UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: AUTOMOTIVE PARTS ANTITRUST LITIGATION	:	CASE NO. 12-MD-02311 HON. MARIANNE O BATTANI
In Re: FUEL INJECTION SYSTEMS	:	Case No. 2:13-cv-02201-MOB-MKM
	:	Case No. 2:15-cv-11827-MOB-MKM
THIS RELATES TO:	:	
	:	Case No. 2:15-cv-13423-MOB-MKM
ALL DIRECT PURCHASER ACTIONS	:	

DIRECT PURCHASER PLAINTIFF'S MOTION FOR AN AWARD OF ATTORNEYS' FEES, LITIGATION COSTS AND EXPENSES

Pursuant to Rules 23 and 54 of the Federal Rules of Civil Procedure, Direct Purchaser Plaintiff Vitec L.L.C. hereby moves the Court for an award of attorneys' fees and litigation costs and expenses from the proceeds of the settlements that have been reached with the MITSUBISHI ELECTRIC Defendants, the HIAMS Defendants, the MITSUBA Defendants, and the DENSO Defendants. In support of this motion, Direct Purchaser Plaintiff relies upon the accompanying memorandum of law and the Declarations attached thereto, which are incorporated by reference.

Dated: July 26, 2019

Respectfully submitted,

/s/ David H. Fink

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DIRECT PURCHASER PLAINTIFF'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR AN AWARD OF ATTORNEYS' FEES AND LITIGATION COSTS AND EXPENSES

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STATEMENT OF ISSUES PRESENTED

1. Should the Court award counsel for the direct purchasers attorneys' fees of 30% of the MITSUBISHI ELECTRIC, HIAMS, MITSUBA, and DENSO settlement funds?

   Suggested Answer: Yes.

2. Should the Court award counsel for the direct purchasers litigation costs and expenses from the settlement funds?

   Suggested Answer: Yes.

STATEMENT OF CONTROLLING OR MOST APPROPRIATE AUTHORITIES

Fed. R. Civ. P. 23(h)

Fed. R. Civ. P. 54(d)

Bowling v. Pfizer, Inc., 102 F.3d 777 (6th Cir. 1996)

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I. INTRODUCTION

Settlements in the direct purchaser *Fuel Injection Systems* case totaling $10,110,449 have been reached with: (a) Mitsubishi Electric Corporation, Mitsubishi Electric US Holdings, Inc., and Mitsubishi Electric Automotive America, Inc. ("MITSUBISHI ELECTRIC Defendants"); (b) Hitachi Automotive Systems, Ltd., Hitachi, Ltd., and Hitachi Automotive Systems Americas, Inc. ("HIAMS Defendants"); (c) Mitsuba Corporation and American Mitsuba Corporation ("MITSUBA Defendants"); and (d) DENSO Corporation, DENSO International America, Inc., DENSO Korea Corporation (f/k/a separately as DENSO International Korea Corporation and DENSO Korea Automotive Corporation), DENSO Automotive Deutschland GmbH, DENSO Products and Services Americas, Inc. (f/k/a DENSO Sales California, Inc.), ASMO Co., Ltd., ASMO North America, LLC, ASMO Greenville of North Carolina, Inc., and ASMO Manufacturing, Inc. ("DENSO Defendants") (collectively, the "Settling Defendants"). In addition to the monetary component, the settlements provide for cooperation in the prosecution of the litigation against the remaining Defendants.

Counsel representing direct purchasers ("DPP counsel") now respectfully move for an order: 1) awarding attorneys' fees of 30% of the settlement funds after deduction of reimbursed litigation costs and expenses; and 2) awarding $52,508.06 for litigation costs and expenses paid and incurred. For the reasons set forth herein, DPP counsel respectfully submit that the requested fee and expense awards are reasonable and fair under both well-established Sixth Circuit precedent concerning such awards in class action litigation and this Court's prior decisions awarding fees and expenses in the *Automotive Parts Antitrust Litigation*.

II. BACKGROUND AND SUMMARY OF WORK PERFORMED TO DATE

The *Fuel Injection Systems* case is part of the *Automotive Parts Antitrust Litigation* that was centralized in this Court by the Judicial Panel on Multidistrict Litigation in 2012. The background of the *Fuel Injection Systems* case is set forth in the related Memorandum in Support of Direct Purchaser Plaintiff's Motion for Final Approval of Proposed Settlements, which was filed on July 27, 2019, and will not be fully repeated here. The first case was filed in 2015, and the settlements were reached in 2018 and 2019. The litigation continues against the remaining Defendants.

In this case, DPP counsel have:

- Investigated the industry and drafted complaints against the Defendants;
- Participated in cooperation meetings with counsel for the DOJ amnesty applicant;
- Reviewed and analyzed Defendant documents related to the claims;
- Negotiated the terms of the settlements with the Settling Defendants and prepared the settlement agreements;
- Drafted the settlement notices, orders, and the preliminary and final approval motions and briefs; and
- Worked with the claims administrator to design and send the class notices and to create and maintain a settlement website.

Throughout the case DPP counsel have sought to avoid duplication of efforts among the attorneys and to work cooperatively and efficiently with defense counsel and the Court.

III. CLASS NOTICE

On June 27, 2019, the Notice of Proposed Settlements of Direct Purchaser Class Action with the MITSUBISHI ELECTRIC, HIAMS, MITSUBA, and DENSO Defendants and Hearing on Settlement Approval and Related Matters ("Notice") was mailed, postage prepaid, to all potential members of the Settlement Classes that were identified by Defendants. On July 1, 2019,

a Summary Notice of Proposed Settlements of Direct Purchaser Class Action with MITSUBISHI ELECTRIC, HIAMS, MITSUBA, and DENSO Defendants and Hearing on Settlement Approval and Related Matters (the "Summary Notice") was published in *Automotive News*, an online banner notice appeared over a 21-day period on www.AutoNews.com (the digital version of *Automotive News*), and an Informational Press Release was issued nationwide via PR Newswire's "Auto Wire," which targets auto industry trade publications. A copy of the Notice has also been posted on-line at www.autopartsantitrustlitigation.com.[1]

As required by Fed. R. Civ. P. 23(h), the Notice informed the Settlement Class Members that DPP counsel would request an award of attorneys' fees of up to 30% of the settlement funds and reimbursement of litigation costs and expenses. (Notice at 1, 2, 5). It also explained how Settlement Class Members could exclude themselves or object to the requests. *Id*. at 1, 2, 4, 5.

The deadline for objections or requests for exclusion is August 16, 2019. To date, there have been no objections or requests for exclusion. DPP counsel will provide the Court with a final report on any objections or requests for exclusion before the Fairness Hearing.

IV. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE

Federal Rule of Civil Procedure 23(h) provides that "[i]n a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." As discussed above, DPP counsel have complied with the requirements of Rule 23(h)(1) and (2) (notice to the class of the attorneys' fees request and an opportunity to object). What remains for the Court to determine is whether the requested fee is reasonable and

[1] Counsel for MITSUBISHI ELECTRIC, HIAMS, MITSUBA, and DENSO have informed Settlement Class Counsel that the requisite notice was sent to the appropriate federal and state officials under the Class Action Fairness Act of 2005.

fair to the class members and DPP counsel under the circumstances. As discussed below, DPP counsel believe their attorneys' fee request of 30% of the settlement funds is fair and reasonable under the circumstances and well-supported by applicable law.

A. THE PERCENTAGE-OF-THE-RECOVERY METHOD PREVIOUSLY EMPLOYED BY THE COURT IN THIS MDL IS APPROPRIATE FOR ASSESSING THE FEE REQUEST.

As the Court has previously observed, Sixth Circuit law gives district courts discretion to select an appropriate method for determining the reasonableness of attorneys' fees in class actions. *In re Automotive Parts Antitrust Litig.*, 2016 WL 8201516, at *1 (E.D. Mich. Dec. 28, 2016) (citations omitted). *See generally Gascho v. Global Fitness Holdings, LLC*, 822 F.3d 269, 279 (6th Cir. 2016) (discussing the advantages and disadvantages of the two methods). In this MDL, the Court has used the percentage-of-the-fund method. *E.g., In re Automotive Parts Antitrust Litig.*, 2016 WL 8201516, at *1 (collecting cases) (holding that "the percentage-of-the-fund … method of awarding attorneys' fees is preferred in this district because it eliminates disputes about the reasonableness of rates and hours, conserves judicial resources, and aligns the interests of class counsel and the class members"). The percentage-of-the-fund method has been used in numerous other cases in the Sixth Circuit. *See Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993); *In re Packaged Ice Antitrust Litig.,* 2011 WL 6209188, at *21 (E.D. Mich. Dec. 13, 2011); In *re Delphi Corp. Sec. Derivative & ERISA Litig.*, 248 F.R.D. 483, 502 (E.D. Mich. 2008). DPP counsel respectfully request that the Court employ the percentage-of-the-fund approach in this case, as it has in the other DPP cases.

B. THE REQUESTED FEE CONSTITUTES A FAIR AND REASONABLE PERCENTAGE OF THE SETTLEMENT FUND.

DPP counsel respectfully request a fee of 30% of the proceeds of the settlement funds that were created by their efforts for the benefit of the Settlement Classes. As detailed below, there is substantial precedent to support the requested fee.

A 30% fee is well within the range of fee awards approved as reasonable by this Court and many others. To date in the *Automotive Parts Litigation*, the Court has approved several fee awards of 33⅓% of the settlement fund in question, finding that percentage to be reasonable. *In re Automotive Parts Antitrust Litig.*, 2016 WL 8201516, at *2 (E.D. Mich. Dec. 28, 2016) (awarding counsel for the Truck and Equipment Dealer Plaintiffs 33.33% of a $4,616,499 settlement fund in the *Wire Harness* and *Occupant Safety Systems* cases); 12-cv-00102-MOB-MKM, Doc. 401 (awarding counsel for the Auto Dealer Plaintiffs 33.33% of a $55,500,504 settlement fund in *Wire Harness*).

The requested 30% award is also consistent with a wealth of authority from courts in the Sixth Circuit (and others) approving class action fees in the range of 30% to one-third of a common fund. *See Bessey v. Packerland Plainwell, Inc*., 2007 WL 3173972, at *4 (W.D. Mich. 2007) ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery") (internal quotation marks omitted); *Thacker v. Chesapeake Appalachia, L.L.C.,* 695 F. Supp. 2d, 521, 528 (E.D. Ky. 2010) ("Using the percentage approach, courts in this jurisdiction and beyond have regularly determined that 30% fee awards are reasonable"). District courts in the Sixth Circuit and elsewhere have awarded 30% or more of settlement funds as reasonable attorneys' fees in antitrust cases. For example, this Court awarded 30% of the settlement funds in *Wire Harness* to Direct Purchaser Plaintiffs' Counsel. Doc. 495 in 2:12-cv-00101. Other courts have also awarded fees representing

30% or more of settlement funds. *See, e.g.*, *In re Prandin Direct Purchaser Antitrust Litig.*, 2015 WL 1396473 (E.D. Mich. Jan. 20, 2015) (one-third of $19 million fund); *In re Skelaxin (Metaxalone) Antitrust Litig.*, 2014 WL 2946459, *1 (E.D. Tenn. Jun. 30, 2014) (one-third of $73 million fund); *In re Southeastern Milk Antitrust Litig.*, 2013 WL 2155387, at *8 (E.D. Tenn. May 17, 2013) (one-third of $158.6 million fund); *In re Foundry Resins Antitrust Litig.,* Case No. 2:04-md-1638 (S.D. Ohio Mar. 31, 2008) (one-third of $14.1 million fund); *In re Polyurethane Foam Antitrust Litig.,* 2015 WL 1639269, at *7 (N.D. Ohio Feb. 26, 2015) (30% of a $147.8 million fund); *In re Refrigerant Compressors Antitrust Litig.,* MDL No. 2:09-md-02042 (E.D. Mich. June 16, 2014) (30% of $30 million fund). DPP counsel's fee request of 30% of the settlement funds is fully supported by these and many other decisions.[2]

[2] *See, e.g., In re Domestic Drywall Antitrust Litig.*, 2018 WL 3439454, at *20 (E.D. Pa. July 17, 2018) (awarding one-third of $190 million settlement and $2.95 million in expenses); *In re Plasma-Derivative Protein Therapies Antitrust Litig.*, 1:09-cv-07666 (N.D. Ill. Jan. 22, 2014) (awarding one-third interim fee from initial settlement in multi-defendant case); *Standard Iron Works v. Arcelormittal,* 2014 WL 7781572, at *1 (N.D. Ill. Oct. 22, 2014) (attorneys' fee award of one-third of $163.9 million settlement); *In re Fasteners Antitrust Litig.*, 2014 WL 296954, *7 (E.D. Pa. Jan. 27, 2014) ("Co–Lead Counsel's request for one third of the settlement fund is consistent with other direct purchaser antitrust actions."); *In re Titanium Dioxide Antitrust Litig.,* 2013 WL 6577029, at *1 (D. Md. Dec. 13, 2013) (one-third fee from $163.5 million fund); *In re Flonase Antitrust Litig.*, 951 F. Supp. 2d 739, 748-52 (E.D. Pa. 2013) (noting that "in the last two-and-a-half years, courts in eight direct purchaser antitrust actions approved one-third fees," and awarding one-third fee from $150 million fund, a 2.99 multiplier); *In re Linerboard Antitrust Litig.,* 2004 WL 1221350 (E.D. Pa., June 2, 2004) (30% of $202 million fund awarded, a 2.66 multiplier); *In re OSB Antitrust Litig.,* Master File No. 06-826 (E.D. Pa.) (fee of one-third of $120 million in settlement funds); *Heekin v. Anthem, Inc.*, 2012 WL 5878032 (S.D. Ind. Nov. 20, 2012) (awarding one-third fee from $90 million settlement fund); *In re Ready-Mixed Concrete Antitrust Litig.*, 2010 WL 3282591, at *3 (S.D. Ind. Aug. 17, 2010) (approving one-third fee); *Williams v. Sprint/United Mgmt. Co,* 2007 WL 2694029, at *6 (D. Kan., Sept. 11, 2007) (awarding fees equal to 35% of $57 million common fund); *Lewis v. Wal-Mart Stores, Inc.,* 2006 WL 3505851, at *1-2 (N.D. Okla., Dec. 4, 2006) (awarding one-third of the settlement fund and noting that a "one-third [fee] is relatively standard in lawsuits that settle before trial."); *New England Health Care Employees Pension Fund v. Fruit of the Loom, Inc.,* 234 F.R.D. 627, 635 (W.D. Ky. 2006) ("[A] one-third fee from a common fund case has been found to be typical by several courts.") (citations omitted), *aff'd*, 534 F.3d 508 (6th Cir. 2008); *In re AremisSoft Corp., Sec. Litig.,* 210 F.R.D. 109, 134 (D.N.J. 2002) ("Scores of cases exist where fees were awarded in the one-third to one-half of

C. THE FACTORS IDENTIFIED BY THE SIXTH CIRCUIT SUPPORT THE REQUESTED FEE.

Once the Court has selected a method for awarding attorneys' fees, the next step is to consider the six factors the Sixth Circuit has identified to guide courts in weighing a fee award in a common fund case. The factors are: 1) the value of the benefit rendered to the class; 2) the value of the services on an hourly basis; 3) whether the services were undertaken on a contingent fee basis; 4) society's stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others; 5) the complexity of the litigation; and 6) the professional skill and standing of counsel involved on both sides. *E.g., Bowling v. Pfizer, Inc.,*102 F.3d 777, 780 (6th Cir. 1996); *In re Wire Harness Cases*, 2:12-cv-00101 (E.D. Mich.) (Doc.495), at 3-5. When applied to the facts of this case, these factors indicate that the requested fee constitutes fair and reasonable compensation for DPP counsel's efforts in creating the settlement fund.

1. DPP COUNSEL OBTAINED VALUABLE BENEFITS FOR THE CLASSES.

The result achieved for the class is the principal consideration when evaluating a fee request. *E.g., Delphi,* 248 F.R.D. at 503. Here, as more fully discussed in Plaintiff's memorandum in support of final approval of the settlements, DPP counsel have achieved an excellent recovery of $10,110,449 for the Settlement Classes.[3]

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the settlement fund.") (citations omitted); *Klein v. PDG Remediation, Inc.,* 1999 WL 38179, at *4 (S.D.N.Y., Jan. 28, 1999) ("33% of the settlement fund…is within the range of reasonable attorney fees awarded in the Second Circuit"); *Moore v. United States,* 63 Fed. Cl. 781, 787 (2005) ("one-third is a typical recovery"); *In re FAO Inc. Sec. Litig.*, 2005 WL 3801469, at * 2 (E.D. Pa., May 20, 2005) (awarding fees of 30% and 33%); *Godshall v. Franklin Mint Co.*, 2004 WL 2745890, at *5 (E.D. Pa., Dec. 1, 2004) (awarding a 33% fee and noting that "[t]he requested percentage is in line with percentages awarded in other cases"); *In re Gen. Instrument Sec. Litig.*, 209 F. Supp. 2d 423, 433-44 (E.D. Pa. 2001) (awarding one-third of a $48 million settlement fund).

[3] The MITSUBISHI ELECTRIC settlement is subject to rescission based on the number of valid requests for exclusion.

2. THE VALUE OF THE SERVICES ON AN HOURLY BASIS CONFIRMS THAT THE REQUESTED FEE IS REASONABLE.

When fees are awarded using the percentage-of-the-fund method, this Court and others have applied a lodestar "cross-check" on the reasonableness of a fee calculated as a percentage of the fund. *In Re Cardinal Health Inc. Sec. Litig.*, 528 F. Supp. 2d 752, 767 (S.D. Ohio 2007); *In re Packaged Ice Antitrust Litig.,* 2011 WL 6209188, at *18. Use of a lodestar cross-check is optional, however, and because it is only a check, the court is not required to engage in a detailed review and evaluation of time records. *Cardinal*, 528 F. Supp. 2d at 767. Here, the amount of time DPP counsel have expended since the inception of the case in 2015 makes clear that the fee requested is well "aligned with the amount of work the attorneys contributed" to the recovery and does not constitute a "windfall." *See id.*

To calculate the lodestar, a court first multiplies the number of hours counsel reasonably expended on the case by their reasonable hourly rate. *See Isabel v. City of Memphis*, 404 F.3d 404, 415 (6th Cir. 2005). Here, as described above, a substantial amount of time has been spent by DPP counsel litigating the case and achieving the settlement. The work DPP counsel performed was managed with an eye toward efficiency and avoiding duplication.

As the Declarations submitted by the law firms set forth,[4] DPP counsel have spent 4,811.65 hours from the inception of the case through June 30, 2019. Applying the historical rates charged by counsel to the hours expended yields a lodestar value of $2,393,029.[5] Assuming that the MITSUBISHI ELECTRIC settlement is not rescinded, the requested fee would translate into DPP

[4] The Declarations are attached as Exhibit 1.

[5] The Supreme Court has held that the use of current rates, as opposed to historical rates, is appropriate to compensate counsel for inflation and the delay in receipt of the funds. *Missouri v. Jenkins*, 491 U.S. 274, 282-84 (1989); *see also Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 483 U.S. 711, 716 (1987). DPP counsel have nevertheless submitted their lodestar information at their lower historical rates, rather than at their current (higher) rates.

counsel receiving a multiplier on their lodestar of 1.26. If the Court were to award the requested fee, the multiplier would be at the low end of the normal range. *See Cardinal*, 528 F. Supp. 2d at 767-68 (approving multiplier of 6 and observing that "[m]ost courts agree that the typical lodestar multiplier" in a large class action "ranges from 1.3 to 4.5."); *Prandin,* 2015 WL 1396473, at *4 (3.01 multiplier).

The work done by DPP counsel is described above and in the separate firm Declarations. DPP counsel submit that the hours expended on this case since inception, while substantial, were reasonable and necessary. Indeed, one of the recognized benefits of using the percentage-of-the-fund method is that it better aligns the interests of class counsel with the interests of class members and eliminates any incentive to unnecessarily expend hours. Here, DPP counsel efficiently achieved an excellent recovery for the class members without burdening the Court or the parties with unnecessary expenditures of time, effort, or money.

3. THE REQUESTED FEE IS FAIR AND REASONABLE GIVEN THE REAL RISK THAT DPP COUNSEL COULD HAVE RECEIVED NO COMPENSATION FOR THEIR EFFORTS.

The Defendants are represented by highly experienced and competent counsel. Absent the settlements, the settling Defendants and their counsel were prepared to defend this case through trial and appeal. Litigation risk is inherent in every case, and this is particularly true with respect to class actions. Therefore, while the Plaintiff is optimistic about the outcome of this litigation, it must acknowledge the risk that the Defendants could prevail on certain legal or factual issues, which could result in reducing or eliminating any potential recovery.

The risk factor attempts to compensate class counsel in contingent fee litigation for having taken on the risk of receiving less than their normal hourly rates, or even nothing at all. *See, e.g. Jones v. Diamond*, 636 F.2d 1364, 1382 (5th Cir. 1981), *overruled on other grounds*, *Int'l*

Woodworkers of Am. AFL-CIO and its Local No. 5-376 v. Champion Intern. Corp., 790 F.2d 1174 (5th Cir. 1986); *In re Packaged Ice Antitrust Litig.,* 2011 WL 6209188, at *19 (risk of non-payment a factor supporting the requested fee). While there were guilty pleas to antitrust violations with respect to certain fuel injection system parts sold to certain customers, the Department of Justice did not seek recovery for the class members, leaving that up to DPP counsel. As this Court has observed, success is not guaranteed even in those instances where a settling defendant has pleaded guilty in a criminal proceeding brought by the DOJ, which is not required to prove impact or damages. *See, e.g., In re Automotive Parts Antitrust Litig.,* 12-MD-02311, 2:12-cv-00103, at 11 (E.D. Mich. June 20, 2016) (Doc. No. 497).

When they commenced this case back in 2015 there was certainly a risk that DPP counsel would recover nothing, or an amount insufficient to support a fee that equaled their lodestar. Therefore, the risk of non-payment is another factor that supports the requested fee. *In re Wire Harness Cases*, 2:12-cv-00101, at 4 (E.D. Mich.) (Doc. 495).

4. SOCIETY HAS AN IMPORTANT STAKE IN THIS LAWSUIT AND IN AN AWARD OF REASONABLE ATTORNEYS' FEES.

It is well established that there is a "need in making fee awards to encourage attorneys to bring class actions to vindicate public policy (e.g., the antitrust laws) as well as the specific rights of private individuals." *In re Folding Carton Antitrust Litig.*, 84 F.R.D. 245, 260 (N.D. Ill. 1979). Courts in the Sixth Circuit weigh "society's stake in rewarding attorneys who [win favorable outcomes in antitrust class actions] in order to maintain an incentive to others . . . Society's stake in rewarding attorneys who can produce such benefits in complex litigation such as in the case at bar counsels in favor of a generous fee . . . Society also benefits from the prosecution and settlement of private antitrust litigation." *In re Cardizem*, 218 F.R.D. 508, 534 (E.D. Mich. 2003) (internal quotation marks omitted). *Accord, Delphi,* 248 F.R.D. at 504.

The DOJ did not seek restitution from the settling Defendants because it has recognized that civil cases potentially provide for the recovery of damages by injured purchasers. In this regard, the substantial recovery DPP counsel have obtained makes it clear that antitrust violations will be the subject of vigorous private civil litigation to deter similar future conduct. Since society gains from competitive markets that are free of collusion, DPP counsel's work benefitted the public.

5. THE COMPLEXITY OF THIS CASE SUPPORTS THE REQUESTED FEE.

The Court is well aware that "[a]ntitrust class actions are inherently complex . . .." *In re Cardizem*, 218 F.R.D. at 533. S*ee also In re Packaged Ice Antitrust Litig.,* 2011 WL 6209188, at *19; *In re Linerboard Antitrust Litig.,* 292 F.Supp.2d 631, 639 (E.D. Pa. 2003) ("An antitrust class action is arguably the most complex action to prosecute. The legal and factual issues involved are always numerous and uncertain in outcome.") (citations and internal quotation marks omitted). This case is no exception.

6. SKILL AND EXPERIENCE OF COUNSEL

The skill and experience of counsel on both sides of the "v" is another factor that courts may consider in determining a reasonable fee award. *E.g., Polyurethane Foam,* 2015 WL 1639269, at * 7; *Packaged Ice,* 2011 WL 6209188, at *19. When the Court appointed Kohn, Swift & Graf, P.C.; Preti, Flaherty, Beliveau & Pachios, L.L.P.; Freed Kanner London & Millen, L.L.C.; and Spector Roseman & Kodroff, P.C. as Interim Lead Counsel, it recognized that they have the requisite skill and experience in class action and antitrust litigation to effectively prosecute these claims. When assessing this factor, courts may also look to the qualifications of the defense counsel opposing the class. Here, the quality of defense counsel is top-notch. Each firm has an excellent reputation in the antitrust bar, significant experience, and extensive resources at its disposal.

But in the final analysis, as more than one court has observed, "[t]he quality of work performed in a case that settles before trial is best measured by the benefit obtained." *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 547-48 (S.D. Fla. 1988), *aff'd*, 899 F.2d 21 (11th Cir 1990). As explained *supra*, a very substantial cash benefit was obtained for the Settlement Classes in this case, which provides the principal basis for awarding the attorneys' fees sought by DPP counsel.

Given the excellent result achieved, the complexity of the claims and defenses, the work performed by DPP counsel, the real risk of non-recovery (or recovery of less than the amount of the settlement funds), formidable defense counsel, the delay in receipt of payment, the substantial experience and skill of DPP counsel, the negative multiplier on the lodestar, and the societal benefit of this litigation, a 30% attorneys' fee award from the settlement funds would be reasonable compensation for DPP counsel's work.

V. THE COURT SHOULD AUTHORIZE INTERIM LEAD COUNSEL TO DETERMINE FEE ALLOCATIONS.

DPP counsel have worked collectively on this litigation under the supervision of Interim Lead Counsel appointed by the Court. This Court and courts generally have approved joint fee applications that request a single aggregate fee award, with allocations to specific firms to be determined by the lead counsel who know the most about the work done by each firm and the relative contribution each firm has made to the success of the litigation.[6] Interim Lead Counsel have directed this case from its inception and are best "able to describe the weight and merit of each [counsel's] contribution." *In re Linerboard Antitrust Litig.*, 2004 WL 1221350, at *17-18 (citation omitted, alteration in original); *see also In re Copley Pharm*., *Inc. Albuterol Prods. Liab.*

[6] *See, e.g., In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 533 n.15 (3d Cir. 2004) (noting "the accepted practice of allowing counsel to apportion fees amongst themselves"); *In re Domestic Air Transp. Antitrust Litig*., 148 F.R.D. 297, 357 (N.D. Ga. 1993) ("Ideally, allocation is a private matter to be handled among class counsel").

Litig., 50 F.Supp.2d 1141, 1148 (D. Wy. 1999), *aff'd*, 232 F.3d 900 (10th Cir. 2000). From an efficiency standpoint, leaving the allocation to Interim Lead Counsel makes good sense, because it relieves the Court of the "difficult task of assessing counsels' relative contributions." *In re Prudential Ins. Co. Amer. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 329 n. 96 (3d Cir. 1998); *see also In re Cendant Corp. Sec. Litig*., 404 F.3d 173 (3d Cir. 2005) (lead counsel given substantial authority to allocate fees awarded by Court).

DPP counsel therefore request that the Court approve the aggregate amount of the fees requested, with the specific allocation of the fee among firms to be performed by Interim Lead Counsel. *See Polyurethane Foam, supra.* To the extent that there are disputes that cannot be resolved by counsel, the Court would retain the jurisdiction necessary to decide them. *See In re Automotive Refinishing Paint Antitrust Litig.,* 2008 WL 63269, at *8 (E.D. Pa. Jan. 3, 2008).

VI. REIMBURSEMENT OF LITIGATION COSTS AND EXPENSES

DPP counsel respectfully request an award of litigation costs and expenses in the amount of $52,508.06. Expenses for telephone calls, faxes, and copying are not included. As the court stated in *In re Cardizem*, "class counsel is entitled to reimbursement of all reasonable out-of-pocket litigation expenses and costs in the prosecution of claims and in obtaining settlement, including expenses incurred in connection with document productions, … travel and other litigation-related expenses." 218 F.R.D. at 535.

The out-of-pocket expenses paid by each law firm are set forth in the Declarations attached as Exhibit 1. These expenses were reasonable and necessary to pursue the case and to obtain the substantial settlements reached in this litigation.

VII. CONCLUSION

For the foregoing reasons, the Direct Purchaser Plaintiff respectfully requests that the Court grant its Motion for an Award of Attorneys' Fees and Litigation Costs and Expenses.

Dated: July 26, 2019

Respectfully submitted,

/s/ David H. Fink

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CERTIFICATE OF SERVICE

I hereby certify that on July 26, 2019, I electronically filed the foregoing document with the Clerk of the court using the ECF system, which will send notification of such filing to all counsel of record registered for electronic filing.

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