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

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

DIRECT PURCHASER PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES

Pursuant to Rules 23 and 54 of the Federal Rules of Civil Procedure, Direct Purchaser Plaintiffs hereby move the Court for an award of attorneys' fees from the previously approved settlement with Defendants Schaeffler Group USA Inc., Schaeffler Technologies AG & Co. KG (formerly Schaeffler Technologies GmbH & Co. KG), and FAG Kugelfischer GmbH (collectively, "Schaeffler").The grounds supporting this motion are set forth in the accompanying brief.

Dated: October 1, 2021

Respectfully submitted,

/s/ David H. Fink

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BRIEF IN SUPPORT OF DIRECT PURCHASER PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES

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I. INTRODUCTION

In October 2020, through the extensive efforts of Class Counsel and the class representatives, Direct Purchaser Plaintiffs ("Plaintiffs") reached a settlement in the Bearings case ("the Action") with Schaeffler in the total amount of $21 million subject to reduction due to opt-outs. After opt-out reductions, the total class settlement amount was $16,540,647.61. Additionally, under the terms of the settlement, Class Counsel obtained a valuable cooperation agreement for Schaeffler to assist Plaintiffs in the prosecution of their claims against the remaining Defendants. The Court previously granted final approval of the Schaeffler settlement.

The Court has also previously approved payment of litigation expenses from the Schaeffler settlement fund. Between the inception of the *Bearings* case in 2012 and March 31, 2019, the day before the Sixth Circuit's denial of Plaintiffs' Rule 23(f) motion, Plaintiffs' incurred litigation costs and expenses in the total amount of $9,397,233.66. Nearly all of these expenses were for the work of Plaintiffs' experts and the creation of the extensive discovery record Plaintiffs used to support their claims. Judge Battani authorized up to 20 percent of the settlement proceeds to be used to fund litigation expenses. ECF No. 289. In 2020, this Court granted Plaintiffs' motion for reimbursement of litigation costs and expenses in the amount of $6.5 million. ECF No. 499. After expenses, incentive awards, and reductions, the balance of the Schaeffler settlement fund is $6,501,875.75. Plaintiffs will submit an updated balance in the Notice Report and proposed Order, which will be submitted prior to the hearing.

Plaintiffs now respectfully move for an order awarding their attorneys a fee of one-third of the remaining settlement amount, after deducting litigation costs and expenses. Class Counsel have not previously asked the Court to award attorneys' fees for their work in obtaining the Schaeffler settlement. Class Counsel have determined that now is an appropriate time for this

Motion because i) the Court has completed the task of addressing litigation expenses, ii) the amount of the settlement fund remaining after payment of those expenses is known, and iii) the claims process leading to distribution of cash to settlement class members is well underway towards completion. For the reasons set forth herein, Class Counsel respectfully submit that the requested fee is reasonable and fair under both well-established Sixth Circuit precedent concerning such awards in class action litigation and prior decisions awarding fees and expenses in the *Automotive Parts Antitrust Litigation*.

II. BACKGROUND AND SUMMARY OF WORK PERFORMED TO DATE

The *Bearings* case is part of the overall *Automotive Parts Antitrust Litigation* that was centralized in this Court by the Judicial Panel on Multidistrict Litigation in 2012. The background of the *Bearings* case is set forth in the Brief in Support of Direct Purchaser Plaintiffs' Motion for Final Approval of Proposed Settlement with Schaeffler Defendants and for Authorization to Use Part of the Settlement Fund to Pay for Litigation Expenses, which was filed on September 11, 2017. ECF No. 268

In summary, during the course of this nine-year litigation, Class Counsel have:

- Researched and investigated the bearings industry and drafted complaints;
- Successfully opposed multiple motions to dismiss;
- Prepared requests to produce documents, interrogatories and subpoenas;
- Engaged in several complex and lengthy meet and confers with Schaeffler to negotiate responses to interrogatories, custodians, document preservation, and documents and data to be produced;
- Reviewed, analyzed, and coded millions of pages of documents produced by Defendants, in multiple languages, including but not limited to a significant number of documents in Japanese;
- Reviewed and prepared the named plaintiffs' documents for production to Defendants;

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

- Prepared for and defended eleven depositions of the named plaintiffs conducted by Defendants over twelve days, and of five depositions of Plaintiffs' experts;

- Prepared a class certification motion and reply;

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

- Reviewed and analyzed Defendants' expert reports;

- Worked closely with experts in connection with their reports;

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

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

- Prepared for and presented oral argument in favor of Plaintiffs' class certification motion and *Daubert* motion, and opposed to Defendants' *Daubert* motions, at a hearing;

- Provided the Court numerous status reports and participated in many status conferences.

- Engaged in extensive settlement negotiations with Schaeffler's counsel;

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

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

- Prepared and filed a brief seeking to appeal the adverse ruling on class certification to the U.S. Court of Appeals for the Sixth Circuit.

Class Counsel pursued the claims for many years. Their commitment to the litigation eventually resulted in a settlement that provides significant cash benefits and provided valuable cooperation to the class.

III. CLASS NOTICE

A notice approved by the Court August 30, 2021 [ECF No. 518.] and notice was mailed to potential members of the settlement class. A summary notice was published in *Automotive News.* Finally, a copy of the notice was (and remains) posted online at www.autopartsantitrustlitigation.com/Bearings, the settlement website dedicated to this Action.

As required by Fed. R. Civ. P. 23(h), the notice informed settlement class members that Class Counsel would request an award of attorneys' fees of up to one-third of the remaining settlement fund. It also explained how settlement class members could object to the requests. The deadline for objections is October 18, 2021. To date, there have been no objections to the fee request. Class Counsel will provide the Court with a final report on class notice and any objections at least ten days before the hearing on this motion.

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

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

The Court denied Schaeffler's motions to dismiss and the parties conducted a significant amount of discovery. Following protracted settlement negotiations, Direct Purchaser Plaintiffs reached a settlement with the Schaeffler Defendants.

Subsequently, the court approved the settlement with Schaeffler pursuant to Fed. R. Civ. P. 23(e), because it was "fair, reasonable, and adequate" to the settlement class. ECF No. at 2. The settlement class was certified as a class pursuant to Rule 23 of the Federal Rules of Civil Procedure. *Id. at* 3.

No other case in the *Automotive Parts* MDL required counsel for any single group of plaintiffs to take on the level of burden and attendant risk—both in terms of the tens of thousands of hours and millions of dollars in expenses that Class Counsel has assumed in the *Bearings* case. Class Counsel's determination resulted in a $21 million settlement for the class, before reductions and expenses, and valuable cooperation from Defendant Schaeffler.

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, Class 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 Class Counsel under the circumstances of this case. As discussed below, Class Counsel's fee request of one-third of the settlement fund in this case is fair and reasonable and well-supported by applicable law.

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

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). Class Counsel respectfully request that the Court apply the percentage-of-the-fund method here, as it has in all the other Auto Parts cases.

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

Class Counsel respectfully request a fee of one-third of the net amount of the settlement fund that was created by their efforts for the benefit of the settlement class, after deducting litigation costs and expenses. As detailed below, there is substantial precedent to support the requested fee.

A one-third fee is well within the range of fee awards approved as reasonable by this Court and many others. To date in the *Automotive Parts Litigation*, the Court has approved several fee awards of one-third of the settlement fund in question, finding that percentage to be reasonable. 2:12-cv-00501SFC-RSW, ECF No. 515 (awarding counsel for the distributor plaintiffs one-third of a $37,500,000 settlement fund in the *Bearings* cases); *In re Automotive Parts Antitrust Litig.*, 2016 WL 8201516, at *2 (E.D. Mich. Dec. 28, 2016) (awarding counsel for the Truck and Equipment Dealer Plaintiffs one-third of a $4,616,499 settlement fund in the *Wire Harness* and

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

The requested award is also consistent with a wealth of authority from courts in the Sixth Circuit (and others) approving class action fees of one-third of a common fund. *See Daoust v. Maru Restaurant LLC*, No. 17-CV-13879, 2019 WL 2866490, *5 (E.D. Mich. 2019) (citation omitted) (finding class counsels' request for attorneys' fees of one-third of settlement fund was "fair and reasonable using the 'percentage-of-recovery' method, [and] consistent with the trend in this Circuit."); *In re Sonic Corp. Customer Data Sec. Breach Litig.*, 1:17-MD-2807, 2019 WL 3773737, at *11 (N.D. Ohio Aug. 12, 2019) (finding attorneys' fees of one-third of aggregate settlement amount was reasonable and "typical" in class actions in the Sixth Circuit); *Jones v. H&J Restaurants, LLC*, No. 5:19-CV-105-TBR, 2020 WL 6877577, at *5 (W.D. Ky. Nov. 23, 2020) ("[D]istrict courts in this Circuit have found a one-third fee award to be appropriate"); *Barbee v. Navihealth, Inc.*, No. 3:19-CV-00119, 2020 WL 6365515, at *1 (M.D. Tenn. Sept. 21, 2020) (one-third of $4.69 million fund); *Sheean v. Convergent Outsourcing, Inc.*, No. 218CV11532GCS, 2019 WL 6039921, at *3 (E.D. Mich. Nov. 14, 2019) (one-third of the fund awarded); *In re Prandin Direct Purchaser Antitrust Litig.*, 2015 WL 1396473 (E.D. Mich. Jan. 20, 2015) (awarding one-third of $19 million fund). District courts in the Sixth Circuit and elsewhere have found an award of 30% or more of settlement funds as reasonable attorneys' fees in antitrust cases. *See Todd S. Elwert, Inc., DC v. All. Healthcare Servs., Inc.*, No. 3:15-CV-2673, 2018 WL 4539287, at *5 (N.D. Ohio Sept. 21, 2018) (approving as reasonable class counsels' motion for fees of one-third of settlement fund); *Hosp. Authority of Metropolitan Gov't of Nashville v. Momenta Pharms., Inc.*, No. 3:15-cv-01100, 2020 WL 3053468, at *2 (M.D. Tenn. May 29, 2020) (approving attorneys'

fees of one-third of $120 million settlement fund). Class Counsel's fee request is fully supported by these and many other decisions in the Sixth Circuit and elsewhere.[1]

In awarding attorneys' fees in the Direct Purchaser Actions in this MDL, the Court has sometimes multiplied the attorneys' fee percentage times the total settlement amount before deducting expenses and at other times has multiplied the percentage times the settlement amount

[1] *See, e.g., Bessey v. Packerland Plainwell, Inc*., 2007 WL 3173972, at *4 (W.D. Mich. 2007) ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery") (internal quotation marks omitted); *In re Skelaxin (Metaxalone) Antitrust Litig.*, 2014 WL 2946459, *1 (E.D. Tenn. Jun. 30, 2014) (one-third of $73 million fund); *In re Southeastern Milk Antitrust Litig.*, 2013 WL 2155387, at *8 (E.D. Tenn. May 17, 2013) (one-third of $158.6 million fund); *In re Foundry Resins Antitrust Litig.*, Case No. 2:04-md-1638 (S.D. Ohio Mar. 31, 2008) (one-third of $14.1 million fund); *In re Domestic Drywall Antitrust Litig.*, 2018 WL 3439454, at *20 (E.D. Pa. July 17, 2018) (awarding one-third of $190 million settlement and $2.95 million in expenses); *In re Fasteners Antitrust Litig.*, 2014 WL 296954, *7 (E.D. Pa. Jan. 27, 2014) ("Co–Lead Counsel's request for one third of the settlement fund is consistent with other direct purchaser antitrust actions."); *In re Titanium Dioxide Antitrust Litig.*, 2013 WL 6577029, at *1 (D. Md. Dec. 13, 2013) (one-third fee from $163.5 million fund); *In re Flonase Antitrust Litig.*, 951 F. Supp. 2d 739, 748-52 (E.D. Pa. 2013) (noting that "in the last two-and-a-half years, courts in eight direct purchaser antitrust actions approved one-third fees," and awarding one-third fee from $150 million fund, a 2.99 multiplier); *In re OSB Antitrust Litig.*, Master File No. 06-826 (E.D. Pa.) (fee of one-third of $120 million in settlement funds); *Heekin v. Anthem, Inc.*, 2012 WL 5878032 (S.D. Ind. Nov. 20, 2012) (awarding one-third fee from $90 million settlement fund); *In re Ready-Mixed Concrete Antitrust Litig.*, 2010 WL 3282591, at *3 (S.D. Ind. Aug. 17, 2010) (approving one-third fee); *Williams v. Sprint/United Mgmt. Co*, 2007 WL 2694029, at *6 (D. Kan., Sept. 11, 2007) (awarding fees equal to 35% of $57 million common fund); *Lewis v. Wal-Mart Stores, Inc.*, 2006 WL 3505851, at *1 (N.D. Okla., Dec. 4, 2006) (awarding one-third of the settlement fund and noting that a "one-third [fee] is relatively standard in lawsuits that settle before trial."); *New England Health Care Employees Pension Fund v. Fruit of the Loom, Inc.*, 234 F.R.D. 627, 635 (W.D. Ky. 2006) ("[A] one-third fee from a common fund case has been found to be typical by several courts.") (citations omitted), *aff'd*, 534 F.3d 508 (6th Cir. 2008); *In re AremisSoft Corp., Sec. Litig.*, 210 F.R.D. 109, 134 (D.N.J. 2002) ("Scores of cases exist where fees were awarded in the one-third to one-half of the settlement fund.") (citations omitted); *Moore v. United States*, 63 Fed. Cl. 781, 787 (2005) ("one-third is a typical recovery"); *Godshall v. Franklin Mint Co.*, 2004 WL 2745890, at *5 (E.D. Pa., Dec. 1, 2004) (awarding a 33% fee and noting that "[t]he requested percentage is in line with percentages awarded in other cases").

after deducting litigation expenses. In this Motion, Settlement Class Counsel request attorneys' fees of one-third of the settlement amount after deducting litigation costs and expenses. Because this will result in more money going to the class than the other method, this feature of the request also supports approval of the requested fee.

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 Class Counsel's efforts in creating the settlement fund.

1. CLASS 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, Class Counsel achieved an excellent recovery of a $21 million settlement, subject to reduction to no less than $16 million depending on the level of opt-outs, and valuable cooperation by Defendant Schaeffler to assist in the prosecution of Plaintiffs' claims against the remaining Defendants.

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 Class Counsel have expended in instituting the case and bringing it to a successful conclusion makes clear that the fee requested is well "aligned with the amount of work the attorneys contributed" to the recovery and does not constitute a "windfall." *See id.*

To calculate the lodestar, a court first multiplies the number of hours counsel reasonably expended on the case by the attorneys' reasonable hourly rates. *See Isabel v. City of Memphis*, 404 F.3d 404, 415 (6th Cir. 2005). Here, as described above, a substantial amount of time has been spent by Class 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 to this Motion, Class Counsel have expended 148,362.85 hours litigating this case from its inception through March 31, 2019, when Class Counsel ceased representation of the proposed class of all direct purchasers and began representation of a class of all distributor direct purchasers. Applying the historical rates charged by counsel to the hours expended yields a lodestar value of $69,132,484.25[2] A one-third

[2] 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*

fee would be $2,167,291.92. Without taking into account future work on the case, the multiplier on their lodestar that Class Counsel would receive (including fees from the settlement with the other Defendants) would be .19, less than one-fifth of their lodestar. At least ten days before the hearing of this Motion, Class Counsel will file a supplemental report setting forth any objections. The hours Class Counsel expended on this case since inception, while substantial, were reasonable and necessary for a case of this magnitude. Even the single damages asserted by Plaintiffs and supported by their experts indicate that this Action was (and remains) a major case, involving numerous foreign and domestic Defendants that allegedly were involved in an international conspiracy that began in the early 2000s. Schaeffler and the other Bearings Defendants are represented by well-respected law firms, who defended their clients vigorously. The substantial resources employed by Class Counsel to pursue these claims in the face of determined opposition by Defendants have been both proportionate and necessary for a lawsuit of this magnitude.[3]

Class 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.

for Clean Air, 483 U.S. 711, 716 (1987). Nevertheless, Class Counsel have submitted their lodestar information at their lower historical rates, rather than at their current (higher) rates.

[3] This was not a case in which the class was able to ride the government's coattails. Instead, Class Counsel had to develop nearly the entire case on their own. For example, while NSK and JTEKT did plead guilty to antitrust violations in connection with sales of bearings to Toyota, certain of its subsidiaries, and other unnamed Japanese automobile and component part manufacturers, Plaintiffs' case includes not only NSK and JTEKT, but also Schaeffler, Nachi, NTN, and SKF, none of which was charged in the U.S., although one of them was a U.S. leniency applicant. Plaintiffs' case also included industrial and aftermarket bearings in addition to automotive bearings. Further, unlike the government, Plaintiffs must prove antitrust impact on all or virtually all class members and damages. Accordingly, Plaintiffs' case was much larger in scope and complexity than the government's case alleging similar claims.

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

Schaeffler and the other Defendants are represented by highly experienced and skilled counsel. Absent the settlement, Schaeffler 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 Plaintiffs were optimistic about what would be the eventual outcome of this litigation, they must acknowledge the risk that Defendant Schaeffler 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 Class Counsel commenced this case there was a substantial risk that they would recover nothing, or an amount insufficient to support a fee that equaled their lodestar. Therefore, the risk of non-payment is another factor that supports the requested fee. *In re Wire Harness Cases*, 2:12-cv-00101 (E.D. Mich.) (Doc. 495), at 4.

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

It is well established that there is a "need in making fee awards to encourage attorneys to bring class actions to vindicate public policy (*e.g.*, the antitrust laws) as well as the specific rights of private individuals." *In re Folding Carton Antitrust Litig.*, 84 F.R.D. 245, 260 (N.D. Ill. 1979). Courts in the Sixth Circuit weigh "society's stake in rewarding attorneys who [win favorable

outcomes in antitrust class actions] in order to maintain an incentive to others . . . Society's stake in rewarding attorneys who can produce such benefits in complex litigation such as in the case at bar counsels in favor of a generous fee . . . Society also benefits from the prosecution and settlement of private antitrust litigation." *In re Cardizem*, 218 F.R.D. 508, 534 (E.D. Mich. 2003) (internal quotation marks omitted). *Accord, Delphi,* 248 F.R.D. at 504.

In this regard, the substantial recovery Class 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, Class Counsel's work benefitted the public.

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

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

6. SKILL AND EXPERIENCE OF COUNSEL

The skill and experience of counsel on both sides of the "v" is another factor that courts may consider in determining a reasonable fee award. *E.g., Polyurethane Foam,* 2015 WL 1639269, at * 7; *Packaged Ice,* 2011 WL 6219188, at *19. The Court appointed four firms with national reputations as leaders in antitrust and other complex litigation—Kohn, Swift & Graf, P.C., Preti, Flaherty, Beliveau & Pachios, LLP, Freed Kanner London & Millen, LLC, and Spector Roseman & Kodroff, P.C.—as Co-Lead Settlement Class Counsel for all the direct purchaser bearings cases.

By doing so, the Court recognized that they have the requisite skill and experience in class action and antitrust litigation to effectively prosecute these claims. Cera LLP and Cohen Milstein Sellers & Toll, who served as additional settlement class counsel, worked cooperatively and extensively with Co-Lead Settlement Class Counsel on this case. Both firms have extensive experience handling class action antitrust cases and other complex litigation. Fink Bressack has ably served as liaison counsel for this and all the direct purchaser cases.

When assessing this factor, courts may also look to the qualifications of the defense counsel opposing the class. Here, the quality of defense counsel is top-notch. Schaeffler's defense counsel, WilmerHale, 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 Class Counsel.

Given the excellent result achieved, the complexity of the claims and defenses, the work performed by Class 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 Class Counsel, the negative multiplier on the lodestar, and the societal benefit of this litigation, a one-third attorneys' fee award from the settlement fund would be reasonable compensation for Class Counsel's work.

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

Class 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.[4] 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).

Class Counsel therefore request that the Court approve (as it has in connection with every other fee award in the direct purchaser cases) the aggregate amount of the fees requested, with the specific allocation of the fee among firms to be performed by Co-Lead Settlement Class Counsel. *See Polyurethane Foam, supra.* To the extent that there are disputes that cannot be resolved by

[4] *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").

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. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant their Motion for an award of attorneys' fees.

Dated: October 1, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 1, 2021, I electronically filed the foregoing paper 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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