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

GARRISON SOUTHFIELD PARK LLC,

Plaintiff,

v.

CLOSED LOOP REFINING AND RECOVERY, INC., *et al*.,

Defendants.

Case No. 2:17-cv-783-EAS-EPD

JUDGE EDMUND A. SARGUS, JR.

MAGISTRATE JUDGE ELIZABETH PRESTON DEAVERS

**MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT BETWEEN PLAINTIFF GARRISON SOUTHFIELD PARK LLC AND DEFENDANT MOSHE SILAGI**

Plaintiff Garrison Southfield Park LLC ("Plaintiff" or "Garrison") and Defendant Moshe Silagi ("Settlor") move the Court to enter an order approving the settlement agreement attached hereto as Exhibit A as a final judgment in accordance with Federal Rules of Civil Procedure 54(b) and 58. This motion is supported by the attached Memorandum in Support and the attached settlement agreement. For the Court's convenience, a proposed order has been attached hereto.

**MEMORANDUM IN SUPPORT**

## I. Background

Plaintiff and Settlor have negotiated a settlement agreement and seek the Court's approval of the settlement agreement attached hereto as Exhibit A ("the Settlement Agreement"). The Settlement Agreement resolves Plaintiff's 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 response 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 (collectively, the "Facility"). [1]

Garrison acquired the Facility from MS-South LLC ("MS-South") on or about June 14, 2013, in exchange for good and valuable consideration, and thereafter assumed all right, title and interest. Declaration of Karl R. Heisler ("Heisler Decl."), ¶ 4. The acquisition included an assignment of all rights and obligations as landlord in connection with a lease agreement for 1675 Watkins Road that MS-South had entered into on or about April 6, 2012, with Closed Loop Refining and Recovery, Inc. ("Closed Loop"). *Id.* In a representative capacity, Settlor acted as the General Manager of MS-South. Declaration of Loriann E. Fuhrer on behalf of Settlor ("Fuhrer Decl."), ¶ 3. MS-South has since been dissolved. Heisler Decl., ¶ 4.

Closed Loop received and stockpiled cathode ray tubes and other electronic wastes ("E-Waste") at the Facility from April 2012 through March 2016, *i.e.*, for a period of about 47 months, of which about 13.5 months occurred during MS-South's ownership. Heisler Decl., ¶ 5. Closed Loop also received, stockpiled, and abandoned E-Waste in a nearby warehouse owned by Plaintiff Olymbec USA LLC ("Olymbec") at 2200 Fairwood Avenue in Columbus, Ohio. *Id.* Closed Loop abandoned all three warehouses in or around March 2016. *Id.* The State of Ohio requested that Garrison and Olymbec negotiate joint settlements in which each potentially responsible party ("PRP") that arranged for the transport of E-Waste to any of the three warehouses pay one sum, because Closed Loop operated the warehouses as a single facility. *Id.*[2]

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[1] Garrison has since sold 1655 and 1675 Watkins Road. The Settlement Agreement includes a release of liability for any claims related to both properties.

[2] This request did not extend to Settlor. Garrison is alleging that Settlor is liable as a former owner pursuant to 42 U.S.C. § 9607(a)(2), as opposed to an arranger pursuant to 42 U.S.C. § 9607(a)(3).

Plaintiff alleges 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*., ¶ 6. Plaintiff retained environmental services providers and consultants to remove the E-Waste, recycle or dispose of it, and to decontaminate the Facility by removing the lead dust deposited on the building's floors, walls, columns, rafters, and contents, all consistent with the U.S. Environmental Protection Agency National Contingency Plan ("NCP") at 40 C.F.R. Part 300. *Id*., ¶ 7. Cleanup operations have now concluded. *Id*. The Ohio Environmental Protection Agency ("Ohio EPA") approved Garrison's closure report for 1655 Watkins Road on April 19, 2021; Olymbec's closure report for 2200 Fairwood Avenue on September 17, 2021; and Garrison's closure report for 1675 Watkins Road on November 17, 2022.[3] Based on the most recent project accounting, the total NCP-compliant response costs are estimated to be $17,137,530, which includes $4,060,940.57 for Fairwood Avenue and $13,076,589 for the Watkins Road properties. *Id*.

Plaintiff has reviewed Closed Loop's records to identify the PRPs that arranged for E-Waste to be transported to the Facility. *Id*., ¶ 8. Plaintiff's counsel have, by letter, electronic mail, and/or telephone, invited these PRPs to negotiate settlements to pay for the removal 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 clean up. *Id*. Plaintiff's counsel have negotiated with all PRPs that have expressed an interest in negotiations, including Settlor. *Id*.

[3] See https://www.ensafe.com/closedloop/ (providing the full administrative records, including approved closure plans and closure reports for the Watkins Road properties and Fairwood Avenue). Although site closure has been issued, Plaintiff has not settled its liability with the State of Ohio.

Plaintiff has negotiated settlements with all Defendants who have appeared in this case and has submitted these settlement agreements to the Court for approval. *Id*., ¶ 9. After accounting for the payments required by these and other settlements with PRPs, Garrison's and Olymbec's combined response costs for cleaning up the three warehouses exceed the settlement payments that have been received or anticipated by $1,208,835 (referred to as the "orphan share"). *Id*. Of this amount, 76% ($918,715) could be considered attributable to the Watkins Road properties, because the response costs for these two warehouses are 76% of the total response costs for the Facility. *Id*. Because MS-South owned 1675 Watkins Road for 13.5 of the 47 months in which Closed Loop accepted E-waste, Garrison multiplied the $918,715 orphan share for the Watkins Road properties by 29%, calculating Settlor's responsibility for purposes of settlement to be $266,427. *Id*. To account for the fact that Settlor never leased 1655 Watkins Road to Closed Loop, Garrison further agreed to an additional 25% downward adjustment from $266,427, based on a rough and conservative approximation of the weight of E-Waste abandoned at 1655 Watkins Road relative to 1675 Watkins Road. *Id*. Garrison and Settlor have thereupon agreed to settle Garrison's claims against Settlor for $200,000. *Id*.; Fuhrer Decl., ¶ 5; Settlement Agreement (Exh. A).

The parties to the Settlement Agreement were represented in negotiations by independent counsel. Heisler Decl., ¶ 10; Fuhrer Decl., ¶ 4. The factors considered in these negotiations included, but were not limited to, evaluations of Settlor's potential liability, the strengths and weaknesses of the evidence pertaining to Plaintiff's claims, the defenses asserted by Settlor, the potential legal fees and costs if settlement did not occur, the amount of the response costs, and the formula described above for allocating the orphan share between Plaintiff and Settlor. Heisler

Decl., ¶ 10; Fuhrer Decl., ¶ 5. Based on these considerations, the Settlement Agreement is fair, adequate, and reasonable. Heisler Decl., ¶ 10; Fuhrer Decl., ¶ 6.

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).

Plaintiff 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 entry of an Order providing that Settlor's settlement payment be credited *pro tanto*, and not *pro rata*, in determining the equitable share of defendants other than Settlor. Plaintiff and Settlor ask the Court to enter an Order to that effect.

Plaintiff 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 that 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 and claims for express breach of contract and contractual indemnification, consistent with this Court's September 27, 2021 Opinion and Order. Doc. # 787. Since no claims for express breach of contract or contractual indemnification have been filed against Settlor in this action, the Parties request that the Settlor be dismissed from the case.

## II. Argument

### A. The Settlement Agreement Should Be Approved By The Court Because Settlements Are Favored, And The Settlement Agreement Is Fair, 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 Cnty. 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 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.*, No. 3:04-cv-013, 2011 WL 382617, at *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. <u>The Settlement Negotiations Satisfy Procedural Fairness</u>.**

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.*, No. 3:14-cv-32, 2014 WL 1872914, at *5, (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 id.* ("The Court should gauge the candor, openness, and bargaining balance of the negotiations" (citing *Cannons Eng'g.*)).

In this case, Plaintiff has reviewed Closed Loop's records as well as discovery responses made by the existing Defendants to identify the PRPs that arranged for E-Waste to be transported to the Facility. Heisler Decl., ¶ 8. Plaintiff's counsel have, by letter, electronic mail, and/or telephone, invited PRPs to negotiate settlements to pay for the removal and/or 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 minimis* amount of E-Waste that will cost no more than $6000 to clean up. *Id*. Plaintiffs have negotiated with those PRPs that have expressed an interest in negotiations, including Settlor. *Id*.

The parties to the Settlement Agreement were represented in negotiations by independent counsel. Heisler Decl., ¶ 10. These negotiations included, but were not limited to, evaluations of Settlor's potential liability, the strengths and weaknesses of the evidence pertaining to Plaintiff's claims, the defenses asserted by Settlor, the potential legal fees and costs if settlement did not occur, the amount of the response costs, and the formula described above for allocating the orphan share between Plaintiff and Settlor. Heisler Decl., ¶ 10; Fuhrer Decl., ¶ 5. Thus, the

settlement is the product of arm's length negotiations conducted in good faith, and the procedural fairness test has been met.

**2. The Settlement Agreement Is Substantively Fair.**

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. *United States v. 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. A settlement, however, 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. Thus, Plaintiff and Settlor have entered into a Settlement Agreement that is fair to everyone and satisfies the substantive fairness test.

**3. The Settlement Agreement Is Reasonable Because It Reflects Settlors' Actual or Potential Liability.**

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. Plaintiff has evaluated the alleged liability of Settlor, and has determined that Settlor's

settlement amount is fair and reasonable given the amount of response costs and Settlor's prior ownership of the Facility during Closed Loop's operations. Heisler Decl., ¶¶ 9, 10.

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 Plaintiff and Settlor included, but were not limited to, evaluations of Settlor's potential liability, the strengths and weaknesses of the evidence pertaining to Plaintiff's claims, the defenses asserted by Settlor, potential legal fees and costs if settlement does not occur, the amount of the response costs, and the formula described above for allocating the orphan share between Plaintiff and Settlor. Heisler Decl., ¶ 10; Fuhrer Decl., ¶ 5. Based on these considerations, the Settlement Agreement is fair, adequate, and reasonable. Heisler Decl., ¶ 10; Fuhrer Decl., ¶ 6. 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 Plaintiff 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 also Nurad, Inc. v. William E. Hooper & Sons Co.*, 966 F.2d 837, 841 (4th Cir. 1992), *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 contribution 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. The previous motions for approval of settlement agreements in this case have explained the legal basis and the rationale for applying a contribution bar in this case. For the sake of efficiency, Plaintiff and Settlor hereby incorporate by reference the argument advocating for this contribution bar contained in the motion to approve the Great Lakes Electronics Corporation and Accurate IT Services Ltd. settlements. Doc. # 832, PageId ## 10215-10219. This Court has applied the contribution bar in the instant case for each of the previous settlements approved by the Court. Doc. # 312, PageId ## 3656-3657, ¶ 3; Doc. # 400, PageId # 4506, ¶ 3; Doc. # 536, PageId ## 6035-6036, ¶ 3; Doc. # 683, PageId # 8371, ¶ 3; Doc. # 808, PageId ## 9986-9987, ¶ 2; Doc. # 820, PageId ## 10171-10172, ¶ 2; Doc. # 838, PageId # 10328, ¶ 2; Doc. # 839, PageId # 10331, ¶ 2; Doc. # 848, PageId #

10504, ¶ 2; Doc. # 859, PageId # 10846, ¶ 2; Doc. # 722, PageId # 7751, ¶ 2; Doc. # 723, PageId # 7754, ¶ 2; Doc. # 724, PageId # 7757, ¶ 2.

Plaintiff has served a copy of this Motion for Approval of the Settlement Agreement on all Defendants and will soon send it to any other currently known PRPs. Heisler Decl., ¶ 11. Plaintiff and Settlor request that the contribution bar apply to all claims that could be asserted against Settlor, except for any claims for express breach of contract and contractual indemnification, consistent with this Court's September 27, 2021 Opinion and Order. Doc. # 787.

### 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 the Settlement Agreement should credit Settlor's settlement payments *pro tanto* and not *pro rata* in determining other defendants' equitable shares of response costs, just as the Court has done for the previous settlements in the instant case. Doc. # 312, PageId # 3657, ¶ 4; Doc. # 400, PageId # 4506, ¶ 4; Doc. # 536, PageId # 6036, ¶ 4; Doc. # 683, PageId ## 8370-8371, ¶ 4; Doc. # 808, PageId # 9987, ¶ 3; Doc. # 820, PageId # 10172, ¶ 3; Doc. # 838, PageId # 10328, ¶ 3; Doc. # 839, PageId # 10331, ¶ 3; Doc. # 848, PageId # 10504, ¶ 3; Doc. # 859, PageId # 10847, ¶ 4; Doc. # 722, PageId # 7752, ¶ 3; Doc. # 723, PageId # 7754, ¶ 3; Doc. # 724, PageId # 7757, ¶ 4. Furthermore, this Court has determined that "[t]he circumstances of this case now dictate uniform application of the *pro tanto* method in crediting approved settlements."). *Garrison*, 2021 WL 4397865, at *8. The previous motions for approval of settlement agreements in this case have explained the legal basis and the rationale for crediting payments *pro tanto* in this case. Plaintiff and Settlor hereby incorporate by reference the argument advocating for the *pro tanto* treatment contained in the motion to approve the Great Lakes Electronics Corporation and Accurate IT Services Ltd. settlements. Doc. # 832, PageId ##

10219-10225. As explained therein, *pro tanto* crediting encourages early settlements, encourages voluntary site cleanups, promotes faster site remediation, and reduces trial time.

**D. The Court Should Enter the Settlement Agreement as a Final Judgment.**

The Court's order approving the Settlement Agreement merits entry as a final judgment pursuant to Federal Rules of Civil Procedure 54(b) and 58. On-site cleanup activities have been completed, and Ohio EPA has approved site closure. The funding for these activities was either paid for with settlement proceeds from this litigation or fronted by Garrison in furtherance of hazardous waste closure plans and CERCLA engineering evaluation/cost analysis ("EE/CAs") approved by Ohio EPA.[4] Without the additional layer of finality in judgment provided by the entry of an order pursuant to Rules 54(b) and 58, Plaintiff would retain the risk of having to return the settlement proceeds to Settlor until court approval of the Settlement Agreement is final and non-appealable. Plaintiff is entitled to know if it will obtain the benefit of the bargain reached with Settlor.

The Court has entered final judgment on all of the settlements it has approved in this case. *Garrison Southfield Park LLC v. Closed Loop Refining and Recovery, Inc.,* No. 2:17-cv-783, 2021 WL 1611325, at *1 (S.D. Ohio, Apr. 26, 2021); Doc. # 808, PageId ## 9987-9991; Doc. # 820, PageId # 10172, ¶ 5; Doc. # 838, PageId # 10329, ¶ 5; Doc. # 839, PageId # 10332, ¶ 5; Doc. # 848, PageId # 10505, ¶ 5; Doc. # 858, PageId # 10847, ¶ 6; Doc. # 722, PageId # 7752, ¶ 5; Doc. # 723, PageId # 7755, ¶ 5; Doc. # 724, PageId # 7758, ¶ 6. Consistent with these prior settlement agreements, and for all the reasons set forth above and below, Plaintiff and Settlor

[4] Garrison voluntarily submitted the closure plan and EE/CA to demonstrate compliance with, among other things, the NCP. See https://www.ensafe.com/closedloop/.

herein request that the Court direct the entry of final judgment and find that there is no just reason to delay an appeal.

**1. Fed. R. Civ P. 54(b)**

As this Court opined in these consolidated cases in an order certifying orders approving prior settlements under Rule 54(b), achieving finality pursuant to Rule 54(b) involves a two-step analysis: "the district court must expressly 'direct the entry of final judgment as to one or more but fewer than all the claims or parties in a case'" and then the court must "'expressly find that there is no just reason' to delay appellate review." *Garrison Southfield Park LLC v. Closed Loop Refining and Recovery, Inc.,* No. 2:17-cv-783, 2021 WL 1611325, at *1 (S.D. Ohio, Apr. 26, 2021) (citing *Gen. Acquisition, Inc. v. GenCorp., Inc.,* 23 F.3d 1022, 1026 (6th Cir. 1994). *See also Ball v. Kasich*, No. 2:16-cv-282, 2020 WL 4528822, at *3 (S.D. Ohio, Aug. 6, 2020), *appeal docketed*, No. 20-3927 (6th Cir., Sept. 3, 2020).

**a. Step 1: Final Judgment**

Rule 54(b) authorizes the Court "to direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay." Emphasis added. This first step is implicated in the ultimate disposition of one or more but fewer than all claims or parties in a multi-claim/multi-party action, as is presented in the instant CERCLA litigation. The rule "relaxes the traditional finality requirement for appellate review," and is specifically "designed to facilitate the entry of judgment on one or more claims, or as to one or more parties, in a multi-claim/multiparty action." *Gen. Acquisition,* 23 F.3d at 1026 (citing *Solomon v. Aetna Life Ins. Co.,* 782 F.2d 58, 60 (6th Cir. 1986)).

To satisfy this first step: "A district court must first determine that it is dealing with a 'final judgment.' It must be a 'judgment' in the sense that it is a decision upon a cognizable

claim for relief, and it must be 'final' in the sense that it is 'an ultimate disposition of an individual claim entered in the course of a multiple claims action.'" *Gen. Acquisition*, 23 F.3d at 1027 (quoting *Curtis-Wright Corp. v. Gen. Elec. Corp.*, 446 U.S. 1, 7 (1980)). *See also United States v. Cannons Eng'g Corp.*, 720 F. Supp. 1027, 1053 (D. Mass. 1989), *aff'd, United States v. Cannons Eng'g Corp.*, 899 F.2d 79 (1st Cir. 1990) (internal citations omitted) (finding that, for purposes of Fed. R. Civ. P. 54(b), (1) CERCLA "Consent Decrees constitute 'judgments' because they resolve all liability of the settling defendants on 'cognizable claim[s] for relief' brought by plaintiffs under CERCLA" and (2) the "judgment is 'final' because the Consent Decrees constitute an 'ultimate disposition of an individual claim entered in the course of a multiple claims action.'").

To satisfy step one, the Court should direct the Clerk to enter an order approving the Settlement Agreement as having the full force and effect of a final judgment under Federal Rule of Civil Procedure 54(b).

**b. Step 2: Delay**

Rule 54(b) authorizes the Court "to direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay." Emphasis added. This second step is required to "determine that there is no just reason for delay in certifying a final judgment." *Garrison,* 2021 WL 1611325, at *1. The opinion accompanying the judgment entry must also provide a reasoned analysis of the grounds for such a determination. *Corrosioneering, Inc. v. Thyssen Envtl. Sys., Inc.*, 807 F.2d 1279, 1284-85 (6th Cir. 1986). This analysis involves, among other things, "strik[ing] a balance between the undesirability of more than one appeal in a single action and the need for making review available in multiple-party or multiple-claim situations at a time that best serves the needs of the

litigants." *Gen. Acquisition*, 23 F.3d at 1027 (quoting WRIGHT, MILLER & KANE, FEDERAL PRACTICE AND PROCEDURE: CIVIL 2D § 2655 (1983 & Supp. 1993)).

Citing the Sixth Circuit's decision in *Corrosioneering*, this Court has articulated the following non-exhaustive factors to consider in making a determination that "there is no just reason for delay" for purposes of the second step of the Rule 54(b) analysis:

> (1) the relationship between the adjudicated and non-adjudicated claims; (2) the possibility that the need for appellate review might become moot due to future developments in the district court; (3) the possibility that the appellate court might be required to hear the same issue twice; (4) the presence or absence of a claim or counterclaim that might result in a set-off against the final judgment; and (5) other miscellaneous factors, including "delay, economic and solvency considerations, shortening the time of trial, frivolity of competing claims, expense, and the like."

*Garrison*, 2021 WL 1611325, at *2 (quoting *U.S. Citizens Ass'n v. Sebelius*, 705 F.3d 588, 596 (6th Cir. 2013). Each factor is addressed below.

First, with respect to any relationship between adjudicated and non-adjudicated claims, the proposed order dismisses only those claims asserted, to be asserted, or which could be asserted against Settlor, including, by incorporation of the Settlement Agreement, 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*., Case No. 2:19-cv-01041-EAS-EPD (S.D. Ohio), against SETTLORS." *See, e.g.*, Exh. A, Settlement Agreement, ¶ 6. As stated in the Court's decision certifying the final judgment for prior settlements in this case, "[t]he adjudicated claims do not prevent the non-adjudicated claims from being fully and fairly adjudicated." *Garrison*, 2021 WL 1611325, at *2. Indeed, CERCLA contemplates that there can be adjudication or disposal of claims against one or more versus all parties to an action. CERCLA clearly authorizes a court to immunize PRPs like Settlor "for claims for contribution regarding matters addressed in the settlement,"

despite the existence of claims left to be adjudicated, given that the settlement "reduces the potential liability of the others by the amount of the settlement." 42 U.S.C. § 9613(f)(2). The same concept applies in private cost recovery actions where contribution protection is provided via CERCLA § 113(f)(1). Any construction to the contrary would constitute an end run around CERCLA's statutory scheme to immunize settling parties from liability despite the "corresponding detriment to their more recalcitrant counterparts." *Cannons Eng'g*, 899 F.2d at 91. *See also United States v. Pretty Prods., Inc*., 780 F. Supp. 1488, 1496 n. 7 (S.D. Ohio 1991) (barring contractual indemnification claim by non-settling party against settling party pursuant to CERCLA § 113(f)(2), and noting "this Court would be skeptical of any attempt to make an end run around CERCLA's contribution immunity").

Second, there is no possibility that the need for appellate review might become moot due to future developments in the district court if the Court grants this motion and accompanying proposed order. As with prior settlements in this case, the issues that would be presented for appellate review are limited to whether the Settlement Agreement with Settlor is fair and reasonable, and whether the terms of the proposed order extending contribution protections to Settlor are consistent with CERCLA and applicable law. *Garrison*, 2021 WL 1611325, at *2. These issues are specific to Settlor, which would be dismissed from the case with prejudice. There will accordingly be no future rulings in this Court involving Settlor that would moot any need for appellate review of these issues.

Third, there is little possibility that the appellate court might be required to hear the same issue twice for all of the reasons noted immediately above: the appellate review would be specific to Settlor, which would be dismissed from the case with prejudice if the Court grants this motion and accompanying proposed order. *Id*. This concern is further mitigated by the fact

that approval of settlements is "committed to the discretion of the district court," with such "discretion to be exercised in light of the strong policy in favor of voluntary settlement of litigation." *Cannons Eng'g Corp.*, 720 F. Supp. at 1053 (granting a motion for entry of the "Major PRP Consent Decree" as a final judgment pursuant to Fed. R. Civ. P. 54(b)).

Fourth, with respect to claims or counterclaims that might result in a "set-off" against the final judgment, set-offs are not only contemplated, but commanded, in CERCLA litigation. *Garrison*, 2021 WL 1611325, at *2 (noting that "[t]his is par for the course in CERCLA litigation and furthers CERCLA's goal of effectuating prompt cleanup of hazardous waste sites by imposing cleanup costs on responsible parties."). CERCLA settlements reduce the amount of the remaining liable parties' liability by the dollar amount of the settlements. *Id*. This Court has found on multiple occasions that payments by settling Defendants in this case should be credited *pro tanto*, thus reducing the liability of the remaining liable parties by the dollar amount of settling defendants' payments. For all of the reasons set forth above and in prior motions to approve settlement agreements, Plaintiff and Settlor similarly request a *pro tanto* approach because it "will best serve the purposes of CERCLA at this time given that the approach is known to facilitate settlement among holdout defendants. . . ." Doc. # 536, PageId # 6034.

Fifth, there are several other miscellaneous factors that weigh in favor of a finding that there is no just reason for delay. Perhaps most notably, the prospect of a delayed appeal of this Settlement Agreement would undermine the primary policy of CERCLA to remediate hazardous substances in a "prompt and efficient" manner. *Akzo Coatings*, 949 F.2d at 1417. It would "disserve a principal end of [CERCLA] – achievement of prompt settlement and a concomitant head start on response activities – to leave matters in limbo until more precise information was amassed." *Cannons Eng'g,* 899 F.2d at 88. *See also Pakootas v. Teck Cominco Metals, Ltd*., 905

F.3d 565, 576 (9th Cir. 2018) (finding that the appellate court had jurisdiction under Fed. R. Civ. P. 54(b) to hear the appeal because "[t]his is a complex case that has been ongoing for fourteen years, and the entry of partial judgment against Teck would help ensure that a responsible party promptly pays for the contamination of the Upper Columbia River, advancing CERCLA's goals and easing the Tribes' burden of financing the litigation effort"). As stated by the Court in this case, a final judgment "will facilitate faster cleanup of the e-waste at issue in this case and mitigate Plaintiffs' risk that settlement funds will have to be refunded potentially several years down the line." *Garrison*, 2021 WL 1611325, at *2.

In this case, Plaintiff's burden of financing this litigation has been compounded with the burden of financing ancillary litigations, including litigation with insurance carriers for multiple Defendants. Separate and apart from these litigations, Plaintiff has further "suffered severe financial losses" in connection with Closed Loop's abandonment of the Facility, including lost rent and attorneys' fees, much of which is not recoverable under CERCLA. Doc. # 539, PageId # 6025, n. 6. These losses and the prospect of future financial risk merit serious consideration in entering this Settlement Agreement as a final judgment.

Equitable factors specific to CERCLA cost recovery actions likewise warrant a finding that there is no just reason for delay. As discussed by the lower court (and as affirmed on appeal) in *United States v. Cannons Engineering Corp*:

> Moreover, in view of the complexity of this litigation, the public interest in prompt cleanup, and the statutory goal of providing finality to settling defendants, the court finds that there is no just reason to delay the entry of final judgment. The settling defendants who have negotiated a settlement of their claims in good faith should not have to wait until the resolution of plaintiffs' claims against non-settling defendants to learn whether the settlements are final, particularly because CERCLA expressly authorizes the United States to enter into settlements which do not involve all potential defendants. *See* 42 U.S.C. § 9622. The settling defendants are, under the Consent Decrees, obligated to make payments and/or perform work. They are entitled to know if they will obtain the benefit of their bargains before incurring these substantial costs.

720 F. Supp. at 1053. *See also Evansville Greenway & Remediation Tr. v. S. Ind. Gas & Elec. Co.,* No. 3:07-CV-66-SEB-WGH (filed May 21, 2007) (routinely approving joint motions to approve CERCLA settlement agreements as final, appealable judgments pursuant to Rule 54(b) (*e.g.*, Doc. ## 873, 874, 882, 893, 898).

**2. Fed. R. Civ. P. 58**

Rule 58 requires that "[e]very judgment . . . must be set out in a separate document" subject to certain delineated exceptions that do not apply here. The Court should accordingly enter an order approving this Settlement Agreement as a document separate and apart from the Court's opinion in order to satisfy Rule 58.

## III. Conclusion

For all the foregoing reasons, Plaintiff and Settlor request that the Court grant the Order approving the Settlement Agreement as a final judgment under Rules 54(b) and 58.

Respectfully submitted,

**KEGLER BROWN HILL + RITTER CO., LPA**

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*Attorneys for Plaintiff Garrison Southfield Park LLC*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on December 22, 2022, a copy of the foregoing Motion to Approve the Settlement Agreement was 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

JUDGE EDMUND A. SARGUS, JR.

MAGISTRATE JUDGE ELIZABETH PRESTON DEAVERS

**ORDER APPROVING SETTLEMENT AGREEMENT EXECUTED BY PLAINTIFF GARRISON SOUTHFIELD PARK LLC AND DEFENDANT MOSHE SILAGI**

This matter having come before the Court on the Motion for Approval of the Settlement Agreement Executed by Plaintiff Garrison Southfield Park LLC ("Garrison") and Defendant Moshe Silagi ("Defendant") and any response thereto, and for good cause shown and as there is no just reason for delay, it is hereby ordered as follows:

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

2. The Settlement Agreement between Plaintiff 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 and for claims for express breach of contract and contractual indemnification, 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 property located at 1675 Watkins Road in Columbus, Ohio and Garrison's former property located at 1655 Watkins Road 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. It appearing that no cross-claims for express breach of contract and contractual indemnification have been asserted against Defendant, Defendant is dismissed from this case.

5. The payments by Defendant to Plaintiff 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 amounts of Defendant's settlement payment, and the Court need not determine Defendant's proportionate share of liability.

6. This order shall have the full force and effect of a final judgment under Fed. R. Civ. P. 54 and 58. This Court nevertheless 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, and the Clerk is directed to enter this judgment as a separate document pursuant to Fed. R. Civ. P. 58(a).

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

JUDGE EDMUND A. SARGUS, JR.

MAGISTRATE JUDGE
ELIZABETH PRESTON DEAVERS

# EXHIBIT A
## (Settlement Agreement)

**OF THE MOTION FOR APPROVAL OF THE SETTLEMENT AGREEMENT BETWEEN PLAINTIFF GARRISON SOUTHFIELD PARK LLC AND DEFENDANT MOSHE SILAGI**

# WATKINS ROAD SETTLEMENT AGREEMENT

This **SETTLEMENT AGREEMENT** ("Agreement") is entered into between Garrison Southfield Park LLC ("GARRISON") and Moshe Silagi ("SETTLOR"). GARRISON and SETTLOR are each referred to herein as a "Party" and are collectively referred to herein as the "Parties."

## RECITALS

*WHEREAS*, GARRISON was the owner of 1655 Watkins Road, Columbus, Ohio 43207, and is the owner of 1675 Watkins Road, 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 (with both properties collectively referred to herein as the "Facility").

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

*WHEREAS*, GARRISON estimated that Closed Loop received and stockpiled approximately 64,000 tons of cathode ray tubes and other electronic waste at the Facility, before abandoning it in or around April 2016.

*WHEREAS*, GARRISON estimated the costs of environmental cleanup at the Facility at more than $16 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 alleged that SETTLOR is a potentially responsible party, as the alleged alter ego of MS-South, LLC ("MS-SOUTH") and under other legal theories, 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, arranging, 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*, SETTLOR denies that he is a potentially responsible party under CERCLA, the RCRA, Ohio Revised Code Chapter 3734, comparable Ohio statutes, federal or state

regulations promulgated thereunder, and Ohio common law, and denies that he can be held responsible under an alter ego theory or any other theory.

*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 purchase of the Facility by GARRISON or the alleged presence, generation, transportation, arranging, 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 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 has 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 such 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 a person who has settled his liability with GARRISON 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 releases and covenants not to sue SETTLOR, and SETTLOR releases and covenants not to sue GARRISON, 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 purchase of the Facility by GARRISON, or the alleged presence, generation, transportation, arranging, 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) 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: MS-SOUTH; MS-SOUTH'S and GARRISON's past and present directors, officers, members, shareholders, insurers, partners, agents, or employees; MS-SOUTH'S and GARRISON's successors, predecessors, assigns, parents, Affiliates, and subsidiaries; and MS-SOUTH'S and GARRISON's past and present directors, officers, members, shareholders, insurers, partners, agents, or employees of MS-SOUTH'S and GARRISON's successors, predecessors, assigns, parents, Affiliates, and subsidiaries (collectively, "Beneficiaries," and each a "Beneficiary"). For purposes of this Agreement, "Affiliates" and "Affiliated" mean related to by shareholdings or means of control other than through arms-length transacting.

**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 purchase of the Facility by GARRISON or from the presence, generation, transportation, arranging, storage, treatment, disposal, abandonment, release, threatened release, removal, or remediation of E-Waste at, to, or migrating from the Facility.

**5. CONSIDERATION**

a. In consideration of the agreements herein, SETTLOR agrees to pay to GARRISON the settlement amount identified in Appendix A ("Settlement Amount") within fourteen (14) days of the Effective Date. Payment of the entire Settlement Amount shall be made to GARRISON, which shall route it directly into an escrow account pursuant to an escrow agreement between Ohio EPA and GARRISON with such escrow agreement specifying that the Settlement Amount will be

dispersed from the escrow account 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 ("NCP"). In any case, the Settlement Amount shall be used by GARRISON to pay necessary removal or remediation costs that Ohio EPA determines are consistent with the NCP or to reimburse GARRISON for such costs previously incurred.

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 agreed to indemnify in connection with the Facility; (ii) GARRISON, 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, arranging, storage, treatment, disposal, abandonment, release, threatened release, removal, or remediation of E-Waste at, to or migrating from the Facility; or (z) any counterclaims to Claims arising from or related to the presence, generation, transportation, arranging, 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 persons or entities and/or by GARRISON, provided that such SETTLOR dismisses any such counterclaims if and when the Claims filed against such 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 GARRISON 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 such SETTLOR pursuant to Section 9.

e. In consideration of the agreements herein, except for Non-Released Claims, SETTLOR hereby assigns to GARRISON all rights, claims and causes of action arising from such 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, arranging, 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 such SETTLOR by any person or entity, provided that such SETTLOR dismisses any such counterclaims if and when the Claims filed against such SETTLOR are dismissed.

f. In consideration of the agreements herein, except for Non-Released Claims and claims made pursuant to Section 9, GARRISON agrees not to assert any Claim against SETTLOR except for failure to perform under this Agreement.

## 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 and claims for express breach of contract and contractual indemnification, (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 with prejudice 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) against SETTLOR except for cross-claims for express breach of contract and contractual indemnification. 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, upon such reimbursement, 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 to execute on his 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, shall increase SETTLOR's obligations to GARRISON beyond those stated in this Agreement or GARRISON's obligations to SETTLOR beyond those stated in this Agreement. Nor shall any such action, if undertaken by GARRISON, 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. GARRISON agrees to exercise Reasonable Efforts to obtain a covenant not to sue and contribution protection from the State of Ohio for the benefit of SETTLOR. Nothing set forth herein, however, shall obligate GARRISON to obtain a covenant not to sue or contribution protection from the State of Ohio. SETTLOR nevertheless authorizes GARRISON to execute on his 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, shall increase SETTLOR's obligations to GARRISON beyond those stated in this Agreement or GARRISON's obligations to SETTLOR beyond those stated in this Agreement. Nor shall any such action, if undertaken by GARRISON, 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. For purposes of this Agreement, "Reasonable Efforts" is defined as no more than a single written communication from GARRISON made on behalf of SETTLOR to the Ohio Attorney General's Office requesting a covenant not to sue, contribution protection, and 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. GARRISON shall forward any responses received to such communication to SETTLOR. Nothing set forth in this Section 7(b) shall restrict or prohibit SETTLOR from exercising his own efforts to obtain a covenant not to sue and contribution protection from the State of Ohio for the benefit of SETTLOR.

c. Except for the covenants and obligations of GARRISON expressly set forth in Section 7(b) of this Agreement, SETTLOR waives any right to assert Claims against GARRISON in connection with the Reasonable Efforts of GARRISON 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. Except for the covenants and obligations of GARRISON expressly set forth in Section 7(b) of this Agreement, SETTLOR also waives any right to assert Claims against GARRISON in connection with the terms of any related administrative order, consent decree, settlement agreement, or other instrument.

d. SETTLOR shall reasonably cooperate with GARRISON 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 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. 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 certain relevant and non-privileged records requested by GARRISON to the extent in SETTLOR's possession, custody, or control as of the Effective Date relating to the Facility. GARRISON agrees 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. In addition to the obligation to cooperate provided in Section 7(d), SETTLOR agrees, at the request of GARRISON, to reasonably cooperate with GARRISON in connection with other activities pertaining to the Facility. Nothing set forth in this Section 7(g), however, shall be construed to obligate SETTLOR to pay GARRISON more than the Settlement Amount identified in Appendix A or to obligate SETTLOR to undertake removal or remedial actions at the Facility.

h. Notwithstanding any other provision of this Agreement, SETTLOR acknowledges that GARRISON will maintain a suit 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 AND GARRISON**

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

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

ii. SETTLOR has not knowingly altered, mutilated, discarded, destroyed, or otherwise disposed of any records or other information relating to his potential liability in connection with the Facility after notification of potential liability as a potentially responsible party at the Facility.

b. SETTLOR recognizes and agrees that his representations to GARRISON set forth herein constitute a material inducement to GARRISON to enter into this Agreement and that, but for such representations, GARRISON would not have entered into this Agreement.

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

i. GARRISON has not knowingly altered, mutilated, discarded, destroyed, or otherwise disposed of any records or other information relating to its potential liability in connection with the Facility after notification of potential liability as a potentially responsible party at the Facility.

d. GARRISON recognizes and agrees that its representations to SETTLOR set forth herein constitute a material inducement to SETTLOR to enter into this Agreement and that, but for such representations, SETTLOR would not have entered into this Agreement.

**9. REOPENER**

Notwithstanding any other provision of this Agreement, GARRISON maintains the right to seek further relief from SETTLOR in the event that Significant New Information is discovered demonstrating that SETTLOR arranged for the transport of E-Waste to the Facility or that SETTLOR was Affiliated with another non-settling, potentially responsible party in connection with this matter prior to the Effective Date. For purposes of this subsection, "Significant New Information" means any information not known by GARRISON as of the Effective Date relating to these matters.

**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 has against SETTLOR 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 has against GARRISON or GARRISON Beneficiaries for Non-Released Claims.

c. Nothing herein is intended to waive or release any of GARRISON'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, MS-SOUTH or MS-SOUTH 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, arranging, 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 date when the last Party to sign has executed the Agreement ("Effective Date").

## 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 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, 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 exceed the environmental investigation and cleanup costs, attorneys' fees, consultant fees, lost rent, and other costs incurred by GARRISON 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 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
110 N. Wacker Drive, Suite 3800
Chicago, IL 60606

**To SETTLOR**:

Moshe Silagi
Silagi Development & Management
101 Hodencamp Road, Suite 200
Thousand Oaks, CA 91360-5835

Loriann E. Fuhrer
Kegler, Brown, Hill & Ritter, Co., L.P.A.
65 E. state Street, Suite 1800
Columbus, OH 43215

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

KevinTreacy

Printed Name

11/10/2022

Date

**MOSHE SILAGI**

By: Moshe Silagi

Signature / Position

Moshe Silagi

Printed Name

12/19/2022

Date

**APPENDIX A**
**SETTLEMENT AMOUNT**

SETTLOR agrees to pay to GARRISON $200,000 as SETTLOR's 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 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 for an environmental cleanup at 1655/1675 Watkins Road, Columbus, Ohio 43207. Thank you for your attention to this matter.

Sincerely,

[SIGNATURE]

cc: Karl Heisler, King & Spalding LLP

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

GARRISON SOUTHFIELD PARK LLC,

Plaintiff,

v.

CLOSED LOOP REFINING AND RECOVERY, INC., *et al.*,

Defendants.

Case No. 2:17-cv-783-EAS-EPD

JUDGE EDMUND A. SARGUS, JR.

MAGISTRATE JUDGE
ELIZABETH PRESTON DEAVERS

# EXHIBIT B
## (Declaration of Plaintiff Garrison Southfield Park LLC)

**OF THE MOTION FOR APPROVAL OF THE SETTLEMENT AGREEMENT BETWEEN PLAINTIFF GARRISON SOUTHFIELD PARK LLC AND DEFENDANT MOSHE SILAGI**

**EXHIBIT B**

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

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

**DECLARATION OF KARL R. HEISLER IN SUPPORT OF MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT BETWEEN PLAINTIFF GARRISON SOUTHFIELD PARK LLC AND DEFENDANT MOSHE SILAGI**

Pursuant to 28 U.S.C. § 1746, Karl R. Heisler declares the following:

1. I offer this declaration in support of the settlement agreement between Plaintiff Garrison Southfield Park LLC ("Garrison") and Defendant Moshe Silagi (referred to as "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 110 N. Wacker Dr., Suite 3800, Chicago, IL 60606. 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 acquired two contiguous properties with warehouses located at 1655 and 1675 Watkins Road in Columbus, Ohio from MS-South LLC ("MS-South") on or about June 14, 2013, in exchange for good and valuable consideration, and thereafter assumed all right, title and interest. The acquisition included an assignment of all rights and obligations as landlord in connection with a lease agreement for 1675 Watkins Road that MS-South had entered into on or about April 6, 2012, with Closed Loop Refining and Recovery, Inc. ("Closed Loop"). MS-South has since been dissolved.

5. Closed Loop received, stockpiled, and abandoned cathode ray tubes and other electronic wastes ("E-Waste") at 1655 and 1675 Watkins Road ("the Facility"). Closed Loop's records indicate that it accepted E-Waste from April 2012 until March 2016, *i.e.*, for a period of about 47 months, of which about 13.5 months occurred during MS-South's ownership. Closed Loop also received, stockpiled, and abandoned E-Waste in a nearby warehouse owned by Plaintiff Olymbec USA LLC ("Olymbec") at 2200 Fairwood Avenue in Columbus, Ohio. Closed Loop abandoned all three warehouses in or around March 2016. The State of Ohio requested that Garrison and Olymbec negotiate joint settlements in which each potentially responsible party ("PRP") that arranged for the transport of E-Waste to any of the three warehouses pay one sum, because Closed Loop operated all three warehouses as a single facility.

6. AECOM, an environmental consultant, collected samples of the E-Waste at the Facility. 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 the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601(14).

7. Garrison retained environmental service providers and consultants to clean up the Facility pursuant to CERCLA by removing the E-Waste, lawfully recycling or disposing of it, and removing the lead dust deposited on the building's 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. Cleanup operations have now concluded. Based on the most recent project accounting, the total NCP-compliant response costs are estimated to be $17,137,530, which includes $4,060,940.57 for Fairwood Avenue and $13,076,589 for the Watkins Road properties.

8. 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 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 clean up. Garrison's counsel have negotiated with all PRPs that have expressed an interest in negotiations, including Settlor.

9. Garrison has negotiated settlements with all Defendants who have appeared in this case and has submitted these settlement agreements to the Court for approval. After accounting for the payments required by these and other settlements with PRPs, Garrison's and Olymbec's

combined response costs for cleaning up the three warehouses exceed the settlement payments that have been received or anticipated by $1,208,835 (referred to as the "orphan share"). Of this amount, 76% ($918,715) could be considered attributable to the Watkins Road properties, because the response costs for these two warehouses are 76% of the total response costs for the Facility. Because MS-South owned 1675 Watkins Road for 13.5 of the 47 months in which Closed Loop accepted E-waste, Garrison multiplied the $918,715 orphan share for the Watkins Road properties by 29%, calculating Settlor's responsibility for purposes of settlement to be $266,427. To account for the fact that Settlor never leased 1655 Watkins Road to Closed Loop, Garrison further agreed to an additional 25% downward adjustment from $266,427, based on a rough and conservative approximation of the weight of E-Waste abandoned at 1655 Watkins Road relative to 1675 Watkins Road. Garrison and Settlor have thereupon agreed to settle Garrison's claims against Settlor for $200,000.

10. The parties to the Settlement Agreement were represented in negotiations by independent counsel. The factors considered by Plaintiff in these negotiations included, but were not limited to, Plaintiff's evaluations of Settlor's potential liability, the strengths and weaknesses of the evidence pertaining to Plaintiff's claims, the defenses asserted by Settlor, the potential legal fees and costs if settlement did not occur, the amount of the response costs, and the formula described in Paragraph 9 above for allocating the orphan share between Garrison and Settlor. Based on these considerations, Garrison believes that the Settlement Agreement is fair, adequate, and reasonable.

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

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

Executed on December 13, 2022.

/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

JUDGE EDMUND A. SARGUS, JR.

MAGISTRATE JUDGE ELIZABETH PRESTON DEAVERS

# EXHIBIT C

## (Declaration on behalf of Defendant Moshe Silagi)

**OF THE MOTION FOR APPROVAL OF THE SETTLEMENT AGREEMENT BETWEEN PLAINTIFF GARRISON SOUTHFIELD PARK LLC AND DEFENDANT MOSHE SILAGI**

**EXHIBIT C**

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

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

**DECLARATION OF LORIANN E. FUHRER IN SUPPORT OF MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT BETWEEN PLAINTIFF GARRISON SOUTHFIELD PARK LLC AND DEFENDANT MOSHE SILAGI**

Pursuant to 28 U.S.C. § 1746, Loriann E. Fuhrer declares the following:

1. I offer this declaration in support of the settlement agreement between Plaintiff Garrison Southfield Park LLC ("Plaintiff") and Defendant Moshe Silagi ("Settlor"). I have personal knowledge of the facts stated herein.
2. The law firm of Kegler Brown Hill + Ritter Co., LLP represents Settlor in this matter. I am a director of this law firm and work in its Columbus office, which is located at 65 East State Street, Suite 1800, Columbus OH 43215. I am admitted to practice in this Court.
3. My familiarity with this matter arises out of my representation in this litigation of Settlor, who previously acted as the General Manager of MS-South LLC in a representative capacity.
4. The Settlement Agreement between Plaintiff and Settlor was negotiated independently by Plaintiff's counsel and Settlor's counsel.
5. In negotiating the Settlement Agreement, Settlor considered his evaluations of Settlor's

potential liability, the strengths and weaknesses of the evidence pertaining to Plaintiff's claims, the defenses asserted by Settlor, the potential legal fees and costs if settlement did not occur, the amount of response costs, and the potential allocation of the orphan share between Plaintiff and Settlor. Plaintiff and Settlor have agreed to settle Plaintiff's claims against Settlor for $200,000.

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

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

Executed on December 21, 2022.

/s/ *Loriann E. Fuhrer*
Loriann E. Fuhrer