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

IN RE AUTOMOTIVE PARTS ANTITRUST LITIGATION	:	Master File No. 12-md-02311 Honorable Sean F. Cox
IN RE: BEARINGS CASES	:	
THIS DOCUMENT RELATES TO: DIRECT PURCHASER ACTIONS	:	2:12-cv-00501-SFC-RSW 2:15-cv-12068-SFC-RSW 2:15-cv-13932-SFC-RSW 2:15-cv-13945-SFC-RSW

DIRECT PURCHASER PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES AND LITIGATION COSTS AND EXPENSES

Pursuant to Rules 23 and 54 of the Federal Rules of Civil Procedure, Direct Purchaser Plaintiffs DALC Gear & Bearing Supply Corp., McGuire Bearing Company, Sherman Bearings, Inc., and Bearing Service, Inc. ("Plaintiffs") move the Court for an award of attorneys' fees and litigation costs and expenses from the proceeds of the $37,500,000 settlement with Defendants JTEKT Corporation; JTEKT North America Corporation (formerly Koyo Corporation of U.S.A.); Koyo France SA; Koyo Deutschland GmbH; Nachi-Fujikoshi Corp.; Nachi America Inc.; Nachi Technology, Inc.; Nachi Europe GmbH; NSK Ltd.; NSK Americas, Inc.; NSK Europe Ltd.; NSK Corporation; NTN Corporation; NTN USA Corporation; NTN Wälzlager (Europa) GmbH; NTN-SNR Roulements SA; AB SKF; SKF GmbH; and SKF USA Inc. The grounds supporting this motion are set forth in the accompanying memorandum of law.

Dated: April 16, 2021

Respectfully submitted,

/s/ David H. Fink

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MEMORANDUM OF LAW IN SUPPORT OF DIRECT PURCHASER PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES AND LITIGATION COSTS AND EXPENSES

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STATEMENT OF ISSUES PRESENTED

1. Whether the Court should award Plaintiffs' counsel attorneys' fees of one-third of the settlement amount; and

2. Whether the Court should award Plaintiffs' counsel litigation costs and expenses from the settlement amount.

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)

Rawlings v. Prudential-Bache Properties, Inc.,
9 F.3d 513 (6th Cir. 1993)

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I. INTRODUCTION

Through the efforts of the Plaintiff class representatives and Plaintiffs' counsel, a settlement of $37,500,000 has been reached with the JTEKT, Nachi, NSK, NTN, and SKF Defendants (the "Settling Defendants") in the *Bearings* direct purchaser case (the "Action").

Plaintiffs now respectfully move for an order: (1) awarding the law firms responsible for obtaining the settlement attorneys' fees of one-third of the settlement amount; and (2) awarding $2,692,068.76[1] in litigation costs and expenses incurred in the prosecution of this litigation. For the reasons set forth herein, Plaintiffs' counsel respectfully submit that the requested fee and expenses are reasonable and fair under both well-established Sixth Circuit precedent concerning such awards in class action litigation and prior decisions awarding fees and expenses in the *Automotive Parts Antitrust Litigation*.

II. BACKGROUND AND SUMMARY OF WORK PERFORMED TO DATE

The *Bearings* case is part of the overall *Automotive Parts Antitrust Litigation* that was centralized in this Court by the Judicial Panel on Multidistrict Litigation in 2012. The background of the *Bearings* case is set forth in the Memorandum in Support of Direct Purchaser Plaintiffs' Motion for Final Approval of Proposed Settlement, which was filed on April 16, 2021.

In summary, during the course of this nine-year litigation, Plaintiffs' counsel have:

- Researched and investigated the bearings industry and drafted complaints;
- Successfully opposed multiple motions to dismiss;
- Prepared requests to produce documents, interrogatories and subpoenas;
- Engaged in several complex and lengthy meet and confers with each Defendant related to Defendants' responses to interrogatories, custodians, document preservation, and documents and data to be produced;

[1] *See* individual law firm Declarations and the Declaration of Co-Lead Settlement Class Counsel attached respectively as Exhibits 1 and 2.

- Reviewed, analyzed, and coded millions of pages of documents produced by Defendants, in multiple languages, including but not limited to a significant number of documents in Japanese;

- Reviewed and prepared the named plaintiffs' documents for production to Defendants;

- Prepared for, took, and defended more than eighty depositions, including of fact (both corporate knowledge and individual) and expert witnesses, over the course of more than one hundred days, in multiple locations in the United States and Japan;

- Prepared for and defended 11 depositions of the named plaintiffs conducted by Defendants over 12 days, and of 6 depositions of Plaintiffs' experts;

- Prepared class certification motions and replies;

- Reviewed and analyzed Defendants' oppositions to the class certification motions;

- Reviewed and analyzed Defendants' expert reports;

- Worked closely with experts in connection with their reports;

- Drafted a *Daubert* motion against a defense expert;

- Opposed multiple *Daubert* motions filed against Plaintiffs' experts;

- Prepared for and presented a class certification motion, and opposed *Daubert* motions, at a hearing;

- Prepared for a second class certification hearing;[2]

- Drafted mediation statements;

- Engaged in extensive settlement negotiations with Defendants' counsel, including at times with two court-appointed mediators;

- Prepared the settlement agreement with the Defendants, and the settlement notices, orders, and the preliminary and final approval motion and memorandum in support of the settlement and allocation and distribution plan; and

[2] The class certification hearing originally scheduled for April 15, 2020 was cancelled by the Court (*Text-only Notice*, entered March 24, 2020).

- Worked with the claims administrator to design and disseminate the class notices and a claim form, and to create and maintain a settlement website.

Plaintiffs' counsel pursued the claims for many years. Their commitment to the litigation eventually resulted in a settlement that provides significant cash benefits to the class.

III. CLASS NOTICE

On March 11, 2021, a notice approved by the Court was mailed to potential members of the settlement class. The Notice was also posted on-line at www.autopartsantitrustlitigation.com/BearingsDistributor. On March 22, 2021, a summary notice was published in *Automotive News*, and an Informational Press Release was issued nationwide via PR Newswire's "Auto Wire," which targets auto industry trade publications, and via PR Newswire's "Machinery and Equipment" microlist. Finally, a copy of the notice was (and remains) posted online at www.autopartsantitrustlitigation.com/BearingsDistributor.

As required by Fed. R. Civ. P. 23(h), the notice informed settlement class members that Plaintiffs' counsel would request an award of attorneys' fees of up to one-third of the settlement fund and reimbursement of expenses (Notice at 4). It also explained how settlement class members could exclude themselves or object to the requests. *Id*. at 4-5.

The deadline for objections or requests for exclusion is May 5, 2021. To date, there have been no objections to either the settlement or the fee or expense request, or any requests for exclusion from the settlement class. Plaintiffs' counsel will provide the Court with a final report on any objections or requests for exclusion before the settlement hearing.

IV. PLAINTIFFS' COUNSEL'S EFFORTS RESULTED IN SIGNIFICANT BENEFIT TO THE SETTLEMENT CLASS

The direct purchaser *Bearings* case has been the most thoroughly litigated action in the *Automotive Parts* MDL—progressing from the initial complaints filed by the class representatives

in 2012 (that were consolidated to become the direct purchaser action, *In re Bearings Cases*, 2:12-cv-00501) through discovery and contested class certification and *Daubert* motions to the Sixth Circuit. The complaints alleged that Defendants engaged in a conspiracy that affected all of Defendants' customers—distributors and original equipment manufacturers. Plaintiffs claimed that the Defendants responded to steel price increases by agreeing to raise all bearings prices, and the discovery and class certification proceedings that followed were geared towards proving that contention on a class-wide basis.

After the Court denied Defendants' motions to dismiss and the parties conducted a significant amount of discovery, Plaintiffs moved for certification of a class of all direct purchasers of bearings from the Defendants in the United States from April 1, 2004 through December 31, 2014 (Doc. No. 221). The class motion was supported by evidence obtained in discovery and multiple reports submitted by Plaintiffs' econometric, economic, and industry experts. Defendants opposed the class certification motion and filed *Daubert* motions to exclude all or a portion of the opinions of Plaintiffs' experts. While finding Plaintiffs' experts' opinions admissible at trial, the Court denied the class motion (Doc. No. 381) on January 7, 2019. Plaintiffs' Rule 23(f) motion for leave to appeal was also denied. *In re Automotive Parts Antitrust Litig.*, No, 19-0101 (6th Cir. Apr. 1, 2019).

Subsequently, the Court allowed Plaintiffs to file a renewed motion for certification of a class limited to bearings distributors. (Doc. Nos. 404 (filed under seal), 405; 414 (corrected, filed under seal), 415 (corrected)). The motion was accompanied by extensive declarations from Plaintiffs' economic and statistical experts—Drs. James Langenfeld and James McClave, respectively. On December 13, 2019, Defendants filed their opposition to Plaintiffs' renewed motion for class certification (Doc. Nos. 418 (filed under seal), 423), moved to partially exclude

the expert report and testimony of Dr. Langenfeld (Doc. No. 424 (filed under seal)), and moved to partially exclude the expert report and testimony of Dr. McClave (Doc. No. 425 (filed under seal)).

After expert discovery was conducted by the parties, Plaintiffs filed their class reply brief (Doc. Nos. 442 (filed under seal), 443), and their oppositions to Defendants' *Daubert* motions (Doc. Nos. 438 (filed under seal), 439; 440 (filed under seal), 441). These briefs were accompanied by reply reports from Plaintiffs' experts that addressed the contentions of Defendants' experts. On April 13, 2020, Defendants filed their two replies in support of their *Daubert* motions (Doc. Nos. 461, 462), accompanied by a lengthy reply declaration of their expert. On May 11, 2020, Defendants moved for leave to submit supplemental authority in further opposition to Plaintiffs' motion for class certification (Doc. No. 466), which Plaintiffs opposed on May 22, 2020 (Doc. Nos. 470 (filed under seal), 471); Defendants filed their reply on May 29, 2020 (Doc. Nos. 472, 473 (filed under seal)). The Court had scheduled a hearing on the class and *Daubert* motions for April 15, 2020, and Plaintiffs prepared for the hearing. The April 15 hearing was subsequently canceled, and the parties were awaiting a new date.

In the summer of 2020, Plaintiffs renewed settlement discussions with the SKF, NSK, JTEKT, NTN, and Nachi Defendants. After years of discussions and ultimately the engagement of mediator James Quinn, a settlement was reached in November 2020. Thereafter, Plaintiffs' counsel prepared and executed the settlement agreement. Working with the settlement administrator, Plaintiffs' counsel prepared and disseminated settlement notices and a claim form. The preliminary and final settlement approval papers were drafted and filed. The final fairness hearing on the settlement and the motion for an award of attorneys' fees and litigation expenses is scheduled for June 10, 2021.

No other case in the *Automotive Parts* MDL required counsel for any single group of plaintiffs to take on the level of burden and attendant risk—both in terms of the tens of thousands of hours and millions of dollars in expenses that Plaintiffs' counsel has assumed in the *Bearings* case. Plaintiffs' counsel's determination resulted in a $37,500,000 million settlement for the class.

V. 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, Plaintiffs' counsel 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 fair to the class members and Plaintiffs' counsel under the circumstances of this case. As discussed below, Plaintiffs' counsel's fee request of one-third of the settlement fund in this case is fair and reasonable 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"). *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 *16 (E.D. Mich. Dec. 13, 2011); *In re Delphi Corp. Sec. Derivative & ERISA Litig.*, 248 F.R.D. 483, 502 (E.D. Mich. 2008). Plaintiffs' counsel respectfully request that the Court apply the percentage-of-the-fund method here, as it has in all the other cases.

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

Plaintiffs' counsel respectfully request a fee of one-third of the proceeds of the settlement fund that was created by their efforts for the benefit of the settlement class. As detailed below, there is substantial precedent to support the requested fee.

A one-third 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 one-third 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 one-third of a $4,616,499 settlement fund in the *Wire Harness* and *Occupant Safety Systems* cases); 12-cv-00102-MOB-MKM, Doc. No. 401 (awarding counsel for the Auto Dealer Plaintiffs one-third of a $55,500,504 settlement fund in *Wire Harness*).

The requested award is also consistent with a wealth of authority from courts in the Sixth Circuit (and others) approving class action fees of one-third of a common fund. *See Daoust v. Maru Restaurant LLC*, No. 17-CV-13879, 2019 WL 2866490, *5 (E.D. Mich. 2019) (citation omitted) (finding class counsels' request for attorneys' fees of one-third of settlement fund was "fair and reasonable using the 'percentage-of-recovery' method, [and] consistent with the trend in this Circuit."); *In re Sonic Corp. Customer Data Sec. Breach Litig.*, 1:17-MD-2807, 2019 WL

3773737, at *11 (N.D. Ohio Aug. 12, 2019) (finding attorneys' fees of one-third of aggregate settlement amount was reasonable and "typical" in class actions in the Sixth Circuit); *Jones v. H&J Restaurants, LLC*, No. 5:19-CV-105-TBR, 2020 WL 6877577, at *5 (W.D. Ky. Nov. 23, 2020) ("[D]istrict courts in this Circuit have found a one-third fee award to be appropriate"); *Barbee v. Navihealth, Inc.*, No. 3:19-CV-00119, 2020 WL 6365515, at *1 (M.D. Tenn. Sept. 21, 2020) (one-third of $4.69 million fund); *Sheean v. Convergent Outsourcing, Inc.*, No. 218CV11532GCS, 2019 WL 6039921, at *3 (E.D. Mich. Nov. 14, 2019) (one-third of the fund awarded); *In re Prandin Direct Purchaser Antitrust Litig.*, 2015 WL 1396473 (E.D. Mich. Jan. 20, 2015) (awarding one-third of $19 million fund). District courts in the Sixth Circuit and elsewhere have found an award of 30% or more of settlement funds as reasonable attorneys' fees in antitrust cases. *See Todd S. Elwert, Inc., DC v. All. Healthcare Servs., Inc.*, No. 3:15-CV-2673, 2018 WL 4539287, at *5 (N.D. Ohio Sept. 21, 2018) (approving as reasonable class counsels' motion for fees of one-third of settlement fund); *Hosp. Authority of Metropolitan Gov't of Nashville v. Momenta Pharms., Inc.*, No. 3:15-cv-01100, 2020 WL 3053468, at *2 (M.D. Tenn. May 29, 2020) (approving attorneys' fees of one-third of $120 million settlement fund). Plaintiffs' counsel's fee request is fully supported by these and many other decisions in the Sixth Circuit and elsewhere.[3]

[3] *See, e.g., 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); *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 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 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)

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, which 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 Plaintiffs' counsel's efforts in creating the settlement fund.

(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 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 (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 the settlement fund.") (citations omitted); *Moore v. United States*, 63 Fed. Cl. 781, 787 (2005) ("one-third is a typical recovery"); *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").

1. PLAINTIFFS' COUNSEL OBTAINED A VALUABLE BENEFIT FOR THE CLASS.

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, Plaintiffs' counsel achieved an excellent recovery of $37,500,000 for the settlement class.

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, 754 (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 Plaintiffs' counsel have expended in instituting the case and bringing it to a successful conclusion 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 the attorneys' reasonable hourly rates. *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 Plaintiffs' counsel litigating the case and achieving the settlement. That work was managed with an eye toward efficiency and avoiding duplication.

As set forth in the law firm Declarations submitted as Exhibit 1 with this motion, Plaintiffs' counsel have expended 159,184.50 hours litigating this case from its inception through February 28, 2021. Applying the historical rates charged by counsel to the hours expended yields a lodestar

value of $76,737,941.25.[4] A one-third fee would be $12,498,750.00. Without taking into account future work on the case, Plaintiffs' counsel will receive a negative multiplier of .16 on their lodestar. After the deadline for requests for exclusion, and before the date of the hearing on the fee request, Plaintiffs' counsel will file a supplemental report setting forth any opt-outs or objections. The hours Plaintiffs' counsel expended on this case since inception, while substantial, were reasonable and necessary for a case of this magnitude. Here, Plaintiffs' 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 COUNSEL COULD HAVE RECEIVED NO COMPENSATION FOR THEIR EFFORTS.

Defendants are represented by highly experienced and skilled counsel. Absent the settlement, 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 Plaintiffs were optimistic about what would be the eventual outcome of this litigation, they must acknowledge the risk that Defendants could prevail on certain legal or factual issues, which could result in the reduction or elimination of 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

[4] 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). Nevertheless, Plaintiffs' counsel have submitted their lodestar information at their lower historical rates, rather than at their current (higher) rates.

(5th Cir. 1986); *In re Packaged Ice Antitrust Litig.*, 2011 WL 6209188, at *19 (risk of non-payment a factor supporting the requested fee). When Plaintiffs' counsel commenced this case – and following denial of their initial motion for class certification – there was a substantial risk that they 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 (E.D. Mich.) (Doc. 495), at 4.

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.

In this regard, the substantial recovery Plaintiffs' 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, Plaintiffs' 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 6219188, at *19. The Court appointed four firms with national reputations as leaders in antitrust and other complex litigation—Kohn, Swift & Graf, P.C., Preti, Flaherty, Beliveau & Pachios, LLP, Freed Kanner London & Millen, LLC, and Spector Roseman & Kodroff, P.C.—as Co-Lead Settlement Class Counsel for all the direct purchaser bearings cases. By doing so, the Court recognized that they have the requisite skill and experience in class action and antitrust litigation to effectively prosecute these claims. Cera LLP and Cohen Milstein Sellers & Toll, who served as additional settlement class counsel, are law firms that have worked cooperatively and extensively with Co-Lead Settlement Class Counsel on this case. Both firms have extensive experience handling class action antitrust cases and other complex litigation. Fink Bressack has ably served as liaison counsel for this and all the direct purchaser cases.

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 class in this case, which provides the principal basis for awarding the attorneys' fees sought by Plaintiffs' counsel.

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

VI. THE COURT SHOULD AUTHORIZE CO-LEAD SETTLEMENT CLASS COUNSEL TO DETERMINE FEE ALLOCATIONS.

Plaintiffs' counsel worked collectively on this litigation under the supervision of Co-Lead Settlement Class 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.[5] Co-Lead Settlement Class Counsel—Kohn Swift; Preti Flaherty; Freed Kanner; and Spector Roseman—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. Litig.*, 50 F. Supp.

[5] *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").

2d 1141, 1148 (D. Wy. 1999), *aff'd*, 232 F.3d 900 (10th Cir. 2000). From an efficiency standpoint, leaving the allocation in this case to Kohn Swift; Preti Flaherty; Freed Kanner; and Spector Roseman 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).

Plaintiffs' counsel therefore request that the Court approve (as it has in connection with every other fee award in the direct purchaser cases) the aggregate amount of the fees requested, with the specific allocation of the fee among firms to be performed by Co-Lead Settlement Class 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) (co-lead counsel to allocate fees with the court retaining jurisdiction to address any disputes).

VII. REIMBURSEMENT OF LITIGATION COSTS AND EXPENSES INCURRED IN THE PROSECUTION OF THIS LITIGATION

Plaintiffs' counsel respectfully request an award of litigation costs and expenses of $2,692,068.76, which reflects expenses incurred in the prosecution of this litigation since April 1, 2019. Expenses for telephone calls, faxes, internal copying, and on-line legal research 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 this litigation, 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 or incurred on behalf of the class 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 settlement reached in this litigation.

VIII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant their motion for an award of attorneys' fees and litigation costs and expenses.

Dated: April 16, 2021

Respectfully submitted,

/s/ David H. Fink

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CERTIFICATE OF SERVICE

I hereby certify that on April 16, 2021, 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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