action would be willing to settle if, after the settlement, it would remain open to contribution claims from other defendants. The measure of finality which a cross-claim bar provides will make settlements more desirable. A settling defendant therefore "buys its peace" from the plaintiff, as being relieved of liability to co-defendants frees the settling defendant from the litigation. The court finds that the degree to which a bar on contribution cross-claims will facilitate settlement outweighs the prejudice of such a bar on non-settling defendants. Accordingly, the court grants this aspect of the motions of Plaintiffs and Defendants Hydrosol and Henkel.

Allied Corp. v. ACME Solvent Reclaiming, Inc., 771 F. Supp. 219, 222 (N.D. Ill. 1990) (internal cites omitted).

The Court has the authority to encourage settlement by terminating and precluding all present and future claims against Settlor, and should do so because it furthers the purposes of

CERCLA. *See Responsible Envtl. Solutions*, 2011 WL 382617, at *5 (approving settlement with contribution bar because "the imposition of such a bar rests on equitable considerations, and, further, since contribution bars will foster the voluntary settlement of complex CERCLA lawsuits, a goal which is worthy of being furthered").

The federal courts, including the Southern District of Ohio, have routinely issued orders under CERCLA Section 113(f)(1) approving settlement agreements containing contribution bars prohibiting non-settling PRPs from filing claims against settling PRPs. The following language of CERCLA Section 113(f)(1) provides for court-approved settlements that can cut off contribution claims by non-settling PRPs:

> (f) Contribution
>
> (1) Contribution
> Any person may seek contribution from any other person who is liable or potentially liable under section 9607(a) of this title, during or following any civil action under section 9606 of this title or under section 9607(a) of this title. Such claims shall be brought in accordance with this section and the Federal Rules of Civil Procedure, and shall be governed by Federal law. In resolving contribution claims, the court may allocate response costs among liable parties using such equitable factors as the court determines are appropriate. Nothing in this subsection shall diminish the right of any person to bring an action for contribution in the absence of a civil action under section 9606 of this title or section 9607 of this title.

42 U.S.C. § 9613(f)(1) (emphasis added).

The courts have used the principles in model laws such as the 1977 Uniform Comparative Fault Act ("UFCA") and the Uniform Contribution Among Tortfeasors Act ("UCATA") to equitably allocate cleanup costs among PRPs. *United States v. Alcan Aluminum Corp.,* 990 F.2d 711, 724 (2d Cir. 1993); *Responsible Envtl. Solutions*, 2011 WL 382617, at *4. These model acts shield settling parties from claims of non-settlors on the premise that the settlors have paid their fair share. *Alcan*, 990 F.2d at 725. The courts have found that these equitable principles

implement congressional intent underlying CERCLA, and have adopted these principles as federal common law. *Id*. at 724-25; *Responsible Envtl. Solutions*, 2011 WL 382617, at *4.

A decision by the Southern District of Ohio explains how the courts use Section 113(f)(1) to impose a contribution bar against non-settling PRPs:

> Nevertheless, a number of courts have held that it is permissible to bar contribution claims against the settling parties in a CERCLA contribution action, in accordance with the federal common law as exemplified by § 6 of the Uniform Comparative Fault Act or § 4 of the Uniform Contribution Among Tortfeasors Act.
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> ****
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> In its Decision of March 27, 2008, this Court indicated that it was inclined to follow the decisions adopting a contribution bar as part of the federal common law, even though such a bar is not authorized by § 113(f)(2), because such a holding is in accordance with § 113(f)(1) of CERCLA, which provides that, "[i]n resolving contribution claims, the court may allocate response costs among liable parties using such equitable factors as the court determines are appropriate" (42 U.S.C. § 9613(f)(1)), given that the imposition of such a bar rests on equitable considerations, and, further, since contribution bars will foster the voluntary settlement of complex CERCLA lawsuits, a goal which is worthy of being furthered. . . . Quite simply, there has been no intervening authority, nor has CWM presented any argument causing this Court to decline to follow its earlier inclination. Therefore, this Court adopts a bar, preventing CWM and every other PRP from seeking contribution from the Settling Defendants and TLC.

Id. This rationale resulted in an order that barred all PRPs from bringing contribution claims against the settling defendants. *Id*. at *5. This approach has also been productive for fostering CERCLA settlements in *Hobart Corp. v. Dayton Power & Light Co*., No. 3:13-cv-115 (S.D. Ohio 2014). *See* Exhibit E hereto, providing a sample of the orders in that case approving settlement agreements and barring all claims against the settlors in Paragraph 3 of each order. This Court also has applied the contribution bar in the instant case for each of the previous settlements approved by the Court. Doc. # 312, PageId # 3655, ¶ 3; Doc. # 400, PageId # 4506, ¶ 3.

Examples of other cases that have used Section 113(f)(1) to bar contribution claims against settling PRPs in private cases include the following: *Evansville Greenway & Remediation Tr. v. S. Ind. Gas & Elec. Co.,* No. 3:07-CV-66-SEB-WGH, 2010 WL 3781565, at *4, n. 3 (S.D. Ind., Sept. 20, 2010); *Foamseal, Inc. v. Dow Chem. Co.,* 991 F. Supp. 883, 886 (E.D. Mich. 1998); *Stearns & Foster Bedding Co. v. Franklin Holding Corp.,* 947 F. Supp. 790, 813 (D. N.J. 1996); *Mavigliano v. McDowell*, No. 93 C 7216, 1995 WL 704391, at *2 (N.D. Ill., Nov. 28, 1995); *Hillsborough Cty. v. A & E Rd. Oiling Serv., Inc.,* 853 F. Supp. 1402, 1408 (M.D. Fla. 1994); *United States v. SCA Servs. of Indiana, Inc.,* 827 F. Supp. 526, 532 (N.D. Ind. 1993); *Am. Cyanamid Co. v. King Indus., Inc.,* 814 F. Supp. 215, 217-19 (D. R.I. 1993); *Barton Solvents, Inc. v. Sw. Petro-Chem, Inc.,* 834 F. Supp. 342, 345–46 (D. Kan. 1993); and *Allied Corp. v. ACME Solvent Reclaiming, Inc.,* 771 F. Supp. 219, 222 (N.D. Ill. 1990). Additional cases in support of contribution bars are cited in the next two paragraphs below.

Because a non-settling defendant could circumvent a contribution bar against CERCLA claims by suing a settling defendant under a different cause of action, the courts have used CERCLA Section 113(f)(1) to bar claims for all potential causes of action. The Southern District of Ohio followed this approach in *Hobart Corp. See* Paragraph 3 of the orders in Exhibit E hereto, barring "[a]ll claims … under Sections 106, 107 or 113 of CERCLA and/or any other federal, state or local statute, regulation, rule, ordinance, law or common law." *Also see San Diego Unified Port Dist. v. Gen. Dynamics Corp.,* No. 07-CV-01955-BAS-WVG, 2017 WL 2655285, at *8-*10 (S.D. Cal., June 20, 2017) (barring all claims "pursuant to any federal or state statute, common laws, or any other theory"); *City of San Diego v. Nat'l Steel & Shipbuilding Corp.,* No. 09CV2275 WQH BGS, 2015 WL 1808527, at *11-*13 (S.D. Cal., Apr. 21, 2015) (barring state law claims); *AmeriPride Servs. Inc. v. Valley Indus. Servs., Inc.,* No.

CIVS 00-113 LKK JFM, 2007 WL 1946635, at *2-*5 (E.D. Cal., July 2, 2007) (barring claims under state law and common law). In accordance with this principle, Plaintiffs and Settlor request that the Court bar all claims against Settlor under all legal theories, as it has done in its past approvals of settlements in this case.

Some decisions have applied the contribution bar against every PRP, including PRPs who were not parties to the lawsuits in which the settlements were approved. *San Diego Unified Port Dist.,* 2017 WL 2655285, at *10 (barring all claims "regardless of when such claims are asserted or by whom"); *Lewis v. Russell*, 2012 WL 671670, No. CIV 2.03-2646 WBS, at *6 (E.D. Cal., Nov. 9, 2012). This is the approach followed by the Southern District of Ohio in *Hobart Corporation*. *See* Paragraph 3 of the orders included in Exhibit E. This Court has also followed this approach for the previous settlements in the instant case. Doc. # 312, PageId # 3655, ¶ 3; Doc. # 400, PageId # 4506, ¶ 3. Plaintiffs and Settlor request that the Court follow the same approach for the attached settlement.

Plaintiffs have served a copy of the Motion for Approval of Settlement Agreement on all defendants and will soon send it to all other currently known PRPs. Heisler Decl., ¶ 14; Womack Decl., ¶ 14. Plaintiffs and Settlor request that the contribution bar apply to all claims that could be asserted against Settlor.

C. Settlor's Payment Should Be Credited *Pro Tanto*, and Not *Pro Rata*, in Determining Other Defendants' Equitable Shares at Trial.

The Court's order approving this Settlement Agreement should credit Settlor's settlement payment *pro tanto* and not *pro rata* in determining other defendants' equitable shares of remediation costs, just as the Court has done for the previous settlements in the instant case. Doc. # 312, PageId # 3655, ¶ 4; Doc. # 400, PageId # 4506, ¶ 4. As explained below, *pro tanto*

crediting encourages early settlements, encourages voluntary site cleanups, promotes faster site remediation, and reduces trial time.

The *pro tanto* and *pro rata* methods are derived from the UCATA and the UCFA, respectively, which advocate competing methods of accounting for a settling party's share when determining the amount of a nonsettling defendant's liability. *Ameripride Servs. Inc. v. Texas E. Overseas Inc.*, 782 F.3d 474, 483 (9th Cir. 2015). When a litigant has settled with one party, the UCFA would reduce the shares of other liable persons by the percentage of the settlor's fault (UCFA § 2). *Akzo Nobel Coatings, Inc. v. Aigner Corp.*, 197 F.3d 302, 308 (7th Cir. 1999). This allocation method is known as the *pro rata*, or proportionate share, method. "Courts adopting the UCFA proportionate share approach 'must therefore determine the responsibility of all firms that have settled, as well as those still involved in the litigation.'" *Ameripride*, 782 F.3d at 483-84 (quoting *American Cyanamid Co. v. Capuano*, 381 F.3d 6, 20 (1st Cir. 2004)). The consequence of this approach is that tortfeasors who have not settled "will be responsible only for their proportionate share of the costs, even if the settling tortfeasor settles for less than its fair share of the injury." *Ameripride,* 782 F.3d at 484.

The UCATA's *pro tanto* method, by contrast, reduces non-settlors' liability only by the dollar amount of the settlements (UCATA § 4). *Id*. CERCLA Section 113(f)(2) (42 U.S.C. § 9613(f)(2)) applies the *pro tanto* method to PRP settlements with the United States or a state. *Id*. (noting that Section 113(f)(2) provides that a settlement with the United States or a state "reduces the potential liability of the others by the amount of the settlement"). CERCLA does not prescribe the accounting method to be used in private settlements.

The Seventh Circuit has mandated the use of *pro tanto* as the only acceptable allocation method in CERCLA cases, observing that any other method would undermine the congressional

preference for *pro tanto* revealed in CERCLA Section 113(f)(2)). *Akzo*, 197 F.3d at 307-308. Other circuits have ruled that the district courts have the discretion to use whichever of the two methods is most suited to the facts of the case. *Ameripride Servs. Inc.*, 782 F.3d at 487 (district courts may use either method, whichever is "'the most equitable method of accounting for settling parties' in private-party contribution actions"); *American Cyanamid*, 381 F.3d at 21 (stating that "CERCLA provides the district court with the discretion to allocate response costs among liable parties" and affirming the district court's use of *pro tanto* allocation).

"These competing approaches can produce substantial differences in incentives to settle and in the complexity of litigation." *Akzo*, 197 F.3d at 307. *Pro rata* is sometimes employed on the premise that it ensures, "in theory, that damages are apportioned equitably among the liable parties." *American Cyanamid*, 381 F.3d at 20. However, *pro tanto* has several important advantages in the context of this case.

First, the *pro tanto* method is better at furthering CERCLA's goals than *pro rata*, because it encourages PRPs to negotiate and leads to earlier settlements:

> In general, the pro tanto approach, by placing the risk of lenient settlements on PRP hold-outs …, facilitates CERCLA's goal of encouraging early settlement and private remediation. In a pro rata regime, PRPs … who assume responsibility for cleanup … will have no flexibility to negotiate in settlements. If they accept anything less from a PRP than what a court later determines to have been that PRP's proportionate share, they will have to pay for the difference out of their own pockets. Further, the defendant PRPs will have no incentive to settle early on, because the early settlements of other PRPs will have no effect on the potential liability of remaining PRPs. In such a regime, it would be more difficult to settle with contribution defendants. As a result, contribution plaintiffs would be forced to litigate against more PRPs, spending non-recoverable attorneys fees. Such a prospect would make it less likely that PRPs would be willing to sign consent decrees … and voluntarily undertake remediation of polluted sites.
>
> In contrast, under a pro tanto regime, contribution plaintiffs will have more flexibility in settling with defendant PRPs, because any potential shortfalls of early settlements can be shared by the contribution plaintiffs and non-settling PRPs in an equitable allocation at trial.… If it is easier for PRP groups to recover

> costs by settling early with other PRPs, they are more likely to come forward to settle … and take on the task of remediating contaminated sites, furthering CERLCA's goals of private party remediation and early settlement.

Action Mfg. Co. v. Simon Wrecking Co., 428 F. Supp.2d 288, 326 (E.D. Pa. 2006), *aff'd,* 287 Fed. Appx. 171 (3d Cir. 2008), *citing* Joseph A. Fischer, "All CERCLA Plaintiffs Are Not Created Equal: Private Parties, Settlements, and the UCATA," 30 Hous. L. Rev. 1979 (1994). Another court has noted that *pro tanto* accounting, unlike the *pro rata* method, encourages a plaintiff to voluntarily clean up hazardous substances:

> The *pro tanto* approach best furthers CERCLA's primary goal of promoting prompt and effective cleanups by assuring that the private-party § 9607 plaintiff will not be shortchanged in their attempt to recover cleanup costs. Because the plaintiff knows the precise amount their settlement will be worth and the rest of the response costs will be recoverable from other PRP's held strictly liable under the statue, the plaintiff can be virtually assured of complete recovery. By contrast, under the proportionate approach, the private party who conducted cleanup is likely to be left holding the proverbial bag if they inaccurately forecast the relative culpability of a settling defendant…. Since a non-PRP private party who conducts CERCLA related cleanup already faces the hurdle and expense of pursuing litigation to receive compensation for its response costs, the prospect of less than full recovery would add an additional disincentive to private party cleanups and would therefore be contrary to CERCLA's principle goals.

Veolia Es Special Servs., Inc. v. Hiltop Investments Inc., No. CIV.A. 3:07-0153, 2010 WL 898097, at *7 (S.D. W.Va., Mar. 12, 2010). The Southern District of Ohio has expressed the same sentiments as reasons for approving *pro tanto* accounting in CERCLA settlements. *See Hobart Corp*., Order of Apr. 18, 2016 (Exhibit F), pp. 5-6. The Court in the instant case has concurred in this rationale as well with respect to the previous settlements. This Court has found the *pro tanto* approach to be appropriate for the previous settlements in the instant case. Doc. # 400, PageId ## 4503-4505. In cases with multiple defendants, like this case, the *pro rata* approach "encourages defendants to hold out until a fault-based allocation can be made,

requiring the plaintiff to continuing litigating and thereby reduce its net recovery." *Veolia*, 2010 WL 898097, at *7.

The second advantage of using the *pro tanto* method in this case is that it will serve judicial economy. Under both methods, a court must determine the settlement's fairness. *Veolia,* 2010 WL 898097, at *8. For the *pro rata* method, "a court must determine the relative culpability of all parties - including settling parties - and their equitable share at trial." *Id*. In CERCLA cases, "the assignment of liability to missing parties at trial will often be more time consuming and costly." *Id*., citing *American Cyanamid,* 381 F.3d at 20 (which notes that "[s]uch a process can lead to a "complex and unproductive inquiry"); *Akzo Nobel Coating* 197 F.3d at 308; *Action Mfg.*, 428 F. Supp.2d at 326 (*pro tanto* is easier to administer).

A court using the *pro tanto* approach evaluates fairness at the time of settlement, not trial. *Id*. *Pro tanto* allocation is especially appropriate for good faith settlements, like this one, that are based on the volumetric shares of the settling PRPs and the overall costs of cleanup calculated at the time of settlement. *Action Mfg.*, 428 F. Supp.2d at 327. Settlement amounts calculated in this manner are approvable, because they "presumably will not grossly underestimate the settling PRPs' liability." *Id*. Because such a formula for calculating settlement amounts is obviously fair, no evidentiary fairness hearing is necessary prior to their approval. *Id*. *Also see Cannons Eng'g*, 899 F.2d at 94 (stating that "[i]n general, we believe that evidentiary hearings are not required under CERCLA when a court is merely deciding whether monetary settlements comprise fair and reasonable vehicles for disposition of Superfund claims"). The Southern District of Ohio, in declining to hold a fairness hearing in another CERCLA case employing *pro tanto* accounting, has found that evidentiary hearings for CERCLA settlements are rarely granted, are unnecessary in the absence of any evidence of collusion or unfairness, and would be

the "functional equivalent of a full-blown trial" that would discourage settlement by PRPs who want to settle to avoid litigation costs. *Hobart Corp*., Order of Apr. 18, 2016 (Exhibit F), pp. 9-12. Based on this principle, settlements in the instant case are appropriate for *pro tanto* accounting, which will serve the purpose of judicial economy.

Thus, the "[a]doption of the *pro tanto* rule in CERCLA cases encourages early settlement, the allocation of private resources towards the hazardous waste disposal problem, and ultimately the expeditious cleanup of hazardous waste sites." *Veolia,* 2010 WL 898097, at *7. This accounting method also efficiently conserves the resources of the court and the parties. The same principles apply here. The Court should approve the Settlement Agreement and direct that Settlor's settlement be credited *pro tanto*, just as the Southern District of Ohio has done in the instant case and other cases. *See* Doc. # 312, PageId # 3655, ¶ 4; Doc. # 400, PageId # 4506, ¶ 4. *Hobart Corp.*, No. 3:13-cv-115 (S.D. Ohio 2014, Apr. 4, 2016) (Exhibit E); *Responsible Envtl. Solutions*, 2011 WL 382617 at *2-*5 (approving motion for approval of settlement agreement with request for *pro tanto* allocation). *Also see* Paragraph 4 in the orders in *Hobart Corporation* included in Exhibit E.

V. Conclusion

For all the foregoing reasons, Plaintiffs and Settlor request that the Court grant the Order approving their Settlement Agreement.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on April 1, 2020, a copy of the foregoing Motion to Approve Settlement Agreement and its exhibits were filed electronically with the Court's CM/ECF system, which will send notification to all attorneys registered to receive such service. Parties may access this filing through the Court's electronic filing system.

/s Jack A. Van Kley
Jack A. Van Kley (#0016961)
Trial Attorney

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 CHIEF JUDGE EDMUND A. SARGUS, JR. 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 CHIEF JUDGE EDMUND A. SARGUS, JR. MAGISTRATE JUDGE ELIZABETH PRESTON DEAVERS

ORDER APPROVING SETTLEMENT AGREEMENT EXECUTED BY PLAINTIFF GARRISON SOUTHFIELD PARK LLC, PLAINTIFF OLYMBEC USA LLC, AND DEFENDANT ECYCLESECURE, LLC

This matter having come before the Court on the Motion for Approval of Settlement Agreement Executed by Plaintiff Garrison Southfield Park LLC, Plaintiff Olymbec USA LLC ("Olymbec," along with Garrison referred to as the "Plaintiffs"), and Defendant eCycleSecure, LLC ("Defendant"), and any response thereto, it is hereby ordered as follows:

1. The Motion for Approval of Settlement Agreement ("Motion") is granted.

2. The Settlement Agreement between Plaintiffs and Defendant ("Settlement

Agreement"), attached to the Motion as Exhibit A, is approved, and the terms and conditions of the Settlement Agreement are hereby incorporated by reference into this Order as if fully restated herein.

3. Except for the exceptions stated in the Settlement Agreement, all claims asserted, to be asserted, or which could be asserted against Defendant by persons who are defendants or third-party defendants in this case (whether by cross-claim or otherwise) or by any other person or entity (except the U.S. Environmental Protection Agency ("U.S. EPA"), the United States acting on U.S. EPA's behalf, the Ohio Environmental Protection Agency ("Ohio EPA"), and the State of Ohio acting on Ohio EPA's behalf) in connection with the presence, generation, transportation, storage, treatment, disposal, abandonment, release, threatened release, removal, remediation, monitoring, or engineering control of electronic waste at, to or migrating from Garrison's properties located at 1655 and 1675 Watkins Road in Columbus, Ohio and Olymbec's property located at 2200 Fairwood Avenue in Columbus, Ohio under Sections 107 or 113 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9607 and § 9613, and/or any other federal, state or local statute, regulation, rule, ordinance, law, contract, common law, or any other legal theory are hereby discharged, barred, permanently enjoined, dismissed with prejudice, satisfied, and are otherwise unenforceable in this case or in any other proceeding.

4. The payment by Defendant to Plaintiffs shall be credited *pro tanto,* and not *pro rata,* during any equitable allocation of response costs among liable parties by the Court in this matter pursuant to 42 U.S.C. § 9613(f)(1). The liability of the remaining liable parties shall accordingly be reduced by the dollar amount of Defendant's settlement payment, and the Court need not determine Defendant's proportionate share of liability.

5. Defendant is dismissed from this lawsuit.

6. Pursuant to the authority contained in *Kokkonen* v. *Guardian Life Ins. Co. of America,* 511 U.S. 375 (1994), this Court hereby retains jurisdiction and shall retain jurisdiction after entry of final judgment in this case to enforce the terms and conditions of the Settlement Agreement.

7. IT IS SO ORDERED.

Dated: _____

_____
UNITED STATES DISTRICT JUDGE

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 CHIEF JUDGE EDMUND A. SARGUS, JR. 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 CHIEF JUDGE EDMUND A. SARGUS, JR. MAGISTRATE JUDGE ELIZABETH PRESTON DEAVERS

EXHIBIT A
(Settlement Agreement)

OF THE MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT EXECUTED BY PLAINTIFF GARRISON SOUTHFIELD PARK LLC, PLAINTIFF OLYMBEC USA LLC, AND DEFENDANT ECYCLESECURE, LLC

WATKINS ROAD – FAIRWOOD AVENUE SETTLEMENT AGREEMENT

This **SETTLEMENT AGREEMENT** ("Agreement") is entered into by, between, and among Garrison Southfield Park LLC ("GARRISON"), Olymbec USA LLC ("OLYMBEC"), and eCycleSecure, LLC, a North Carolina limited liability company with offices at 9100C Perimeter Woods Drive, Charlotte, NC 28216. ("SETTLOR"), effective this 31st day of March 2020 ("Effective Date"). GARRISON, OLYMBEC, and SETTLOR are each referred to herein as a "Party" and are collectively referred to herein as the "Parties."

RECITALS

WHEREAS, GARRISON is the owner of 1655 and 1675 Watkins Road, Columbus, Ohio 43207, and OLYMBEC is the owner of 2200 Fairwood Avenue, Columbus, Ohio 43207.

WHEREAS, Closed Loop Refining and Recovery, Inc. ("Closed Loop") leased 1675 Watkins Road, Columbus, Ohio 43207 and space within 1655 Watkins Road, Columbus, Ohio 43207 (collectively, "Watkins Road") from GARRISON; and leased space within 2200 Fairwood Avenue, Columbus, Ohio 43207 ("Fairwood Avenue") from OLYMBEC (with all three properties collectively referred to herein as the "Facility").

WHEREAS, at all times relevant, Closed Loop operated the Facility.

WHEREAS, GARRISON and OLYMBEC currently estimate that Closed Loop received and stockpiled approximately 80,000 tons of cathode ray tubes and other electronic waste at the Facility, before abandoning both Watkins Road and Fairwood Avenue in or around April 2016.

WHEREAS, GARRISON and OLYMBEC currently estimate the costs of environmental cleanup at the Facility at more than $18 million.

WHEREAS, the Ohio Environmental Protection Agency ("Ohio EPA") has referred this matter to the Ohio Attorney General's Office to "initiate all necessary legal and/or equitable civil actions as may be deemed necessary and seek appropriate penalties against [Closed Loop and Closed Loop Glass Solutions, LLC] and any other appropriate persons for the violations of ORC Chapter 3734 and the rules adopted thereunder."

WHEREAS, GARRISON and OLYMBEC allege that SETTLOR is a potentially responsible party under the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act, 42 U.S.C. §§ 9601, *et seq*. ("CERCLA"), the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, *et seq*. ("RCRA"), Ohio Revised Code Chapter 3734, comparable Ohio statutes, federal or state regulations promulgated thereunder, and Ohio common law in connection with the alleged presence, generation, transportation, storage, treatment, disposal, abandonment, release, threatened release, removal, and remediation of hazardous substances (as that term is defined in CERCLA Section 101(14), 42 U.S.C. § 9601(14)), and other wastes arising from the stockpiling and subsequent abandonment of cathode ray tubes and other electronic waste (collectively, "E-Waste") at, to or migrating from the Facility.

WHEREAS, due to the uncertainties, costs, time and legal issues associated with litigation, the Parties desire to resolve any and all claims involving SETTLOR's alleged liability relating to the Facility that have been asserted or could be asserted either now or in the future, whether known or unknown, including, without limitation, claims under CERCLA, RCRA, Ohio Revised Code Chapter 3734, comparable Ohio statutes, federal or state regulations promulgated thereunder, common law, or any other legal theory in connection with the alleged presence, generation, transportation, storage, treatment, disposal, abandonment, release, threatened release, removal, or remediation of E-Waste at, to or migrating from the Facility (including, without limitation, all claims involving remedial investigations and feasibility studies, records of decision, response actions, removal actions, remedial design and remedial action or any other activity related to E-Waste associated with the Facility) subject, however, to the limitations set forth herein.

WHEREAS, for the consideration described herein, including SETTLOR's payment of the Settlement Amount as defined in Section 5(a) and as identified in Appendix A, and except as specifically limited by this Agreement, GARRISON and OLYMBEC have agreed:

i. to release and covenant not to sue SETTLOR with respect to, subject to Section 4, any and all Released Claims, as defined in Section 3, that have been or could be asserted either now or in the future against SETTLOR with respect to the Facility;

ii. to move the U.S. District Court for the Southern District of Ohio ("S.D. Ohio") for the entry of an order pursuant to a joint motion for approval of the Agreement that extends contribution protection to SETTLOR in keeping with CERCLA Section 113(f)(1), 42 U.S.C. § 9613(f)(1); and

iii. to identify SETTLOR to the State of Ohio as an entity that has settled its liability with GARRISON and OLYMBEC and to ask the State of Ohio to refrain from pursuing enforcement against SETTLOR with respect to the Facility.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties agree as follows:

1. INCORPORATION OF RECITALS

The recitals above are incorporated into the body of this Agreement as if fully set forth herein.

2. DEFINITION OF CLAIM

"Claim" shall mean any civil lawsuit or administrative case, and any causes of action asserted or relief requested therein.

3. MUTUAL RELEASE OF CLAIMS

a. Subject to Section 4 and other limitations set forth in this Agreement, GARRISON and OLYMBEC release and covenant not to sue SETTLOR, and SETTLOR releases and covenants not to sue GARRISON and OLYMBEC, with respect to any and all Claims that have been asserted or could be asserted now or in the future under CERCLA, RCRA, Ohio Revised

Code Chapter 3734, any comparable Ohio statutes, or federal or state regulations promulgated thereunder, as they now exist, may be amended in the future, or as may come into effect in the future, or common law or any other causes of action, whether presently known or unknown, arising out of, or in connection with, the alleged presence, generation, transportation, storage, treatment, disposal, abandonment, release, threatened release, removal, remediation, monitoring, or engineering control of E-Waste at, to or migrating from the Facility, including natural resource damages, and including, without limitation, the Claims asserted in *Garrison Southfield Park LLC v. Closed Loop Refining and Recovery, Inc., et al*., Case No. 2:17-cv-00783-EAS-EPD (S.D. Ohio) and *Olymbec USA LLC v. Closed Loop Refining and Recovery, Inc., et al*., 2:19-cv-01041-EAS-EPD (S.D. Ohio) against SETTLOR ("Released Claims").

b. Subject to Section 4 and other limitations set forth in this Agreement, the following persons and entities shall also receive the same releases of liability and covenants not to sue as the Parties: the past and present directors, officers, members, shareholders, insurers, partners, agents, or employees of each Party; each Party's successors, predecessors, assigns, parents, and subsidiaries; and the past and present directors, officers, members, shareholders, insurers, partners, agents, or employees of each Party's successors, predecessors, assigns, parents, and subsidiaries (collectively, "Beneficiaries," and each a "Beneficiary").

4. NON-RELEASED CLAIMS

Notwithstanding anything to the contrary contained herein, the releases and covenants not to sue in Section 3 shall not extend and shall not be construed to extend to the following (collectively, "Non-Released Claims"):

a. any Claims arising from or related to an alleged breach of this Agreement;

b. any Claims not arising from or related to the presence, generation, transportation, storage, treatment, disposal, abandonment, release, threatened release, removal, or remediation of E-Waste at, to or migrating from the Facility;

c. any Claims by GARRISON or OLYMBEC arising from or related to Claims asserted by a SETTLOR Beneficiary against GARRISON or OLYMBEC or any of their Beneficiaries;

d. any Claims by SETTLOR arising from or related to Claims asserted by a GARRISON or OLYMBEC Beneficiary against SETTLOR or any of their Beneficiaries;

e. any Claims by GARRISON or OLYMBEC arising from or related to Claims asserted by SETTLOR against any GARRISON or OLYMBEC Beneficiary; and

f. any Claims by GARRISON or OLYMBEC arising from or related to E-Waste not attributable to SETTLOR asserted against any SETTLOR Beneficiary.

5. CONSIDERATION

a. In consideration of the agreements herein, SETTLOR agrees to pay to GARRISON and OLYMBEC the settlement amount identified in Appendix A ("Settlement Amount") within

fourteen (14) days after the Effective Date. Payment of the Settlement Amount shall be made into escrow account(s) pursuant to escrow agreement(s) between Ohio EPA, GARRISON and/or OLYMBEC with such escrow agreement(s) specifying that the Settlement Amount will be dispersed from the escrow account(s) to pay necessary removal or remediation costs that Ohio EPA determines are consistent with the U.S. Environmental Protection Agency National Contingency Plan in 40 C.F.R. Part 300.

b. In consideration of the agreements herein, SETTLOR agrees not to challenge any removal or remedial measures selected for or undertaken at the Facility.

c. In consideration of the agreements herein, except for Non-Released Claims, SETTLOR agrees not to assert any Claim against (i) any person or entity that GARRISON or OLYMBEC agreed to indemnify in connection with the Facility; (ii) GARRISON or OLYMBEC, except for failure to perform under this Agreement; or (iii) any person or entity not a party to this Agreement who is alleged to be a potentially responsible party for removal or remedial costs at the Facility pursuant to CERCLA. This Section 5(c) shall not, however, preclude SETTLOR from asserting against any such person or entity (y) any Claims not arising from or related to the presence, generation, transportation, storage, treatment, disposal, abandonment, release, threatened release, removal, or remediation of E-Waste at, to or migrating from the Facility; or (z) or any counterclaims to Claims arising from or related to the presence, generation, transportation, storage, treatment, disposal, abandonment, release, threatened release, removal, or remediation of E-Waste at, to or migrating from the Facility, which are first filed against SETTLOR by such person or entity, provided that SETTLOR dismisses any such counterclaims if and when the Claims filed against SETTLOR are dismissed.

d. In consideration of the agreements herein, except for Non-Released Claims, SETTLOR waives any right to object to past and future agreements to settle Claims between and among GARRISON, OLYMBEC, and any person or entity that is not a Party to this Agreement, including, without limitation, agreements that allocate removal or remedial costs for the Facility to other persons or entities. This provision shall no longer be binding on SETTLOR if a Claim is made against SETTLOR pursuant to Section 9.

e. In consideration of the agreements herein, except for Non-Released Claims, SETTLOR hereby assigns to GARRISON and OLYMBEC all rights, claims and causes of action arising from SETTLOR's alleged liability relating to the Facility, including, without limitation, causes of action for cost recovery or contribution against any person or entity not a party to this Agreement who is a potentially responsible party for removal or remedial costs at the Facility pursuant to CERCLA. This Section 5(e) shall not, however, preclude SETTLOR from asserting any counterclaims to Claims arising from or related to the presence, generation, transportation, storage, treatment, disposal, abandonment, release, threatened release, removal, or remediation of E-Waste at, to or migrating from the Facility, which are first filed against SETTLOR by any person or entity, provided that SETTLOR dismisses any such counterclaims if and when the Claims filed against SETTLOR are dismissed.

6. JUDICIAL APPROVAL

The Parties hereby agree to move the S.D. Ohio jointly for the entry of an order pursuant to a joint motion for judicial approval of the Agreement. This Agreement is contingent upon entry of an order that grants the Parties' joint motion for judicial approval of the Agreement that specifically provides that (i) the S.D. Ohio discharge and bar all past, present, and future counterclaims, cross-claims, and other claims relating to the Facility, as contemplated by this Agreement, including claims for contribution under 42 U.S.C. § 9613(f)(1), which have been made or could be made against SETTLOR by any person or entity, except for Non-Released Claims, (ii) the Settlement Amount as defined in Section 5(a) and as identified in Appendix A shall be credited *pro tanto*, and not *pro rata*, in determining the equitable share at trial of defendants other than SETTLOR; and (iii) the S.D. Ohio dismisses the Claims brought in *Garrison Southfield Park LLC v. Closed Loop Refining and Recovery, Inc., et al*., Case No. 2:17-cv-00783-EAS-EPD (S.D. Ohio) and *Olymbec USA LLC v. Closed Loop Refining and Recovery, Inc., et al*., 2:19-cv-01041-EAS-EPD (S.D. Ohio) against SETTLOR. Should such an order as specified in this Section 6 not be entered, and the Parties hereto fail to agree otherwise, SETTLOR will be entitled to a reimbursement of the Settlement Amount, and this Agreement shall be null and void.

7. PERFORMANCE UNDER THIS AGREEMENT

a. To obtain the State of Ohio's assurance that it will not object to the Agreement or to the extension of CERCLA Section 113(f)(1) contribution protection to SETTLOR, SETTLOR authorizes GARRISON and OLYMBEC to execute on its behalf an administrative order, consent decree, settlement agreement, or other instrument necessary to secure such assurance for the benefit of SETTLOR, provided, however, that no such action, if undertaken by GARRISON or OLYMBEC, shall increase SETTLOR's obligations to GARRISON or OLYMBEC beyond those stated in this Agreement or the obligations of GARRISON or OLYMBEC to SETTLOR beyond those stated in this Agreement. Nor shall any such action, if undertaken by GARRISON or OLYMBEC, increase SETTLOR's obligations to the State of Ohio or any person or entity not a party to this Agreement beyond those stated in this Agreement without SETTLOR's consent.

b. Nothing set forth in Section 7(a) or otherwise herein shall obligate GARRISON or OLYMBEC to request or obtain a covenant not to sue or contribution protection from the State of Ohio. SETTLOR nevertheless authorizes GARRISON and OLYMBEC to execute on its behalf an administrative order, consent decree, settlement agreement, or other instrument necessary to secure such covenant not to sue or contribution protection for the benefit of SETTLOR, provided, however, that no such action if undertaken by GARRISON or OLYMBEC shall increase SETTLOR's obligations to GARRISON or OLYMBEC beyond those stated in this Agreement or the obligations of GARRISON or OLYMBEC to SETTLOR beyond those stated in this Agreement. Nor shall any such action, if undertaken by GARRISON or OLYMBEC, increase SETTLOR's obligations to the State of Ohio or any person or entity not a party to this Agreement beyond those stated in this Agreement without SETTLOR's consent.

c. SETTLOR waives any right to assert Claims against GARRISON and OLYMBEC in connection with the efforts of GARRISON or OLYMBEC to secure a covenant not to sue, contribution protection, or the State of Ohio's assurance that it will not object to the Agreement or to the extension of CERCLA Section 113(f)(1) contribution protection to SETTLOR. SETTLOR

also waives any right to assert Claims against GARRISON and OLYMBEC in connection with the terms of any related administrative order, consent decree, settlement agreement, or other instrument.

d. SETTLOR shall reasonably cooperate with GARRISON and OLYMBEC to prepare a settlement agreement, motion for judicial approval of the settlement agreement, or any other instrument necessary to seek a covenant not to sue, to apply for contribution protection, or to request the State of Ohio's assurance that it will not object to the Agreement or to the extension of CERCLA Section 113(f)(1) contribution protection to SETTLOR.

e. SETTLOR acknowledges that the State of Ohio or the S.D. Ohio may not agree to provide a covenant not to sue or contribution protection for SETTLOR on terms acceptable to the Parties and that the State of Ohio may not agree to provide an assurance that it will not object to the Agreement or to the extension of CERCLA Section 113(f)(1) contribution protection to SETTLOR on terms acceptable to the Parties. If the S.D. Ohio does not provide contribution protection, then the Agreement shall be null and void. The failure to obtain from the State of Ohio a covenant not to sue, contribution protection, or an assurance not to object to the Agreement or to the extension of CERCLA Section 113(f)(1) contribution protection to SETTLOR shall not terminate this Agreement.

f. SETTLOR agrees to forward to GARRISON and OLYMBEC all relevant and non-privileged records in its possession, custody, or control as of the Effective Date, relating to the Facility. GARRISON and OLYMBEC agree to enter into confidentiality agreements, as appropriate, to protect information SETTLOR deems to be a trade secret pursuant to Ohio Revised Code § 1333.61(D) or Ohio Administrative Code § 3745-49-03.

g. Notwithstanding any other provision of this Agreement, the SETTLOR acknowledges that GARRISON and OLYMBEC will file or maintain a suit or suits pursuant to CERCLA and common law in the S.D. Ohio against SETTLOR until such time that the S.D. Ohio enters the order contemplated by Section 6 or, if such an order is not issued, until the Claims in the suit or suits against SETTLOR are otherwise resolved via settlement, voluntary dismissal, or in a final, non-appealable decision rendered by the S.D. Ohio.

8. REPRESENTATIONS OF SETTLOR

a. SETTLOR represents to GARRISON and OLYMBEC that, to the best of its knowledge, as of the Effective Date:

i. SETTLOR did not transport, arrange for the transport, or otherwise contribute E-Waste to the Facility that is at least 500,000 lbs in excess of the weight of the materials identified in Appendix A to this Agreement;

ii. SETTLOR has signed no other agreements and has made no other commitments in connection with the Facility that obligate it to undertake removal or remedial actions or pay money;

iii. SETTLOR has disclosed to Ohio EPA all known, relevant, and non-privileged information about (1) the weight and nature of E-Waste transported to the

Facility, either directly or indirectly, by SETTLOR or any agent of SETTLOR, and (2) relevant direct or indirect transactions regarding the Facility; and

iv. SETTLOR has not altered, mutilated, discarded, destroyed, or otherwise disposed of any records or other information relating to its potential liability relating to the Facility after notification of potential liability as a potentially responsible party at the Facility.

b. SETTLOR recognizes and agrees that its representations to GARRISON and OLYMBEC set forth herein constitute a material inducement to GARRISON and OLYMBEC to enter into this Agreement and that, but for such representations, neither GARRISON nor OLYMBEC would have entered into this Agreement.

9. REOPENER

Notwithstanding any other provision of this Agreement, GARRISON and OLYMBEC maintain the right to seek further relief from SETTLOR in the event that significant new information is discovered demonstrating that (i) SETTLOR was Affiliated with another non-settling, potentially responsible party in connection with this matter prior to the Effective Date, or (ii) that the weight of materials attributable to SETTLOR is at least 500,000 lbs in excess of the weight of the materials identified in Appendix A to this Agreement. In the event of such a reopener, the Settlement Amount paid by SETTLOR shall be retained by GARRISON and OLYMBEC, but shall be deducted from any future allocation of removal or remedial costs to SETTLOR. For purposes of this subsection:

a. "Significant new information" includes any information not known by GARRISON and OLYMBEC as of the Effective Date, including, without limitation, any information relating to the weight of E-Waste attributable to SETTLOR.

b. "Affiliated" means related to, by shareholdings or means of control other than through arms-length transacting, and "affiliated" persons and entities do not include Beneficiaries, unless the Beneficiary is a potentially responsible party for E-Waste not attributable to SETTLOR.

10. RESERVATION OF RIGHTS

a. Nothing in this Agreement is intended to be, nor shall be, construed as a release or covenant not to sue for any claim or cause of action, past or future, in law or in equity, which GARRISON or OLYMBEC has against SETTLOR or SETTLOR Beneficiaries for Non-Released Claims.

b. Nothing in this Agreement is intended to be, nor shall be, construed as a release or covenant not to sue for any claim or cause of action, past or future, in law or in equity, which SETTLOR or SETTLOR Beneficiaries have against GARRISON, GARRISON Beneficiaries, OLYMBEC, or OLYMBEC Beneficiaries for Non-Released Claims.

c. Nothing herein is intended to waive or release any of GARRISON's or OLYMBEC's claims, causes of action or demands in law or equity against any person, firm, partnership, corporation, organization, governmental entity or any person or entity other than

SETTLOR or SETTLOR Beneficiaries for any liability, including, without limitation, any liability that may arise out of or may relate in any way to the presence, generation, transportation, storage, treatment, disposal, abandonment, release, threatened release, removal, or remediation of E-Waste at, to or migrating from the Facility.

11. NO ADMISSION OF LIABILITY

The compromise and settlement contained in this Agreement is for the administrative convenience of the Parties and does not constitute an admission of liability by any Party. The execution of this Agreement shall not, under any circumstances, be construed as an admission by any Party of any liability with respect to the Facility or with respect to any E-Waste allegedly contributed to the Facility. This Agreement shall not constitute or be used by the Parties as (a) evidence, (b) an admission of any liability or fact, or (c) a concession of any question of law. Nor shall this Agreement be admissible in any proceeding except in an action to seek enforcement of any terms herein, to obtain contribution protection for SETTLOR, or for the purpose of obtaining judicial approval of this Agreement as contemplated in Section 6 of this Agreement.

12. EFFECTIVE DATE

This Agreement shall be effective upon execution by the Parties.

13. NO WINDFALL

a. GARRISON, based on principles of fairness and equity, shall refund to SETTLOR all or part of the Settlement Amount identified in Appendix A, if GARRISON is successful in its efforts to fully recover and actually receive the costs of the environmental investigation and cleanup, attorneys' fees, consultant fees, lost rent, and other costs incurred by GARRISON and OLYMBEC arising from or relating to the Facility through enforcement of the final judgment entry in *Garrison Southfield Park LLC v. Closed Loop Refining and Recovery, Inc., et al* (Franklin County Court of Common Pleas Case No. 16-CV-002317) and *Garrison Southfield Park LLC v. Closed Loop Refining and Recovery, Inc.* (Franklin County Court of Common Pleas Case No. 15-CV-006697).

b. GARRISON and OLYMBEC, based on principles of fairness and equity, shall refund to SETTLOR a proportionate share of the Settlement Amount identified in Appendix A, if, and to the extent that, the funds recovered from all persons and entities other than GARRISON and OLYMBEC exceed the environmental investigation and cleanup costs, attorneys' fees, consultant fees, lost rent, and other costs incurred by GARRISON and OLYMBEC arising from or relating to the Facility.

14. MISCELLANEOUS PROVISIONS

a. **Governing Law**. This Agreement shall be construed according to the laws of the State of Ohio regardless of any conflict of law provisions which may apply. Any and all actions

at law or in equity that may be brought by any of the Parties to enforce or interpret this Agreement shall be brought only in the State of Ohio.

b. **Severability**. In the event that any provision of this Agreement is determined by a court to be invalid, the remainder of this Agreement shall not be affected thereby and shall remain in force.

c. **Successors and Assigns Included as Parties**. Whenever in this Agreement one of the Parties hereto is named or referenced, the successors and permitted assigns of such Party shall be included, and all covenants and agreements contained in this Agreement by or on behalf of any of the Parties hereto shall bind and inure to the benefit of their respective successors and permitted assigns, whether so expressed or not.

d. **Attorneys' Fees and Litigation Expenses**. Each Party is responsible for its own attorneys' fees and other costs incurred in any legal action or proceeding arising from or related to E-Waste at the Facility, including, without limitation, the suit or suits filed or maintained by GARRISON or OLYMBEC pursuant to CERCLA and common law as referenced in Section 7(h).

e. **Insurance**. The Parties do not hereby make any agreement or take any action intended to prejudice the Parties with respect to their insurers.

f. **Relationship of the Parties**. This Agreement does not create and shall not be construed to create, any agency, joint venture, or partnership relationship(s) between or among the Parties.

g. **Section Headings**. The headings of sections of this Agreement are for convenience of reference only, are not to be considered a part hereof, and shall not limit or otherwise affect any of the terms hereof.

h. **Modification of the Agreement**. Neither this Agreement nor any provisions hereof may be changed, waived, discharged or terminated orally, but only by instrument in writing signed by all Parties.

i. **Entire Agreement**. This Agreement constitutes the entire understanding of the Parties and supersedes all prior contemporaneous agreements, discussions or representations, oral or written, with respect to the subject matter hereof, and each of the Parties represents that it has read each of the provisions of the Agreement and understands the same.

j. **Counterparts**. This Agreement may be executed in any number of counterparts, all of which together shall constitute but one original document. Electronic copies of original signatures, for all purposes, shall be deemed to be originally executed counterparts of this Agreement.

k. **Advice of Counsel**. Each Party represents that it has sought and obtained the legal advice it deemed necessary prior to entering into this Agreement.

l. **Notices**. Notices effectuating the requirements of this Agreement shall be directed as follows:

To GARRISON:

GARRISON SOUTHFIELD PARK LLC
c/o Karl R. Heisler
King & Spalding LLP
353 N. Clark Street, 12th Floor
Chicago, IL 60654

To OLYMBEC:

OLYMBEC USA LLC
c/o Randall Womack
Glankler Brown, PLLC
6000 Poplar Avenue, Suite 400
Memphis, TN 38119

To SETTLOR:

eCycleSecure, LLC
c/o Michael M. Heimlich
Attorney at Law
103 North Union Street, Suite E
Delaware, OH 43015

All notices or demands required or permitted under this Agreement shall be in writing and shall be effective if hand-delivered, delivered by a commercial delivery service with a return receipt, or sent by registered or certified mail, postage prepaid and return receipt requested. Notice shall be deemed received at the time delivered. Any Party may also give notice by electronic mail, which shall be effective upon confirmation by the Party receiving the notice that such electronic mail has been received by the Party to whom the notice has been addressed. Nothing in this Section shall prevent the giving of notice in such manner as prescribed by the Federal Rules of Civil Procedure or the Ohio Rules of Civil Procedure for the service of legal process. Any Party may change its address by giving written notice.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement designated on their respective signature pages. Each Party and the individual executing this Agreement represent and warrant that the individual executing this Agreement has been duly authorized to enter into this Agreement by, and to bind the Party on whose behalf such individual is executing.

GARRISON

By: _____
Signature / Position

_____
Printed Name

_____
Date

OLYMBEC

By: _____ EVP Operations & General Counsel
Signature / Position

JASON BERGER
Printed Name

03/30/2020
Date

SETTLOR

By: _____ MANAGING MBR
Signature / Position

R.W. VIRTUE
Printed Name

3/25/20
Date

For:

eCYCLE SECURE LLC
Company Name

27-1859831
Federal Employer ID No.

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement designated on their respective signature pages. Each Party and the individual executing this Agreement represent and warrant that the individual executing this Agreement has been duly authorized to enter into this Agreement by, and to bind the Party on whose behalf such individual is executing.

GARRISON

By: _____
Signature / Position

Matthew Kane
Vice President
Printed Name

3/31/2020
Date

OLYMBEC

By: _____
Signature / Position

_____
Printed Name

_____
Date

SETTLOR

By: _____ Managing Mbr
Signature / Position

R.W. Virtue
Printed Name

3/25/20
Date

For:

eCycleSecure LLC
Company Name

27-1859831
Federal Employer ID No.

APPENDIX A
SETTLEMENT AMOUNT

Based on SETTLOR's reasonable inquiry, SETTLOR arranged for the transport of no more than 7,054,560 lbs. of E-Waste to the Facility, starting in or around June 2012 and extending into or around September 2015. SETTLOR agrees to pay to GARRISON and OLYMBEC $903,432.50 as its share of the environmental cleanup costs at the Facility.

APPENDIX B
NOTICE LETTER

_____
Environmental Enforcement Section
Ohio Attorney General's Office
30 East Broad Street, 25th Floor
Columbus, Ohio 43215

RE: Watkins Road – Fairwood Avenue Settlement Agreement

[DATE]

Dear _____:

The purpose of this letter is to notify the Ohio Attorney General's Office, acting on behalf of the Ohio Environmental Protection Agency, that _____ has entered into a settlement with Garrison Southfield Park LLC and Olymbec USA LLC for an environmental cleanup at 1655/1675 Watkins Road, Columbus, Ohio 43207, and 2200 Fairwood Avenue, Columbus, Ohio 43207. Thank you for your attention to this matter.

Sincerely,

[SIGNATURE]

cc: Karl Heisler, King & Spalding LLP
Randall Womack, Glankler Brown, PLLC

FIRST MODIFICATION TO
WATKINS ROAD – FAIRWOOD AVENUE SETTLEMENT AGREEMENT

This **MODIFICATION** to the Watkins Road – Fairwood Avenue Settlement Agreement ("Modification") is entered into by, between, and among Garrison Southfield Park LLC ("GARRISON"), Olymbec USA LLC ("OLYMBEC"), and eCycleSecure, LLC, a North Carolina limited liability company with offices at 9100C Perimeter Woods Drive, Charlotte, NC 28216 ("SETTLOR"), effective this 31st day of March, 2020 ("Effective Date"). GARRISON, OLYMBEC, and SETTLOR are collectively referred to herein as the "Parties."

RECITALS

WHEREAS, the Parties hereto previously entered into that certain Watkins Road – Fairwood Avenue Settlement Agreement (the "Agreement") effective March 31, 2020, whereby the Parties agreed to settle liabilities arising out of cathode ray tubes and other electronic wastes abandoned at 1655 and 1675 Watkins Road, Columbus, Ohio 43207 and 2200 Fairwood Avenue, Columbus, Ohio 43207; and

WHEREAS, the Parties desire to modify the terms of the Agreement upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties agree as follows:

1. Section 5(a) is hereby deleted in its entirety and replaced with the following:

   In consideration of the agreements herein, SETTLOR agrees to pay to GARRISON and OLYMBEC the settlement amount identified in Appendix A ("Settlement Amount") within thirty (30) days after the Effective Date. Payment of the Settlement Amount shall be made to GARRISON, which shall route the funds into escrow account(s) pursuant to escrow agreement(s) between Ohio EPA, GARRISON and/or OLYMBEC with such escrow agreement(s) specifying that the Settlement Amount will be dispersed from the escrow account(s) to pay necessary removal or remediation costs that Ohio EPA determines are consistent with the U.S. Environmental Protection Agency National Contingency Plan in 40 C.F.R. Part 300.

2. As amended hereby, the Agreement, and each and every provision thereof shall remain in full force and effect by, between, and among the Parties.

3. This Modification may be executed in any number of counterparts, all of which together shall constitute but one original document. Electronic copies of original signatures, for all purposes, shall be deemed to be originally executed counterparts of this Modification.

IN WITNESS WHEREOF, the undersigned Parties have executed this Modification designated on their respective signature pages. Each Party and the individual executing this

Agreement represent and warrant that the individual executing this Modification has been duly authorized to enter into this Agreement by, and to bind the Party on whose behalf such individual is executing.

GARRISON

By: _____

Signature / Position

Matthew Kane
Vice President

Printed Name

3/31/2020

Date

OLYMBEC

By: _____

Signature / Position

_____

Printed Name

_____

Date

SETTLOR

By: _____ MANAGING MBR

Signature / Position

R. W. VIRTUE

Printed Name

3/25/20

Date

Agreement represent and warrant that the individual executing this Modification has been duly authorized to enter into this Agreement by, and to bind the Party on whose behalf such individual is executing.

GARRISON

By:

_____
Signature / Position

_____
Printed Name

_____
Date

OLYMBEC

By: [signature] / EVP Operations & General Counsel
Signature / Position

JASON BERGER
Printed Name

03/30/2020
Date

SETTLOR

By: [signature] MANAGING MBR
Signature / Position

R. W. VIRTUE
Printed Name

3/25/20
Date

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 CHIEF JUDGE EDMUND A. SARGUS, JR. 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 CHIEF JUDGE EDMUND A. SARGUS, JR. MAGISTRATE JUDGE ELIZABETH PRESTON DEAVERS

EXHIBIT B
(Declaration of Plaintiff Garrison Southfield Park LLC)

OF THE MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT EXECUTED BY PLAINTIFF GARRISON SOUTHFIELD PARK LLC, PLAINTIFF OLYMBEC USA LLC, AND DEFENDANT ECYCLESECURE, LLC

EXHIBIT B

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 CHIEF JUDGE EDMUND A. SARGUS, JR. 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 CHIEF JUDGE EDMUND A. SARGUS, JR. MAGISTRATE JUDGE ELIZABETH PRESTON DEAVERS

DECLARATION OF KARL HEISLER IN SUPPORT OF MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT EXECUTED BY PLAINTIFF GARRISON SOUTHFIELD PARK LLC, PLAINTIFF OLYMBEC USA LLC, AND DEFENDANT ECYCLESECURE, LLC

Pursuant to 28 U.S.C. § 1746, Karl R. Heisler 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 eCycleSecure, LLC ("Settlor"). I have personal knowledge of the facts stated herein.

2. The law firm of King & Spalding LLP is one of the law firms that represent Garrison in this matter. I am a partner of this law firm and work in its Chicago, Illinois office, which is located at 353 N Clark Street, 12th Floor, Chicago, IL 60654. I am admitted to practice in this case *pro hac vice*.

3. My familiarity with this matter arises out of my representation of Garrison. My knowledge of the facts in this declaration is based on documentary evidence, firsthand observations, communications with the State of Ohio, and expert consulting advice that my law firm has obtained and reviewed.

4. Garrison owns two contiguous warehouses located at 1655 and 1675 Watkins Road in Columbus, Ohio. Garrison leased 1675 Watkins Road and space within 1655 Watkins Road to Closed Loop Refining and Recovery, Inc. ("Closed Loop"), which received, stockpiled, and abandoned cathode ray tubes and other electronic wastes ("E-Waste") at these warehouses from 2012 and extending into 2016.

5. According to the declaration of Randall B. Womack, counsel for Olymbec, Closed Loop rented a warehouse owned by Olymbec that is located near Garrison's warehouses. *See* Exhibit C to the Motion for Approval of Settlement Agreement. That declaration states that Closed Loop and/or Closed Loop Glass Solutions (an affiliate of Closed Loop) received, stockpiled, and abandoned E-Waste at Olymbec's warehouse from 2014 and extending into 2016.

6. Garrison has obtained and reviewed Closed Loop records providing detailed accounts of the weight of E-Waste that Closed Loop received from its customers, including accounting

spreadsheets, commodity purchase agreements, bills of lading, weight tickets, purchase orders, and related shipping documentation. According to these records, Settlor arranged for the transport of the weight of E-Waste to Garrison's warehouses and to Olymbec's warehouse (collectively, the "Facility") that appears in Appendix A to the Settlement Agreement.

7. AECOM, an environmental consultant, collected samples of the E-Waste at Garrison's warehouses. The laboratory analyses of these samples using the Toxicity Characteristic Leaching Procedure reflect that the E-Waste has a total lead content that far exceeds the 5.0 mg/L regulatory threshold under federal and state hazardous waste laws, which is consistent with common industry knowledge of lead content in cathode ray tubes. Based on these analyses and common industry knowledge, the E-Waste is a hazardous substance as defined by Section 101 of CERCLA, 42 U.S.C. § 9601(14).

8. Atwell, LLC ("Atwell"), an environmental consultant, in consultation with electronic waste recyclers and abatement contractors, estimated the total weight of E-Waste in Garrison's warehouses and estimated the costs that Garrison will incur to remove it, to lawfully dispose of it, and to decontaminate the warehouses by removing the lead dust deposited on the floors, walls, columns, rafters, and contents, all consistent with the U.S. Environmental Protection Agency National Contingency Plan at 40 C.F.R. Part 300. Atwell estimated that Garrison's warehouses contain approximately 128,187,373 pounds of E-Waste. Atwell estimated that the costs of environmental cleanup for Garrison's warehouses will be approximately $14,247,355.

9. According to Randall Womack's declaration, there are an estimated 30,917,116 pounds of E-Waste at Olymbec's warehouse, and the costs of environmental cleanup for that warehouse were estimated at about $4,123,820. *See* Exhibit C.

10. The State of Ohio requested that the Plaintiffs negotiate joint settlements in which each potentially responsible party ("PRP") pays one sum for all of its E-Waste in the three warehouses, because Closed Loop operated all three warehouses as a single facility. Closed Loop stored the same type of E-Waste at all three warehouses and in the same manner; Garrison's warehouse is a six minute drive from Olymbec's warehouse; and Closed Loop's records reflect the fact that millions of pounds of the E-Waste were transferred from Garrison's warehouses to Olymbec's warehouse, without any documentation regarding which E-Waste came from which defendant. The State of Ohio is also expecting the same or substantially identical cleanup remedy at each warehouse, and the Plaintiffs have retained the same environmental consulting firm to help design that remedy in consultation with the State of Ohio and in compliance with the U.S. Environmental Protection Agency National Contingency Plan.

11. Plaintiffs are using a straightforward cost recovery formula in settlement negotiations that allocates a percentage of the remediation costs to each PRP based on records that identify the total weight of E-Waste that the PRP shipped to the Facility, as compared to the total weight of the E-Waste shipped by all PRPs.[1] Plaintiffs then applied this percentage to the combined cleanup cost estimate of $18,371,174.98, which has served as the basis for settlements with PRPs to date. Using this formula, Settlor's share would be $985,187.18. Plaintiffs and

[1] Plaintiffs may make exceptions to this formula for some PRPs when circumstances warrant. As an example, it may be reasonable to accept a lower sum from a PRP that demonstrates an inability to pay its allocated share for purposes of settlement.

Settlor have agreed to settle the claims against Settlor for $903,432.50 – which takes into consideration: (a) additional information provided by Settlor that is relevant to the matter, including information regarding the identity and role of other PRPs; (b) Settlor's commitment to continue to cooperate with Plaintiff; and (c) the fact that Settlor obtained and paid the premiums for pollution legal liability insurance that provided coverage for cleanup costs.

12. Garrison has reviewed Closed Loop's records to identify the PRPs that arranged for E-Waste to be transported to the Facility. Garrison's counsel have, by letter, electronic mail, and/or telephone, invited these PRPs to negotiate settlements to pay for the removal and remediation of the E-Waste that they contributed to the Facility, except for bankrupt, dissolved, or defunct PRPs and PRPs that sent a *de minimus* amount of E-Waste that will cost no more than $6000 to remediate. Garrison's counsel have negotiated with all PRPs that have expressed in interest in negotiations, and those negotiations are continuing. These negotiations have resulted in a settlement with the Settlor, and may result in other settlements.

13. The parties to the Settlement Agreement were represented in negotiations by independent counsel. These negotiations included, but were not limited to, evaluations of the Settlor's potential liability, the evidence tying Settlor to the Facility, the defenses asserted by Settlor, the potential legal fees and costs if settlement does not occur, and past and projected future remediation costs. Based on these considerations, the allocation formula, and additional considerations identified in Paragraph 11 above, Garrison believes that the Settlement Agreement is fair, adequate, and reasonable. Garrison's counsel have used and will continue to consider the same factors to negotiate settlements with other PRPs.

14. Plaintiffs have served a copy of the Motion for Approval of Settlement Agreement on all defendants in these cases and will soon send it to all other currently known existing PRPs, even if they are not defendants.

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

Executed on March 30, 2020.

/s/ Karl R. Heisler_____
Karl R. Heisler

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 CHIEF JUDGE EDMUND A. SARGUS, JR. 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 CHIEF JUDGE EDMUND A. SARGUS, JR. MAGISTRATE JUDGE ELIZABETH PRESTON DEAVERS

EXHIBIT C

(Declaration of Plaintiff Olymbec USA LLC)

OF THE MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT EXECUTED BY PLAINTIFF GARRISON SOUTHFIELD PARK LLC, PLAINTIFF OLYMBEC USA LLC, AND DEFENDANT ECYCLESECURE, LLC

EXHIBIT C

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 CHIEF JUDGE EDMUND A. SARGUS, JR. 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 CHIEF JUDGE EDMUND A. SARGUS, JR. MAGISTRATE JUDGE ELIZABETH PRESTON DEAVERS

DECLARATION OF RANDALL WOMACK IN SUPPORT OF MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT EXECUTED BY PLAINTIFF GARRISON SOUTHFIELD PARK LLC, PLAINTIFF OLYMBEC USA LLC, AND DEFENDANT ECYCLESECURE, LLC

Pursuant to 28 U.S.C. § 1746, Randall Womack 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 eCycleSecure, LLC ("Settlor"). I have personal knowledge of the facts stated herein.

2. The law firm of Glankler Brown, PLLC represents Olymbec in this matter. I am a member of the law firm, which is located at 6000 Poplar Avenue, Suite 400, Memphis, TN 38119. I am admitted to practice in this case *pro hac vice*.

3. My familiarity with this matter arises out of my representation of Olymbec. My knowledge of the facts in this declaration is based on documentary evidence, firsthand observations, communications with the State of Ohio, and expert consulting advice that my law firm has obtained and reviewed.

4. Olymbec owns a warehouse located at 2200 Fairwood Avenue in Columbus, Ohio. Olymbec leased this warehouse to Closed Loop Refining and Recovery, Inc. ("Closed Loop"), and Closed Loop and/or Closed Loop Glass Solutions (an affiliate of Closed Loop) received, stockpiled, and abandoned cathode ray tubes and other electronic wastes ("E-Waste") at this warehouse from 2014 and extending into 2016.

5. According to the declaration of Karl Heisler, counsel for Garrison, Closed Loop also rented two warehouses owned by Garrison that are located near Olymbec's warehouse. *See* Exhibit B to the Motion for Approval of Settlement Agreement. That declaration states that Closed Loop received, stockpiled, and abandoned E-Waste at Garrison's warehouses from 2012 and extending into 2016.

6. Olymbec has obtained and reviewed Closed Loop records providing detailed accounts of the weight of E-Waste that Closed Loop received from its customers, including accounting spreadsheets, commodity purchase agreements, bills of lading, weight tickets, purchase orders, and related shipping documentation. According to these records, Settlor arranged for

the transport of the weight of E-Waste to Olymbec's warehouse and Garrison's warehouses (collectively, the "Facility") that appears in Appendix A to the Settlement Agreement.

7. According to Closed Loop records, millions of pounds of the E-Waste at Garrison's warehouses were transferred to Olymbec's warehouse. According to the declaration of Karl Heisler, AECOM, an environmental consultant, collected samples of the E-Waste at Garrison's warehouses. The laboratory analyses of these samples using the Toxicity Characteristic Leaching Procedure reflect that the E-Waste has a total lead content that far exceeds the 5.0 mg/L regulatory threshold under federal and state hazardous waste laws, which is consistent with common industry knowledge of lead content in cathode ray tubes. Based on these records, analyses (including laboratory analysis of samples taken at Olymbec's warehouse), and common industry knowledge, the E-Waste at Olymbec's warehouse is a hazardous substance as defined by Section 101 of CERCLA, 42 U.S.C. § 9601(14).

8. DEC Enviro Inc. ("DEC"), an environmental consultant, in consultation with electronic waste recyclers and abatement contractors, estimated the total weight of E-Waste in Olymbec's warehouse and estimated the costs that Olymbec will incur to remove it, to lawfully dispose of it, and to decontaminate the warehouse by removing the lead dust deposited on the floors, walls, columns, rafters, and contents, all consistent with the U.S. Environmental Protection Agency National Contingency Plan at 40 C.F.R. Part 300. DEC estimated that Olymbec's warehouse contains approximately 30,917,116 pounds of E-Waste. DEC also estimated at such time that the costs of environmental cleanup for Olymbec's warehouse will be approximately $4,123,820.

9. According to Karl Heisler's declaration, there are an estimated 128,187,373 pounds of E-Waste at Garrison's warehouses, and the costs of environmental cleanup for those warehouses were estimated at about $14,247,355. *See* Exhibit B.

10. The State of Ohio requested that the Plaintiffs negotiate joint settlements in which each potentially responsible party ("PRP") pays one sum for all of its E-Waste in the three warehouses, because Closed Loop operated all three warehouses as a single facility. Closed Loop stored the same type of E-Waste at all three warehouses and in the same manner; Olymbec's warehouse is a six minute drive from Garrison's warehouse; and Closed Loop's records reflect the fact that millions of pounds of the E-Waste were transferred from Garrison's warehouses to Olymbec's warehouse, without any documentation regarding which E-Waste came from which defendant. The State of Ohio is also expecting the same or substantially identical cleanup remedy at each warehouse, and the Plaintiffs have retained the same environmental consulting firm to help design that remedy in consultation with the State of Ohio and in compliance with the U.S. Environmental Protection Agency's National Contingency Plan.

11. Plaintiffs are using a straightforward cost recovery formula in settlement negotiations that allocates a percentage of the remediation costs to each PRP based on records that identify the total weight of E-Waste that the PRP shipped to the Facility, as compared to the total weight of the E-Waste shipped by all PRPs.[1] Plaintiffs then applied this percentage to the combined cleanup cost estimate of $18,371,174.98, which has served as the basis for settlements with PRPs to date. Using this formula, Settlor's share would be $985,187.18. Plaintiffs and

[1] Plaintiffs may make exceptions to this formula for some PRPs when circumstances warrant. As an example, it may be reasonable to accept a lower sum from a PRP that demonstrates an inability to pay its allocated share for purposes of settlement.

Settlor have agreed to settle the claims against Settlor for $903,432.50 -- which takes into consideration: (a) additional information provided by Settlor that is relevant to the matter, including information regarding the identity and role of other PRPs; (b) Settlor's commitment to continue to cooperate with Plaintiff; and (c) the fact that Settlor obtained and paid the premiums for pollution legal liability insurance that provided coverage for cleanup costs.

12. Olymbec has reviewed Closed Loop's records to identify the PRPs that arranged for E-Waste to be transported to the Facility. Olymbec's counsel and/or Garrison's counsel have, by letter, electronic mail, and/or telephone, invited these PRPs to negotiate settlements to pay for the removal and remediation of the E-Waste that they contributed to the Facility, except for bankrupt, dissolved, or defunct PRPs and PRPs that sent a *de minimus* amount of E-Waste that will cost no more than $6000 to remediate. Olymbec's counsel have negotiated with all PRPs that have expressed in interest in negotiations, and those negotiations are continuing. These negotiations have resulted in a settlement with the Settlor, and may result in other settlements.

13. The parties to the Settlement Agreement were represented in negotiations by independent counsel. These negotiations included, but were not limited to, evaluations of Settlor's potential liability, the evidence tying the Settlor to the Facility, the defenses asserted by Settlor, the potential legal fees and costs if settlement does not occur, and past and projected future remediation costs. Based on these considerations, the allocation formula, and additional considerations identified in Paragraph 11 above, Olymbec believes that the Settlement Agreement is fair, adequate, and reasonable. Olymbec's counsel has used and will continue to consider the same factors to negotiate settlements with other PRPs.

14. Plaintiffs have served a copy of the Motion for Approval of Settlement Agreement on all defendants in these consolidated cases and will soon send it to all other currently known existing PRPs, even if they are not defendants.

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

Executed on March 30, 2020.

/s/ Randall B. Womack_____
Randall B. Womack

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 CHIEF JUDGE EDMUND A. SARGUS, JR. 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 CHIEF JUDGE EDMUND A. SARGUS, JR. MAGISTRATE JUDGE ELIZABETH PRESTON DEAVERS

EXHIBIT D
(Defendant's Declarations)

OF THE MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT EXECUTED BY PLAINTIFF GARRISON SOUTHFIELD PARK LLC, PLAINTIFF OLYMBEC USA LLC, AND DEFENDANT ECYCLESECURE, LLC

EXHIBIT D

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 CHIEF JUDGE EDMUND A. SARGUS, JR. 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 CHIEF JUDGE EDMUND A. SARGUS, JR. MAGISTRATE JUDGE ELIZABETH PRESTON DEAVERS

DECLARATION OF MICHAEL M. HEIMLICH IN SUPPORT OF MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT EXECUTED BY PLAINTIFF GARRISON SOUTHFIELD PARK LLC, PLAINTIFF OLYMBEC USA LLC, AND DEFENDANT ECYCLESECURE, LLC

Pursuant to 28 U.S.C. § 1746, Michael M. Heimlich 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 eCycleSecure, LLC ("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 future cleanup costs for Plaintiffs' warehouses. Based on these considerations and the allocation formula used to determine the amounts paid by Settlor for the cleanup costs, Settlor believes that the Settlement Agreement is fair, adequate, and reasonable.

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

Executed on March 30, 2020.

/s/ Michael M. Heimlich
Michael M. Heimlich

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 CHIEF JUDGE EDMUND A. SARGUS, JR. 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 CHIEF JUDGE EDMUND A. SARGUS, JR. MAGISTRATE JUDGE ELIZABETH PRESTON DEAVERS

EXHIBIT E

(Orders Approving Settlements in *Hobart Corp. v. Dayton Power & Light Co.*, No. 3:13-cv-115 (S.D. Ohio 2014)

OF THE MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT EXECUTED BY PLAINTIFF GARRISON SOUTHFIELD PARK LLC, PLAINTIFF OLYMBEC USA LLC, AND DEFENDANT ECYCLESECURE, LLC

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

HOBART CORPORATION, *et al.*,	:	Case No. 3:13-cv-115
Plaintiffs,	:	JUDGE WALTER H. RICE
v.	:	
THE DAYTON POWER AND LIGHT COMPANY, *et al.*,	:	
Defendants.	:	

ORDER

This matter having come before the Court on the Joint Motion for Approval of Settlement Agreement between Plaintiffs and Franklin Iron & Metal Corporation ("Motion"), Doc. #1135, and any response thereto, it is hereby

ORDERED THAT:

1) The Motion is GRANTED.

2) The Settlement Agreement between Plaintiffs and Franklin Iron & Metal Corporation, attached to the Motion as Exhibit A, is APPROVED, and the terms and conditions of the Settlement Agreement are hereby incorporated by reference into this Order as if fully restated herein.

3) Subject to the Settlement Agreement, all claims asserted, to be asserted, or which could be asserted against Franklin Iron & Metal Corporation by the defendants in this case (whether by cross-claim or otherwise) or by any other person or entity (except the United States and the State of Ohio) for matters in connection with the South Dayton Dump and Landfill Site located at 1975 Dryden Road (also known as Springboro Pike) in Moraine, Ohio (the "Site") under Sections 106, 107 or 113 of CERCLA and/or any other federal, state or local statute,

regulation, rule, ordinance, law or common law, as the same may be amended or superseded, are hereby barred, permanently enjoined, dismissed with prejudice, satisfied and are otherwise unenforceable in this case or in any other proceeding.

4) The Settlement Agreement represents a fair and reasonable resolution of Franklin Iron & Metal Corporation's equitable share of CERCLA liability at the Site. The payment by Franklin Iron & Metal Corporation to Plaintiffs shall be credited *pro tanto*, and not *pro rata*, during any equitable allocation of response costs among liable parties by the Court in this matter pursuant to 42 U.S.C. § 9613(f)(1). The liability of the litigants shall be reduced by the dollar amount of Franklin Iron & Metal Corporation's settlement payment, and the Court need not determine Franklin Iron & Metal Corporation's proportionate share of liability.

5) Upon notice to the Court by Plaintiffs that Franklin Iron & Metal Corporation has paid the settlement amount under the Settlement Agreement, Franklin Iron & Metal Corporation shall be dismissed with prejudice and without court costs.

6) Pursuant to the authority contained in *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375 (1994), this Court hereby retains jurisdiction and shall retain jurisdiction after entry of final judgment in this case to enforce the terms and conditions of the settlement between Plaintiffs and Franklin Iron & Metal Corporation.

Dated: 3-24-20

JUDGE WALTER HERBERT RICE
UNITED STATES DISTRICT JUDGE

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

HOBART CORPORATION, *et al.*,	:	Case No. 3:13-cv-115
Plaintiffs,	:	JUDGE WALTER H. RICE
v.	:	
THE DAYTON POWER AND LIGHT COMPANY, *et al.*,	:	
Defendants.	:	

ORDER

This matter having come before the Court on the Joint Motion for Approval of Settlement Agreement between Plaintiffs and Dayton Board of Education ("Motion"), and any response thereto, it is hereby

ORDERED THAT:

1) The Motion is GRANTED.

2) The Settlement Agreement between Plaintiffs and Dayton Board of Education, attached to the Motion as Exhibit A, is APPROVED, and the terms and conditions of the Settlement Agreement are hereby incorporated by reference into this Order as if fully restated herein.

3) All claims asserted, to be asserted, or which could be asserted against the Dayton Board of Education by the defendants in this case (whether by cross-claim or otherwise) or by any other person or entity (except the United States and the State of Ohio) for matters in connection with the South Dayton Dump and Landfill Site located at 1975 Dryden Road (also known as Springboro Pike) in Moraine, Ohio (the "Site") under Sections 106, 107 or 113 of CERCLA and/or any other federal, state or local statute, regulation, rule, ordinance, law or

common law, as the same may be amended or superseded, are hereby barred, permanently enjoined, dismissed with prejudice, satisfied and are otherwise unenforceable in this case or in any other proceeding.

4) The payment of $75,000.00 by the Dayton Board of Education to Plaintiffs shall be credited *pro tanto*, and not *pro rata*, during any equitable allocation of response costs among liable parties by the Court in this matter pursuant to 42 U.S.C. § 9613(f)(1). The liability of the litigants shall be reduced by the dollar amount of the Dayton Board of Education's settlement payment, and the Court need not determine the Dayton Board of Education's proportionate share of liability.

5) The Dayton Board of Education is dismissed.

6) Pursuant to the authority contained in *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375 (1994), this Court hereby retains jurisdiction and shall retain jurisdiction after entry of final judgment in this case to enforce the terms and conditions of the settlement between Plaintiffs and the Dayton Board of Education.

Dated: 4-17-15

JUDGE WALTER HERBERT RICE
UNITED STATES DISTRICT JUDGE

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

HOBART CORPORATION, *et al.*,	:	Case No. 3:13-cv-115
Plaintiffs,	:	JUDGE WALTER H. RICE
v.	:	
THE DAYTON POWER AND LIGHT COMPANY, *et al.*,	:	
Defendants.	:	

ORDER

This matter having come before the Court on the Joint Motion for Approval of Settlement Agreement between Plaintiffs and Fickert Devco, Inc. ("Motion"), and any response thereto, it is hereby

ORDERED THAT:

1) The Motion is GRANTED.

2) The Settlement Agreement between Plaintiffs and Fickert Devco, Inc., attached to the Motion as Exhibit A, is APPROVED, and the terms and conditions of the Settlement Agreement are hereby incorporated by reference into this Order as if fully restated herein.

3) Subject to the Settlement Agreement, all claims asserted, to be asserted, or which could be asserted against Fickert Devco, Inc. by the defendants in this case (whether by cross-claim or otherwise) or by any other person or entity (except the United States and the State of Ohio) for matters in connection with the South Dayton Dump and Landfill Site located at 1975 Dryden Road (also known as Springboro Pike) in Moraine, Ohio (the "Site") under Sections 106, 107 or 113 of CERCLA and/or any other federal, state or local statute, regulation, rule, ordinance, law or common law, as the same may be amended or superseded, are hereby barred,

permanently enjoined, dismissed with prejudice, satisfied and are otherwise unenforceable in this case or in any other proceeding.

4) The payment of $150,000.00 by Fickert Devco, Inc. to Plaintiffs shall be credited *pro tanto*, and not *pro rata*, during any equitable allocation of response costs among liable parties by the Court in this matter pursuant to 42 U.S.C. § 9613(f)(1). The liability of the litigants shall be reduced by the dollar amount of Fickert Devco, Inc. settlement payment, and the Court need not determine Fickert Devco, Inc.'s proportionate share of liability.

5) Fickert Devco, Inc. is dismissed.

6) Pursuant to the authority contained in *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375 (1994), this Court hereby retains jurisdiction and shall retain jurisdiction after entry of final judgment in this case to enforce the terms and conditions of the settlement between Plaintiffs and Fickert Devco, Inc.

Dated: 4.18.16

JUDGE WALTER HERBERT RICE
UNITED STATES DISTRICT JUDGE

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

HOBART CORPORATION, *et al.*,	:	Case No. 3:13-cv-115
Plaintiffs,	:	JUDGE WALTER H. RICE
v.	:	
THE DAYTON POWER AND LIGHT COMPANY, *et al.*,	:	
Defendants.	:	

ORDER

This matter having come before the Court on the Joint Motion for Approval of Settlement Agreement between Plaintiffs and Defendant Newmark LLC ("Motion"), and any response thereto, it is hereby

ORDERED THAT:

1) The Motion is GRANTED.

2) The Settlement Agreement between Plaintiffs and Newmark LLC, attached to the Motion as Exhibit A, is APPROVED, and the terms and conditions of the Settlement Agreement are hereby incorporated by reference into this Order as if fully restated herein.

3) Subject to the Settlement Agreement, all claims asserted, to be asserted, or which could be asserted against Newmark LLC by the defendants in this case (whether by cross-claim or otherwise) or by any other person or entity (except the United States and the State of Ohio) for matters in connection with the South Dayton Dump and Landfill Site located at 1975 Dryden Road (also known as Springboro Pike) in Moraine, Ohio (the "Site") under Sections 106, 107 or 113 of CERCLA and/or any other federal, state or local statute, regulation, rule, ordinance, law or common law, as the same may be amended or superseded, are hereby barred, permanently

enjoined, dismissed with prejudice, satisfied and are otherwise unenforceable in this case or in any other proceeding.

4) The payment of $110,000.00 by Newmark LLC to Plaintiffs shall be credited *pro tanto*, and not *pro rata*, during any equitable allocation of response costs among liable parties by the Court in this matter pursuant to 42 U.S.C. § 9613(f)(1). The liability of the litigants shall be reduced by the dollar amount of Newmark LLC's settlement payment, and the Court need not determine Newmark LLC's proportionate share of liability.

5) Newmark LLC is dismissed.

6) Pursuant to the authority contained in *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375 (1994), this Court hereby retains jurisdiction and shall retain jurisdiction after entry of final judgment in this case to enforce the terms and conditions of the settlement between Plaintiffs and Newmark LLC.

Dated: 8-16-16

JUDGE WALTER HERBERT RICE
UNITED STATES DISTRICT JUDGE

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

HOBART CORPORATION, *et al.*,	:	Case No. 3:13-cv-115
Plaintiffs,	:	JUDGE WALTER H. RICE
v.	:	
THE DAYTON POWER AND LIGHT COMPANY, *et al.*,	:	
Defendants.	:	

ORDER

This matter having come before the Court on the Joint Motion for Approval of Settlement Agreement between Plaintiffs and Defendant The Peerless Transportation Company ("Motion"), and any response thereto, it is hereby

ORDERED THAT:

1) The Motion is GRANTED.

2) The Settlement Agreement between Plaintiffs and The Peerless Transportation Company, attached to the Motion as Exhibit A, is APPROVED, and the terms and conditions of the Settlement Agreement are hereby incorporated by reference into this Order as if fully restated herein.

3) Subject to the Settlement Agreement, all claims asserted, to be asserted, or which could be asserted against The Peerless Transportation Company by the defendants in this case (whether by cross-claim or otherwise) or by any other person or entity (except the United States and the State of Ohio) for matters in connection with the South Dayton Dump and Landfill Site located at 1975 Dryden Road (also known as Springboro Pike) in Moraine, Ohio (the "Site") under Sections 106, 107 or 113 of CERCLA and/or any other federal, state or local statute,

regulation, rule, ordinance, law or common law, as the same may be amended or superseded, are hereby barred, permanently enjoined, dismissed with prejudice, satisfied and are otherwise unenforceable in this case or in any other proceeding.

4) The payment of $500.00 by The Peerless Transportation Company to Plaintiffs shall be credited *pro tanto*, and not *pro rata*, during any equitable allocation of response costs among liable parties by the Court in this matter pursuant to 42 U.S.C. § 9613(f)(1). The liability of the litigants shall be reduced by the dollar amount of The Peerless Transportation Company's settlement payment, and the Court need not determine The Peerless Transportation Company's proportionate share of liability.

5) The Peerless Transportation Company is dismissed.

6) Pursuant to the authority contained in *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375 (1994), this Court hereby retains jurisdiction and shall retain jurisdiction after entry of final judgment in this case to enforce the terms and conditions of the settlement between Plaintiffs and The Peerless Transportation Company.

Dated: 3-31-17

JUDGE WALTER HERBERT RICE
UNITED STATES DISTRICT JUDGE

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 CHIEF JUDGE EDMUND A. SARGUS, JR. 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 CHIEF JUDGE EDMUND A. SARGUS, JR. MAGISTRATE JUDGE ELIZABETH PRESTON DEAVERS

EXHIBIT F

(Decision of April 18, 2016 in *Hobart Corp. v. Dayton Power & Light Co*., No. 3:13-cv-115 (S.D. Ohio 2014)

OF THE MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT EXECUTED BY PLAINTIFF GARRISON SOUTHFIELD PARK LLC, PLAINTIFF OLYMBEC USA LLC, AND DEFENDANT ECYCLESECURE, LLC

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

HOBART CORPORATION, *et al.*, Plaintiffs, v. THE DAYTON POWER AND LIGHT COMPANY, *et al.*, Defendants.	:	Case No. 3:13-cv-115 JUDGE WALTER H. RICE

ORDER OVERRULING DEFENDANT DAYTON POWER AND LIGHT COMPANY'S OBJECTIONS TO COURT'S APPROVAL OF *PRO TANTO* SETTLEMENT AGREEMENTS WITH REYNOLDS AND REYNOLDS COMPANY (DOC. #333), P-AMERICAS, LLC (DOC. #359), AND FICKERT DEVCO, INC. (DOC. #369)

Plaintiffs Hobart Corporation, Kelsey-Hayes Company and NCR Corporation filed suit under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. §§ 9607(a) and 9613(f), against The Dayton Power and Light Company ("DP&L") and three dozen other entities, seeking recovery of response costs they incurred at the South Dayton Dump and Landfill Site.

Plaintiffs have entered into settlement agreements with several of the Defendants. The Court has already approved settlement agreements with the Dayton Board of Education (Doc. #291), Day International, Inc. (Doc. #318), University of Dayton (Doc. #364), and YP Advertising and Publishing LLC (Doc. #376). No objections were filed concerning any of these.

Currently pending are joint motions to approve settlement agreements with three additional Defendants—Reynolds and Reynolds Company (Doc. #333), P-Americas, LLC (Doc. #359), and Fickert Devco, Inc. (Doc. #369). Defendant DP&L has filed memoranda in opposition to these motions, raising just one objection. *See* Docs. ##334, 367, 371. It contends that the settlement funds paid by these Defendants should be credited against the liability of the remaining parties on a proportionate share basis rather than *pro tanto*. For the reasons set forth below, the Court overrules this objection.

Plaintiffs in this case seek contribution from other potentially responsible parties ("PRPs") under §113(f) of CERCLA, which requires the Court to "allocate response costs among liable parties using such equitable factors as the court determines are appropriate." 42 U.S.C. § 9613(f)(1). As is fairly typical in CERCLA cases, there are dozens of defendants in this case. No global settlement has been reached; however, Plaintiffs were able to resolve their claims against several individual defendants. The question then becomes how those individual settlements should be credited against the liability of the remaining PRPs. There are two choices.

The proportionate share approach, embodied in the Uniform Comparative Fault Act ("UCFA"), reduces the plaintiffs' claims against the non-settling defendants by the amount of the settling defendant's proportionate share of fault, as later determined at trial. Because the non-settling defendants are held responsible only for their own proportional share, the plaintiffs must absorb any

shortfall if they settle for too little. *AmeriPride Servs. Inc. v. Texas Eastern Overseas Inc.*, 782 F.3d 474, 483-84 (9th Cir. 2015).

In contrast, the *pro tanto* approach, embodied in the Uniform Contribution Among Tortfeasors Act ("UCATA"), reduces the plaintiffs' claims against the non-settling defendants by the dollar value of the settlement. Under this scenario, if the plaintiffs settle for too little, all non-settling PRPs bear the risk of being liable for more than their fair share of the response costs. *Id.* at 484.

CERCLA dictates that the *pro tanto* approach be used when the *government* enters into a settlement agreement with a responsible party. *See* 42 U.S.C. § 9613(f)(2) (providing that the settlement "reduces the potential liability of the others by the amount of the settlement."). Congress, however, has not given any similar guidance with respect to settlement agreements between private parties. *AmeriPride*, 782 F.3d at 486. Courts typically have broad discretion to determine, on a case-by-case basis, which approach is best. *See Am. Cyanamid Co. v. Capuano*, 381 F.3d 6, 20 (1st Cir. 2004); *AmeriPride*, 782 F.3d at 487. *But see Akzo Nobel Coatings, Inc. v. Aigner Corp.*, 197 F.3d 302, 308 (7th Cir. 1999) (adopting the *pro tanto* approach in CERCLA cases). The Sixth Circuit has not addressed this issue.

The four settlement agreements already approved by the Court in this case—notably, without objection—provide that the settlement funds will be credited *pro tanto*. The three settlement agreements awaiting Court approval contain similar provisions. Defendant DP&L now argues that, if the Court approves these

settlement agreements at all, it should do so only on a proportionate share basis. DP&L notes that it was not privy to the negotiation of those settlement agreements, and argues that, because it has not yet had the opportunity to conduct full discovery to determine each party's fair share of the response costs, the proportionate share approach—whereby Plaintiffs bear the sole risk of any miscalculation—is the only equitable option.

DP&L's failure to object to the *pro tanto* approach adopted in the four settlement agreements previously approved by the Court weighs heavily against any serious consideration of this argument now. As the Ninth Circuit noted in *AmeriPride:*

> Choosing a method that would discourage settlement or produce plainly inequitable results could constitute an abuse of discretion. . . . Because a district court's chosen method will likely affect parties' decisions to settle or contest a proposed settlement, once a district court selects a method in a final order approving a settlement agreement, failing to follow that approach may produce a result that is inequitable and inconsistent with CERCLA's goals.

782 F.3d at 488. Plaintiffs no doubt relied on the Court's approval of the *pro tanto* approach, in the earlier settlement agreements, when they negotiated settlements with Reynolds and Reynolds, P-Americas, and Fickert Devco. Plaintiffs reasonably anticipated that, if it was ultimately determined that these particular Defendants had settled for less than their fair share, the non-settling parties would bear the risk of having to help bridge the gap. As the court held in *AmeriPride*, it would be unfair for the Court to change course at this stage of the litigation, and would thwart CERCLA's goal of encouraging settlements.

Even if the Court did not feel bound by its approval of the earlier *pro tanto* settlement agreements, there are several reasons why this Court believes that the *pro tanto* approach is preferable, both in CERCLA cases in general, and in this case in particular.

As several courts have noted, the *pro tanto* approach facilitates the goals of CERCLA. First, it encourages early settlement by "placing the risk of lenient settlements on PRP holdouts," who know that they may be called upon to make up any shortfall. *Action Mfg. Co., Inc. v. Simon Wrecking Co.*, 428 F. Supp.2d 288, 326 (E.D. Pa. 2006). Second, it encourages private remediation of hazardous waste sites, because private parties who undertake clean-up efforts are more likely to be able to completely recoup their response costs. *Id.*

In contrast, with the proportionate share approach, private party plaintiffs are understandably hesitant to enter into early settlements, because they bear the entire risk of not being able to recover any shortfall. Moreover, defendants have little incentive to settle before the proportionate fault of each PRP has been conclusively determined, at trial or otherwise, given that they are never at risk of being held liable for more than their own proportionate share. This prolongs the litigation and increases the costs for everyone involved. *Id.*

True, the proportionate share approach will likely result in a more precise equitable allocation of response costs. This precision, however, comes at a cost, and is potentially at odds with CERCLA's goals of ensuring "prompt and efficient cleanup of hazardous waste sites" and placing "the costs of those cleanups on the

PRPs." *United States v. Akzo Coatings of Am., Inc.*, 949 F.2d 1409, 1417 (6th Cir. 1991).[1]

DP&L maintains that, under the *pro tanto* approach, plaintiffs have an incentive to enter into early settlement agreements for low amounts, knowing that the non-settling defendants will pick up the difference. This is not necessarily true. In a typical CERCLA contribution case, the plaintiffs are also PRPs, and often face significant liability for the response costs at the site. They therefore have an added incentive to maximize settlement, because, if there are shortfalls, the burden is distributed among *all* non-settling liable parties, *including* the plaintiffs. *See* Marc L. Frohman, *Rethinking the Partial Settlement Credit Rule in Private Party CERCLA Actions: An Argument in Support of the Pro Tanto Credit Rule*, 66 U. Colo. L. Rev. 711, 788 (1995).

Not only is the *pro tanto* approach generally more conducive to achieving CERCLA's goals, but it is the better approach given the circumstances of this particular case. Under the proportionate share approach, the Court would, at the close of trial, be called upon to determine the proportionate share of fault attributable to *all* PRPs, whether they settled their claims or not. Because the

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[1] DP&L notes that, in *McDermott, Inc. v. AmClyde*, 511 U.S. 202 (1994), the Supreme Court rejected a *pro tanto* approach in favor of the proportionate share regime. *McDermott*, however, was an admiralty case, and is distinguishable on that basis. *See AmeriPride*, 782 F.3d at 486-87 (noting that, unlike CERCLA, damages in admiralty cases *must* be assessed on the basis of proportionate fault); *Akzo Nobel Coatings,* 197 F.3d at 308 (explaining that, while the proportionate share approach may be required in the context of admiralty law, CERCLA's adoption of a *pro tanto* approach in settlement agreements with the government is logically extended to contribution claims between private parties).

disposal of the hazardous substances in this case took place many decades ago, and because there is so little documentation available to show how much, and what kind of, hazardous waste each of the three dozen PRPs contributed to the Site, a precise apportionment of response costs is nearly impossible.

As the First Circuit noted in *Capuano*, a proportionate share analysis can be a very "complex and unproductive inquiry and may be unrealistic in situations where waste was deposited by hundreds of polluters for years, if not decades, prior to the litigation." 381 F.3d at 20 (internal quotation omitted). In contrast, the *pro tanto* approach "makes it possible to account for the settlements of PRPs not before the court [at trial], without having to determine their proportionate shares according to fault." *Action Mfg.*, 428 F. Supp.2d at 326.

DP&L maintains that, if the Court adopts the *pro tanto* approach at all, it should do so only after full discovery, so that the parties can better determine the proportionate allocation of liability for each Defendant. DP&L argues that, because the scope of future response costs is uncertain, the settling Defendants should not be given contribution protection until it can be shown that the settlement amount represents a fair forecast of their proportionate share of liability.

According to DP&L, Plaintiffs have settled with each of these Defendants for a "minute fraction" of the total response costs. DP&L maintains that the agreements fail to adequately explain the factual basis for the settlement amounts. Declarations of counsel, submitted in support of each of the Joint Motions for Approval of the Settlement Agreements, simply indicate that, in negotiating the

agreements, they took into account the relative strengths and weaknesses of the evidence, and the chances that Plaintiffs would be able to prevail on the merits against each settling Defendant.

This case, however, has been pending for more than three years and, although there is more to be done, significant discovery has already taken place.[2] Given the lack of available documentation, and the faulty memories of the witnesses who have been deposed, an accurate determination of the proportionate fault of the settling Defendants may be impossible.

Reynolds and Reynolds notes that Plaintiffs have taken several depositions and propounded numerous written discovery requests over the past three years, and have uncovered no evidence that it disposed of *any* hazardous substances at the Site. It explains that it agreed to "settle the marginal claims against it in order to avoid the ongoing expense and inherent uncertainty of protracted contribution litigation." Doc. #355, PageID#5306. It also points out that, "[i]ronically, because of the lack of evidence that Reynolds disposed of any hazardous substances at the Site, a *pro tanto* allocation may prove to be the most favorable allocation alternative for DP&L and the other non-settling Defendants." *Id.* at PageID#5304 n.2. In other words, if Reynolds and Reynolds paid *more* than its proportionate share, the windfall accrues to the benefit of all remaining parties.

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[2] Plaintiffs maintain that, because DP&L has made a conscious choice to conduct little or no discovery up to this point, its problems are of its own making. Tellingly, DP&L does not respond to this allegation in its Sur-Reply.

A rule that no *pro tanto* settlement can be approved until all discovery is complete, and each party's proportionate liability conclusively established, would defeat any possibility for early settlement, thereby thwarting CERCLA's goals. Although *some* discovery is obviously needed before the fairness of any proposed settlement can be assessed, the rule proposed by DP&L goes too far. Here, the settling parties have conducted enough discovery to be able to assess the strengths and weaknesses of their respective positions, and to reach what they believe is a fair settlement.

DP&L raises one additional issue that merits consideration. It specifically states that it does not object to any of the pending motions for approval of the settlement agreements, but only to the *pro tanto* crediting of the settlement funds. The Court interprets this to mean that DP&L has no objection to the *amounts* of the proposed settlements. Nevertheless, quoting *AmeriPride*, 782 F.3d at 489, DP&L argues that it must be given a "reasonable opportunity to present evidence and argument regarding the fairness" of any *pro tanto* settlement.

DP&L notes that some federal courts have held that a fairness hearing is required prior to the approval of a *pro tanto* settlement, to ensure that the non-settling defendants have the opportunity to raise any objections. For example, in *Atlantic Richfield Co. v. American Airlines, Inc.*, 836 F. Supp. 763, 775 (N.D. Okla. 1993), the court stated that, "[t]he *pro tanto* rule does require special hearings to determine the fairness of settlements and decide if they are collusive or unfair as to amounts." The court also noted, however, that "fairness hearings

need not be long and arduous, as the law requires only that a fair and reasonable compromise be demonstrated." *Id.*

In this case, the non-settling defendants have had the opportunity to file memoranda in opposition to the motions for approval of the settlement agreements. The Court will consider the issues raised by DP&L in determining whether the proposed settlement agreements are fair, reasonable, and consistent with CERCLA's goals. *See Akzo Coatings*, 949 F.2d at 1426.

Notably, although 42 U.S.C. §9613(f)(2), governing settlement agreements between PRPs and the Government, adopts the *pro tanto* approach, it does not grant non-settling defendants the statutory right to a fairness hearing prior to judicial approval of the settlement, and most courts have refused to provide one. *See Tosco Corp. v. Koch Indus., Inc.*, 216 F.3d 886, 897 n.8 (10th Cir. 2000). The First Circuit held that, "[i]n general, we believe that evidentiary hearings are not required under CERCLA when a court is merely deciding whether monetary settlements comprise fair and reasonable vehicles for disposition of Superfund claims." *U.S. v. Cannons Eng'g Corp.*, 899 F.2d 79, 94 (1st Cir. 1990). Whether a hearing is required depends on the nature and circumstances of any given case. *Id.*

A settlement between private parties may require slightly more scrutiny than a settlement between a governmental entity and a private party. That does not necessarily mean, however, that an evidentiary hearing is required. Here, the risk of an inadequate settlement falls not only on the non-settling Defendants, but on

the Plaintiffs, who are also liable for a significant portion of response costs at the Site. This minimizes the risk that Plaintiffs will enter into collusive or unfair settlement agreements. Absent evidence that raises a red flag, there is little need for a substantive "good faith" fairness hearing. *See* Frohman, *Rethinking the Partial Settlement Credit Rule in Private Party CERCLA Actions*, 66 U. Colo. L. Rev. at 772. In *Action Manufacturing*, the court found that no fairness hearing was required, where—as here—the settlements involved defendants who had contributed *de minimis* amounts of waste, and where there was no evidence that the settlements were reached in bad faith. 428 F. Supp.2d at 326-27.

Notably, in order to determine whether a proposed settlement agreement accurately reflects any one defendant's proportionate share of liability, the proportionate share of liability of *each* PRP must be determined. In this instance, the evidentiary hearing becomes the functional equivalent of a full-blown trial. Because this is exactly what the settling parties hope to avoid, any overly-detailed inquiry into the fairness of a proposed settlement discourages early settlement. *See Comerica Bank-Detroit v. Allen Indus., Inc.*, 769 F. Supp. 1408, 1411 (E.D. Mich. 1991). *See also Foamseal, Inc. v. Dow Chem. Co.*, 991 F. Supp. 883, 886-87 (E.D. Mich. 1998) (refusing to conduct evidentiary hearing or review settlements "in microscopic detail" as this would be contrary to CERCLA's goal of encouraging early settlement).

This is not to say that evidentiary hearings may never be required before Court approval of a *pro tanto* settlement agreement. However, for the reasons

stated above, the Court finds that no evidentiary hearing is warranted with respect to the settlement agreements currently before the Court. The settling parties have conducted significant discovery and, based on the declarations of counsel, have evaluated the strengths and weaknesses of their cases, and have reached what they believe to be a fair settlement.

In summary, given that the Court has previously approved four settlement agreements using the *pro tanto* approach, it would be unfair to switch positions now. Moreover, the Court finds that the *pro tanto* approach is more conducive to achieving CERCLA's goals of early settlement and private remediation of hazardous waste sites. In addition, the *pro tanto* approach is superior in this particular case, because of the difficulties inherent in determining the precise proportionate share of liability of each PRP. For the reasons stated above, the Court rejects DP&L's argument that approval of *pro tanto* settlement agreements must await full discovery by all parties and an evidentiary hearing. The Court therefore overrules DP&L's objections to the three pending Joint Motions for Approval of Settlement Agreements.

Date: April 18, 2016

WALTER H. RICE
UNITED STATES DISTRICT JUDGE

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 CHIEF JUDGE EDMUND A. SARGUS, JR. 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 CHIEF JUDGE EDMUND A. SARGUS, JR. MAGISTRATE JUDGE ELIZABETH PRESTON DEAVERS

EXHIBIT G

(Draft Letter from State of Ohio)

OF THE MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT EXECUTED BY PLAINTIFF GARRISON SOUTHFIELD PARK LLC, PLAINTIFF OLYMBEC USA LLC, AND DEFENDANT ECYCLESECURE, LLC

DAVE YOST
OHIO ATTORNEY GENERAL

Environmental Enforcement
Office: (614) 466-2766
Fax: (614) 644-1926

[Date]

[Address Block]

Re: Closed Loop Refining and Recovery, Inc.
1675 and 1655 Watkins Road, 2200 Fairwood Ave.
Columbus, Ohio

Dear XX:

Thank you for sending notice of your settlement with Garrison Southfield Park LLC (Garrison) and Olymbec USA LLC (Olymbec) for environmental cleanup at 1675/1655 Watkins Road and 2200 Fairwood Avenue, Columbus, Ohio 43207 (the Properties). Ohio Environmental Protection Agency (Ohio EPA), through the Ohio Attorney General's Office, acknowledges and does not object to your settlement with Garrison and Olymbec in satisfaction of Garrison and Olymbec's CERCLA claims in the Southern District of Ohio.

Monies collected as part of Garrison and Olymbec's settlements with you and other potentially responsible parties will be placed in escrow accounts pursuant to escrow agreements between Ohio EPA and Garrison and Olymbec. The escrow agreements specify that this money will be dispersed from the escrow accounts to pay necessary removal or remediation costs at the Properties that Ohio EPA determines are consistent with the U.S. Environmental Protection Agency National Contingency Plan in 40 C.F.R. Part 300.

When the funds from your settlement are deposited in the escrow accounts, the State of Ohio will consider your CERCLA liability satisfied, provided that: 1) you fully cooperate with any additional State investigation at the Properties; 2) the State does not receive information that your e-waste contribution was materially higher than is reflected in your settlement; 3) the State does not discover that you are affiliated with another potentially responsible party who has not settled; and 4) the Southern District of Ohio issues a bar order under CERCLA § 113(f).

Sincerely,

Elizabeth Ewing
Assistant Attorney General

cc: Mitchell Mathews, Ohio EPA
Todd Anderson, Ohio EPA