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

IN RE AUTOMOTIVE PARTS ANTITRUST LITIGATION	CASE NO. 12-MD-02311 HON. SEAN F. COX
IN RE: HEATER CONTROL PANELS IN RE: INSTRUMENT PANEL CLUSTERS IN RE: WIRE HARNESS PRODUCTS	2:12-cv-00401-SFC-RSW 2:12-cv-00201-SFC-RSW 2:12-cv-00101-SFC-RSW
THIS RELATES TO: ALL DIRECT PURCHASER ACTIONS	

DIRECT PURCHASER PLAINTIFFS' MOTION FOR FINAL APPROVAL OF PROPOSED SETTLEMENTS WITH THE DENSO DEFENDANTS AND PROPOSED PLANS FOR DISTRIBUTION OF SETTLEMENT FUNDS

On May 23, 2019, the Court preliminarily approved proposed Settlement Agreements between Direct Purchaser Plaintiffs and the DENSO Defendants[1] and certified for purposes of the Settlements a Direct Purchaser Plaintiff DENSO Settlement Class in each of the DPP-DENSO Cases.[2] *See* 2:12-cv-00401, ECF No. 232; 2:12-cv-00201, ECF No. 233; and 2:12-cv-00101, ECF No. 585.

On October 28, 2021, the Court authorized the dissemination of notice to the Direct Purchaser Settlement Classes in the DPP-DENSO Cases to inform potential Class members of the

[1] "DENSO" or the "DENSO Defendants" refers collectively to 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. (f/k/a DENSO Sales California, Inc.), ASMO Co., Ltd., ASMO North America, LLC, ASMO Greenville of North Carolina, Inc., and ASMO Manufacturing, Inc.

[2] For purposes of this Motion, "DPP-DENSO Cases" refers to *Heater Control Panels* (2:12-cv-00401), *Instrument Panel Clusters* (2:12-cv-00201), and *Wire Harness Products* (2:12-cv-00101).

settlements and proposed plans of distribution. *See* 2:12-cv-00401, ECF No. 243; 2:12-cv-00201, ECF No. 244; and 2:12-cv-00101, ECF No. 602.

Plaintiffs now move this Court to enter orders finally approving the settlements and the proposed plans for distribution of settlement funds. In support of this motion, Plaintiffs rely on the accompanying memorandum of law, which is incorporated by reference herein.

DATED: December 20, 2021

Respectfully submitted,

/s/*David H. Fink*

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MEMORANDUM IN SUPPORT OF DIRECT PURCHASER PLAINTIFFS' MOTION FOR FINAL APPROVAL OF PROPOSED SETTLEMENTS WITH THE DENSO DEFENDANTS AND PROPOSED PLANS FOR DISTRIBUTION OF SETTLEMENT FUNDS

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STATEMENT OF ISSUES PRESENTED

1. Whether the proposed settlements between the Direct Purchaser Plaintiffs in the DPP-DENSO Cases (*Heater Control Panels*, *Instrument Panel Clusters*, and *Wire Harness Products*) ("Plaintiffs"), on behalf of themselves and the proposed Direct Purchaser Settlement Classes in the DPP-DENSO Cases, and Defendants 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. (f/k/a DENSO Sales California, Inc.), ASMO Co., Ltd., ASMO North America, LLC, ASMO Greenville of North Carolina, Inc., and ASMO Manufacturing, Inc. (collectively, the "DENSO" or the "DENSO Defendants"), as set forth in the Settlement Agreements between Plaintiffs and the DENSO Defendants, are sufficiently fair, reasonable and adequate for the Court to approve the settlements under Fed. R. Civ. P. 23;

2. Whether the Court should certify the Direct Purchaser Plaintiff -DENSO Settlement Classes in the DPP-DENSO Cases (the "Settlement Classes") for purposes of the settlements only; and

3. Whether the Court should approve the proposed plans for distribution of settlement funds.

STATEMENT OF CONTROLLING OR MOST APPROPRIATE AUTHORITIES

Amchem Prods., Inc. v. Windsor,
521 U.S. 591 (1997)

In re Automotive Parts Antitrust Litig.,
12-MD-02311, 2:12-cv-00103, ECF No. 497 (E.D. Mich. June 20, 2016)

Date v. Sony Electronics, Inc.,
No. 07-15474, 2013 WL 3945981 (E.D. Mich. Jul. 31, 2013)

Griffin v. Flagstar Bancorp, Inc.,
No. 2:10-cv-10610, 2013 WL 6511860 (E.D. Mich. Dec. 12, 2013)

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

In re Delphi Corp. Sec., Deriv. & "ERISA" Litig.,
248 F.R.D. 483 (E.D. Mich. 2008)

In re Packaged Ice Antitrust Litig.,
No. 08-MD-01952, 2010 WL 3070161 (E.D. Mich. Aug. 2, 2010)

In re: Packaged Ice Antitrust Litig.,
No. 08-MD-01952, 2011 WL 717519 (E.D. Mich. Feb. 22, 2011)

In re Scrap Metal Antitrust Litig.,
527 F.3d 517 (6th Cir. 2008)

In re Whirlpool Corp. Front-Loading Washer Prods. Liab. Litig.,
722 F.3d 838 (6th Cir. 2013)

Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am. v. Ford Motor Co.,
No. 05-74730, 2006 WL 1984363 (E.D. Mich. July 13, 2006)

Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306 (1950)

Sheick v. Auto. Component Carrier LLC,
No. 2:09-14429, 2010 WL 4136958 (E.D. Mich. Oct. 18, 2010)

Sprague v. General Motors Corp.,
133 F.3d 388 (6th Cir. 1998)

In re Telectronics Pacing Sys. Inc.,
137 F. Supp. 2d 985 (S.D. Ohio 2001)

UAW v. General Motors Corp.,
497 F.3d 615 (6th Cir. 2007)

Fed. R. Civ. P. 23(c)(2)(B)

Fed. R. Civ. P. 23(e)(1), (e)(2)

INTRODUCTION

Direct Purchaser Plaintiffs, on behalf of settlement classes composed of direct purchasers of various motor vehicle parts in seventeen cases ("Collective Actions"), reached a settlement with the DENSO Defendants that resolved the Collective Actions ("Global Settlement").[3] Under the terms of the proposed Global Settlement, DENSO agreed to pay $2,100,000 ("Total Settlement Amount") and provide substantial cooperation to assist Plaintiffs in the prosecution of the claims against the remaining non-settling Defendants in the Collective Actions. Final approval has already been granted in 12 of the 17 cases that make up the Collective Actions. Assuming the Court ultimately grants final approval in the *Heater Control Panels*, *Instrument Panel Clusters*, and *Wire Harness Products* cases (collectively, "DPP-DENSO Cases"), the only remaining cases asserting Direct Purchaser Plaintiff claims against DENSO will be *In Re: Oxygen Sensors* (2:15-cv-03101) and *In Re: Spark Plugs* (2:15-cv-03001).[4]

In addition to seeking the Court's approval of the settlements in the DPP-DENSO Cases, Plaintiffs request that the Court approve plans to distribute the net settlement proceeds, *pro rata*, to members of each of the Settlement Classes. For the reasons set forth herein, Plaintiffs respectfully submit that both the settlements and the proposed distribution plans are fair, reasonable, and adequate, and should be approved by the Court.

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[3] *See* Exhibit 1 to the Court's Amended Order Granting Preliminary Approval of Proposed Settlements with the DENSO Defendants and Provisional Certification of the Direct Purchaser Settlement Classes, Case 2:12-cv-00101-MOB-MKM, Doc. No. 585 (filed May 23, 2019), which lists the seventeen Collective Actions and the named plaintiffs representing the proposed settlement class in each Collective Action.

[4] Plaintiffs will seek final approval of the proposed DENSO settlements in these cases at a later date.

ARGUMENT

I. BACKGROUND AND PROCEDURAL HISTORY

Beginning in 2011, class action lawsuits were filed on behalf of direct purchasers of various motor vehicle parts manufactured and sold by the DENSO Defendants in the Collective Actions. The central allegation in each Collective Action is that, in violation of Federal antitrust laws, the DENSO Defendants conspired to raise, fix, maintain, and stabilize prices of, rig bids for, and allocate the supply of certain motor vehicle parts sold in the United States. Plaintiffs further allege that because of the conspiracies, they and other direct purchasers of the motor vehicle parts at issue were injured by paying more for those products than they would have paid in the absence of the alleged illegal conduct. Plaintiffs seek recovery of treble damages, together with reimbursement of costs and an award of attorneys' fees. DENSO denies these allegations and does not admit liability for the alleged violations of Federal law in agreeing to the Global Settlement.

The cases that make up the Collective Actions were filed at different times and are at different procedural stages. In all cases, however, including the three DPP-DENSO Cases, Plaintiffs' Settlement Class Counsel have obtained sufficient information to weigh the strengths and weaknesses of the constituent cases to make an informed judgment that the Total Settlement Amount and the proposed allocation is fair, reasonable, and adequate to the members of each class in the Collective Actions.

On April 24, 2019, as amended May 23, 2019, the Court preliminarily approved the Global Settlement with the DENSO Defendants in the Collective Actions in the amount of $2,100,000. DENSO paid the Total Settlement Amount into an escrow account, and the funds were thereafter transferred to separate interest-bearing escrow accounts established for each of the Collective Actions. The Global Settlement resolved Plaintiffs' claims in the three DPP-DENSO Cases for a total of $700,000 – $326,216.74 ("HCP Settlement Fund"), $100,000 ("IPC Settlement Fund"),

and $273,783.26 ("Wire Harness Products Settlement Fund"). The Court also provisionally certified a proposed settlement class of direct purchasers pursuant to Fed. R. Civ. P. 23(b)(3) in each of the Collective Actions, including a DENSO Heater Control Panel Settlement Class, DENSO Instrument Panel Cluster Settlement Class, and DENSO Wire Harness Products Settlement Class.

On October 28, 2021, the Court authorized Plaintiffs to disseminate notice of the proposed settlements, the fairness hearing, and related matters, to the Settlement Classes (the "Notice Order"). *See* 2:12-cv-00401, ECF No. 243; 2:12-cv-00201, ECF No. 244; and 2:12-cv-00101, ECF No. 602. Thereafter, on November 18, 2021, 7,919 copies of the Notice (attached as Exhibit 1) were mailed, postage prepaid, to all potential members of the Settlement Classes identified by Defendants. Further, on or before November 29, 2021, a summary notice (attached as Exhibit 2) was published in *Automotive News*. In addition, an Informational Press Release was issued nationwide via PR Newswire's "Auto Wire," which targets auto industry trade publications. Finally, a copy of the Notice was (and remains) posted online at www.autopartsantitrustlitigation.com.

The deadline for submission of objections to the proposed settlements and the proposed plans of distribution, and for requests for exclusion from the Settlement Classes, is January 7, 2022. To date, there have been no objections, or any requests for exclusion. After the applicable deadlines have passed and prior to the fairness hearing, Settlement Class Counsel will file a report on any objections or requests for exclusion.[5]

[5] Counsel for the DENSO Defendants have informed Settlement Class Counsel that their clients fulfilled their obligations under 28 U.S.C. § 1715 (the "Class Action Fairness Act of 2005" or "CAFA"), by disseminating the requisite notice to the appropriate federal and state officials at least ninety days prior to the final approval hearing.

II. TERMS OF THE SETTLEMENT AGREEMENT

Plaintiffs, on behalf of the Settlement Classes, executed the settlement agreements on February 4, 2019 ("Settlement Agreement"). As described above, pursuant to the Global Settlement, DENSO paid $2,100,000 into an escrow account, and a total of $700,000 of the funds were thereafter transferred to separate interest-bearing escrow accounts established for each of the three DPP-DENSO Cases in the following amounts: $326,216.74 (*Heater Control Panels*); $100,000 (*Instrument Panel Clusters*), and $273,783.26 (*Wire Harness Products*).

In exchange for the settlement payment, the proposed settlements provide, *inter alia*, for the release by Plaintiffs, and the other members of the proposed Settlement Classes, of certain claims ("Released Claims") concerning sales of Heater Control Panels, Instrument Panel Clusters, and Wire Harness Products to customers who purchased those products in the United States directly from Defendants against the DENSO Defendants and other "Releasees" (as defined in the respective Settlement Agreements). The Released Claims specifically exclude certain claims against the DENSO Defendants, including claims based upon indirect purchases of Heater Control Panels, Instrument Panel Clusters, and Wire Harness Products; claims based on negligence, personal injury, or product defects; claims brought under laws other than those of the United States relating to purchases of Heater Control Panels, Instrument Panel Clusters, and Wire Harness Products outside the United States; and claims concerning any product other than Heater Control Panels, Instrument Panel Clusters, and Wire Harness Products.

III. THE PROPOSED SETTLEMENTS ARE FAIR, REASONABLE, AND ADEQUATE AND SHOULD BE APPROVED BY THE COURT

At various times throughout the nine years the Direct Purchaser Plaintiff auto parts litigation has been pending, the parties engaged in settlement discussions directly and also with the assistance of a mediator. The settlements were executed only after these arm's-length and

good-faith negotiations between experienced and sophisticated counsel. During the negotiations, the merits of the respective parties' positions were discussed and evaluated. The parties communicated extensively, and Settlement Class Counsel analyzed information obtained through discovery, as well as information provided to them by the DENSO Defendants, relevant industry data, and other pertinent information. The settlements are the result of these good-faith negotiations, after factual investigation and legal analysis by experienced counsel, and are based upon the attorneys' full understanding of the strengths and weaknesses of the claims and defenses and their clients' respective positions. Plaintiffs believe that the proposed settlements are fair, reasonable, and adequate and merit final approval.

A. The Governing Standards.

A court has broad discretion in deciding whether to approve a class action settlement. *UAW v. Gen. Motors Corp.*, 497 F.3d 615, 636 (6th Cir. 2007). In exercising this discretion, courts give considerable weight and deference to the views of experienced counsel as to the merits of an arm's-length settlement. *Dick v. Sprint Commc'ns*, 297 F.R.D. 283, 297 (W.D. Ky. 2014) ("The Court defers to the judgment of the experienced counsel associated with the case, who have assessed the relative risks and benefits of litigation.").

Recognizing that a settlement represents an exercise of judgment by the negotiating parties, courts have consistently held that a judge reviewing a settlement should not "substitute his or her judgment for that of the litigants and their counsel." *IUE-CWA v. General Motors Corp.*, 238 F.R.D. 583, 593 (E.D. Mich. 2006). Due to the uncertainties and risks inherent in any litigation, courts take a common-sense approach and approve class action settlements if they fall within a "range of reasonableness." *Sheick v. Auto. Component Carrier LLC*, No. 2:09-cv-14429, 2010 WL 4136958, at *15 (E.D. Mich. Oct. 18, 2010) (citation omitted). Moreover, a district court should guard against demanding too large a settlement, because a settlement "represents a compromise in

which the highest hopes for recovery are yielded in exchange for certainty and resolution." *Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am. v. Ford Motor Co.*, No. 05-74730, 2006 WL 1984363, at *23 (E.D. Mich. July 13, 2006) (citation omitted); *accord Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 324 (3d Cir. 2011).

B. The Proposed Settlements are Fair, Reasonable, and Adequate.

Fed. R. Civ. P. 23(e)(2) provides that a court may approve a settlement that would bind class members only after a hearing and on finding that the settlement is "fair, reasonable, and adequate." *Accord In re Packaged Ice Antitrust Litig.*, No. 08-MD-01952, 2011 WL 717519, at *8 (E.D. Mich. Feb. 22, 2011). The 2018 amendments to Rule 23(e) lists factors for a court to consider before approving a proposed settlement. The factors are whether:

> (A) the class representatives and class counsel have adequately represented the class;
>
> (B) the proposal was negotiated at arm's length;
>
> (C) the relief provided for the class is adequate, taking into account:
>
> (i) the costs, risks, and delay of trial and appeal;
>
> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
>
> (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
>
> (iv) any agreement required to be identified under Rule 23(e)(3); and
>
> (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

Generally, in evaluating a proposed class settlement, the court does "not decide the merits of the case or resolve unsettled legal questions." *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 88 n. 14 (1981). There are two reasons for this. First, the object of settlement is to avoid the

determination of contested issues, so the approval process should not be converted into an abbreviated trial on the merits. *Van Horn v. Trickey*, 840 F.2d 604, 607 (8th Cir. 1988). Second, "[b]eing a preferred means of dispute resolution, there is a strong presumption by courts in favor of settlement." *Telectronics*, 137 F. Supp. 2d at 1008-09 (citing *Manual for Complex Litigation (3d ed.)* § 30.42). This is particularly true in the case of class actions. *Berry v. Sch. Dist. of City of Benton Harbor*, 184 F.R.D. 93, 97 (W.D. Mich. 1998).

Both the Sixth Circuit and courts in the Eastern District of Michigan "have recognized that the law favors the settlement of class action lawsuits." *See, e.g., In re Automotive Parts Antitrust Litig.*, 12-MD-02311, 2:12-cv-00103, ECF No. 497, at 11 (E.D. Mich. June 20, 2016) (quoting *Griffin v. Flagstar Bancorp, Inc.*, No. 2:10-cv-10610, 2013 WL 6511860, at *2 (E.D. Mich. Dec. 12, 2013)). *Accord Sims v. Pfizer, Inc.*, No. 1:10-cv-10743, 2016 WL 772545, at *6 (E.D. Mich. Feb. 24, 2016). A court's inquiry on final approval is whether the proposed settlement is "fair, adequate, and reasonable to those it affects and whether it is in the public interest." *Lessard v. City of Allen Park*, 372 F. Supp. 2d 1007, 1009 (E.D. Mich. 2005) (citing *Williams v. Vukovich*, 720 F.2d 909, 921-23 (6th Cir. 1983)); *Olden v. Gardner*, 294 Fed. Appx. 210, 217 (6th Cir. 2008). This determination requires consideration of "whether the interests of the class as a whole are better served if the litigation is resolved by the settlement rather than pursued." *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 522 (E.D. Mich. 2003); *Sheick v. Auto. Component Carrier LLC*, No. 2:09-cv-14429, 2010 WL 4136958, at *14-15 (E.D. Mich. Oct. 18, 2010).

Historically, courts in the Sixth Circuit considered factors comparable to those in Rule 23(e)(2) in determining whether a settlement should be approved. *See In re Automotive Parts Antitrust Litig.*, No. 12-md-02311, 2016 WL 9280050, at *5 (E.D. Mich. Nov. 28, 2016) (considering (1) the likelihood of success on the merits weighed against the amount and form of

the relief offered in the settlement; (2) the complexity, expense, and likely duration of further litigation; (3) the opinions of class counsel and class representatives; (4) the amount of discovery engaged in by the parties; (5) the reaction of absent class members; (6) the risk of fraud or collusion; and (7) the public interest). *Accord UAW*, 497 F.3d at 631; *Griffin v. Flagstar Bancorp, Inc.*, No. 2:10-cv-10610, 2013 WL 6511860, at *3 (E.D. Mich. Dec. 12, 2013); *In re Polyurethane Foam Antitrust Litig.*, No. 1:10-MD-2196, 2015 WL 1639269, at *3 (N.D. Ohio Feb. 26, 2015), appeal dismissed (Dec. 4, 2015). The Advisory Committee Notes to Rule 23 acknowledge these judicially created standards, explaining that the newly enumerated Rule 23(e) factors are "core concerns" in every settlement and were not intended to displace a court's consideration of other relevant factors in a particular case. Fed. R. Civ. P. 23 Advisory Committee Note (2018 Amendment).

As discussed more fully below, the proposed settlements are fair, reasonable, and adequate under the relevant criteria, and should be approved under Rule 23(e)(2).

1. The Class Representatives and Class Counsel Have Adequately Represented the Settlement Classes, and the Settlements Were Reached at Arm's Length.

The first two factors of Rule 23(e)(2) (adequate representation by the class representative and class counsel and whether the settlement was reached at arm's length) are procedural and focus on the history and conduct of the litigation and settlement negotiations. Fed. R. Civ. P. 23 Advisory Committee Note. Relevant considerations may include the experience and expertise of plaintiff's counsel, the quantum of information available to counsel negotiating the settlement, the stage of the litigation and amount of discovery taken, the pendency of other litigation concerning the subject matter, the length of the negotiations, whether a mediator or other neutral facilitator was used, the manner of negotiation, whether attorney's fees were negotiated with the defendant and

if so how they were negotiated and their amount, and other factors that may demonstrate the fairness of the negotiations. *Id.*

Plaintiffs and Settlement Class Counsel have adequately represented the proposed Settlement Classes in connection with the proposed settlements and the litigation in general. Plaintiffs' interests are the same as those of other members of the Settlement Classes, and Settlement Class Counsel have extensive experience in handling class action antitrust and other complex litigation. They negotiated the settlements at arm's length with well-respected and experienced counsel for the DENSO Defendants, and with the assistance of a mediator. There is a presumption that settlement negotiations were conducted in good faith and that the resulting agreements were reached without collusion. *Griffin*, 2013 WL 6511860, at *3; *Packaged Ice*, 2011 WL 717519, at *12; *Ford*, 2006 WL 1984363, at *26; *Sheick v. Automotive Component Carrier LLC*, No. 09-14429, 2010 WL 3070130, at *19-20 (E.D. Mich. Aug. 2, 2010). Settlements reached by experienced counsel that result from arm's-length negotiations are entitled to deference from the court. *Dick v. Sprint Commc'ns*, 297 F.R.D. 283, 296 (W.D. Ky. 2014) ("Giving substantial weight to the recommendations of experienced attorneys, who have engaged in arms-length settlement negotiations, is appropriate....") (quoting *In re Countrywide Fin. Corp. Customer Data Sec. Breach Litig.*, No. 3:08-MD-01998, 2010 WL 3341200, at *4 (W.D. Ky. Aug. 23, 2010)); *accord In re Southeastern Milk Antitrust Litig.*, 2:07-cv-208, 2013 WL 2155379, at *5 (E.D. Tenn. May 17, 2013); *In re Auto. Refinishing Paint Antitrust Litig.*, 617 F. Supp. 2d. 336, 341 (E.D. Pa. 2007).

The negotiations that led to the settlements were at all times conducted at arm's length, took years to complete, and were assisted by a mediator. Further, in addition to the information obtained by Settlement Class Counsel in connection with their investigations of the industries at

issue – Heater Control Panels, Instrument Panel Clusters, and Wire Harness Products – and the alleged conspiracies, there has been sufficient discovery in these actions, including, among other things, attorney proffers, the review of thousands of pages of documents, and, the taking of a substantial number of depositions. This information, and Settlement Class Counsel's legal analysis, allowed Settlement Class Counsel to evaluate the strengths and weaknesses of Plaintiffs' claims. Settlement Class Counsel have concluded that the proposed settlements are fair, reasonable, and in the best interests of the Settlement Classes, and their informed opinion supports both final approval of the settlements and the plans of distribution.

Because the proposed settlements were negotiated at arm's length by experienced counsel knowledgeable about the facts and the law and who advocate their approval, consideration of these factors fully supports final approval of the settlements.

2. The Relief Provided to the Classes is Significant.

The relief provided to the Settlement Classes totals $700,000 ($326,216.74 in *Heater Control Panels*, $100,000 in *Instrument Panel Clusters*, and $273,783.26 in *Wire Harness Products*). Settlement Class Counsel believe that these cash payments represent an excellent result for the Settlement Classes.

a. The Costs, Risks, and Delay of Trial and Appeal.

When considering the adequacy of the relief to the class in determining the fairness of a class action settlement, the court should assess it "with regard to a 'range of reasonableness,' which 'recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs inherent in taking any litigation to completion.'" *Sheick*, 2010 WL 4136958, *15 (quoting *IUE-CWA v. General Motors Corp*., 238 F.R.D. 583, 594 (E.D. Mich. 2006)); *Ford*, 2006 WL 1984363, at *21; *Ford v. Fed.-Mogul Corp*., No. 2:09-cv-14448, 2015 WL 110340, at *6 (E.D.

Mich. Jan. 7, 2015). These risks must be weighed against the settlement consideration; here the certainty of $700,000 in cash payments by the DENSO Defendants. Settlement Class Counsel believe the settlements are an excellent result.

Weighing the settlements' benefits against the risks and costs of continued litigation tilts the scale toward approval. *See Griffin*, 2013 WL 6511860, at *4; *Packaged Ice*, 2011 WL 717519, at *9. Plaintiffs were optimistic about the likelihood of ultimate success in this case, but success is not certain. As the Court has previously noted, success is not guaranteed even in those instances where a settling defendant has pleaded guilty in a criminal proceeding brought by the Department of Justice. The presence of a guilty plea does not guarantee victory; other factors come into play. For example, the DOJ is not required to prove class-wide impact or damages, both of which require complex and expensive expert analyses, and the outcome of litigating those issues is uncertain. *Automotive Parts*, 2:12-cv-00103, ECF No. 497, at 11.

The DENSO Defendants are represented by highly experienced and competent counsel. They deny Plaintiffs' allegations of liability and damages, would vigorously oppose Plaintiffs' motion for class certification, and assert a number of defenses. Plaintiffs believe the DENSO Defendants were prepared to defend these cases through trial and appeal. Risk is inherent in any litigation, and this is particularly true with respect to class actions. So, while optimistic about the outcome of these cases, Plaintiffs must acknowledge the risk that the DENSO Defendants could prevail with respect to certain legal or factual issues, which could reduce or eliminate any potential recovery.

"Settlements should represent 'a compromise which has been reached after the risks, expense and delay of further litigation have been assessed.'" *Cardizem*, 218 F.R.D. at 523 (quoting *Vukovich*, 720 F.2d at 922). "[T]he prospect of a trial necessarily involves the risk that Plaintiffs

would obtain little or no recovery." *Id.* at 523. This is particularly true for class actions, which are "inherently complex." *Telectronics*, 137 F. Supp. 2d at 1013 (settlement avoids the costs, delays, and multitude of other problems associated with complex class actions).

As the proposed settlements with the DENSO Defendants have not yet been finally approved, it is not appropriate to discuss with any specificity Settlement Class Counsel's analysis of the risks of litigation as the DENSO Defendants could seek to use any such disclosures against Plaintiffs going forward. Settlement Class Counsel believe that at this point it is sufficient to state that complex antitrust litigation of this scope has certain inherent risks that the settlements negate.

In deciding whether a proposed settlement warrants approval, "[t]he Court should also consider the judgment of counsel and the presence of good faith bargaining between the contending parties." *Delphi*, 248 F.R.D. at 498. Counsel's judgment "that settlement is in the best interests of the class 'is entitled to significant weight, and supports the fairness of the class settlement.'" *Packaged Ice*, 2011 WL 717519, at *11 (quoting *Sheick*, 2010 WL 4136958, at *18); *Fed.-Mogul Corp.*, 2015 WL 110340, at *9. "In the absence of evidence of collusion (there is none here) this Court 'should defer to the judgment of experienced counsel who has competently evaluated the strength of his proofs.'" *Date v. Sony Electronics, Inc.*, No. 07-15474, 2013 WL 3945981, at *9 (E.D. Mich. Jul. 31, 2013) (quoting *Vukovich*, 720 F.2d at 922-23).

Settlement Class Counsel have extensive experience in handling class action antitrust and other complex litigation. They litigated these cases for more than 10 years and negotiated the settlements at arm's length with well-respected and experienced counsel for the DENSO Defendants. Settlement Class Counsel believe that the proposed settlements eliminate the risks, expense, and delay with respect to a recovery from the DENSO Defendants and ensure meaningful

payments to the Settlement Classes. This factor also supports final approval of the proposed settlements.

b. The Effectiveness of Any Proposed Method of Distributing Relief to the Classes, Including the Method of Processing Class Member Claims, if Required.

These cases do not present any difficulties in identifying claimants or distributing settlement proceeds. Consistent with the practice in previously approved *Automotive Parts Antitrust Litigation* direct purchaser settlements, Settlement Class Counsel propose that the net settlement funds be distributed *pro rata* to approved claimants. *See* Section V., *infra*. Claims will be processed using a settlement claims administrator to review claim forms, assist Settlement Class Counsel in making recommendations to the Court concerning the disposition of those claims, and to mail checks to approved claimants for their *pro-rata* shares of the net settlement funds.

c. The Terms of Any Proposed Award of Attorneys' Fees, Including Timing of Payment.

Settlement Class Counsel are not seeking attorneys' fees or reimbursement of expenses from the settlements of the DPP-DENSO cases. Accordingly, this factor supports final approval.

d. There Are No Separate Agreements Relating to the Proposed Settlements.

The Settlement Agreements reflect all the agreements and understandings relating to the proposed settlements.

3. The Settlements Treat Class Members Equitably Relative to Each Other.

Class members will be treated equitably relative to each other in terms of their eligibility for a *pro-rata* portion of the settlement funds and their right to opt-out of the Settlement Classes. Likewise, each class member gives the same releases. Plaintiffs submit that this factor supports final approval.

4. The Settlements are Consistent with the Public Interest.

"[T]here is a strong public interest in encouraging settlement of complex litigation and class action suits because they are 'notoriously difficult and unpredictable' and settlement conserves judicial resources." *Cardizem*, 218 F.R.D. at 530 (quoting *Granada Invs. Inc. v. DWG Corp.*, 962 F. 2d 1203, 1205 (6th Cir. 1992). *Accord Griffin*, 2013 WL 6511860, at *5; *Packaged Ice*, 2011 WL 717519, at *12. Plaintiffs submit that there is no countervailing public interest that provides a reason to disapprove the proposed settlements. *Griffin*, 2013 WL 6511860, at *5. This factor also supports final approval.

Consideration of the above factors supports final approval of the proposed settlements. Therefore, Settlement Class Counsel respectfully submit that the proposed settlements are in the best interests of the Settlement Classes and should be finally approved.

IV. NOTICE WAS PROPER UNDER RULE 23 AND DUE PROCESS

Federal Rule of Civil Procedure 23 provides that, "upon ordering notice under Rule 23(e)(1) to a class proposed to be certified for purposes of settlement under Rule 23(b)(3) [ ] the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). Rule 23(e)(1) provides that a court must direct notice in a "reasonable manner" to all class members who would be bound by a proposed settlement. Rule 23(e) notice must contain a summary of the litigation sufficient "to apprise interested parties of the pendency of the action and to afford them an opportunity to present their objections." *UAW*, 497 F.3d at 629 (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). *Accord In re Insurance Brokerage Antitrust Litig.*, 297 F.R.D. 136, 151 (E.D. Pa. 2013). In addition, the "notice must clearly and concisely state in plain, easily understood language:" (1) the nature of the action;

(2) the class definition; (3) the class claims, issues, or defenses; (4) that a class member may enter an appearance through counsel; (5) that the court will exclude from the class any member who requests exclusion; (6) the time and manner for requesting exclusion; and (7) the binding effect of a class judgment on class members under Rule 23(c)(3). Fed. R. Civ. P. 23(c)(2)(B).

The notice program and forms of notice utilized by Plaintiffs satisfy these requirements. The Notice sets forth all information required by Rule 23(c)(2)(B) and 23(e)(1), and also informs members of the Settlement Classes that Settlement Class Counsel will propose a plan of distribution of the settlement fund in each of the DENSO-DPP cases.

The content and methods for dissemination of notice fulfill the requirements of Federal Rule of Civil Procedure 23 and due process. Pursuant to the Notice Order, on October 28, 2021, 7,919 copies of the Notice were mailed, postage prepaid, to all potential members of the Settlement Classes identified by Defendants. The Summary Notice was published in *Automotive News* on or about November 29, 2021, and an Informational Press Release targeting automotive industry trade publications was issued nationwide via PR Newswire's "Auto Wire," which targets auto industry trade publications. Finally, a copy of the Notice was (and remains) posted on-line at www.autopartsantitrust.com.

V. THE PROPOSED PLANS FOR DISTRIBUTION OF THE SETTLEMENT FUNDS ARE FAIR, REASONABLE, AND ADEQUATE AND MERIT APPROVAL.

Approval of a settlement fund distribution in a class action is governed by the same standards of review applicable to approval of the settlement as a whole: the plan of distribution must be fair, reasonable, and adequate. *Packaged Ice*, 2011 WL 6209188, at *15. *Accord 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); *Law v. National Collegiate Athletic Ass'n.*, 108 F. Supp. 2d 1193, 1196 (D. Kan. 2000). 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.*, No. Civ. A. 87-2110-EEO, 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").

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).

The Notice sent to potential members of the Settlement Classes describes the plans recommended by Settlement Class Counsel for the distribution of settlement funds to Class members who file valid claim forms. The proposed distribution plans are identical for each of the three DDP-DENSO Cases: the settlement fund from each case, with accrued interest, will be allocated among approved claimants according to the amount of their recognized transactions during the Class Period, after payment of settlement administration costs and expenses.

This Court has approved similar *pro rata* distribution plans in the *Automotive Parts Antitrust Litigation*, as have numerous other courts in other matters. *See, e.g., In re Automotive Hoses Cases*, 2:15-cv-03201, ECF No. 10); 2:12-cv-00601, ECF No. 172; 2:12-cv-00101, ECF No. 572). *See also* 4 *Newberg*, § 12.35, at 353-54 (noting propriety of *pro rata* distribution of settlement funds). "Settlement distributions, such as this one, that apportion funds according to the relative amount of damages suffered by class members have repeatedly been deemed fair and

reasonable." *In re Vitamins Antitrust Litig*., No. 99-197, 2000 WL 1737867, at *6 (D. D.C. Mar. 31, 2000) (finding proposed plan for *pro rata* distribution of partial settlement funds was fair, adequate, and reasonable). *Accord Prandin Direct Purchaser Antitrust Litig.*, C.A. No. 2:10-cv-12141-AC-DAS, 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). The proposed plans for allocation and distribution satisfy the above criteria and should receive final approval.

VI. CERTIFICATION OF THE DIRECT PURCHASER SETTLEMENT CLASSES FOR PURPOSES OF EFFECTUATING THE PROPOSED SETTLEMENTS IS APPROPRIATE.

In preliminarily approving the proposed settlements, the Court found that Rule 23's requirements were met and provisionally certified, for purposes of the proposed settlements only, the following Settlement Classes:

A. Heater Control Panels Settlement Class

The Heater Control Panels Settlement Class is defined as follows:

> All individuals and entities who purchased Heater Control Panels in the United States directly from one or more Defendant(s) (or their subsidiaries, affiliates, or joint ventures) from January 1, 2000 through March 23, 2017. Excluded from the Settlement Class are Defendants, their present and former parent companies, subsidiaries, and affiliates, federal governmental entities and instrumentalities of the federal government, and states and their subdivisions, agencies and instrumentalities.

2:12-cv-00401, ECF No. 232. For purposes of the Heater Control Panels Settlement Class definition set forth above, the following entities are Defendants: DENSO Corporation; DENSO International America, Inc.; K & S Wiring Systems Inc.; Sumitomo Electric Industries, Ltd. and Sumitomo Electric Industries, Inc.; Sumitomo Electric Wiring Systems, Inc.; Sumitomo Electric Wintec America, Inc.; Sumitomo Wiring Systems, Ltd.; Sumitomo Wiring Systems (U.S.A.) Inc.;

Tokai Rika Co., Ltd.; TRAM, Inc. d/b/a Tokai Rika U.S.A. Inc.; ALPS Electric Co., Ltd.; ALPS Electric (North America), Inc.; ALPS Automotive Inc.; and their parents, subsidiaries, and affiliates. *Id*.

B. Instrument Panel Clusters Settlement Class

The Instrument Panel Clusters Settlement Class is defined as follows:

> All individuals and entities who purchased Instrument Panel Clusters in the United States directly from one or more Defendant(s) (or their subsidiaries, affiliates, or joint ventures) from January 1, 1998 through December 27, 2016. Excluded from the Settlement Class are Defendants, their present and former parent companies, subsidiaries, and affiliates, federal governmental entities and instrumentalities of the federal government, and states and their subdivisions, agencies and instrumentalities.

2:12-cv-00201, ECF No. 233. For purposes of the Instrument Panel Clusters Settlement Class definition set forth above, the following entities are Defendants: Continental Automotive Electronics LLC; Continental Automotive Systems, Inc.; Continental Automotive Korea Ltd., DENSO Corporation; DENSO International America, Inc.; Nippon Seiki Co. Ltd.; N.S. International, Ltd.; New Sabina Industries; Yazaki Corporation; Yazaki North America Inc.; S&T Daewoo Co., Ltd.; S&T Motiv Co., Ltd.; and their parents, subsidiaries, and affiliates. *Id*.

C. Wire Harness Products Settlement Class

The Wire Harness Products Settlement Class is defined as follows:

> All individuals and entities who purchased Wire Harness Products in the United States directly from one or more Defendant(s) (or their subsidiaries, affiliates, or joint ventures) from January 1, 2000 through December 13, 2016. Excluded from the Settlement Class are Defendants, their present and former parent companies, subsidiaries, and affiliates, federal governmental entities and instrumentalities of the federal government, and states and their subdivisions, agencies and instrumentalities.

2:12-cv-00101, ECF No. 585. For purposes of the Wire Harness Settlement Class definition set forth above, the following entities are Defendants: Chiyoda Manufacturing Corp.; Delphi

Automotive LLP; Delphi Automotive Systems, LLC; DPH Holdings Corp.; Delphi Furukawa Wiring Systems LLC; DENSO Corporation; DENSO International America, Inc.; Fujikura Automotive America, LLC; Fujikura Ltd.; American Furukawa, Inc.; Furukawa Electric Co., Ltd.; Furukawa Wiring Systems America, Inc.; G.S. Electech, Inc.; G.S. Wiring Systems, Inc.; G.S.W. Manufacturing Inc.; Kyungshin-Lear Sales and Engineering LLC; Lear Corporation; Leoni AG; Leoni Kabel GmbH; Leoni Wire Inc.; Leoni Wiring Systems, Inc.; Leonische Holding, Inc.; Leoni Bordnetz-Systeme GMBH; Mitsubishi Electric Automotive America, Inc.; Mitsubishi Electric Corp.; Mitsubishi Electric US Holdings, Inc.; K&S Wiring Systems, Inc.; Sumitomo Electric Industries, Ltd.; Sumitomo Electric Wintec America, Inc.; Sumitomo Electric Wiring Systems, Inc.; Sumitomo Wiring Systems (U.S.A.) Inc.; Sumitomo Wiring Systems, Ltd.; S-Y Systems Technologies Europe GmbH; Tokai Rika Co., Ltd.; TRAM, Inc. d/b/a Tokai Rika U.S.A. Inc.; Yazaki Corporation; Yazaki North America Inc.; and their parents, subsidiaries, and affiliates. *Id*.

It is well established that a class may be certified for purposes of settlement. *See, e.g.*, *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591 (1997); *Automotive Parts*, 2:12-cv-00103, ECF No. 497, at 24; *Cardizem*, 218 F.R.D. at 516-19; *Thacker v. Chesapeake Appalachia, LLC*, 259 F.R.D. 262, 266-70 (E.D. Ky. 2009). As demonstrated below, the proposed Settlement Classes meet all the requirements of Rule 23(a), as well as the requirements of Rule 23(b)(3) for settlement purposes.

D. The Proposed Settlement Classes Satisfy Rule 23(a).

Certification of a class requires meeting the requirements of Fed. R. Civ. P. 23(a) and one of the subsections of Rule 23(b). *In re Whirlpool Corp. Front-Loading Washer Prods. Liab. Litig.*, 722 F.3d 838, 850-51 (6th Cir. 2013); *Ford*, 2006 WL 1984363, at *19 (citing *Sprague v. General Motors Corp.*, 133 F.3d 388, 397 (6th Cir. 1998)). Certification is appropriate under Rule 23(a) if: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of

law and fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. *Griffin*, 2013 WL 6511860, at *5; *Date*, 2013 WL 3945981, at *3.

1. The Settlement Classes are Sufficiently Numerous.

Class certification under Rule 23(a)(1) is appropriate where a class contains so many members that joinder of all would be "impracticable." Fed. R. Civ. P. 23(a)(1). There is no strict numerical test to satisfy the numerosity requirement; the most important factor is whether joinder of all the parties would be impracticable for any reason. *Whirlpool*, 722 F.3d at 852 (noting that "substantial" number of class members satisfies numerosity). Moreover, numerosity is not determined solely by the size of the class, but also by the geographic location of class members. *Marsden v. Select Medical Corp.*, 246 F.R.D. 480, 484 (E.D. Pa. 2007).

Here, copies of the Notice were mailed to 72 entities in the Heater Control Panels Settlement Class, 351 entities in the Instrument Panel Clusters Settlement Class, and 7,496 entities in the Wire Harness Products Settlement Class, geographically dispersed throughout the United States, that were identified by Defendants as their customers who directly purchased the products at issue from Defendants. Thus, joinder of all Settlement Class members would be impracticable, satisfying Rule 23(a)(1).

2. There are Common Questions of Law and Fact.

Fed. R. Civ. P. 23(a)(2) requires that a proposed class action involve "questions of law or fact common to the class." "We start from the premise that there need be only one common question to certify a class," *Whirlpool*, 722 F.3d at 853, and "the resolution of [that common issue] will advance the litigation." *Sprague*, 133 F.3d at 397. *Accord Barry v. Corrigan*, 2015 WL

136238, at *13 (E.D. Mich. Jan 9, 2015); *Exclusively Cats Veterinary Hosp. v. Anesthetic Vaporizer Servs., Inc.*, 2010 WL 5439737, at * 3 (E.D. Mich. Dec. 27, 2010) ("[T]here need be only a single issue common to all members of the class") (citing *In re Am. Med. Sys., Inc.*, 75 F.3d 1069, 1080 (6th Cir. 1996)).

It has long been the case that "allegations concerning the existence, scope and efficacy of an alleged conspiracy present questions adequately common to class members to satisfy the commonality requirement." *In re Flat Glass Antitrust Litig.*, 191 F.R.D 472, 478 (W.D. Pa. 1999) (citing 4 *Newberg on Class Actions*, § 18.05-15 (3d ed. 1992)). Here, whether Defendants entered into illegal agreements to fix prices of Heater Control Panels, Instrument Panel Clusters and Wire Harness Products presents a factual question common to all members of each of the Settlement Classes because it is an essential element of proving an antitrust violation. *See, e.g., Automotive Parts*, 2:12-cv-00103, ECF No. 497, at 25. Common legal questions include whether, if such agreements were reached, Defendants violated the antitrust laws and the impact on members of the Settlement Classes. *Packaged Ice*, 2011 WL 717519, at *6 (commonality requirement satisfied by questions concerning "whether Defendants conspired to allocate territories and customers and whether their unlawful conduct caused Packaged Ice prices to be higher than they would have been absent such illegal behavior and whether the conduct caused injury to the Class Members"). "Indeed, consideration of the conspiracy issue would, of necessity, focus on defendants' conduct, not the individual conduct of the putative class members." *Flat Glass*, 191 F.R.D. at 484. Because there are common legal and factual questions related to potential liability, the commonality requirement of Rule 23(a)(2) is met.

3. Plaintiffs' Claims Are Typical of Those of the Settlement Classes.

Rule 23(a)(3) requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). "If there is a strong similarity of legal theories, the requirement [of typicality] is met, even if there are factual distinctions among named and absent class members." *Griffin*, 2013 WL 6511860, at *6 (quoting *Ford Motor*, 2006 WL 1984363, at * 19); *Date*, 2013 WL 3945981, at *3.

"Typicality is met if the class members' claims are 'fairly encompassed by the named plaintiffs' claims.'" *Whirlpool*, 722 F.3d at 852 (quoting *Sprague*, 133 F.3d at 399). Here, Plaintiffs' claims arise from the same course of conduct as the claims of the other members of the Settlement Classes: Defendants' alleged violations of the antitrust laws. Plaintiffs and the other members of the Settlement Classes are proceeding on the same legal claim, alleged violations of Section 1 of the Sherman Act. *See UAW*, 497 F.3d at 625; *Barry v. Corrigan*, No. 13-cv-13185, 2015 WL 136238, at *13 (E.D. Mich. Jan. 9, 2015). Accordingly, the Rule 23(a)(3) typicality requirement is satisfied.

4. Plaintiffs Will Fairly and Adequately Protect the Interests of the Settlement Classes.

Rule 23(a)(4) requires that the class representative fairly and adequately protect the interests of the class. "There are two criteria for determining whether the representation of the class will be adequate: 1) the representative must have common interests with unnamed members of the class; and 2) it must appear that the representatives will vigorously prosecute the interests of the class through qualified counsel." *Sheick v. Automotive Component Carrier LLC*, No. 09–14429, 2010 WL 3070130, at *3 (E.D. Mich. Aug. 2, 2010) (quoting *Senter v. Gen. Motors Corp.*, 532 F.2d 511, 524-25 (6th Cir. 1976)).

These requirements are met here. The interests of the proposed representatives of the Settlement Classes are common to those of other members of the Settlement Classes. Plaintiffs are entities who directly purchased Heater Control Panels, Instrument Panel Clusters, or Wire Harness Products from a Defendant in the United States. Plaintiffs and the other members of the Settlement Classes claim that they were injured because of the alleged conspiracy and seek to prove that Defendants violated the antitrust laws. Plaintiffs' interests are thus aligned with those of the Settlement Classes.

Moreover, Plaintiffs have retained qualified and experienced counsel to pursue this action.[6] Settlement Class Counsel vigorously represented Plaintiffs and the Settlement Classes in the settlement negotiations with the DENSO Defendants and have vigorously prosecuted these actions. Adequate representation under Rule 23(a)(4) is therefore satisfied.

E. Plaintiffs' Claims Satisfy the Prerequisites of Rule 23(b)(3) for Settlement Purposes.

In addition to satisfying Rule 23(a), Plaintiffs must show that the proposed class action falls under at least one of the three subsections of Rule 23(b). Here, the Settlement Classes qualify under Rule 23(b)(3), which authorizes class certification if "questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and … a class action is superior to other available methods for the fair and efficient adjudication of the controversy." *In re Scrap Metal Antitrust Litig.*, 527 F.3d 517, 535 (6th Cir. 2008); *Hoving v. Lawyers Title Ins. Company* 256 F.R.D. 555, 566 (E.D. Mich. 2009).

[6] Rule 23(g) requires the court to examine the capabilities and resources of class counsel to determine whether they will provide adequate representation to the class. The Court previously appointed Freed Kanner London & Millen LLC, Kohn, Swift & Graf, P.C., Preti, Flaherty, Beliveau & Pachios LLP, and Spector Roseman & Kodroff, P.C. as Interim Co-Lead Counsel in this case and all other *Automotive Parts Antitrust Litigation* direct purchaser cases. They submit that, for the same reasons that the Court appointed them to those positions, their appointment as Co-Lead Settlement Class Counsel is appropriate.

1. Common Legal and Factual Questions Predominate.

Rule 23(b)(3)'s requirement that common issues predominate ensures that a proposed class is "sufficiently cohesive" to warrant certification. *Amchem*, 521 U.S. at 623. The predominance requirement is met where "the issues in the class action that are subject to generalized proof, and thus applicable to the class as a whole, . . . predominate over those issues that are subject only to individualized proof." *Beattie v. CenturyTel, Inc.*, 511 F.3d 554, 564 (6th Cir. 2007) (citation omitted).

Courts have repeatedly recognized that alleged horizontal price-fixing cases are particularly well-suited for class certification because proof of the conspiracy is a common, predominating question. *Scrap Metal*, 527 F.3d at 535; *Automotive Parts*, 2:12-cv-00103, ECF No. 497, at 27; *In re Southeastern Milk Antitrust Litig.*, No. 2:07-cv-208, 2010 WL 3521747, at *5, 9-11 (E.D. Tenn. Sept. 7, 2010). Affirming class certification in *Scrap Metal*, the Sixth Circuit observed that the "district court found that the '*allegations* of price-fixing and market allocation … will not vary among class members'…. Accordingly, the court found that the 'fact of damages' was a question common to the class even if the amount of damages sustained by each individual class member varied." 527 F.3d at 535 (emphasis in original).

In the DPP-DENSO Cases, the same set of core operative facts and theory of liability apply to each member of the Settlement Classes. As discussed above, whether Defendants entered into the alleged illegal agreements to artificially fix prices of Heater Control Panels, Instrument Panel Clusters, or Wire Harness Products is a question common to all members of the Settlement Classes because it is an essential element of proving an antitrust violation. Common questions also include whether, if such agreements were reached, Defendants violated the antitrust laws, and whether Defendants' acts caused anticompetitive effects. *See, e.g.*, *Packaged Ice*, 2011 WL 717519, at *6.

If Plaintiffs and the other members of the Settlement Classes were to bring their own individual actions, they would each be required to prove the same alleged wrongdoing by Defendants to establish liability. Therefore, common proof of Defendants' alleged violations of antitrust law will predominate.

2. A Class Action is Superior to Other Methods of Adjudication.

Rule 23(b)(3) lists factors to be considered in determining the superiority of proceeding as a class action compared to individual methods of adjudication: (1) the interests of the members of the class in individually controlling the prosecution of separate actions; (2) the extent and nature of other pending litigation about the controversy by members of the class; (3) the desirability of concentrating the litigation in a particular forum; and (4) the difficulties likely to be encountered in management of the class action. Fed. R. Civ. P. 23(b)(3).

All Heater Control Panels, Instrument Panel Clusters, and Wire Harness Products litigation is centralized in this Court. If any members of the Settlement Classes want to control their own litigation, they can request exclusion from the Settlement Class. Thus, consideration of factors (1) – (3) demonstrates the superiority of a class action.

With respect to factor (4), in *Amchem*, 521 U.S. at 620, the Court explained that when a court is asked to certify a settlement-only class it need not consider the difficulties in managing a trial of the case because the settlement will end the litigation without a trial. *See Cardizem*, 218 F.R.D. at 517.

In addition, even though the Settlement Classes are not composed of small retail purchasers, "[g]iven the complexities of antitrust litigation, it is not obvious that all members of the class could economically bring suits on their own." *In re Cardizem CD Antitrust Litig*, 200 F.R.D. 297, 325 (E.D. Mich. 2007) (quoting *Paper Systems Inc. v. Mitsubishi Corp.*, 193 F.R.D.

601, 605 (E.D. Wisc. 2000)). Moreover, by proceeding as a class action, both judicial and private resources will be more efficiently utilized to resolve the predominating common issues, which will bring about a single outcome that is binding on all members of the Settlement Classes. *E.g.*, *Cardizem*, 200 F.R.D. at 351 ("The economies of time, effort and expense will be achieved by certifying a class in this action because the same illegal anticompetitive conduct by Defendants gives rise to each class member's economic injury."). The alternatives to a class action are a multiplicity of separate lawsuits with possibly contradictory results for some plaintiffs, *In re Flonase Antitrust Litig.*, 284 F.R.D. 207, 234 (E.D. Pa. 2012), or no recourse for many class members for whom the cost of pursuing individual litigation would be prohibitive. *In re NASDAQ Market-Makers Antitrust Litig.*, 169 F.R.D. 493, 527 (S.D.N.Y 1996). Thus, class litigation is superior to the alternatives in this case.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant final approval of the proposed settlements, certify the Settlement Classes for purposes of settlement only, and approve the proposed plans for allocation and distribution of the Heater Control Panels, Instrument Panel Clusters, or Wire Harness Products settlement funds.

DATED: December 20, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 20, 2021, I electronically filed the foregoing paper with the Clerk of the court using the ECF system which will send notification of such filing to all counsel of record registered for electronic filing.

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