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: INSTRUMENT PANEL CLUSTERS	
THIS RELATES TO: DIRECT PURCHASER ACTIONS	2:12-cv-00201-MOB-MKM

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

Direct Purchaser Plaintiff ACAP, L.L.C., f/k/a Aguirre, Collins & Aikman Plastics, LLC, hereby moves the Court, pursuant to Rules 23 and 54 of the Federal Rules of Civil Procedure, for an award of attorneys' fees, litigation costs and expenses, and an incentive payment to the class representative from the proceeds of the settlements that have been reached with the Yazaki and Nippon Seiki Defendants in the Direct Purchaser Action. In support of this motion, Direct Purchaser Plaintiff relies upon the accompanying memorandum of law and the Declarations attached thereto, which are incorporated by reference.

Dated: September 17, 2018

Respectfully submitted,

/s/ David H. Fink

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DIRECT PURCHASER PLAINTIFF'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR AN AWARD OF ATTORNEYS' FEES, LITIGATION COSTS AND EXPENSES, AND INCENTIVE PAYMENT TO THE CLASS REPRESENTATIVE

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STATEMENT OF ISSUES PRESENTED

1. Should the Court award Plaintiff's Counsel attorneys' fees of 33⅓% of the Yazaki and Nippon Seiki settlement funds?

   Suggested Answer: Yes.

2. Should the Court award Plaintiff's Counsel litigation costs and expenses from the Yazaki and Nippon Seiki settlement funds?

   Suggested Answer: Yes.

3. Should the Court award an incentive payment to the Class Representative from the Yazaki and Nippon Seiki 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)

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

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I. INTRODUCTION

Plaintiff has reached settlements with Defendants Nippon Seiki Co. Ltd., N.S. International Ltd., and New Sabina Industries, Inc. (collectively, "Nippon Seiki") in the amount of $5.25 million, and with Defendants Yazaki Corporation and Yazaki North America, Inc. (collectively, "Yazaki") in the amount of $2.5 million. Those settlements, in the total amount of $7.75 million (the "IPC Settlement Fund"), were previously approved by the Court in Orders dated December 4, 2014 and March 13, 2018, respectively.

The *Instrument Panel Clusters* 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. After the first direct purchaser complaint in the *Instrument Panel Clusters* case was filed in 2012, Plaintiff thoroughly investigated its claims and took significant discovery before reaching these settlements. The other Defendants in this action, Continental Automotive Electronics LLC, Continental Automotive Korea Ltd. Continental Automotive Systems, Inc., Denso Corporation, and Denso International America, have been dismissed. Thus, all that is left for the Court is to approve the proposed plan of distribution, the requests for an award of attorneys' fees and expenses, and an incentive payment to the class representative.

Accordingly, Plaintiff's Counsel[1] now respectfully move for an order: 1) awarding attorneys' fees of 33⅓% of the ICP Settlement Fund after deduction of reimbursed litigation costs and expenses; 2) awarding Plaintiff's Counsel $213,264.80 for litigation costs and expenses; and 3) awarding an incentive payment of $15,000 to the class representative. For the reasons set forth herein, Plaintiff's Counsel respectfully submit that the requested fee, expense, and incentive payment awards are reasonable and fair under both well-established Sixth Circuit precedent

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

concerning such awards in class action litigation and this Court's prior decisions awarding fees, expenses, and incentive payments in the *Automotive Parts Antitrust Litigation*.

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

Much of the background of the *Instrument Panel Clusters* case is set forth in the Plaintiff's Motion for Final Approval of Proposed Settlement with Yazaki Defendants filed January 16, 2018,[2] and will not be repeated in full here. The case began in 2012, and the settlement with Nippon Seiki was approved in 2016. The settlement with Yazaki was approved in early 2018.

In the *Instrument Panel Clusters* case, Plaintiff's Counsel:

- Investigated the IPC industry and drafted complaints against the Defendants;
- Drafted the oppositions to and argued motions to dismiss;
- Drafted and responded to discovery requests, and negotiated the scope of responses;
- Reviewed, analyzed, and coded documents;
- Participated in detailed information proffers from the ACPERA applicant and Defendants that settled and conducted witness interviews;
- Took depositions of Defendants' witnesses and defended the deposition of the Plaintiff;
- Negotiated the settlements and prepared the settlement agreements;
- Drafted the settlement notices, orders, and preliminary and final approval briefs seeking Court approval of the settlements; and
- Worked with the claims administrator to design and send notices and claim forms to the members of the Settlement Classes and to create and maintain a settlement website.

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

[2] No. 2:12-cv-00201-MOB-MKM, Doc # 182.

III. CLASS NOTICE

On August 16, 2018, the Notice of Hearing on Proposed Plan of Distribution of the Nippon Seiki and Yazaki Settlement Fund, and Settlement Class Counsel's Requests for Award of Attorneys' Fees and Expenses and an Incentive Payment to the Class Representative (the "Notice") was mailed, postage prepaid, to all potential Settlement Class members identified by Defendants. See Exhibit 2. On August 27, 2018, a Summary Notice was published in the national edition of *The Wall Street Journal* and in *Automotive News.* A copy of the Notice is also posted on-line at www.autopartsantitrustlitigation.com.

As required by Fed. R. Civ. P. 23(h), the Notice informed the Settlement Class Members that Plaintiff's Counsel would request an award of attorneys' fees of up to 33⅓% of the settlement funds, payment of expenses, and an incentive payment of $15,000 to the Class Representative. (Notice at 1, 2, 4.) It also explained how Settlement Class Members could object to the requests. *Id*.

The deadline for objections is October 5, 2018. To date, there have been no objections to the requested fees, expense reimbursements, incentive payment, or the proposed plan of distribution. Plaintiff's Counsel will provide the Court with a final report on any objections 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, Plaintiff's 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 Plaintiff's Counsel under the circumstances. As discussed below,

Plaintiff's Counsel believe the attorneys' fees request of 33⅓% 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 Gascho v. Global Fitness Holdings, LLC*, 822 F.3d 269, 279 (6th Cir. 2016) (discussing the advantages and disadvantages of 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"). Plaintiff's Counsel respectfully request that the Court apply the percentage-of-the-fund 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.

Plaintiff's Counsel respectfully request a fee of 33⅓% of the proceeds of the IPC Settlement Fund created by their efforts. As detailed below, there is substantial precedent to support the requested fee. Plaintiff's Counsel also request reimbursement of litigation costs and expenses paid or incurred through July 31, 2018.

The requested 33⅓% 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 33⅓% of the settlement fund in question, finding that percentage to be reasonable. *In re Automotive Parts Antitrust Litig.*, 2016 WL 8201516, at *2 (E.D. Mich. Dec. 28, 2016) (awarding counsel for the Truck and Equipment Dealer Plaintiffs 33.33% of a $4,616,499 settlement fund in the *Wire Harness* and *Occupant Safety Systems* cases); 12-cv-00102-MOB-MKM, Doc. 401 (awarding counsel for the Auto Dealer Plaintiffs 33.33% of a $55,500,504 settlement fund in *Wire Harness*).

The requested 33⅓% 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 Plaintiff's Counsel. Doc. 495 in 2:12-cv-00101.[3] 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

[3] 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).

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 million fund).[4] Plaintiff's Counsel's fee request is fully supported by these and many other decisions.

[4] *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

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: 1) the value of the benefit rendered to the class; 2) the value of the services on an hourly basis; 3) whether the services were undertaken on a contingent fee basis; 4) society's stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others; 5) the complexity of the litigation; and 6) the professional skill and standing of counsel involved on both sides. *E.g., Bowling v. Pfizer, Inc.,* 102 F.3d 777, 780 (6th Cir. 1996); *In re Wire Harness Cases*, 2:12-cv-00101 (E.D. Mich.) (Doc.495), at 3-5. When applied to the facts of this case, these factors indicate that the requested fee constitutes fair and reasonable compensation for Plaintiff's Counsel's efforts in creating the IPC Settlement Fund.

1. PLAINTIFF'S 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 Plaintiff's briefs filed in support of final approval of the settlements, Plaintiff's Counsel have achieved an excellent recovery of $7.75 million for the Settlement Classes.

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

When fees are awarded using the percentage-of-the-fund method, this Court and others have applied a lodestar "cross-check" on the reasonableness of a fee calculated as a percentage of

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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).

the fund. *In Re Cardinal Health Inc. Sec. Litig.*, 528 F. Supp. 2d 752, 754 (S.D. Ohio 2007); *In re Packaged Ice Antitrust Litig.,* 2011 WL 6209188, at *18. Use of a lodestar cross-check is optional, however, and because it is only a check, the court is not required to engage in a detailed review and evaluation of time records. *Cardinal*, 528 F. Supp. 2d at 767. Here, the amount of time Plaintiff's Counsel have expended since the inception of the case in 2012 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 is substantially less than the 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 Plaintiff's Counsel litigating the case and achieving the settlements. The work Plaintiff's Counsel performed was managed with an eye toward efficiency and avoiding duplication.

As the Declarations submitted by the law firms set forth,[5] Plaintiff's Counsel have expended 21,019.33 hours from the inception of the case through July 31, 2018. Applying the historical rates charged by counsel to the hours expended yields a lodestar value of $9,868,766.32.[6] A fee of 33⅓ of the IPC Settlement Fund after deducting reimbursed costs and expenses would be $2,503,814.56, representing 25% of the lodestar, or in other words, a negative multiplier of .25.

[5] The Declarations are attached as Exhibit 1.

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

The work done by Plaintiff's Counsel is described above and in the separate firm Declarations. Plaintiff's Counsel submit that the hours expended on this case since inception, while substantial, were reasonable and necessary. 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, Plaintiff's Counsel efficiently achieved an excellent recovery for the class members.

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

The Settling Defendants are represented by highly experienced and competent counsel. Absent the settlement, Plaintiff believes that the Settling Defendants and their counsel were prepared to defend this case through trial and appeal. Litigation risk is inherent in every case, and this is particularly true with respect to class actions. Therefore, while the Plaintiff is optimistic about the outcome of this litigation, it must acknowledge the risk that the Defendants could prevail on certain legal or factual issues, which could result in reducing or eliminating 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). While Nippon Seiki and Yazaki both pleaded guilty to antitrust violations over a limited time period, the Department of Justice did not seek recovery for the class members, leaving that up to Plaintiff's 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 Plaintiff's Counsel would recover nothing, or – as here – an amount insufficient to support a fee that covered 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.

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 Plaintiff's Counsel have obtained makes it clear that antitrust violations will be the subject of vigorous private civil litigation to deter similar future conduct. Since society gains from competitive markets that are free of collusion, Plaintiff's Counsel's work

benefitted the public.

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

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

6. SKILL AND EXPERIENCE OF COUNSEL.

The skill and experience of counsel on both sides of the "v" is another factor that courts may consider in determining a reasonable fee award. *E.g., Polyurethane Foam,* 2015 WL 1639269, at * 7; *Packaged Ice,* 2011 WL 6219188, at *19. 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 Winston & Strawn and Jones Day is top-notch. Both firms have excellent reputations in the antitrust bar, significant experience, and extensive resources at their disposal.

But in the final analysis, as more than one court has observed, "[t]he quality of work performed in a case that settles before trial is best measured by the benefit obtained." *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 547-48 (S.D. Fla. 1988), *aff'd*, 899 F.2d 21 (11th Cir. 1990). As explained *supra*, a very substantial cash benefit was obtained for the Settlement Classes

in this case, which provides the principal basis for awarding the attorneys' fees sought by Plaintiff's Counsel.

Given the excellent result achieved, the complexity of the claims and defenses, the work performed by Plaintiff's Counsel, the real risk of non-recovery (or recovery of less than the $5,704,000 settlement amount), formidable defense counsel, the delay in receipt of payment, the substantial experience and skill of Plaintiff's Counsel, the negative multiplier on the lodestar, and the societal benefit of this litigation, a 33⅓% attorneys' fee award from the settlement funds would be reasonable compensation for Plaintiff's Counsel's work.

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

Plaintiff's Counsel have worked collectively on this litigation under the supervision of Interim Lead Counsel appointed by the Court. This Court and courts generally have approved joint fee applications that request a single aggregate fee award, with allocations to specific firms to be determined by the lead counsel, who know the most about the work done by each firm and the relative contribution each firm has made to the success of the litigation.[7] Interim Lead Counsel 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 to Interim Lead Counsel makes good sense, because it relieves the Court of the "difficult task of assessing counsels' relative contributions." *In re*

[7] *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").

Prudential Ins. Co. Amer. Sales Practice Litig. Agent Actions, 148 F.3d 283, 329 n. 96 (3d Cir. 1998); *see also In re Cendant Corp. Sec. Litig*., 404 F.3d 173 (3d Cir. 2005) (lead counsel given substantial authority to allocate fees awarded by Court).

Plaintiff's Counsel therefore request that the Court 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

Plaintiff's Counsel respectfully request an award of litigation costs and expenses of $213,264.80, representing out-of-pocket costs and expenses paid by Plaintiff's Counsel. As the court stated in *In re Cardizem*, "class counsel is entitled to reimbursement of all reasonable out-of-pocket litigation expenses and costs in the prosecution of claims and in obtaining settlement, including expenses incurred in connection with document productions, travel and other litigation-related expenses." 218 F.R.D. at 535. The out-of-pocket expenses paid by each law firm are set forth in the Declarations attached as Exhibit 1. These expenses were reasonable and necessary to pursue the case and to obtain the substantial settlements reached in this litigation.[8]

[8] The Court previously authorized Class Counsel to use up to $500,000 from the Yazaki settlement proceeds and up to $1,050,000 from the Nippon Seiki settlement proceeds to pay for expenses. Any unused portions will be included in the net settlement fund to be distributed to claimants.

VII. AN AWARD OF INCENTIVE PAYMENTS TO THE CLASS REPRESENTATIVES IS APPROPRIATE.

The Sixth Circuit has noted that incentive awards may be appropriate under some circumstances. *Shane Group, Inc. v. Blue Cross Blue Shield of Michigan*, 825 F.3d 299, 311 (6th Cir. 2016); *Hadix v. Johnson*, 322 F.3d 895, 897 (6th Cir. 2003). In surveying decisions from other courts, the Court 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. Yet applications for incentive awards are scrutinized carefully by courts who sensibly fear that incentive awards may lead named plaintiffs to expect a bounty for bringing suit or to compromise the interest of the class for personal gain.

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

An award to the class representative is appropriate here. This is not a case where the class representative compromised the interests of the class for personal gain. The class representative was not promised an incentive award. Each settlement was negotiated by Plaintiff's Counsel and then presented to the class representative for review and approval without any discussion of incentive awards; the prospect of such an award was not among the reasons the representative plaintiff approved these settlements. *Hillson v. Kelly Servs. Inc.*, 2017 WL 279814, at *6 (E.D. Mich. 2017). Moreover, this is not a case where the requested incentive award will dwarf the amounts that class members will receive through the claims process; indeed, some class members will receive hundreds of thousands or even millions of dollars.[9]

[9] In cases where courts have rejected incentive awards, the awards were so disproportionately large relative to the cash benefits to the class that the courts called the class representative's adequacy into question. *In re Dry Max Pampers Litig.*, 724 F.3d 713, 722 (6th Cir. 2013) (reversing $1000 payments to representatives when class members received "nearly worthless injunctive relief"); *Machesney, v. Lar-Bev of Howell, Inc.*, 2017 WL 2437207, at *11 (E.D. Mich. Jun. 2017) (rejecting $15,000 incentive payment that was "30 times more than the

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

- Assisting counsel in developing an overall understanding of the automotive parts industry generally and Instrument Panel Clusters in particular;
- Meeting with counsel (in-person and telephonically) to discuss preservation of documents and taking steps to implement preservation plans;
- Meeting with counsel (in-person and telephonically) to discuss collecting documents for review and potential production to Defendants;
- Working with counsel to respond to document requests and interrogatories served by Defendants and Defendants' written correspondence seeking additional information;
- Meeting with counsel (in-person and telephonically) on multiple occasions to prepare for depositions;
- Preparing and sitting for its deposition;
- Reviewing pleadings and keeping apprised of the status of the litigation; and
- Reviewing the details of the settlements and conferring with counsel to determine whether the settlements were in the best interests of the class.

Finally, an incentive award in the amount of $15,000 is appropriate in this case. This Court previously approved $50,000 incentive awards in *Wire Harness*. 2:12-cv-00101-MOB-MKM Doc # 495, at ¶23. *See also In re Prandin Direct Purchaser Antitrust Litig.*, 2015 WL 1396473, at *5 (granting each class representatives an award of $50,000 each); *In re Skelaxin (Metaxalone) Antitrust Litig.*, 2014 WL 2946459, at *1 (same). The request for a $15,000 incentive payment appropriately recognizes ACAP's contributions to the resolution of this case. Because ACAP's service on behalf of the members of the settlement classes helped create the settlement funds, the requested award is fair and appropriate.

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maximum that any class member could receive under the proposed settlement"). The same is not true here.

VIII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant its Motion for an Award of Attorneys' Fees, Litigation Costs and Expenses, and Incentive Payment to Class Representative.

Dated: September 17, 2018

Respectfully submitted,

/s/ David H. Fink

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CERTIFICATE OF SERVICE

I hereby certify that on September 17, 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.

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