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

IN RE AUTOMOTIVE PARTS ANTITRUST LITIGATION In Re: BEARINGS CASES	CASE NO. 12-MD-02311 HON. SEAN F. COX
THIS RELATES TO: DIRECT PURCHASER ACTIONS	2:12-cv-00501-SFC-RSW

DIRECT PURCHASER PLAINTIFFS' MOTION FOR AN ORDER: 1) AUTHORIZING THE PROPOSED PRO-RATA PLAN OF DISTRIBUTION OF THE NET SETTLEMENT FUND TO THE SCHAEFFLER SETTLEMENT CLASS; 2) APPROVING SETTLEMENT CLASS COUNSEL'S REQUESTS FOR LITIGATION EXPENSES; AND 3) PROVIDING FOR CLASS REPRESENTATIVE SERVICE AWARDS

Direct Purchaser Plaintiffs ("Plaintiffs" or "DPPs") respectfully move the Court for an order: 1) authorizing the proposed pro-rata plan of distribution of the net Schaeffler settlement fund to the Schaeffler settlement class; 2) approving Plaintiffs' counsel's request for litigation expenses; and 3) providing for service awards to the three class representatives—DALC Gear & Bearing Supply Corp., McGuire Bearing Company, and Sherman Bearings, Inc. In support of this motion, Plaintiffs rely on the accompanying memorandum of law, which is incorporated by reference herein. Concurrence has not been sought because Schaeffler was dismissed from the case and is no longer a party.

DATED: June 15, 2020

Respectfully submitted,

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DIRECT PURCHASER PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR MOTION FOR AN ORDER: 1) AUTHORIZING THE PROPOSED PRO-RATA PLAN OF DISTRIBUTION OF THE NET SETTLEMENT FUND TO THE SCHAEFFLER SETTLEMENT CLASS; 2) APPROVING SETTLEMENT CLASS COUNSEL'S REQUEST FOR LITIGATION EXPENSES; AND 3) PROVIDING FOR CLASS REPRESENTATIVE SERVICE AWARDS

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STATEMENT OF THE ISSUES PRESENTED

1. Should the Court approve Plaintiffs' counsel's proposed pro-rata plan of distribution of the net Schaeffler settlement funds?

   Suggested answer: Yes

2. Should the Court award Plaintiffs' counsel litigation expenses?

   Suggested answer: Yes.

3. Should the Court award each of the class representatives a service award?

   Suggested answer: Yes

STATEMENT OF CONTROLLING OR MOST APPROPRIATE AUTHORITIES

Boeing Co. v. Van Gemert, 444 U.S. 472 (1980)

In re Synthroid Marketing Litig., 264 F.3d 712 (7th Cir. 2001)

In re Cardizem CD Antitrust Litig., 218 F.R.D. 508 (E.D. Mich. 2003)

In re Wire Harness Antitrust Litig., 2:12-cv-00101, Doc. No. 572 (E.D. Mich. Nov. 21, 2018)

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

Hadix v. Johnson, 322 F.3d 895 (6th Cir. 2003)

In re Wire Harness Antitrust Litig., 2:12-cv-00101-MOB-MKM Doc. No . 495

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

In re Refrigerant Compressors Antitrust Litig., 2:09-md-02042-SFC, Doc. No. 610 (E.D. Mich. March 10, 2017)

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Denney v. Jenkens & Gilchrist,
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In re Automotive Parts Antitrust Litig.,
2014 WL 4724883 (E.D. Mich. Sept. 23, 2014).. 4
In re Cardizem CD Antitrust Litig.,
218 F.R.D. 508 (E.D. Mich. 2003).. 11, 20
In re Continental Illinois Securities Litig.,
962 F.2d 566 (7th Cir. 1992).. 10, 11
In re Flonase Antitrust Litig.,
291 F.R.D. 93 (E.D. Pa. 2013).. 8, 9
In re Global Crossing Sec. & ERISA Litig.,
225 F.R.D. 436 (S.D.N.Y. 2004).. 11
In re Ikon Office Solutions, Inc., Sec. Litig.,
194 F.R.D. 166 (E.D. Pa. 2000).. 8
In re Insurance Brokerage Antitrust Litig.,
282 F.R.D. 92 (D. N.J. 2012).. 14
In re Insurance Brokerage Antitrust Litig.,
2013 WL 3956378 (D. N.J. Aug. 1, 2013).. 14

In re Packaged Ice Antitrust Litig.,
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For the reasons set forth below, Direct Purchaser Plaintiffs ("Plaintiffs" or "DPPs") respectfully request that the Court grant their motion to 1) authorize the proposed pro-rata plan of distribution of the net Schaeffler settlement fund to class; 2) approve Plaintiffs' counsel's request for litigation expenses; and 3) provide for service awards to the class representatives—DALC Gear & Bearing Supply Corp., McGuire Bearing Company, and Sherman Bearings, Inc.

A. Introduction - The direct purchaser *Bearings* case has been the most thoroughly litigated action in the *Automotive Parts* MDL—progressing from the initial complaints filed by the class representatives in 2012 (that were consolidated to become the direct purchaser action, *In re Bearings Cases*, 2:12-cv-00501) through discovery and contested class certification and *Daubert* motions to the Sixth Circuit. The complaints alleged that Defendants[1] engaged in a conspiracy that affected all of Defendants' customers—both original equipment manufacturers and distributors—and the discovery and class certification proceedings that followed were all geared towards proving that contention on a class-wide basis.

After the Court denied Defendants' motions to dismiss and the parties conducted significant amounts of fact and expert discovery, Plaintiffs moved for certification of a class of all direct purchasers of bearings from the Defendants in the United States from April 1, 2004 through December 31, 2014. The class motion was supported by evidence obtained in discovery and multiple reports submitted by Plaintiffs' experts. Single damages for the class were estimated at $3.8 billion. Defendants opposed the class certification motion and filed *Daubert* motions to exclude all or a portion of the opinions of Plaintiffs' experts. While finding Plaintiffs' experts' opinions admissible at trial, the Court denied the class motion. Plaintiffs' Rule 23(f) motion for

[1] Schaeffler, SKF, NSK, JTEKT, NTN, Nachi, and certain of their U.S. subsidiaries.

leave to appeal was denied on April 1, 2019. Plaintiffs' counsel only seek reimbursement for expenses that were paid out-of-pocket or accrued prior to April 1, 2019.[2]

No other case in the *Automotive Parts* MDL required counsel for any single group of plaintiffs to take on the level of burden and attendant risk—both in terms of the tens of thousands of hours and millions of dollars in expenses—that Plaintiffs' counsel has assumed in the *Bearings* case.[3]

1. The Schaeffler Settlement - Plaintiffs settled with Schaeffler for $21 million, subject to reduction to no less than $16 million depending on the level of opt-outs, on behalf of the following settlement class: All individuals and entities (excluding any Defendant and its present and former parents, subsidiaries, and affiliates) that purchased Bearings in the United States directly from one or more Defendant from January 1, 2000 through March 21, 2017.

Notice was provided to the class members—automotive and industrial OEMs and distributors—in accordance with the requirements of Rule 23. The notice informed the class members, among other things, that: 1) they would be eligible to submit a claim in the future and would have an opportunity to be heard with respect to a proposed distribution plan; 2) Plaintiffs' counsel was seeking authorization to use up to twenty-percent of the settlement for litigation

[2] Subsequently, the Court allowed Plaintiffs to file a renewed motion for certification of a class limited to bearings distributors. The instant motion does not request reimbursement for expenses incurred in connection with the renewed motion for class certification.

[3] There are four different plaintiff groups in the *Automotive Parts* MDL, DPPs and indirect purchaser End-Payors (retail vehicle purchasers), Automobile Dealers, and Truck and Equipment Dealers. Ford Motor Company filed an individual lawsuit in the *Wire Harness* case. In *Wire Harness*, the first case to complete fact discovery, the plaintiff groups shared expenses, but not expert costs because the cases settled before the class certification proceedings began. In *Bearings*, DPPs have borne the entire burden of the class certification costs and a substantial portion of the discovery costs.

expenses; and 3) at a later date Plaintiffs' counsel would seek an award of attorneys' fees and reimbursement of additional litigation expenses, as well as payment of awards to the class representatives for their service to the class.

There were no objections to the Schaeffler settlement or to Plaintiffs' request to use a portion of the settlement funds to defray litigation expenses. After a hearing, the Court approved the Schaeffler settlement, the final amount of which was $16,538,888 after adjusting for opt-outs, and the request to use up to twenty percent of the settlement funds to pay litigation expenses. (2:12-cv-00501, Doc. No. 279).

2. Notice of the Proposed Distribution Plan and Requests for Reimbursement of Litigation Expenses and Service Awards - On May 6, 2020, Plaintiffs moved the Court for authorization to send a notice and claim form ("Notice") to the members of the settlement class. The motion was granted on May 11, 2020 (2:12-cv-00501, Doc. No. 465), and on May 26 the claims administrator mailed 44,205 Notices to the class members. The Notice is attached as Exhibit A. In accordance with the Court's order, the summary notice and online banner notice are attached as Exhibit B and the press release is attached as Exhibit C.

The Notice informed the class members that the Court would hold a hearing on July 23, 2020 to consider: 1) a proposed pro-rata plan of distribution of the Schaeffler settlement funds; and 2) Plaintiffs' counsel's request for reimbursement of litigation expenses not to exceed $6.5 million and service awards of $50,000 to each of the three class representatives. Notice, Exhibit A. The Notice provides that any objections to the proposed plan of distribution or Plaintiffs' expense reimbursement and service award requests are due June 25 and explains the procedure for

filing an objection. No objections have been received as of the date this motion was filed. Plaintiffs' counsel will respond to any objection received prior to the scheduled hearing.[4]

B. Efforts and Expenditures on Behalf of the Class - Beginning in 2012, class action lawsuits were filed by DPPs on behalf of direct purchasers of automotive and industrial bearings alleging that Defendants entered into a conspiracy to suppress and eliminate competition for bearings by agreeing to rig bids for, and to raise, fix, stabilize, or maintain the prices of, bearings in violation of federal antitrust laws. Subsequently, in August 2013, DPPs filed a Consolidated Amended Class Action Complaint ("Consolidated Complaint") (2:12-cv-00501, Doc. No. 100).

In December 2013, Defendants filed multiple motions to dismiss the Consolidated Complaint, including a collective Rule 12(b)(6) motion. (2:12-cv-00501, Doc. No. 106; 2:12-cv-00500, Doc. Nos. 113 and 114), which Plaintiffs opposed. The Court: 1) denied Defendants' collective Rule 12(b)(6) motion; 3) denied Defendant Schaeffler USA's Rule 12(b)(6) motion; and 3) granted Defendant Schaeffler AG's motion to dismiss for lack of personal jurisdiction. (2:12-cv-00500, Doc. No. 149; *In re Automotive Parts Antitrust Litig.*, 2014 WL 4272772 (E.D. Mich. Aug. 29, 2014); *In re Automotive Parts Antitrust Litig.*, 2014 WL 4724883 (E.D. Mich. Sept. 23, 2014)). In May 2015, DPPs filed a Second Consolidated Amended Class Action Complaint ("Second Consolidated Complaint") (2:12-cv-00501, Doc. No. 136).

Discovery - Beginning with the investigation that led to DPPs filing their initial complaint in 2012 and continuing through September 2018, counsel for DPPs devoted an enormous amount of time and money to discovery.

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[4] It appears that the July 23 hearing date has been suspended due to the transfer of the *Bearings* case to Your Honor. It should be noted that a hearing is not required with respect to this motion. It can be decided on the papers.

Depositions **-** DPPs' counsel prepared for, took, and defended 84 depositions in this case. DPPs' counsel conducted 68 fact depositions (both corporate knowledge and individual), and two expert depositions, over 104 days. These depositions took place in multiple locations in the U.S., as well as in Japan. The majority of these depositions were of witnesses whose first language was Japanese, necessitating the employment of interpreters, as well as court reporters and videographers. Often the depositions of Japanese speakers had to be conducted over two days to accommodate the translation of the questions and objections from English to Japanese and the answers from Japanese to English. Further, a substantial portion of the documents were written in Japanese, which required them to be examined by reviewers fluent in that language to determine what documents should be translated for use with these witnesses, and in the case generally. DPPs' counsel prepared the three named Plaintiffs for 11 depositions conducted by Defendants over 12 days, and DPPs' econometric, economic, and industry experts at five separate depositions.

Documents **-** Defendants produced millions of pages of documents. As explained above, a great many of these documents were in Japanese, which required use of reviewers fluent in that language to select documents for translation. DPPs' counsel, along with counsel from the indirect plaintiffs for a period of time, reviewed and coded in excess of one million documents; after the End-Payor and Automobile Dealer groups reached settlements with the Defendants, DPPs' counsel were solely responsible for reviewing and coding documents needed for depositions and class certification and for the substantial costs of the document database that housed the millions of pages of Defendants' documents. DPPs' counsel were solely responsible for reviewing and preparing the named Plaintiffs' documents for production to Defendants, as well as the costs of the database housing those documents.

***Written Discovery* -** DPPs' counsel prepared multiple sets of interrogatories and document requests directed to all the Defendants and likewise prepared responses to the multiple sets of interrogatories Defendants served on the named plaintiffs.

***Meet and Confers* -** In connection with the over eighty depositions, document productions, and written discovery discussed above, DPPs' counsel engaged in numerous lengthy and detailed discussions with Defendants' counsel in an effort to resolve fundamental disputes about the scope and extent of discovery, especially with respect to conduct that occurred overseas.

C. Class Certification, Daubert Motions, and Experts - After most of the discovery had been taken, DPPs filed a motion for class certification and supporting memorandum (Doc. No. 216). The motion was accompanied by extensive declarations from Plaintiffs' econometric and economic experts—Drs. McClave and Langenfeld, respectively—who opined on class-wide impact and damages, a declaration of an industry expert, Mr. Farmer, and 85 other exhibits. On July 26, 2017, Defendants filed their opposition to class certification (Doc. No. 245), and moved to exclude the expert report and testimony of Dr. McClave, (Doc. No. 246), and to partially exclude the expert report and testimony of Dr. Langenfeld. (Doc. No. 248). On October 27, 2017, DPPs filed a motion to exclude portions of the report and opinions of Defendants' proffered industry expert, Kevin McCloskey. (Doc. No. 274).

On November 16, 2017, DPPs filed their reply in support of class certification (Doc. No. 281), and their opposition to Defendants' *Daubert* motions. (Doc. Nos. 283 and 285). These briefs were accompanied by rebuttal reports prepared by Drs. McClave and Langenfeld that addressed contentions of Defendants' experts. On November 22, 2017, Defendants filed their opposition to DPPs' *Daubert* motion against Mr. McCloskey. On December 15, 2017, Defendants filed their two replies in support of their *Daubert* motions (Doc. Nos. 298 and 300), accompanied by a

lengthy reply declaration of Dr. Willig. On January 8, 2018, DPPs sought leave to submit additional reports of their experts to rebut new material contained in Dr. Willig's reply declaration and Defendants' *Daubert* reply briefs.[5]

On January 18, 2018, the Court entertained argument on Plaintiffs' class certification motion and Defendants' two *Daubert* motions. Plaintiffs' *Daubert* motion targeting part of Defendants' proffered industry expert's report was argued in March 2018. On November 6, 2018, the Court denied Defendants' *Daubert* motions in their entirety and granted Plaintiffs' motion to partially exclude the opinions of Mr. McCloskey. Doc. No. 373. On January 7, 2019, the Court

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[5]Plaintiffs' experts prepared 7 reports totaling over 200 pages, including exhibits and appendices. Defendants' experts submitted 3 reports, also totaling over 200 pages, including exhibits and appendices, which contained material that Plaintiffs' experts were required to evaluate and rebut in support of the class certification motion and in opposition to Defendants' *Daubert* motions.

Before Plaintiffs' experts could conduct any statistical analyses for inclusion in their reports, they had to wade through electronic sales data that contained millions of transactions produced by six different Defendants and non-Defendant Timken. It took an enormous amount of work by the experts – including trying to get supplemental information from Defendants about various aspects of the data – just to organize and understand the data and create a useable database. The six Defendants and Timken produced over 44 gigabytes of transactional data files. Collectively, this data included approximately 64 million observations, representing roughly 44 billion data points. Each Defendant's data had different fields, definitions, and, in some cases, missing or incomplete data, that had to be reconciled through repeated sets of back and forth questions to the Defendants and Timken over a period of approximately 19 months to create a single, unified transactional sales database. Moreover, Plaintiffs' experts had to segregate the data into ball or roller bearings, which was a time-consuming and manual process requiring information from product catalogues. Similarly, it took many hours to standardize customer information, such as customer type and application (automotive or industrial), across the data. To verify and correctly interpret the transactional data, the experts reviewed and analyzed the extensive discovery record. Dr. Langenfeld relied on the transactional database for his initial and reply report. Notably, even the Defendants' economist relied on the transactional database created by Plaintiffs' experts for their analyses.

Plaintiffs' experts also conducted extensive analyses of the transactional data in response to the criticisms leveled by Defendants' economist. These analyses led to the creation of a large number of charts and tables, which became part of Plaintiffs' experts' reports.

denied Plaintiffs' class certification motion. Doc. No. 381. Plaintiffs' Rule 23(f) motion for leave to appeal was denied. *In re Automotive Parts Antitrust Litig.*, No, 19-0101 (6th Cir. Apr. 1, 2019).

D. The Court Should Authorize the Proposed Pro-Rata Distribution Plan - The proposed distribution plan provides for the settlement funds, with accrued interest, less any amounts approved by the Court for payment of litigation and settlement administration costs and expenses, and service awards to the class representatives, to be distributed pro-rata to the settlement class members in proportion to their approved purchases compared to all approved purchases. (Notice, Exhibit A at 2).

Before a court approves a settlement fund distribution, it must conclude that it is fair, reasonable, and adequate. *E.g.*, *In re Packaged Ice Antitrust Litig.*, 2011 WL 6209188, at *15 (E.D. Mich. Dec. 13, 2011); *Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 326 (3d Cir. 2011); *In re Flonase Antitrust Litig.,* 291 F.R.D. 93, 107 (E.D. Pa. 2013). An allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel. As with other aspects of a settlement, the opinion of experienced and informed counsel is entitled to considerable weight. *In re American Bank Note Holographics, Inc.*, 127 F. Supp. 2d 418, 429-30 (S.D.N.Y. 2001).

Generally, a plan of allocation that reimburses class members based on the type and extent of their injuries is a reasonable one. *In re Ikon Office Solutions, Inc., Sec. Litig.,* 194 F.R.D. 166, 184 (E.D. Pa. 2000); *Smith v. MCI Telecoms Corp*., 1993 WL 142006, at *2 (D. Kan. April 28, 1993); 4 Alba Conte & Herbert Newberg, *Newberg on Class Actions*, §12.35, at 350 (4th ed. 2002) ("*Newberg*") (noting that pro-rata allocation of a settlement fund "is the most common type of apportionment of lump sum settlement proceeds for a class of purchasers" and "has been accepted and used in allocating and distributing settlement proceeds in many antitrust class actions").

The Court consistently has approved pro-rata distributions in this MDL litigation. *See In re Wire Harness Antitrust Litig.*, 2:12-cv-00101, Doc. No. 502 at 1 (E.D. Mich. Aug. 25, 2017); *In re Wire Harness Antitrust Litig.*, 2:12-cv-00101, Doc. No. 572 at 1 (E.D. Mich. Nov. 21, 2018). "Settlement distributions…that apportions funds according to the relative amount of damages suffered by class members have repeatedly been deemed fair and reasonable". *In re Vitamins Antitrust Litig*., 2000 WL 1737867, at *6 (D.D.C. March 31, 2000) (finding proposed plan for pro-rata distribution of partial settlement funds was fair, adequate, and reasonable). *Accord Prandin Direct Purchaser Antitrust Litig.*, 2015 WL 1396473, at *3 (E.D. Mich. Jan. 20, 2015) (approving a plan as fair, reasonable, and adequate that utilized a pro-rata method for calculating each class member's share of the settlement fund). This Court authorized a pro-rata distribution in *In re Refrigerant Compressors Antitrust Litig*., 2:09-md-02042-SFC, Doc. No. 610 (E.D. Mich. March 10, 2017). The proposed plan for allocation and distribution of the settlement fund is fair, reasonable, and adequate and well-supported in the law, and thus should be approved.

E. Awarding Plaintiffs' Counsel Litigation Expenses is Appropriate - Dr. McClave estimated single damages of $3.8 billion ($11.4 billion trebled) for the class. This figure illustrates that this 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. The Defendants are represented by well-respected law firms, who defended their clients vigorously. The substantial resources employed by Plaintiffs' 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.[6]

[6] Plaintiffs' case was much larger in scope and complexity than the government's. 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

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' counsel incurred out-of-pocket and accrued expenses on behalf of the class of $6,620,397.[7] 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. In the Notice, Plaintiffs' counsel informed class members that they would cap their expense request at $6.5 million. Therefore, Plaintiffs' counsel now request that the Court award $6.5 million from the Schaeffler settlement fund as reimbursement for litigation expenses.[8]

Plaintiffs' counsel's efforts resulted in a $16.5 million common fund for the benefit of the settlement class members. Under the common fund doctrine, Plaintiffs' counsel are entitled to compensation for their efforts in creating a settlement fund benefitting class members. *See*, *e.g*., *In re Continental Illinois Securities Litig.,* 962 F.2d 566, 568 (7th Cir. 1992) (citing *Boeing Co. v. Van Gemert*, 444 U.S. 472 (1980)). *See also Boeing Co. v. Van Gemert,* 444 U.S. at 478 (class lawyers who secure fund are entitled to payment from the fund to avoid unjustly enriching those who benefit from class counsel and the class representatives' efforts).

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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. The 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. This was not a case where the class was able to ride the government's coattails. Instead, Plaintiffs' counsel had to develop nearly the entire case on their own.

[7] Plaintiffs' counsel's out-of-pocket expenses are $4,951,933.39. *See* Exhibit D and Plaintiffs' Counsel's Declarations (attached hereto as Exhibit E). Their accrued expenses are $1,668,463.91.

[8] As discussed above, the Court previously allowed Plaintiffs' counsel to use up to twenty percent of the Schaeffler settlement funds to pay litigation expenses. These funds, which totaled $3.3 million, were used to pay a portion of Plaintiffs' litigation expenses, and are not included in Plaintiffs' counsel's current expense request.

The common fund doctrine and the market also apply to reimbursement of litigation expenses. Under the common fund doctrine, class counsel are "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, consulting with experts and consultants, travel and other litigation-related expenses." *In re Cardizem CD Antitrust Litig.,* 218 F.R.D. 508, 535 (E.D. Mich. 2003). *See also In re Global Crossing Sec. & ERISA Litig.,* 225 F.R.D. 436, 468 (S.D.N.Y. 2004) ("The expenses incurred-which include investigative and expert witnesses, filing fees, service of process, travel, legal research and document production and review are the type for which "the paying, arms' length market" reimburses attorneys. For this reason, they are properly chargeable to the Settlement."); *Anwar v. Fairfield Greenwich Ltd.,* 2012 WL 1981505, at *3 (S.D.N.Y. June 1, 2012) ("Plaintiffs' Counsel seek reimbursement for expenses such as mediation fees, expert witness fees, electronic legal research, photocopying, postage, and travel expenses, each of which is the type 'the paying, arms' length market' reimburses attorneys."). *See also Continental Illinois,* 962 F.2d at 571 (expenses are compensable under the common fund doctrine).

As with attorneys' fees, district courts should take a market-based approach when considering requests for reimbursement of litigation expenses. *In re Synthroid Marketing Litig.,* 264 F.3d 712, 722 (7th Cir. 2001). In determining whether the requested expenses are compensable from the common fund, the court considers whether the particular costs are the type routinely billed by attorneys to paying clients in similar cases. *Id. See also Continental Illinois,* 962 F.2d at 570 (court should allow reimbursement of expenses at market rates). As noted above, expenses for various goods and services, such as "expert witness fees, electronic legal research,

photocopying, postage, and travel expenses, [are of] the type 'the paying, arms' length market' reimburses attorneys." *Anwar, supra.*

Plaintiffs' counsel took the case on a purely contingent basis as to both attorneys' fees and expenses. Thus, they bore the risk of non-payment of expenses as well as attorneys' fees, unless they were able to obtain a recovery by way of settlement or judgment.

Plaintiffs' counsel vigorously litigated the matter in this Court through *Daubert* motions, class certification, and in the appellate court. Given the length, scope, and complexity of the case and the tenacious defense, it is no surprise that the expenses incurred were substantial.

Plaintiffs' counsel's efforts did not go for naught. Because of their dogged pursuit of the case they were able to obtain a $16.5 million settlement with Schaeffler. Plaintiffs' counsel have not sought attorneys' fees. By this motion, they seek an award which will cover most of their out-of-pocket and accrued expenses from the Schaeffler settlement proceeds.

1. Plaintiffs' Expenses Are Those Customarily Charged to Clients and Reimbursed in Class Actions - As set forth above and in the individual firm Declarations, the request for litigation expenses is based upon categories of expenses and amounts that are customarily charged to clients in the market for legal services.[9] Set forth below are the largest expenses

The most significant component of the expenses is for the cost of experts. Economic and econometric experts are essential in antitrust litigation, both at the class certification stage and for proving causation and damages. This case is no exception. Plaintiffs' experts and their respective teams worked closely with Plaintiffs' counsel, created a usable database from Defendants' disparate transactional data, submitted initial, reply, and rebuttal reports, and had their depositions

[9] Per the Court's earlier instructions, expenses for internal photocopying, telephone, and facsimile are not included in the total.

taken over multiple days. They were integral in assisting Plaintiffs' counsel's efforts to achieve positive results for the class. The out-of-pocket and accrued expert costs were $ 4,257,733.

Another unavoidable cost of this complex litigation was for the electronic hosting of a massive discovery record that could be accessed by multiple reviewers, which allowed for the review of millions of pages of documents used for depositions, to support class certification, and to rebut Defendants' arguments. These out-of-pocket costs came to $1,216,045.

Plaintiffs' counsel were also required to travel extensively in connection with this litigation for the numerous depositions (including those held in Japan at Defendants' insistence) and Court hearings and thus incurred the related costs of transportation, meals, and lodging. The costs for travel and related expenses total $450,343.

In connection with the many depositions there were necessary costs for the court reporters, videographers, translators and the deposition transcripts. All told, the cost of depositions was $516,832.

Other expenses that were necessarily incurred in the prosecution of this litigation include expenses for court fees, hearing transcripts, service, postage, and overnight delivery. These other expenses are set forth in the law firm Declarations.

The expenses that were incurred were necessary and of a type and in amounts paid by clients in non-class action litigation and reimbursed by courts in class action cases. Therefore, Plaintiffs' counsel respectfully request that the Court approve reimbursement of such expenses from the settlement funds.

2. Awards in Other Cases Support Approving the Request in This Case - The amount of pre-trial expenses on the Plaintiffs' side in this case are not out of line for complex antitrust litigation. For example, in *In re Polyurethane Foam Antitrust Litig.*, 135 F. Supp. 3d 679,

694 (N.D. Ohio 2015), the court granted direct purchaser plaintiffs' motions for reimbursement of over $9.3 million in pretrial expenses.[10]

In *In re Urethane Antitrust Litig*., MDL No. 1616, No. 04-md-01616-JWL (D. Kan.), the Court awarded reimbursement of $2,131,383.64 in litigation costs and expenses from the proceeds of a pretrial settlement with one defendant (Doc. No. 995), and $5,014,329.08 from pretrial settlements with two other defendants (Doc. No. 2210), for a total of $7,145,712.72.

In *In Re New Motor Vehicles Canadian Export Antitrust Litig*., MDL No. 03-1532 (D. Maine) and *Automobile Antitrust Cases I and II*, Judicial Council Coordination Proceeding Nos. 4298 and 4303 (Cal. Sup. Ct. for the City and County of San Francisco),[11] the attorneys in the two proceedings expended over $12 million in costs and expenses, with roughly seventy-four percent (74%) of the total spent on experts.

In *In Re Insurance Brokerage Antitrust Litig*., 2013 WL 3956378, at *15, *21 (D. N.J. Aug. 1, 2013), the court approved reimbursement of litigation expenses totaling $9,787,096. Included in this amount were "costs expended for the purposes of litigating this action, including fees for experts, costs associated with creating and maintaining electronic document databases, participating in mediation, travel and lodging expenses, and photocopying, mailing, telephone and deposition transcription costs." *Id.* at 21. *Accord In Re Insurance Brokerage Antitrust Litig*., 282 F.R.D. 92, 125 (D. N.J. 2012).[12]

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[10] In addition, indirect purchasers in *Polyurethane Foam* were pursuing the same alleged wrongdoing under state law, and the court granted their motion for reimbursement of $5.1 million in expenses. *In re Polyurethane Foam Antitrust Litig*., 168 F. Supp. 3d 985, 1013-14 (N.D. Ohio 2016).

[11] These cases were filed in both state and federal courts before the passage of the Class Action Fairness Act, and thus the state cases were not removable to federal court. The attorneys and the judges in the state and federal courts coordinated the litigation in the two courts.

[12] In *Silverman v. Motorola Solutions, Inc*., 2013 WL 4082893, at *2 (7th Cir. Aug. 14, 2013) (a securities fraud case), the court noted that the case "took more than four years, and more

It is true that the amount of money expended on behalf of the class in this case constitutes more than half of the $16.5 million that Plaintiffs' counsel obtained from Schaeffler. But as noted above, Plaintiffs' counsel were pursuing a significant antitrust action for a class with potential damages in the billions that required the expenditure of extensive amounts of human and financial resources.[13] Considering the size, scope, and complexity of this litigation, the dollar amount of expenses, while substantial, is not excessive and comparable to other antitrust cases. Therefore, Plaintiffs' counsel respectfully request that the Court grant their motion for litigation expenses.

F. Service Awards to the Class Representatives Are Warranted - Class representatives are "an essential ingredient of any class action" and service (also called incentive) awards are appropriate to induce a business to participate in worthy class action lawsuits. *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 2008). Such "awards serve an important function, particularly where the named plaintiffs participated actively in the litigation." *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1218 (S.D. Fla. 2006) (*citing Denney v. Jenkens & Gilchrist*, 230 F.R.D. 317, 2005 WL 388562, at *31 (S.D.N.Y. Feb. 18, 2005)).

Plaintiffs' counsel respectfully request that the Court authorize a $50,000 award to each of the three class representatives for their service to the class. The Sixth Circuit has noted that such awards may be appropriate under some circumstances, such as those in this case. *Hadix v. Johnson*, 322 F.3d 895, 897 (6th Cir. 2003). In surveying decisions from other courts, the Court of Appeals in *Hadix* explained:

> 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.

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than $5 million in out-of-pocket expenses by counsel to conduct discovery and engage experts, before reaching the summary judgment stage."

[13] Plaintiffs' counsel have expended tens of thousands of attorneys' hours on the case.

> 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).

The class representatives worked closely with counsel to provide information about the bearings industry, as well as to preserve and produce documents and respond to multiple sets of interrogatories. The class representatives were deposed multiple times, and were ready, willing, and able to see the case through to its conclusion. Without them there would have been no class action and no Schaeffler settlement. Further, the class representatives were not promised an incentive award and the prospect of such an award was not among the reasons the representative plaintiffs approved the settlement. *Hillson v. Kelly Servs. Inc.*, 2017 WL 279814, at *6 (E.D. Mich. 2017). Moreover, this is not a case where the requested incentive award will dwarf the amounts that class members will receive.

The class representatives devoted a significant amount of time and effort to representing the interests of the class members. **DALC** - DALC has devoted a substantial amount of time and effort on behalf of the class and has been an exemplary class representative. After conferring with and assisting DPPs' counsel regarding the investigation of antitrust violations in the bearings industry, DALC decided to step up and file a class action lawsuit. Since that time, DALC has done everything that could possibly be expected from a class representative. DALC conferred and met with counsel regarding the requirement to preserve its documents and data and then, with the assistance of counsel, took the necessary action to ensure that it met its preservation obligations. DALC also met with counsel to discuss its obligations to the prospective class as a class representative. Thereafter, DALC reviewed drafts of the complaint, and provided feedback regarding same and DALC conferred with counsel in connection with its corporate disclosure statement and initial disclosures.

Subsequently, DALC met with counsel on several occasions to collect documents potentially responsive to Defendants' document requests, as well as transactional data. Ultimately, DALC produced more than 23,000 pages of documents, and transactional data, to Defendants. DALC also conferred with counsel numerous times in connection with its responses and objections to multiple sets of interrogatories. When the time for depositions came, DALC made its key employees available to DPP counsel and representatives of DALC sat for one 30(b)(6) and three 30(b)(1) depositions. The DALC deponents all met and conferred with DPP counsel multiple times to prepare for their depositions.

In addition to devoting substantial resources to meeting all of its discovery obligations, DALC has regularly monitored the status of the litigation and has made itself available to answer questions relating to class certification, including providing counsel the benefit of its knowledge of the industry pertaining to standards, product fungibility, and the commodity nature of bearings.

McGuire - McGuire Bearing Company, founded in 1954, is the largest regional distributor of bearings and power transmission products with 9 branch locations in the Pacific Northwest. Over the past 8 years, more than two dozen McGuire employees have taken an active role in assisting with the litigation and have contributed significant time, energy, and expertise for the benefit of the class. Beginning with McGuire's President assisting counsel in 2012 with the technical aspects of bearings for the complaint, McGuire has diverted significant time and resources from its day-to-day operations to be a hands-on participant in this case.

McGuire provided unfettered access to dozens of employees in the purchasing, accounting, marketing, sales, and IT departments to ensure it complied with its discovery obligations and provided in-depth knowledge of the bearings industry to counsel. These individuals spent many hours being interviewed, searching for documents, answering follow up questions, and providing

additional documentation throughout the discovery period. McGuire's IT department spent numerous hours restoring archived data on several occasions and provided back up ESI for several current and former employees. They also assisted computer experts who forensically imaged in excess of 325 gigabytes of ESI from more than two dozen current and former employees' computers, external storage devices and back-up drives. These efforts contributed to the production of more than 90,000 documents (generating more than 310,000 pages) in response to Defendants' document requests. Responding to Defendants' five sets of interrogatories also took considerable time and effort by McGuire's President and members of the purchasing department.

McGuire's President and a former purchasing manager were deposed in the capacity of 30(b)(6) witnesses, and the Vice President of Sales, the current purchasing manager, and a bearings buyer sat for 30(b)(1) depositions. These five deponents collectively spent multiple days with counsel to prepare for their depositions. Additional employees also spent time with the witnesses so that they could fully respond to the 30(b)(6) topics. McGuire's senior management has maintained an active involvement in the litigation as it has progressed through class certification and continues to do so. McGuire's considerable efforts were undertaken without any assurance that there would be a recovery, let alone a payment to compensate it not only for its time, but to acknowledge the risks that a plaintiff faces when it puts its name on a class action complaint.

Sherman - Sherman Bearings is a retail seller of bearings in Houston, Texas. As a thirty-year veteran of the bearings industry, co-owner Roy Sherman brought his extensive knowledge about the Defendants and the industry as a whole to this litigation on behalf of the class. Along with co-owner Dustin Sherman, they met with counsel on multiple occasions to provide documentation and information to comply with Sherman's discovery obligations to produce documents and respond to five sets of interrogatories. The search for documents was time

consuming and cumbersome for Sherman given the length of the class period and the fact that paper documents were the primary source of documentation. Complying with its ESI obligations required additional time and effort by its outside IT vendor to restore data and format it in to comply with defendants' transactional data requests. Sherman also allowed counsel and a forensic computer expert to image all potential ESI sources. Sherman produced in excess of 16,000 pages of documents. Dustin Sherman was deposed as the 30(b)(6) witness, which required thorough preparation with counsel due to the extensive scope of the 21 topics. Roy Dustin subsequently sat for a 30(b)(1) deposition, which also required preparation time with counsel. Like DALC and McGuire, Sherman has and continues to fulfill its obligations as a class representative by monitoring the litigation and answering questions from counsel as needed.

The Court has provided for service awards in the *Automotive Parts* MDL, and a service award of this size is not uncommon in lengthy, highly complex antitrust cases. For example, the Court previously approved $50,000 incentive awards to seven class representatives in *Wire Harness*, 2:12-cv-00101-MOB-MKM Doc. No.495, at 6, ¶23. *See also In re Prandin Direct Purchaser Antitrust Litig*., 2015 WL 1396473, at *5 (E.D. Mich. Jan. 20, 2015) ($19 million settlement, award of $50,000 to each class representative); *In re Skelaxin Antitrust Litig*., 2014 WL 2946459 (E.D. Tenn. June 30, 2014) (settlement of direct purchaser pharmaceutical antitrust action, awarding $50,000 to each class representative); *Connectivity Systems Inc. v. National City Bank*, 2011 WL 292008, at *20 (S.D. Ohio Jan. 26, 2011) (in $10 million settlement, awarding $50,000 each to three named plaintiffs); *Liberte Capital Group v. Capwill*, 2007 WL 2492461, at *3 (N.D. Ohio Aug. 29, 2007) (awarding $97,133.83 and $95,172.47 to two named plaintiffs representing subclasses that received $11 million and $7 million); *Hainey v. Parrott*, 2007 WL 3308027 (S.D. Ohio Nov. 6, 2007) (approving service award of $50,000 for each class

representative); *In re Cardizem CD Antitrust Litig*., 218 F.R.D. 508, 535-36 (E.D. Mich.2003) (awarding $75,000 to each class representative); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913–14 (S.D. Ohio 2001) (granting a $50,000 service award out of a $5.25 million fund); *In re Revco Sec. Litig*., 1992 WL 118800, *7 (N.D. Ohio May 6, 1992) ($200,000 incentive award to named plaintiff); *Enter. Energy Corp. v. Columbia Gas Transmission Corp*., 137 F.R.D. 240, 251 (S.D. Ohio 1991) (approving service awards of $50,000 to six class representatives out of a settlement fund of $56.6 million). To date, no class member has objected to the service award request. In light of their commendable efforts and the substantial benefits provided to the class, an award from the Court recognizing the class representatives' efforts in the requested amounts would be appropriate.

G. Conclusion - For the reasons set forth above, Plaintiffs' counsel respectfully request that the Court: 1) authorize the proposed pro-rata plan of distribution; 2) approve Plaintiffs' counsel's request for litigation expenses; and 3) provide for service awards to the class representatives.

Dated: June 15, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2020, 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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