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: OXYGEN SENSORS	
THIS DOCUMENT RELATES TO: DIRECT PURCHASER ACTIONS	2:15-cv-03101-SFC-RSW 2:15-cv-12918-SFC-RSW

DIRECT PURCHASER PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES, LITIGATION COSTS AND EXPENSES, AND A SERVICE AWARD TO THE CLASS REPRESENTATIVES

Pursuant to Rules 23 and 54 of the Federal Rules of Civil Procedure, All European Auto Supply, Inc., Irving Levine Automotive Distributors, Inc., KMB/CT, Inc. d/b/a KMB Warehouse Distributors Inc., and Hopkins Auto Supply, Inc. d/b/a Thrifty Auto Supply ("Plaintiffs") move the Court for an award of attorneys' fees and litigation costs from the proceeds of the settlements reached with the DENSO and NGK Defendants (collectively, "Settling Defendants"). The settlements with the Settling Defendants total $700,000 ("Settlement Fund"). Plaintiffs also request service awards to the class representatives, which would be paid from the Settlement Fund. The grounds supporting this motion are set forth in the accompanying memorandum of law.

Dated: July 18, 2022

Respectfully submitted,

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MEMORANDUM IN SUPPORT OF DIRECT PURCHASER PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES, LITIGATION COSTS AND EXPENSES, AND A SERVICE AWARD TO THE CLASS REPRESENTATIVES

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STATEMENT OF ISSUES PRESENTED

1. Should the Court award Plaintiffs' counsel attorneys' fees of 33% of the Settlement Fund?

   Suggested Answer: Yes.

2. Should the Court award Plaintiffs' counsel litigation costs and expenses from the Settlement Fund?

   Suggested Answer: Yes.

3. Should the Court award each of the class representatives, All European Auto Supply, Inc., Irving Levine Automotive Distributors, Inc., KMB/CT, Inc. d/b/a KMB Warehouse Distributors Inc., and Hopkins Auto Supply, Inc. d/b/a Thrifty Auto Supply, a service award of $7,500?

   Suggested Answer: Yes.

STATEMENT OF CONTROLLING OR MOST APPROPRIATE AUTHORITIES

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

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

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Behrens v. Wometco Enters., Inc.,
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Hillson v. Kelly Servs. Inc.,
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In re AremisSoft Corp., Sec. Litig.,
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In re Automotive Parts Antitrust Litig.,
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In re Cardizem,
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In re Cendant Corp. Sec. Litig.,
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In re Copley Pharm., Inc. Albuterol Prods. Liab. Litig.,
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In re Delphi Corp. Sec. Derivative & ERISA Litig.,
248 F.R.D. 483 (E.D. Mich. 2008) 5, 7, 10

In re Domestic Air Transp. Antitrust Litig.,
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In re Domestic Drywall Antitrust Litig.,
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In re Dry Max Pampers Litig.,
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In re FAO Inc. Sec. Litig.,
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In re Fasteners Antitrust Litig.,
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In re Flonase Antitrust Litig.,
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In re Folding Carton Antitrust Litig.,
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In re Gen. Instrument Sec. Litig.,
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In re Linerboard Antitrust Litig.,
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In re Linerboard Antitrust Litig.,
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In re Packaged Ice Antitrust Litig.,
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In re Polyurethane Foam Antitrust Litig.,
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In re Prandin Direct Purchaser Antitrust Litig.,
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In re Titanium Dioxide Antitrust Litig.,
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Lewis v. Wal-Mart Stores, Inc.,
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Machesney, v. Lar-Bev of Howell, Inc.,
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Missouri v. Jenkins,
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Moore v. United States,
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New England Health Care Employees Pension Fund v. Fruit of the Loom, Inc.,
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Pennsylvania v. Delaware Valley Citizens' Council for Clean Air,
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Rawlings v. Prudential-Bache Properties, Inc.,
9 F.3d 513 (6th Cir. 1993) 5

Shane Group, Inc. v. Blue Cross Blue Shield of Michigan,
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I. INTRODUCTION

Through the efforts of the class representatives, All European Auto Supply, Inc., Irving Levine Automotive Distributors, Inc., KMB/CT, Inc. d/b/a KMB Warehouse Distributors Inc., and Hopkins Auto Supply, Inc. d/b/a Thrifty Auto Supply (collectively, "Plaintiffs"), and Plaintiffs' counsel, settlements totaling $700,000 ("Settlement Fund") have been reached with the DENSO and NGK Defendants[1] (collectively, "Settling Defendants") in the *Oxygen Sensors* direct purchaser case.

Plaintiffs respectfully move for an order: (1) awarding attorneys' fees of 33% of the Settlement Fund; (2) awarding $21,905.07 in unreimbursed litigation costs and expenses incurred in the prosecution of this litigation through May 31, 2022; and (3) authorizing a service award of $7,500 to each of the class representatives. For the reasons set forth herein, Plaintiffs' counsel respectfully submit that the requested fee, expenses, and service awards are reasonable and fair under both well-established Sixth Circuit precedent concerning such awards in class action litigation and this Court's prior decisions awarding fees, expenses, and service awards in the *Automotive Parts Antitrust Litigation*.

II. BACKGROUND AND SUMMARY OF WORK PERFORMED TO DATE

The *Oxygen Sensors* 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 *Oxygen Sensors* case is set forth in the related Memorandum in Support of

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[1] The Settling Defendants include: DENSO Corporation, DENSO International America, Inc., DENSO Korea Corporation (f/k/a separately as DENSO International Korea Corporation and DENSO Korea Automotive Corporation), DENSO Automotive Deutschland GmbH, DENSO Products & Services Americas, Inc., ASMO Co., Ltd., ASMO North America, LLC, ASMO Greenville of North Carolina, Inc., and ASMO Manufacturing, Inc. (collectively, "DENSO Defendants"); and NGK Spark Plug Co., Ltd., NGK Spark Plugs (U.S.A.) Holding, Inc., NGK Spark Plugs (U.S.A.), Inc., and NTK Technologies, Inc. (collectively, "NGK Defendants").

Direct Purchaser Plaintiffs' Motion for Final Approval of Proposed Settlements, which was simultaneously filed on July 18, 2022, and will not be fully repeated here.

In summary, Plaintiffs' counsel have:

- Investigated the industry and drafted the initial and amended complaints against the Defendants;
- Worked with Plaintiffs to identify relevant business records;
- Participated in proffer and/or cooperation meetings with Defendants' counsel;
- Engaged in extensive settlement negotiations, separately, with each of the Settling Defendants;
- Prepared settlement agreements with each of the Settling Defendants;
- Drafted the settlement notices, orders, and preliminary and final approval motions and memoranda in support; and
- Worked with the claims administrator to design and disseminate the class notices and claim forms, and to create and maintain a settlement website.

III. CLASS NOTICE

On June 20, 2022, the Notice of Proposed Settlements of Direct Purchaser Class Action with NGK Defendants and DENSO Defendants and Hearing on Settlement Approval and Related Matters, and Claim Form (the "Notice") was mailed to potential members of the settlement classes. The Notice was also posted on-line at www.autopartsantitrustlitigation.com, the website dedicated to this litigation. On June 27, 2022, a summary notice was published in *Automotive News*, and an Informational Press Release was issued nationwide via PR Newswire's "Auto Wire," which targets auto industry trade publications.

As required by Fed. R. Civ. P. 23(h), the Notice informed settlement class members that Plaintiffs' counsel would request an award of attorneys' fees of up to 33% of the Settlement Fund

and reimbursement of expenses. (Notice at 6). It also explained how class members could exclude themselves or object to the requests. *Id*. at 5-7.

The deadline for objections or requests for exclusion is August 8, 2022. To date, there have been no objections to the settlements, the fee or expense request, or the request for service awards for the class representatives, and no requests for exclusion from the settlement classes. Plaintiffs' counsel will provide the Court with a final report on objections or requests for exclusion before the fairness hearing scheduled for September 15, 2022.

IV. THE WORK PLAINTIFFS' COUNSEL PERFORMED FOR THE BENEFIT OF THE SETTLEMENT CLASSES

The class action lawsuit on behalf of a class of direct purchasers of Oxygen Sensors was commenced in 2015. Plaintiffs allege that Defendants conspired to suppress and eliminate competition for Oxygen Sensors by agreeing to rig bids for, and to raise, fix, stabilize, and/or maintain the prices of Oxygen Sensors,[2] in violation of federal antitrust laws. Plaintiffs further allege that because of the conspiracy, Plaintiffs and other direct purchasers of Oxygen Sensors were injured by paying more for those products than they would have paid in the absence of the alleged illegal conduct. Plaintiffs sought recovery of treble damages, together with reimbursement of costs and an award of attorneys' fees.

In February 2019, Plaintiffs reached a settlement with the DENSO Defendants for $100,000; and in January 2022, Plaintiff reached a settlement with the NGK Defendants for $600,000. The Settlement Fund created from the two settlements totals $700,000.

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[2] For the purposes of these settlements, "Oxygen Sensors" are defined as electronic sensors located before and after the catalytic converter in the exhaust system used to measure the amount of oxygen in the exhaust. Oxygen Sensors provide signals or data to the automobile's engine management computer, which then adjusts the ratio of air/fuel injected into the engine to compensate for excess air or excess fuel.

Working with the settlement administrator, Plaintiffs' counsel prepared and disseminated notices and claim forms for the settlements consistent with the Court's Notice Order. (2:15-cv-03101, ECF No. 98). The final fairness hearing on the settlements and the motion for an award of attorneys' fees, litigation expenses, and service awards to the class representatives is scheduled for September 15, 2022.

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, Plaintiffs' 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 Plaintiffs' counsel under the circumstances of this case. As discussed below, Plaintiffs' counsel's fee request of 33% 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.

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). Plaintiffs’ counsel respectfully request that the Court apply the percentage-of-the-fund method here, as it has in all the other cases.

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

Plaintiffs’ counsel respectfully request a fee of 33% of the proceeds of the Settlement Fund that was created by their efforts and will benefit the settlement classes. As detailed below, there is substantial precedent to support the requested fee.

A 33% 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 also approved several fee awards of one-third of the settlement fund in question, finding that percentage to be reasonable. *Bearings Cases,* 2:12-cv-00501-SFC-RSW (Nov. 18, 2021) (ECF No. 522) (settlement fund of $6,445,199.05); *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, ECF. No. 401 (awarding counsel for the Auto Dealer Plaintiffs 33.33% of a $55,500,504 settlement fund in *Wire Harness*).

The requested 33% award is also consistent with a wealth of authority from courts in the Sixth Circuit (and others) approving class action fees in the range of 30% to one-third of a common fund. *See Bessey v. Packerland Plainwell, Inc.*, 2007 WL 3173972, at *4 (W.D. Mich. 2007) (“Empirical studies show that, regardless whether the percentage method or the lodestar method is

used, fee awards in class actions average around one-third of the recovery") (internal quotation marks omitted). District courts in the Sixth Circuit and elsewhere have awarded 30% or more of settlement funds as reasonable attorneys' fees in antitrust cases. *See, e.g.*, *In re Prandin Direct Purchaser Antitrust Litig.*, 2015 WL 1396473 (E.D. Mich. Jan. 20, 2015) (one-third of $19 million fund); *In re Skelaxin (Metaxalone) Antitrust Litig.*, 2014 WL 2946459, *1 (E.D. Tenn. Jun. 30, 2014) (one-third of $73 million fund); *In re Southeastern Milk Antitrust Litig.*, 2013 WL 2155387, at *8 (E.D. Tenn. May 17, 2013) (one-third of $158.6 million fund); *In re Foundry Resins Antitrust Litig.,* Case No. 2:04-md-1638 (S.D. Ohio Mar. 31, 2008) (one-third of $14.1 million fund); *In re Polyurethane Foam Antitrust Litig.,* 2015 WL 1639269, at *7 (N.D. Ohio Feb. 26, 2015) (30% of a $148.7 million fund). Plaintiffs' counsel's fee request of 30% of the Settlement Fund is fully supported by these and many other decisions.[3]

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[3] *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]

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.) (ECF No. 495), at 3-5. When applied to the facts of this case, these factors indicate that the requested fee constitutes fair and reasonable compensation for Plaintiffs' counsel's efforts in creating the Settlement Fund.

1. PLAINTIFFS' COUNSEL OBTAINED A VALUABLE BENEFIT FOR THE CLASSES.

The result achieved for the class is the principal consideration when evaluating a fee request. *E.g., Delphi*, 248 F.R.D. at 503. Here, Plaintiffs' counsel achieved a meaningful recovery of $700,000 for the Settlement Classes.

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one-third fee from a common fund case has been found to be typical by several courts.") (citations omitted), *aff'd*, 534 F.3d 508 (6th Cir. 2008); *In re AremisSoft Corp., Sec. Litig.,* 210 F.R.D. 109, 134 (D.N.J. 2002) ("Scores of cases exist where fees were awarded in the one-third to one-half of the settlement fund.") (citations omitted); *Klein v. PDG Remediation, Inc.,* 1999 WL 38179, at *4 (S.D.N.Y., Jan. 28, 1999) ("33% of the settlement fund…is within the range of reasonable attorney fees awarded in the Second Circuit"); *Moore v. United States,* 63 Fed. Cl. 781, 787 (2005) ("one-third is a typical recovery"); *In re FAO Inc. Sec. Litig.*, 2005 WL 3801469, at * 2 (E.D. Pa., May 20, 2005) (awarding fees of 30% and 33%); *Godshall v. Franklin Mint Co.*, 2004 WL 2745890, at *5 (E.D. Pa., Dec. 1, 2004) (awarding a 33% fee and noting that "[t]he requested percentage is in line with percentages awarded in other cases"); *In re Gen. Instrument Sec. Litig.*, 209 F. Supp. 2d 423, 433-44 (E.D. Pa. 2001) (awarding one-third of a $48 million settlement fund).

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

When fees are awarded using the percentage-of-the-fund method, this Court and others have applied a lodestar "cross-check" on the reasonableness of a fee calculated as a percentage of the fund. *In Re Cardinal Health Inc. Sec. Litig.*, 528 F. Supp. 2d 752, 754 (S.D. Ohio 2007); *In re Packaged Ice Antitrust Litig.,* 2011 WL 6209188, at *18. Use of a lodestar cross-check is optional, however, and because it is only a check, the court is not required to engage in a detailed review and evaluation of time records. *Cardinal*, 528 F. Supp. 2d at 767. Here, the amount of time Plaintiffs' counsel expended in instituting the case and bringing it to a successful conclusion makes clear that the fee requested is well "aligned with the amount of work the attorneys contributed" to the recovery and does not constitute a "windfall." *See id.*

To calculate the lodestar, a court first multiplies the number of hours counsel reasonably expended on the case by their reasonable hourly rate. *See Isabel v. City of Memphis*, 404 F.3d 404, 415 (6th Cir. 2005). Here, as described above, a substantial amount of time has been spent by Plaintiffs' 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 with this motion, Plaintiffs' counsel have expended 1,855.40 hours from Inception of the case through May 31, 2022. Applying the historical rates charged by counsel to the hours expended yields a lodestar value of $1,209,663.75.[4] A 33% fee would be $231,000. Without considering future work on the case, the current multiplier is 0.19.

[4] 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*

One of the recognized benefits of using the percentage-of-the-fund method is that it better aligns the interests of class counsel with the interests of class members and eliminates any incentive to unnecessarily expend hours. Here, Plaintiffs' counsel achieved a meaningful recovery for the class members without burdening the Court or the parties with unnecessary expenditures of time, effort, or money.

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

Defendants are represented by highly experienced and competent counsel. Absent the settlements, Defendants and their counsel were prepared to defend this case through trial and appeal. Litigation risk is inherent in every case, and this is particularly true with respect to class actions. Therefore, while Plaintiffs were optimistic about what would be the eventual outcome of this litigation, they must acknowledge the risk that Defendants could prevail on certain legal or factual issues, which could result in the reduction or elimination of any potential recovery.

The risk factor attempts to compensate class counsel in contingent fee litigation for having taken on the risk of receiving less than their normal hourly rates, or even nothing at all. *See, e.g. Jones v. Diamond*, 636 F.2d 1364, 1382 (5th Cir. 1981), *overruled on other grounds*, *Int'l Woodworkers of Am. AFL-CIO and its Local No. 5-376 v. Champion Intern. Corp.*, 790 F.2d 1174 (5th Cir. 1986); *In re Packaged Ice Antitrust Litig.,* 2011 WL 6209188, at *19 (risk of non-payment a factor supporting the requested fee). When Plaintiffs' counsel commenced this case there was a risk that they would recover nothing, or an amount insufficient to support a fee that equaled their

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

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.) (ECF No. 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 recovery Plaintiffs' 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, Plaintiffs' 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 law firms with national reputations as leaders in antitrust and other complex litigation: Kohn, Swift & Graf, P.C.; Preti, Flaherty, Beliveau & Pachios, LLP; Freed Kanner London & Millen, LLC; and Spector Roseman & Kodroff, P.C., as Interim Co-Lead Settlement Class Counsel for all the direct purchaser cases. By doing so, the Court recognized that these law firms have the requisite skill and experience in class action and antitrust litigation to effectively prosecute the direct purchasers' claims. The law firm of Fink Bressack has ably served as liaison counsel for this case 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. Defense counsel has an excellent reputation 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 meaningful cash benefit was obtained for the settlement classes in this case, which provides the principal basis for awarding the attorneys' fees sought by Plaintiffs' counsel.

Given the result achieved, the complexity of the claims and defenses, the work performed by Plaintiffs' counsel, the real risk of non-recovery (or recovery of less than the amount of the

Settlement Fund), formidable defense counsel, the delay in receipt of payment, the substantial experience and skill of Plaintiffs' counsel, the negative multiplier on the lodestar, and the societal benefit of this litigation, a 33% attorneys' fee award from the Settlement Fund is reasonable compensation for Plaintiffs' counsel's work.

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

Plaintiffs' 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.[5] Co-Lead Settlement Class Counsel—Freed Kanner; Kohn Swift; Preti Flaherty; 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 Freed Kanner; Kohn Swift; Preti Flaherty; 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).

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[5] *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").

Plaintiffs' counsel therefore request that the Court (as it has in connection with every other fee award in the direct purchaser cases) approve the aggregate amount of the fees requested, with the specific allocation of the fee among firms to be performed by Co-Lead Settlement Class 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).

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

Plaintiffs' counsel respectfully request an award of litigation costs and expenses in the amount of $21,905.07, which reflects unreimbursed expenses incurred in the prosecution of this litigation from inception through May 31, 2022. Expenses for telephone calls, faxes, and internal copying are not included. As the court stated in *In re Cardizem*, "class counsel is entitled to reimbursement of all reasonable out-of-pocket litigation expenses and costs in the prosecution of this litigation, including expenses incurred in connection with document productions, travel and other litigation-related expenses." 218 F.R.D. at 535.

The out-of-pocket expenses paid or incurred by each law firm are set forth in the Declarations attached as Exhibit 1. These expenses were reasonable and necessary to pursue the case and to obtain the substantial Settlement Fund reached in this litigation.

VIII. SERVICE AWARDS TO THE CLASS REPRESENTATIVES ARE APPROPRIATE.

Plaintiffs' counsel request that the Court award a $7,500 service award to each class representative. The Sixth Circuit has noted that such awards may be appropriate under some circumstances. *Shane Group, Inc. v. Blue Cross Blue Shield of Michigan*, 825 F.3d 299, 311 (6th

Cir. 2016); *Hadix v. Johnson*, 322 F.3d 895, 897 (6th Cir. 2003). In surveying decisions from other courts, the Court explained that:

> Numerous courts have authorized incentive awards. These courts have stressed that incentive awards are efficacious ways of encouraging members of a class to become class representatives and rewarding individual efforts taken on behalf of the class. Yet applications for incentive awards are scrutinized carefully by courts who sensibly fear that incentive awards may lead named plaintiffs to expect a bounty for bringing suit or to compromise the interest of the class for personal gain.

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

Service awards to the class representatives are appropriate here. Plaintiffs stepped forward to represent the classes. The case had a successful resolution that will benefit all the class members. This is not a case where the class representatives compromised the interests of the classes for personal gain. The class representatives were not promised service awards. The settlements were negotiated by Plaintiffs' counsel and then presented to the class representatives for their review and approval without any discussion of service awards. The prospect of such awards was not a reason why the representative plaintiffs approved these settlements. *Hillson v. Kelly Servs. Inc.*, 2017 WL 279814, at *6 (E.D. Mich. 2017). Moreover, this is not a case where the requested service awards will dwarf the amounts that class members will receive through the claims process.[6]

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

- Assisting counsel in developing an overall understanding of the Oxygen Sensors market;

[6] In cases where courts have rejected service awards, the awards were so disproportionately large relative to the cash benefits to the class that the courts called the class representative's adequacy into question. For example, in *In re Dry Max Pampers Litig.*, 724 F.3d 713, 722 (6th Cir. 2013), the Court reversed the award of $1,000 payments to the class representatives when class members received "nearly worthless injunctive relief." In *Machesney, v. Lar-Bev of Howell, Inc.*, 2017 WL 2437207, at *11 (E.D. Mich. Jun. 2017), the court did not approve a proposed $15,000 incentive payment because it was "30 times more than the maximum that any class member could receive under the proposed settlement."

- Discussing with counsel the preservation of electronic and hard-copy documents and taking steps to implement preservation plans;
- Discussing with counsel and collecting documents for review and potential production to Defendants;
- Reviewing pleadings and keeping apprised of the status of the litigation; and
- Reviewing the settlements and conferring with counsel to determine whether the settlements were in the best interest of the settlement classes.

Finally, service awards of this size or larger are not uncommon in lengthy, highly complex antitrust cases. Indeed, the Court previously approved $50,000 service awards to the class representatives in the *Wire Harness* and *Bearings* cases. *See* 2:12-cv-00101-MOB-MKM (ECF No. 495 at 6, ¶23) and 2:12-cv-00501-SFC-RSW (ECF No. 499 at 2, ¶6). *See also In re Prandin Direct Purchaser Antitrust Litig.*, 2015 WL 1396473, at *5 (granting each class representative an award of $50,000); *In re Skelaxin (Metaxalone) Antitrust Litig.*, 2014 WL 2946459, at *1 (same). The class representatives here put in substantial effort and provided commendable service on behalf of the members of the settlement classes to help create the $700,000 Settlement Fund. The requested award of $7,500 for each class representative is fair to the settlement classes and appropriate under the facts and the law.

IX. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant their motion for an award of attorneys' fees, litigation costs and expenses, and service awards to the class representatives.

Dated: July 18, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 18, 2022, I electronically filed the foregoing document with the Clerk of the court using the ECF system, which will send notification of such filing to all counsel of record registered for electronic filing.

/s/ Nathan J. Fink

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