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

IN RE AUTOMOTIVE PARTS ANTITRUST LITIGATION	CASE NO. 12-MD-02311 HON. MARIANNE O. BATTANI
In Re: AIR CONDITIONING SYSTEMS	
THIS RELATES TO: ALL DIRECT PURCHASER ACTIONS	2:13-cv-02701-MOB-MKM

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

Direct Purchaser Plaintiffs Tiffin Motor Homes, Inc. and SLTNTRST LLC, Trustee for Fleetwood Liquidating Trust, hereby move the Court, pursuant to Rules 23 and 54 of the Federal Rules of Civil Procedure, for an award of attorneys' fees and litigation costs and expenses from the proceeds of the settlement with the Valeo Defendants. In support of this motion, Direct Purchaser Plaintiffs rely upon the accompanying brief and the Declarations attached thereto.

Dated: July 30, 2018

Respectfully submitted,

/s/ David H. Fink

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

Interim Liaison Counsel

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
Jonathan M. Jagher
Jeffrey L. Spector
SPECTOR ROSEMAN & KODROFF, P.C.
1818 Market Street, Suite 2500
Philadelphia, PA 19103
Telephone: (215) 496-0300

Interim Co-Lead Class Counsel

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

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STATEMENT OF ISSUES PRESENTED

1. Should the Court award Plaintiffs' Counsel attorneys' fees of 30% of the Valeo settlement funds?

   Suggested Answer: Yes.

2. Should the Court award Plaintiffs' Counsel litigation costs and expenses from the Valeo settlement funds?

   Suggested Answer: Yes.

STATEMENT OF CONTROLLING OR MOST APPROPRIATE AUTHORITIES

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

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

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

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I. INTRODUCTION

Plaintiffs' Counsel have obtained a settlement totaling $9,500,000[1] with Valeo S.A., Valeo Japan Co., Ltd., Valeo, Inc., Valeo Electrical Systems, Inc., and Valeo Climate Control Corp. (the "Valeo Defendants") in the *Air Conditioning Systems* case.[2] In addition, the settlement provides for cooperation in the prosecution of the litigation against the remaining Defendants.

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 complaint in the *Air Conditioning Systems* case, filed in 2013, named Valeo and other Defendants.

With respect to Valeo, the parties started a dialogue fairly early on that resulted in settlement of the case, subject to Court approval. By so doing, Plaintiffs' Counsel and counsel for the Valeo Defendants were able to minimize the burden and expense of litigation for all concerned—but not before Plaintiffs' Counsel had devoted a substantial amount of time and money to pursuing antitrust claims on behalf of the class members.

Although the case against Valeo settled without discovery from all the Defendants, Plaintiffs' Counsel have spent a considerable amount of time obtaining and considering relevant information in order to understand and evaluate the strengths and weaknesses of the claims. In pursuing the case (which is far from over), Plaintiffs' Counsel have investigated the industry; drafted complaints; reviewed, analyzed, and coded documents; obtained information regarding Plaintiffs' allegations from Valeo and another Defendant; negotiated the settlement; drafted the

[1] The Settlement Agreement allows Valeo to reduce its settlement payment by a maximum amount of $1.5 million based on valid requests for exclusion by members of the Settlement Class. Therefore, the minimum settlement amount is $8 million.

[2] This motion is submitted by Interim Liaison Counsel and Interim Co-Lead Counsel appointed by the Court.

settlement agreement and the notices, orders, and preliminary and final approval documents; and worked with the notice and claims administrator in connection with the dissemination of notice. The Valeo settlement is the first settlement in this case to be presented to the Court for final approval. The case will not end if the Court approves the Valeo settlement, because Plaintiffs' Counsel will continue to litigate the case against non-settling Defendants.

Plaintiffs' Counsel now respectfully move for an order: 1) awarding attorneys' fees of 30% of the Valeo settlement funds; and 2) reimbursing Plaintiffs' Counsel $46,704.53 for litigation costs and expenses.[3] For the reasons set forth herein, Plaintiffs' Counsel respectfully submit that the requested fee and expense awards are reasonable and fair under both well-established Sixth Circuit precedent concerning awards of attorneys' fees in class action litigation and this Court's prior decisions awarding fees and expenses in the *Automotive Parts Antitrust Litigation*.

II. BACKGROUND AND SUMMARY OF WORK PERFORMED TO DATE BY PLAINTIFFS' COUNSEL

The background of the *Air Conditioning Systems* case is set forth in the Brief in Support of Direct Purchaser Plaintiffs' Motion for Final Approval of Proposed Settlements With Valeo Defendants, which was filed on July 30, 2018, and will not be repeated in full here. The case began in 2013, and the Valeo settlement was reached in 2017. The litigation continues against other Defendants.[4]

[3] While the Notice informed class members that Plaintiffs' Counsel might request attorneys' fees of up to one-third of the settlement amount, they are asking for thirty percent. The Notice also stated that Plaintiffs' Counsel might seek authorization to use up to 10% of the settlement funds to defray future litigation costs and expenses, but they are not making such a request from the Valeo settlement amount.

[4] The other Defendants in the *Air Conditioning Systems* case are the Sanden Defendants, the Calsonic Kansei Defendants, the MAHLE Behr Defendants, the Panasonic Defendants, the Mitsubishi Heavy Industries Defendants, and the Denso Defendants.

Up to this point in the *Air Conditioning Systems* case, Plaintiffs' Counsel have:

- Investigated the air conditioning systems industry and drafted complaints against the Defendants;
- Reviewed, analyzed, and coded documents;
- Obtained information regarding Plaintiffs' claims from the settling Defendant and another Defendant;
- Negotiated the settlement with the Valeo Defendants and prepared the settlement agreement;
- Drafted the settlement notices, orders, and the preliminary and final approval briefs seeking Court approval for the settlement; and
- Worked with the claims administrator to design and send notices and claim forms to the members of the Settlement Class and to create and maintain a settlement website.

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

III. CLASS NOTICE

On June 28, 2018, 1,732 copies of the Notice of Proposed Settlement of Direct Purchaser Class Action with Valeo Defendants and Hearing on Settlement Approval and Requests for Attorneys' Fees and Litigation Costs and Expenses (the "Notice") were mailed, postage prepaid, to all potential Settlement Class members identified by Defendants. On July 9, 2018, a Summary Notice was published in *Automotive News*, and an online banner notice will appear over a 21-day period on www.AutoNews.com, the digital version of *Automotive News*. An Informational Press release was also issued nationally through PR Newswire's "Auto Wire." A copy of the Notice has also been posted on-line at www.autopartsantitrustlitigation.com.[5]

[5] Counsel for the Valeo Defendants have informed Plaintiffs' Counsel that their clients fulfilled their obligations under 28 U.S.C. § 1715 (the "Class Action Fairness Act of 2005").

As required by Fed. R. Civ. P. 23(h), the Notice informed the Settlement Class Members that Plaintiffs' Counsel would request an award of attorneys' fees of up to one-third of the settlement funds, payment of expenses, and authorization to use up to 10% of the settlement funds for future litigation expenses. (Notice at 1, 2, 4.) It also explained how Settlement Class Members could object to the requests. *Id*.

The deadline for objections or requests for exclusion is August 22, 2018. To date, there have been no objections to either the proposed settlement, the requested fees, or expense reimbursements. Nor have there been any requests for exclusion. Plaintiffs' Counsel will provide the Court with a final report on any objections or requests for exclusion before the Fairness Hearing.

IV. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE

Federal Rule of Civil Procedure 23(h) provides that "[i]n a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." As discussed above, Plaintiffs' Counsel have complied with the requirements of Rule 23(h)(1) and (2) (notice to the class of the attorneys' fees request and an opportunity to object). What remains for the Court to determine is whether the requested fee is reasonable and fair to the class members and Plaintiffs' Counsel under the circumstances. As discussed below, Plaintiffs' Counsel believe their attorneys' fees request of 30% of the settlement funds is fair and reasonable under the circumstances, and well-supported by applicable law.

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

As the Court has previously observed, Sixth Circuit law gives district courts discretion to select an appropriate method for determining the reasonableness of attorneys' fees in class actions. *In re Automotive Parts Antitrust Litig.*, 2016 WL 8201516, at *1 (E.D. Mich. Dec. 28, 2016)

(citations omitted). *See generally 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"). Plaintiffs' Counsel respectfully request that the Court apply the same method here. *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).

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

Plaintiffs' Counsel respectfully request a fee of 30% of the proceeds of the Valeo settlement created by their efforts. As detailed below, there is substantial precedent to support the requested fee. Plaintiffs' Counsel also request reimbursement of litigation costs and expenses paid or incurred through June 30, 2018.

1. THE REQUESTED FEE AWARD IS WELL WITHIN THE RANGE OF REASONABLENESS.

The requested 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 33.3% 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 33.3% 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 33.3% of a $55,500,504 settlement fund in *Wire Harness*).

The requested 30% award is also consistent with a wealth of authority from this Circuit and others approving class action fees in the range of 30% to one-third of a common fund. *See Bessey v. Packerland Plainwell, Inc*., 2007 WL 3173972, at *4 (W.D. Mich. 2007) ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery") (internal quotation marks omitted); *Thacker v. Chesapeake Appalachia, L.L.C.,* 695 F. Supp. 2d, 521, 528 (E.D. Ky. 2010) ("Using the percentage approach, courts in this jurisdiction and beyond have regularly determined that 30% fee awards are reasonable"). District courts in the Sixth Circuit (and elsewhere) have awarded 30% or more of settlement funds as reasonable attorneys' fees in antitrust cases. For example, this Court awarded 30% of the settlement funds in *Wire Harness* to Direct Purchaser Plaintiffs' Counsel. Doc. 495 in 2:12-cv-00101.[6] Other courts have also awarded fees in that range. *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); *In re Refrigerant Compressors Antitrust Litig.,* MDL No. 2:09-md-02042 (E.D. Mich. June 16, 2014) (30% of $30

[6] The Court has also made fee awards that were lower than the 30% to one-third range. *See Occupant Safety Systems,* 2:12-cv-00601, Doc.128 (25% of $42.1 million fund).

million fund).[7] Plaintiffs' Counsel's fee request is fully supported by these and many other decisions.

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

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[7] *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).

a common fund case: 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.

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

The result achieved for the class is the principal consideration. *E.g., Delphi,* 248 F.R.D. at 503. Here, as more fully discussed in Plaintiffs' brief filed in support of final approval of the settlement, Plaintiffs' Counsel have achieved an excellent recovery of $9.5 million for the Settlement Class, which may be reduced to no less than $8 million based upon the level of opt-out requests.

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 since the inception of the case in 2013 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 the contrary, the lodestar cross-check reveals that the requested fee constitutes a reasonable multiplier on Plaintiffs' Counsel's lodestar.

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 Plaintiffs' Counsel litigating the case and achieving the settlement. These tasks have been managed with an eye toward efficiency and avoiding duplication.

As the Declarations submitted by the law firms set forth,[8] Plaintiffs' Counsel have expended 3528.30 hours from the inception of the case through June 30, 2018. Applying the historical rates charged by counsel to the hours expended yields a lodestar value of $1,810,061.25.[9]

The ultimate size of the settlement fund is dependent on the level of opt-outs from the settlement. It would therefore be speculative to predict at this time the final amount of the settlement, which may be $9.5 million, $8 million, or somewhere in between. 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 the final amount of the settlement after any opt-out reductions, and the resulting multiplier on their lodestar that the requested fee represents.

It has been observed that positive multipliers vary. In the Sixth Circuit they have been as high as 6. *Cardinal*, 528 F. Supp. 2d at 767-68 (approving multiplier of 6 and observing that

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[8] The Declarations are attached as Exhibit 1.

[9] 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). Plaintiffs' Counsel have nevertheless submitted their lodestar information at their lower historical rates, rather than at their current (higher) rates.

"[m]ost courts agree that the typical lodestar multiplier" in a large class action "ranges from 1.3 to 4.5."). In *Prandin,* 2015 WL 1396473, at *4, the fee award amounted to a 3.01 multiplier.

The work done by Plaintiffs' Counsel is described above and in the separate firm Declarations. Plaintiffs' Counsel submit that the hours expended on this case since inception, while substantial, are reasonable. Indeed, one of the recognized benefits of using the percentage-of-the-fund method is that it better aligns the interests of class counsel with the interests of class members and eliminates any incentive to unnecessarily expend hours. Here, 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 PLAINTIFFS' COUNSEL COULD HAVE RECEIVED NO COMPENSATION FOR THEIR EFFORTS.

Valeo is represented by highly experienced and competent counsel from the Cleary Gottlieb firm. Absent the settlement, Plaintiffs believe that the Valeo 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 are optimistic about the outcome of this litigation, they must acknowledge the risk that the Defendants could prevail with respect to certain legal or factual issues, which could result in reducing or eliminating any potential recovery.

In light of this reality, the risk factor attempts to compensate class counsel in contingent fee litigation for having taken on the risk of receiving less than their normal hourly rates, or even nothing at all. *See, e.g. Jones v. Diamond*, 636 F.2d 1364, 1382 (5th Cir. 1981), *overruled on other grounds*, *Int'l Woodworkers of Am. AFL-CIO and its Local No. 5-376 v. Champion Intern. Corp.*, 790 F.2d 1174 (5th Cir. 1986); *In re Packaged Ice Antitrust Litig.,* 2011 WL 6209188, at *19 (risk

of non-payment a factor supporting the requested fee). While Valeo Japan pled guilty to antitrust violations with respect to certain parts, the Department of Justice did not seek recovery for the class members, leaving that up to Plaintiffs' Counsel. As this Court has observed, success is not guaranteed even in those instances where a settling defendant has pleaded guilty in a criminal proceeding brought by the DOJ, which is not required to prove impact or damages. *See, e.g., In re Automotive Parts Antitrust Litig.,* 12-MD-02311, 2:12-cv-00103, Doc. No. 497, at 11 (E.D. Mich. June 20, 2016).

There was certainly a risk that Plaintiffs' Counsel would recover nothing, or an amount insufficient to support a fee that covered their lodestar (as happened in *Wire Harness,* where the fee awarded corresponded to less than half of the lodestar). Further, the case is not over. Plaintiffs' Counsel will continue to litigate against the other Defendants, with the chance that they may not receive anything for those efforts. Therefore, the risk of non-payment is another factor that supports the requested fee. *In re Wire Harness Cases*, 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.

The DOJ did not seek restitution from the settling Defendants because it has recognized that civil cases potentially provide for the recovery of damages by injured purchasers. In this regard, the substantial recovery Plaintiffs' Counsel have obtained makes it clear that antitrust violations will be the subject of vigorous private civil litigation that will deter similar future conduct. Since society gains from competitive markets that are free of collusion, Plaintiffs' Counsel's work benefitted the general 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. When the Court appointed Kohn, Swift & Graf, P.C., Preti, Flaherty, Beliveau & Pachios, L.L.P., Freed Kanner London & Millen, L.L.C., and Spector Roseman & Kodroff, P.C. as Interim Lead Counsel, it recognized that they have the requisite skill and experience in class action and antitrust litigation to effectively prosecute these claims. When assessing this factor, courts may also may look to the qualifications of the defense counsel opposing the class. Here, the quality of defense counsel at Cleary Gottlieb is top-notch. This firm has an excellent reputation in the antitrust bar, significant experience, and extensive

resources at its disposal.

But in the final analysis, as a district court in Florida 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 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 $9.5 million settlement amount), formidable defense counsel, the delay in receipt of payment, the substantial experience and skill of Plaintiffs' Counsel, the reasonable 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 Plaintiffs' Counsel's work.

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

Plaintiffs' 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.[10] Interim Lead Counsel have directed this case from its inception and are best "able to describe the weight and merit of

[10] *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").

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 to Interim Lead Counsel makes good sense, because it relieves the Court of the "difficult task of assessing counsels' relative contributions." *In re Prudential Ins. Co. Amer. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 329 n. 96 (3d Cir. 1998); *see also In re Cendant Corp. Sec. Litig.*, 404 F.3d 173 (3d Cir. 2005) (lead counsel given substantial authority to allocate fees awarded by Court).

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

VI. REIMBURSEMENT OF LITIGATION COSTS AND EXPENSES

Plaintiffs' Counsel respectfully request an award of litigation costs and expenses in the amount of $46,704.53. 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 expenses 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.

VII. 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: July 30, 2018

Respectfully submitted,

/s/ David H. Fink

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

Interim Liaison Counsel

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
Jonathan M. Jagher
Jeffrey L. Spector
SPECTOR ROSEMAN & KODROFF, P.C.
1818 Market Street, Suite 2500
Philadelphia, PA 19103
Telephone: (215) 496-0300

Interim Co-Lead Class Counsel and Settlement Class Co-Lead Counsel

CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2018, 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/ David H. Fink
David H. Fink (P28235)
Darryl Bressack (P67820)
FINK + ASSOCIATES LAW
38500 Woodward Ave, Suite 350
Bloomfield Hills, MI 48304
Telephone: (248) 971-2500