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: SWITCHES CASES	
THIS DOCUMENT RELATES TO: DIRECT PURCHASER ACTIONS	2:13-cv-01301-SFC-RSW 2:17-cv-12338-SFC-RSW

DIRECT PURCHASER PLAINTIFF'S MOTION FOR AN AWARD OF ATTORNEYS' FEES, LITIGATION COSTS AND EXPENSES, AND A SERVICE AWARD TO THE CLASS REPRESENTATIVE

Pursuant to Rules 23 and 54 of the Federal Rules of Civil Procedure, Findlay Industries, Inc. ("Plaintiff") moves the Court for an award of attorneys' fees, litigation costs and expenses, and a service award to the class representative from the proceeds of the settlement reached with Nidec Mobility Corporation (formerly known as Omron Automotive Electronics Co., Ltd.) (referred to herein as "NMOJ"). The settlement amount totals $1,400,000, which has been reduced to $700,000 based on requests for exclusion by members of the NMOJ Settlement Class. The grounds supporting this motion are set forth in the accompanying memorandum of law.

Dated: April 9, 2021

Respectfully submitted,

/s/ David H. Fink

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STATEMENT OF ISSUES PRESENTED

1. Should the Court award Plaintiff's counsel attorneys' fees of 30% of the Nidec Mobility Corporation settlement fund?

   Suggested Answer: Yes.

2. Should the Court award Plaintiff's counsel litigation costs and expenses from the settlement fund?

   Suggested Answer: Yes.

3. Should the Court award the class representative, Findlay Industries, Inc., a service award of $10,000?

   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)

Rawlings v. Prudential-Bache Properties, Inc.,
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I. INTRODUCTION

Power Window Switches

Findlay Industries, Inc. ("Plaintiff"), on behalf of the Nidec Mobility Corporation (formerly known as Omron Automotive Electronics Co., Ltd.) (referred to herein as "NMOJ" or "Settling Defendant") Settlement Class comprised of direct purchasers of Power Window Switches in the United States, has reached a settlement with NMOJ. Under the terms of the proposed settlement, NMOJ agreed to pay a total of $1,400,000 ("Settlement Amount") with the right to have the Settlement Amount reduced to no less than $700,000 based on requests for exclusion by members of the NMOJ Settlement Class. Based on the requests for exclusion received thus far, the Settlement Amount has been reduced to $700,000 ("NMOJ Settlement Fund" or "settlement fund"). In connection with the approval process for the settlement with NMOJ, Plaintiff proposes to make a distribution to members of the NMOJ Settlement Class, subject to Court approval, from the NMOJ Settlement Fund, and will apply to the Court for an award of attorneys' fees and expenses, and a service award for the class representative. In addition, the NMOJ settlement includes a provision requiring NMOJ to provide reasonable cooperation upon the request of Plaintiff's counsel.

The law firms responsible for achieving the settlement respectfully move for an order: (1) awarding attorneys' fees of 30% of the NMOJ Settlement Fund; (2) awarding $9,603.02 in litigation costs and expenses that have been incurred in the prosecution of this litigation; and (3) authorizing a service award of $10,000 to the class representative. For the reasons set forth herein, Plaintiff's counsel respectfully submit that the requested fee, expenses, and service award 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, expenses, and service awards in the *Automotive Parts Antitrust Litigation*.

II. BACKGROUND AND SUMMARY OF WORK PERFORMED TO DATE

The *Automotive Switches* 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 *Automotive Switches* case is set forth in the related Memorandum in Support of Direct Purchaser Plaintiff's Motion for Final Approval of Proposed Settlement, which was simultaneously filed on April 9, 2021, and will not be fully repeated here.

In summary, Plaintiff's counsel has:

- Investigated the industry and drafted the initial complaint against the Defendants;
- Worked with Plaintiff to identify relevant business records;
- Participated in proffer and/or cooperation meetings with Defendants' counsel;
- Engaged in extensive settlement negotiations with NMOJ;
- Prepared a settlement agreement with NMOJ;
- Drafted the settlement notices, orders, and the preliminary and final approval motion and memorandum in support; and
- Worked with the claims administrator to design and disseminate the class notices and a claim form, and to create and maintain a settlement website.

III. CLASS NOTICE

On March 4, 2021, the Notice of Proposed Settlement of Direct Purchaser Class Action with Defendant NMOJ and Hearing on Settlement Approval and Related Matters, and Claim Form (the "Notice") was mailed to potential members of the settlement class. The Notice was also posted on-line at www.autopartsantitrustlitigation.com, the website dedicated to this litigation. On March 15, 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.

As required by Fed. R. Civ. P. 23(h), the Notice informed settlement class members that Plaintiff's counsel would request an award of attorneys' fees of up to 30% of the settlement fund and reimbursement of expenses (Notice at 4). It also explained how class members could exclude themselves or object to the requests. *Id*. at 4-5.

The deadline for objections or requests for exclusion is April 28, 2021. To date, there have been no objections to the settlement, the fee or expense request, or the request for a service award for the class representative, and one request for exclusion from the settlement class. Plaintiff's counsel will provide the Court with a final report on objections or requests for exclusion before the settlement hearing scheduled for June 10, 2021.

IV. THE WORK PLAINTIFF'S COUNSEL PERFORMED FOR THE BENEFIT OF THE SETTLEMENT CLASS

In June 2018, Plaintiff filed an amended class action lawsuit on behalf of a class of direct purchasers of Power Window Switches.[1] Plaintiff alleges that Defendants conspired to suppress and eliminate competition for Power Window Switches by agreeing to rig bids for, and to raise, fix, stabilize, and/or maintain the prices of Power Window Switches[2], in violation of federal antitrust laws. Plaintiff further alleges that as a result of the conspiracy, Plaintiff and other direct purchasers of Power Window Switches were injured by paying more for those products than they would have paid in the absence of the alleged illegal conduct. Plaintiff sought recovery of treble damages, together with reimbursement of costs and an award of attorneys' fees.

[1] *In re Switches*, Case No. 2:17-cv-12338-MOB-MKM) (E.D. Mich.), ECF No. 21.

[2] For the purposes of this settlement, "Power Window Switches" means "switches that raise or lower an automobile's windows."

After the commencement of the litigation, Plaintiff's counsel began exploring settlement possibilities with NMOJ. After months of discussions, the settlement with NMOJ was reached in April 2020.

Working with the settlement administrator, Plaintiff's counsel prepared and disseminated notices and claim forms for the settlement. 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, litigation expenses, and a service award to the class representative is scheduled for June 10, 2021.

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, Plaintiff's 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 Plaintiff's counsel under the circumstances of this case. As discussed below, Plaintiff's counsel's fee request of 30% 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). Plaintiff's 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.

Plaintiff's counsel respectfully request a fee of 30% of the proceeds of the settlement fund that was created by their efforts and will benefit the settlement class. 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. For example, in the *In re Automotive Parts Antitrust Litig.*, this Court recently awarded counsel for the Direct Purchaser Plaintiff 30% of the settlement funds in *Automotive Hoses*, 2:15-cv-03201-SFC-RSW (Feb. 12, 2021) (Doc. No. 11 at 3) (settlement fund of $4,067,000; *Exhaust Systems*, 2:16-cv-13968-SFC-RSW (Dec. 8, 2020) (Doc. No. 76 at 3) (settlement fund of $13,270,579); and *Ceramic Substrates*, 2:16-cv-03801-SFC-RSW (July 16, 2020) (Doc. No. 19 at 3) (settlement fund of $17,300,000). *See also In re Refrigerant Compressors Antirust Litig.*, 2:09-md-02042-SFC (June 6, 2014) (Doc. No. 496 at 2) (awarding plaintiffs' counsel 30% of the $30 million in settlement proceeds). To date in the *Automotive Parts Litigation*, the Court has also 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 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. *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 $148.7 million fund). Plaintiff's counsel's fee request of 30% of the settlement fund is fully supported by these and many other decisions.[3]

[3] *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 (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); *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).

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 Plaintiff's counsel's efforts in creating the settlement fund.

1. PLAINTIFF'S 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, Plaintiff's counsel achieved a substantial recovery of $700,000 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

Plaintiff's 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 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 Plaintiff's 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, Plaintiff's counsel have expended 889.25 hours from the inception of the case through February 28, 2021. Applying the historical rates charged by counsel to the hours expended yields a lodestar value of $581,542.35.[4] A 30% fee would be $210,000.[5] Without taking into account future work on the case, the current multiplier is a negative .36. After the deadline for requests for exclusion, and before the date of the hearing on the fee request, Plaintiff's counsel will file a supplemental report setting forth any opt-outs or objections, the impact of any opt-outs on the settlement amount, an updated lodestar and multiplier that will reflect work done after February 28, 2021.

The hours Plaintiff's counsel expended on this case since inception, while substantial, were reasonable and necessary. 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

[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, Plaintiff's counsel have submitted their lodestar information at their lower historical rates, rather than at their current (higher) rates.

[5] As stated above, based on the requests for exclusion received thus far, the Settlement Amount has been reduced to $700,000.

eliminates any incentive to unnecessarily expend hours. Here, Plaintiff's 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.

Defendant is represented by highly experienced and competent counsel. Absent the settlement, Defendant and its 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 Plaintiff was optimistic about what would be the eventual outcome of this litigation, it must acknowledge the risk that Defendant 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 (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 Plaintiff's counsel commenced this case there was a 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 recovery Plaintiff's 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, Plaintiff's 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 Interim Co-Lead Settlement Class Counsel for all the direct purchaser 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. 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. Defense counsel 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 Plaintiff's counsel.

Given the excellent result achieved, the complexity of the claims and defenses, the work performed by Plaintiff's 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 Plaintiff's counsel, the reasonable multiplier on the lodestar, and the societal benefit of this litigation, a 30% attorneys' fee award from the settlement fund would be reasonable compensation for Plaintiff's counsel's work.

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

Plaintiff's 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.[6] 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.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).

Plaintiff's counsel therefore request that the Court (as it has in connection with every other fee award in the direct purchaser cases) approve 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

[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").

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

Plaintiff's counsel respectfully requests an award of litigation costs and expenses in the amount of $9,603.02, which reflects expenses incurred in the prosecution of this litigation. Expenses for telephone calls, faxes, and internal 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 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 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 settlement reached in this litigation.

VIII. A SERVICE AWARD TO THE CLASS REPRESENTATIVE IS APPROPRIATE.

Plaintiff's counsel request that the Court award a $10,000 service payment to the class representative. The Sixth Circuit has noted that such awards may be appropriate under some circumstances. *Shane Group, Inc. v. Blue Cross Blue Shield of Michigan*, 825 F.3d 299, 311 (6th Cir. 2016); *Hadix v. Johnson*, 322 F.3d 895, 897 (6th Cir. 2003). In surveying decisions from other courts, the Court explained that:

> Numerous courts have authorized incentive awards. These courts have stressed that incentive awards are efficacious ways of encouraging members of a class to become class representatives and rewarding individual efforts taken on behalf of the class. Yet applications for incentive awards are scrutinized carefully by courts who

> sensibly fear that incentive awards may lead named plaintiffs to expect a bounty for bringing suit or to compromise the interest of the class for personal gain.

Hadix v. Johnson, 322 F.3d at 897 (internal citations omitted).

A service award to the class representative is appropriate here. Plaintiff stepped forward to represent the class. The case had a successful resolution that will benefit all the class members. This is not a case where the class representative compromised the interests of the class for personal gain. The class representative was not promised a service award. The settlement was negotiated by Plaintiff's counsel and then presented to the class representative for its review and approval without any discussion of a service award. The prospect of such an award was not a reason why the representative plaintiff approved this settlement. *Hillson v. Kelly Servs. Inc.*, 2017 WL 279814, at *6 (E.D. Mich. 2017). Moreover, this is not a case where the requested service award will dwarf the amounts that class members will receive through the claims process. Some class members may receive thousands of dollars.[7]

The class representative devoted a significant amount of time and effort to representing the interests of the class members, including but not limited to the following:

- Assisting counsel in developing an overall understanding of the Power Window Switches market;
- Discussing with counsel preservation of electronic and hard-copy documents and taking steps to implement preservation plans;
- Discussing with counsel collecting documents for review and potential production to Defendants;

[7] In cases where courts have rejected incentive awards, the awards were so disproportionately large relative to the cash benefits to the class that the courts called the class representative's adequacy into question. For example, in *In re Dry Max Pampers Litig.*, 724 F.3d 713, 722 (6th Cir. 2013), the Court reversed the award of $1,000 payments to the class representatives when class members received "nearly worthless injunctive relief." In *Machesney, v. Lar-Bev of Howell, Inc.*, 2017 WL 2437207, at *11 (E.D. Mich. Jun. 2017), the court did not approve a proposed $15,000 incentive payment because it was "30 times more than the maximum that any class member could receive under the proposed settlement."

- Reviewing pleadings and keeping apprised of the status of the litigation; and
- Reviewing the settlement and conferring with counsel to determine whether the settlement was in the best interest of the class.

Finally, a service award of this size or larger is not uncommon in lengthy, highly complex antitrust cases. Indeed, the Court previously approved $50,000 incentive awards to the class representatives in *Wire Harness*. 2:12-cv-00101-MOB-MKM (Doc. No. 495 at 6, ¶23). *See also In re Prandin Direct Purchaser Antitrust Litig*., 2015 WL 1396473, at *5 (granting each class representative an award of $50,000); *In re Skelaxin (Metaxalone) Antitrust Litig.*, 2014 WL 2946459, at *1 (same). The class representative here put in great effort and provided commendable service on behalf of the members of the settlement class to help create a $700,000 settlement fund. The requested award of $10,000 is fair to the class representative and the settlement class and is appropriate under the facts and the law.

IX. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant its motion for an award of attorneys' fees, litigation costs and expenses, and a service award to the class representative.

Dated: April 9, 2021

Respectfully submitted,

/s/ David H. Fink

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CERTIFICATE OF SERVICE

I hereby certify that on April 9, 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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