

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

<hr/> IN RE: AUTOMOTIVE PARTS ANTITRUST LITIGATION <hr/>	:	Master File No. 12-MD-02311 HON. SEAN F. COX
	:	
In Re: AIR CONDITIONING SYSTEMS <hr/>	:	Case No. 2:13-cv-02701-SFC-RSW
	:	
THIS RELATES TO: <hr/>	:	
	:	
ALL DIRECT PURCHASER ACTIONS <hr/>	:	
	:	

**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, Tiffin Motor Homes, 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 settlements reached with Defendants Mitsubishi Heavy Industries, Ltd., Mitsubishi Heavy Industries America, Inc., Mitsubishi Heavy Industries Climate Control, Inc., Sanden Holdings Corporation, Sanden Automotive Components Corporation, Sanden Automotive Climate Systems Corporation, and Sanden International (U.S.A.) Inc. The settlements total \$7.85 million. The grounds supporting this motion are set forth in the accompanying memorandum of law.

DATED: September 14, 2020

Respectfully submitted,

/s/David H. Fink

David H. Fink (P28235)
Darryl Bressack (P67820)
Nathan J. Fink (P75185)
FINK BRESSACK
38500 Woodward Ave; Suite 350
Bloomfield Hills, MI 48304
Telephone: (248) 971-2500

*Interim Liaison Counsel for the Direct
Purchaser Plaintiff*

Steven A. Kanner
William H. London
Michael E. Moskovitz
FREED KANNER LONDON
& MILLEN LLC
2201 Waukegan Road, Suite 130
Bannockburn, IL 60015
Telephone: (224) 632-4500

Joseph C. Kohn
William E. Hoese
Douglas A. Abrahams
KOHN, SWIFT & GRAF, P.C.
1600 Market Street, Suite 2500
Philadelphia, PA 19103
Telephone: (215) 238-1700

Gregory P. Hansel
Randall B. Weill
Michael S. Smith
PRETI, FLAHERTY, BELIVEAU
& PACHIOS LLP
One City Center, P.O. Box 9546
Portland, ME 04112-9546
Telephone: (207) 791-3000

Eugene A. Spector
William G. Caldes
Jeffrey L. Spector
SPECTOR ROSEMAN & KODROFF, P.C.
2001 Market Street, Suite 3420
Philadelphia, PA 19103
Telephone: (215) 496-0300

Interim Co-Lead Counsel for the Direct Purchaser Plaintiff

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

<hr/>	:	Master File No. 12-MD-02311
IN RE: AUTOMOTIVE PARTS ANTITRUST	:	HON. SEAN F. COX
LITIGATION	:	
<hr/>	:	
In Re: AIR CONDITIONING SYSTEMS	:	Case No. 2:13-cv-02701-SFC-RSW
	:	
<hr/>	:	
THIS RELATES TO:	:	
	:	
ALL DIRECT PURCHASER ACTIONS	:	
<hr/>	:	

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

TABLE OF CONTENTS

STATEMENT OF ISSUES PRESENTED..... ii

STATEMENT OF CONTROLLING OR MOST APPROPRIATE AUTHORITIES iii

TABLE OF AUTHORITIES iv

INTRODUCTION 1

I. BACKGROUND AND SUMMARY OF WORK PERFORMED TO DATE..... 2

II. CLASS NOTICE 3

III. THE WORK PLAINTIFF’S COUNSEL PERFORMED FOR THE BENEFIT OF THE SETTLEMENT CLASSES..... 3

IV. THE REQUESTED ATTORNEYS’ FEES ARE REASONABLE..... 5

 1. PLAINTIFF’S COUNSEL OBTAINED A VALUABLE BENEFIT FOR THE CLASSES..... 10

 2. THE VALUE OF THE SERVICES ON AN HOURLY BASIS CONFIRMS THAT THE REQUESTED FEE IS REASONABLE. 10

 3. THE REQUESTED FEE IS FAIR AND REASONABLE GIVEN THE REAL RISK THAT COUNSEL COULD HAVE RECEIVED NO COMPENSATION FOR THEIR EFFORTS. 12

 4. SOCIETY HAS AN IMPORTANT STAKE IN THIS LAWSUIT AND IN AN AWARD OF REASONABLE ATTORNEYS’ FEES..... 12

 5. THE COMPLEXITY OF THIS CASE SUPPORTS THE REQUESTED FEE. 13

V. THE COURT SHOULD AUTHORIZE INTERIM LEAD COUNSEL TO DETERMINE FEE ALLOCATIONS 15

VI. REIMBURSEMENT OF LITIGATION COSTS AND EXPENSES INCURRED IN THE PROSECUTION OF THIS LITIGATION 16

VII. A SERVICE AWARD TO THE CLASS REPRESENTATIVE IS APPROPRIATE 16

VIII. CONCLUSION..... 19

STATEMENT OF ISSUES PRESENTED

1. Should the Court award Plaintiff's Counsel attorneys' fees of 30% of the Mitsubishi Heavy Industries, Ltd., Mitsubishi Heavy Industries America, Inc., Mitsubishi Heavy Industries Climate Control, Inc., Sanden Holdings Corporation, Sanden Automotive Components Corporation, Sanden Automotive Climate Systems Corporation, and Sanden International (U.S.A.) Inc. settlement funds (the "Settlement Funds")?

Suggested Answer: Yes.

2. Should the Court award Plaintiff's Counsel litigation costs and expenses from the Settlement Funds?

Suggested Answer: Yes.

3. Should the Court award the class representative, Tiffin Motor Homes, Inc., a service award of \$25,000?

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.,
9 F.3d 513 (6th Cir. 1993)

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Behrens v. Wometco Enters., Inc.</i> , 118 F.R.D. 534 (S.D. Fla. 1988)	19
<i>Bessey v. Packerland Plainwell, Inc.</i> , 2007 WL 3173972 (W.D. Mich. 2007)	12
<i>Bowling v. Pfizer, Inc.</i> , 102 F.3d 777 (6th Cir. 1996)	14
<i>Gascho v. Global Fitness Holdings, LLC</i> , 822 F.3d 269 (6th Cir. 2016)	11
<i>Godshall v. Franklin Mint Co.</i> , 2004 WL 2745890 (E.D. Pa., Dec. 1, 2004)	13
<i>Hadix v. Johnson</i> , 322 F.3d 895 (6th Cir. 2003)	21, 22
<i>Heekin v. Anthem, Inc.</i> , 2012 WL 5878032 (S.D. Ind. Nov. 20, 2012)	13
<i>Hillson v. Kelly Servs. Inc.</i> , 2017 WL 279814 (E.D. Mich. 2017)	22
<i>Huyer v. Buckley</i> , 849 F.3d 395 (8th Cir. 2017)	6
<i>In re AremisSoft Corp., Sec. Litig.</i> , 210 F.R.D. 109 (D.N.J. 2002)	13
<i>In re Automotive Parts Antitrust Litig.</i> , 2016 WL 8201516 (E.D. Mich. Dec. 28, 2016)	11, 12
<i>In re Automotive Refinishing Paint Antitrust Litig.</i> , 2008 WL 63269 (E.D. Pa. Jan. 3, 2008)	21
<i>In Re Cardinal Health Inc. Sec. Litig.</i> , 528 F. Supp. 2d 752 (S.D. Ohio 2007)	15
<i>In re Cardizem CD Antitrust Litig.</i> , 218 F.R.D. 508 (E.D. Mich. 2003)	6, 18, 21
<i>In re Cendant Corp. Sec. Litig.</i> , 404 F.3d 173 (3d Cir. 2005)	20
<i>In re Copley Pharm., Inc. Albuterol Prods. Liab. Litig.</i> , 50 F.Supp.2d 1141 (D. Wy. 1999)	20
<i>In re Domestic Air Transp. Antitrust Litig.</i> , 148 F.R.D. 297 (N.D. Ga. 1993)	20
<i>In re Domestic Drywall Antitrust Litig.</i> , 2018 WL 3439454 (E.D. Pa. July 17, 2018)	13
<i>In re Dry Max Pampers Litig.</i> , 724 F.3d 713 (6th Cir. 2013)	22
<i>In re FAO Inc. Sec. Litig.</i> , 2005 WL 3801469 (E.D. Pa., May 20, 2005)	13
<i>In re Fasteners Antitrust Litig.</i> , 2014 WL 296954 (E.D. Pa. Jan. 27, 2014)	13

In re Flonase Antitrust Litig.,
 951 F. Supp. 2d 739 (E.D. Pa. 2013) 13

In re Folding Carton Antitrust Litig.,
 84 F.R.D. 245 (N.D. Ill. 1979)..... 18

In re Gen. Instrument Sec. Litig.,
 209 F. Supp. 2d 423 (E.D. Pa. 2001) 13

In re Linerboard Antitrust Litig.,
 292 F.Supp.2d 631 (E.D. Pa. 2003) 18

In re Linerboard Antitrust Litig.,
 2004 WL 1221350 (E.D. Pa., June 2, 2004) 13, 20

In re Losetrin 24 Fe Antitrust Litig.,
 2020 WL 4035125 (D.R.I. July 17, 2020) 13

In re Losetrin 24 Fe Antitrust Litig.,
 2020 WL 5201275 (D.R.I. Sept. 1, 2020)..... 13

In re Parking Heaters Antitrust Litig.,
 2019 WL 8137325 (E.D.N.Y Aug. 15, 2019)..... 13

In re Polyurethane Foam Antitrust Litig.,
 2015 WL 1639269 (N.D. Ohio Feb. 26, 2015) 13, 18

In re Prandin Direct Purchaser Antitrust Litig.,
 2015 WL 1396473 (E.D. Mich. Jan. 20, 2015)..... 13, 23

In re Ready-Mixed Concrete Antitrust Litig.,
 2010 WL 3282591 (S.D. Ind. Aug. 17, 2010)..... 13

In re Skelaxin (Metaxalone) Antitrust Litig.,
 2014 WL 2946459 (E.D. Tenn. Jun. 30, 2014)..... 13, 23

In re Southeastern Milk Antitrust Litig.,
 2013 WL 2155387 (E.D. Tenn. May 17, 2013)..... 13

In re Titanium Dioxide Antitrust Litig.,
 2013 WL 6577029 (D. Md. Dec. 13, 2013)..... 13

In re Warfarin Sodium Antitrust Litig.,
 391 F.3d 516 (3d Cir. 2004)..... 20

In re Western States Wholesale Natural Gas Litig.,
 2019 WL 4597502 (D. Nev. Aug. 5, 2019)..... 13

Isabel v. City of Memphis,
 404 F.3d 404 (6th Cir. 2005)..... 15

Jones v. Diamond,
 636 F.2d 1364 (5th Cir. 1981)..... 17

Klein v. PDG Remediation, Inc.,
 1999 WL 38179 (S.D.N.Y., Jan. 28, 1999)..... 13

Kornell v. Haverhill Ret. Sys.,
 790 F. App'x 296 (2d Cir. 2019) 6

Lewis v. Wal-Mart Stores, Inc.,
 2006 WL 3505851 (N.D. Okla., Dec. 4, 2006)..... 13

Machesney, v. Lar-Bev of Howell, Inc.,
 2017 WL 2437207 (E.D. Mich. Jun. 2017)..... 22

Missouri v. Jenkins,
 491 U.S. 274 (1989)..... 16

Moore v. United States,
63 Fed. Cl. 781 (2005) 13

New England Health Care Employees Pension Fund v. Fruit of the Loom, Inc.,
234 F.R.D. 627 (W.D. Ky. 2006)..... 13

Pennsylvania v. Delaware Valley Citizens’ Council for Clean Air,
483 U.S. 711 (1987)..... 16

Powers v. Eichen,
229 F.3d 1249 (9th Cir. 2000)..... 6

Rawlings v. Prudential-Bache Properties, Inc.,
9 F.3d 513 (6th Cir. 1993)..... 11

Seaman v. Duke University,
2019 WL 4674758 (E.D.N.C. Sept. 25, 2019)..... 13

Shane Group, Inc. v. Blue Cross Blue Shield of Michigan,
825 F.3d 299 (6th Cir. 2016)..... 21

Standard Iron Works v. Arcelormittal,
2014 WL 7781572 (N.D. Ill. Oct. 22, 2014)..... 13

Thacker v. Chesapeake Appalachia, L.L.C.,
695 F. Supp. 2d, 521 (E.D. Ky. 2010)..... 12

Vista Healthplan, Inc. v. Cephalon, Inc.,
2020 WL 1922902 (E.D. Pa. April 21, 2020) 13

Williams v. Sprint/United Mgmt. Co.,
2007 WL 2694029 (D. Kan., Sept. 11, 2007) 13

Rules

Fed. R. Civ. P. 23(b)(3)..... 10

Fed. R. Civ. P. 23(h) 8, 11

Fed. R. Civ. P. 23(h)(1) and (2) 11

INTRODUCTION

Through the efforts of the class representative, Tiffin Motor Homes, Inc., and Plaintiff's counsel, settlements totaling \$7.85 million have been reached with Mitsubishi Heavy Industries, Ltd., Mitsubishi Heavy Industries America, Inc., Mitsubishi Heavy Industries Climate Control, Inc. (collectively, "MHI" or the "MHI Defendants"), and Sanden Holdings Corporation, Sanden Automotive Components Corporation, Sanden Automotive Climate Systems Corporation, and Sanden International (U.S.A.) Inc. (collectively, "Sanden" or the "Sanden Defendants") (together the "Settling Defendants") in the *Air Conditioning Systems* direct purchaser case. In addition, the MHI and Sanden settlements included provisions requiring them to cooperate with Plaintiff's counsel in the prosecution of the litigation.

The law firms responsible for achieving the settlements respectfully move for an order: (1) awarding attorneys' fees of 30% of the Settlement Funds¹; (2) awarding \$4,264.82 in litigation

¹ DPP counsel are asking the Court to award attorneys' fees as a percentage of the gross settlement fund, not as a percentage of the net amount after deduction of costs and expenses. In connection with a fee award in the direct purchaser cases—*Wire Harness*—Judge Battani deducted reimbursed costs and expenses from the settlement funds before applying a percentage to calculate the fees, and thereafter DPP counsel did so when they petitioned the Court for fees, which was reflected in the Court's orders.

But DPP counsel believe that the vast majority of percentage fee awards in antitrust cases are based on the gross settlement fund. *See, e.g., In re Refrigerant Compressors Antitrust Litig.*, 2:09-md-02042 (E.D. Mich. July 16, 2014); *In re Packaged Ice Antitrust Litig.*, 2011 WL 6209188, at *17; *In re Foundry Resins Antitrust Litig.*, No. 2:04-md-1638 (S.D. Ohio Mar. 31, 2008); *Delphi*, 248 F.R.D. at 505 (attorneys' fees awarded on gross settlement fund); *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 531-535 (E.D. Mich. 2003) (awarding costs in addition to percentage of the fund fee). Indeed, district courts' decisions to award fees on the gross recovery have been affirmed throughout the country in the face of direct challenges. *See, e.g., Powers v. Eichen*, 229 F.3d 1249, 1258 (9th Cir. 2000) (affirming an award on the gross, because "the choice of whether to base an attorneys' fee award on either net or gross recovery should not make a difference so long as the end result is reasonable"); *Kornell v. Haverhill Ret. Sys.*, 790 F. App'x 296, 298–99 (2d Cir. 2019) (summary order) (affirming decision to award fees on the gross fund rather than the net as reasonable); *Huyer v. Buckley*, 849 F.3d 395, 398–99 (8th Cir. 2017) (same). Therefore, DPP counsel respectfully request that the Court award fees on the gross settlement fund.

costs and expenses that have been paid and incurred in the prosecution of this litigation; and (3) authorizing a service award of \$25,000 to the class representative. For the reasons set forth herein, Plaintiff's counsel respectfully submit that the requested fee, expense, and service award are reasonable and fair under both well-established Sixth Circuit precedent concerning such awards in class action litigation and the court's prior decisions awarding fees, expenses, and service awards in the *Automotive Parts Antitrust Litigation*.

I. BACKGROUND AND SUMMARY OF WORK PERFORMED TO DATE

The *Air Conditioning Systems* 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 *Air Conditioning Systems* case is set forth in the related Memorandum in Support of Direct Purchaser Plaintiff's Motion for Final Approval of Proposed Settlements, which is being filed concurrently and will not be fully repeated here.

In summary, Plaintiff's counsel have:

- Investigated the industry and drafted the initial complaint against the Defendants;
- Researched and drafted the opposition to the motion to dismiss filed by Defendants;
- Researched and drafted an amended complaint;
- Negotiated a Stipulated Discovery Plan with Defendants;
- Reviewed, analyzed, and coded documents obtained from Defendants;
- Engaged in extensive settlement negotiations with each of the Defendants (in the case of Sanden, with the assistance of a mediator);
- Prepared settlement agreements with each of the Defendants;
- 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.

II. CLASS NOTICE

On August 14, 2020, the Notice of Proposed Settlements of Direct Purchaser Class Action with the MHI and Sanden Defendants and Hearing on Settlement Approval and Related Matters, and Claim Form (the “Notice”) was mailed to the potential members of the settlement classes. The Notice was also posted on-line at www.autopartsantitrustlitigation.com. On August 24, 2020, a summary notice was published in *Automotive News*, an online banner notice appearing over a 21-day period on www.AutoNews.com (the digital version of *Automotive News*), and an Informational Press Release will run nationwide via PR Newswire’s “Auto Wire,” which targets auto industry trade publications. As required by Fed. R. Civ. P. 23(h), the Notice informs the class members that Plaintiff’s counsel would request an award of attorneys’ fees of up to 30% of the settlement funds and reimbursement of expenses. Notice at 5. It also explains how class members could exclude themselves or object to the requests. *Id.* at 5-6.

The deadline for objections or requests for exclusion is October 5, 2020. To date, there have been no objections to the settlement, fee or expense request, request for a class representative service award, or any requests for exclusion from any of the settlement classes. Plaintiff’s counsel will provide the Court with a final report on any objections or requests for exclusion before the settlement hearing scheduled for November 5.

III. THE WORK PLAINTIFF’S COUNSEL PERFORMED FOR THE BENEFIT OF THE SETTLEMENT CLASSES

The *Air Conditioning Systems* 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 first *Air Conditioning Systems* complaint was filed in December 2013 against Defendants Sanden Corp.; Sanden Automotive Climate Systems Corporation; Sanden Automotive Components Corporation; Sanden International (U.S.A.), Inc.; Calsonic Kansei

Corporation; CalsonicKansei North America; Panasonic Corporation; Panasonic Corporation of North America; Valeo Japan Co., Ltd.; Valeo Inc.; Valeo Electrical Systems, Inc.; Valeo Climate Control Corp.; Mitsubishi Heavy Industries, Ltd.; Mitsubishi Heavy Industries America, Inc.; Mitsubishi Heavy Industries Climate Control, Inc.; Denso Corporation; and Denso International America, Inc., on behalf of direct purchasers of Air Conditioning Systems. Plaintiffs later named MAHLE Behr MAHLE Behr USA Inc. in a Second Consolidated Class Action Complaint in May 2018.²

After filing the complaints, Plaintiff's counsel set to work on reviewing Defendants' voluminous document production. Valeo S.A. was voluntarily dismissed from the action in June 2016. Both Settling Defendants filed motions to dismiss with this court in February 2019, to which Plaintiff's counsel filed opposition memoranda.

In the meantime, Plaintiff's counsel engaged in settlement negotiations with several other Defendants, with the first agreement reached in February 2017. The court granted final approval of this agreement in November 2018. As a result of Plaintiff's counsel's continued efforts, the parties reached settlement agreements with several Defendants in February, April and May of 2019, respectively. During the settlement negotiations, the merits of the respective parties' positions were discussed and evaluated. As part of the settlement negotiations, the parties communicated extensively, and Plaintiff's Counsel analyzed information provided to them by Defendants, relevant industry data, information disclosed in the related criminal litigation, and other pertinent information. For each settlement, the Court also found that a proposed settlement class of direct purchasers of Air Conditioning Systems could be certified pursuant to Fed. R. Civ.

² *Tiffin Motor Homes, Inc. v. Valeo, S.A., et al.*, Case No. 2:13-cv-15126-AC-MAR (E.D. Mich.), ECF No. 1. The MAHLE Behr Defendants were named in *Tiffin Motor Homes, Inc., et al., v. Mahle Behr USA Inc., et al.*, Case No. 2:17-cv-12540-MOB-MKM (E.D. Mich.), and in a Second Consolidated Class Action Complaint filed in May 2018. 2:13-cv-02701, ECF No. 105.

P. 23(b)(3). Working with the settlement administrator, Plaintiffs' counsel prepared and disseminated notices and claim forms for each of the settlements. The preliminary and final settlement approval papers were drafted and filed and approved after the final fairness hearings.

Concurrent with this work, Plaintiff's counsel scheduled mediations with two defendants, including one of the Settling Defendants. The first mediation, preceded by the submission of confidential mediation statements, took place in October 2018, and resulted in a proposed settlement agreement in May 2019. This agreement was granted final approval in November of that year. A second mediation, for which Plaintiff's counsel prepared a confidential mediation statement, took place in April 2019. After several months of negotiations, Plaintiff's counsel reached a settlement with Sanden on July 9, 2019, for \$3,650,000. The Court granted preliminary approval of the proposed Sanden settlement on November 22, 2019. (2:13-cv-02701, ECF No. 180).

On April 14, 2020, after extensive negotiations, Plaintiff's counsel reached a settlement with MHI for \$4,200,000. The Court granted preliminary approval of the MHI settlement on July 31, 2020. (2:13-cv-02701, ECF No. 191).

Pursuant to the terms of the agreements, the settlement funds collected in the Air Conditioning Systems litigation have been placed into an interest-bearing escrow account. The total settlement funds in this litigation, including the MHI and Sanden settlements, total \$30,770,000, plus accrued interest.

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, Plaintiff's counsel will comply 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 believe their attorneys' fee request of 30% of the Settlement Funds 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 here, as in all other cases in the *Automotive Parts Litigation* to date, the Court apply the percentage-of-the-fund method.

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

Plaintiff's counsel respectfully request a fee of 30% of the proceeds of the Settlement Funds that were created by their efforts and will benefit 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 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

For example, this Court recently awarded 30% of the settlement funds in *Ceramic Substrates* to DPP counsel, 2:16-cv-03801-SFC-RSW (July 16, 2020) (ECF No. 19 at 2), and three

other cases in the *Automotive Parts* MDL.³ The Court also awarded 30% of the \$30 million in settlement proceeds to plaintiffs' counsel in *In re Refrigerant Compressors Antitrust Litig.*, 2:09-md-02042-SFC (June 6, 2014) (ECF No. 496 at 2).

Other district courts in this Circuit 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 \$148.7 million fund). DPP counsel's fee request of 30% of the settlement funds is fully supported by these and many other decisions.⁴

³ *Ignition Coils*, 2:13-cv-01401-SFC-RSW (E.D. Mich. July 16, 2020) (ECF No. 118), *Valve Timing Control Devices*, 2:13-cv-02501-SFC-RSW (E.D. Mich. July 16, 2020) (ECF No. 22), and *Brake Hoses*, 2:16-cv-03601 (E.D. Mich. July 16, 2020) (ECF No. 29).

⁴ *See, e.g., In re Losetrin 24 Fe Antitrust Litig.*, 2020 WL 5201275, at *5 (D.R.I. Sept. 1, 2020) (approving a magistrate judge's recommendation of a fee award of one-third from a \$120 million settlement. The magistrate judge's recommendation is *In re Losetrin 24 Fe Antitrust Litig.*, 2020 WL 4035125 (D.R.I. July 17, 2020)); *Vista Healthplan, Inc. v. Cephalon, Inc.*, 2020 WL 1922902, at *31-*32 (E.D. Pa. April 21, 2020) (one-third fee from a \$65.8 million settlement); *Seaman v. Duke University*, 2019 WL 4674758, at *8 (E.D.N.C. Sept. 25, 2019) (one-third fee from a \$54.5 million settlement); *In re Parking Heaters Antitrust Litig.*, 2019 WL 8137325 (E.D.N.Y. Aug. 15, 2019) (one-third fee from a \$12.2 million settlement); *In re Western States Wholesale Natural Gas Litig.*, 2019 WL 4597502 (D. Nev. Aug. 5, 2019) (33% of a \$29,250,000 settlement); *In re Domestic Drywall Antitrust Litig.*, 2018 WL 3439454, at *20 (E.D. Pa. July 17, 2018) (awarding one-third of \$190 million settlement); *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-

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

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).

compensation for Plaintiff's counsel's efforts in creating the Settlement Funds.

1. PLAINTIFF'S COUNSEL OBTAINED A VALUABLE BENEFIT 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, Plaintiff's counsel have achieved an excellent recovery from MHI and Sanden of \$7,850,000 for the settlement classes.

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 settlements. 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 664.6 hours from the inception of the case through August 14,

2020. Applying the historical rates charged by counsel to the hours expended yields a lodestar value of \$464,970.25 from August 1, 2019 through August 14, 2020.⁵ A 30% fee would equal \$2,355,000. Without taking into account future work on the case, the overall multiplier on fees awarded for all seven Court-approved settlements to date (Valeo⁶, Calsonic, DENSO, MAHLE Behr, Panasonic⁷, MHI and Sanden) would be approximately 1.53 times the total lodestar accrued from the inception of the case through August 14, 2020. 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, and an updated lodestar and multiplier that will reflect work done after this motion was filed.

Plaintiff's counsel submit that the hours 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 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.

⁵The 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.

⁶ By Order dated October 18, 2018, the Court awarded fees from the Valeo settlement after deducting expenses in the amount of \$2,611,941.03, which was 30% of the common fund created by the Valeo settlement.

⁷ By Order dated November 22, 2019, the Court awarded fees from the Calsonic, Denso, Mahle Behr and Panasonic settlements after deducting expenses in the amount of \$4,231,299.82, which was 30% of the common fund created by the settlements.

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

The Defendants are represented by highly experienced and competent counsel. Absent the settlements, the 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 was optimistic about what would be the eventual outcome of this litigation, it must acknowledge the risk that the 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 (5th Cir. 1986); *In re Packaged Ice Antitrust Litig.*, 2011 WL 6209188, at *19 (risk of non-payment a factor supporting the requested fee). 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, Doc. 497, at 11 (E.D. Mich. June 20, 2016).

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 substantial recovery Plaintiff’s counsel have obtained makes it clear that antitrust violations will continue to 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. *See 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 Lead 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. 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 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 Funds), formidable defense counsel, the delay in receipt of payment, the substantial experience and skill of Plaintiff’s counsel, the modest 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 Plaintiff’s counsel’s work.

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

Plaintiff's 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.⁸ Interim Lead 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 Interim Lead Counsel. *See Polyurethane Foam, supra*. To the extent that there are disputes that cannot be resolved by counsel,

⁸*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”).

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).

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

Plaintiff's counsel respectfully request an award of litigation costs and expenses in the amount of \$4,264.82, which reflects expenses incurred in the prosecution of this litigation from August 1, 2019 through August 14, 2020. 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 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 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 settlements with MHI and Sanden reached in this litigation.

VII. A SERVICE AWARD TO THE CLASS REPRESENTATIVE IS APPROPRIATE

Plaintiff's counsel request that the Court award a \$25,000 service payment to the class representative. The Sixth Circuit has noted that incentive 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).

An award to the class representative is appropriate here. It stepped forward to represent the classes. 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. Each 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 these settlements. *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 hundreds of thousands of dollars.⁹

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 Air Conditioning Systems 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;

⁹ 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."

- Collecting and reviewing potentially relevant documents;
- Reviewing pleadings and keeping apprised of the status of the litigation; and
- Reviewing the settlements and conferring with counsel to determine whether the settlements were in the best interests 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 # 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 put in great effort and provided commendable service on behalf of the members of the settlement classes to help create Settlement Funds totaling \$7.85 million. The requested award of \$25,000 is fair to the class representative and the settlement classes and is appropriate under the facts and the law.

VIII. 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: September 14, 2020

Respectfully submitted,

/s/ David H. Fink

David H. Fink (P28235)
Darryl Bressack (P67820)
Nathan J. Fink (P75185)
FINK BRESSACK
38500 Woodward Ave, Suite 350
Bloomfield Hills, MI 48304
Telephone: (248) 971-2500

Interim Liaison Counsel for the Direct
Purchaser Plaintiff

Steven A. Kanner
William H. London
Michael E. Moskovitz
FREED KANNER LONDON
& MILLEN LLC
2201 Waukegan Road, Suite 130
Bannockburn, IL 60015
Telephone: (224) 632-4500

Joseph C. Kohn
William E. Hoese
Douglas A. Abrahams
KOHN, SWIFT & GRAF, P.C.
1600 Market Street, Suite 2500
Philadelphia, PA 19103
Telephone: (215) 238-1700

Gregory P. Hansel
Randall B. Weill
Michael S. Smith
PRETI, FLAHERTY, BELIVEAU
& PACHIOS LLP
One City Center, P.O. Box 9546
Portland, ME 04112-9546
Telephone: (207) 791-3000

Eugene A. Spector
William G. Caldes
Jeffrey L. Spector
SPECTOR ROSEMAN & KODROFF, P.C.
2001 Market Street
Suite 3420
Philadelphia, PA 19103
Telephone: (215) 496-0300

Interim Co-Lead and Settlement Class Counsel for the Direct Purchaser Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2020, 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.

/s/ Nathan J. Fink

David H. Fink (P28235)

Darryl Bressack (P67820)

Nathan J. Fink (P75185)

FINK BRESSACK

38500 Woodward Ave, Suite 350

Bloomfield Hills, MI 48304

Telephone: (248) 971-2500