

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

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| IN RE: AUTOMOTIVE PARTS ANTITRUST LITIGATION | : | Master File No. 12-md-02311 Honorable Marianne O. Battani |
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| In Re: Wire Harness | : | 2:12-cv-00103 |
| In Re: Instrument Panel Clusters | : | 2:12-cv-00203 |
| In Re: Fuel Senders | : | 2:12-cv-00303 |
| In Re: Heater Control Panels | : | 2:12-cv-00403 |
| In Re: Bearings | : | 2:12-cv-00503 |
| In Re: Alternators | : | 2:13-cv-00703 |
| In Re: Anti-Vibrational Rubber Parts | : | 2:13-cv-00803 |
| In Re: Windshield Wiper Systems | : | 2:13-cv-00903 |
| In Re: Radiators | : | 2:13-cv-01003 |
| In Re: Starters | : | 2:13-cv-01103 |
| In Re: Ignition Coils | : | 2:13-cv-01403 |
| In Re: Motor Generator | : | 2:13-cv-01503 |
| In Re: HID Ballasts | : | 2:13-cv-01703 |
| In Re: Inverters | : | 2:13-cv-01803 |
| In Re: Electronic Powered Steering Assemblies | : | 2:13-cv-01903 |
| In Re: Fan Motors | : | 2:13-cv-02103 |
| In Re: Fuel Injection Systems | : | 2:13-cv-02203 |
| In Re: Power Window Motors | : | 2:13-cv-02303 |
| In Re: Automatic Transmission Fluid Warmers | : | 2:13-cv-02403 |
| In Re: Valve Timing Control Devices | : | 2:13-cv-02503 |
| In Re: Electronic Throttle Bodies | : | 2:13-cv-02603 |
| In Re: Air Conditioning Systems | : | 2:13-cv-02703 |
| In Re: Windshield Washer Systems | : | 2:13-cv-02803 |
| In Re: Spark Plugs | : | 2:15-cv-03003 |
| In Re: Automotive Hoses | : | 2:15-cv-03203 |
| In Re: Ceramic Substrates | : | 2:16-cv-03803 |
| In Re: Power Window Switches | : | 2:16-cv-03903 |
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| THIS DOCUMENT RELATES TO: | : | |
| End-Payor Actions | : | |

**END-PAYOR PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES
AND REIMBURSEMENT OF CERTAIN EXPENSES IN CONNECTION
WITH THE ROUND 2 SETTLEMENTS**

EPP Class Counsel for End-Payor Plaintiffs (“EPPs”)¹ hereby move the Court, pursuant to Fed. R. Civ. P. 23(h) and 54(d)(2), for an award of attorneys’ fees of 27.5% from each of the settlements currently before the Court for final approval, net of certain litigation costs and expenses, and for reimbursement of those costs and expenses.

Date: February 9, 2017

Respectfully submitted,

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¹ In granting preliminary approval of these settlements, the Court appointed Robins Kaplan LLP, Cotchett, Pitre & McCarthy, LLP and Susman Godfrey L.L.P. Settlement Class Counsel. *See, e.g., Order Granting Preliminary Approval of Proposed Settlement with DENSO Defendants, Wire Harness*, 2:12-cv-00103, ECF No. 534.

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**END-PAYOR PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR
AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF CERTAIN
EXPENSES IN CONNECTION WITH THE ROUND 2 SETTLEMENTS**

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STATEMENT OF ISSUES PRESENTED

1. Should End-Payor Plaintiffs Counsel, who have obtained nearly \$380 million in class settlements that are before the Court for final approval, be awarded attorneys' fees equal to 27.5% of these settlement proceeds net of certain litigation costs and expenses?

Yes.

2. Should End-Payor Plaintiffs Counsel be reimbursed for certain litigation costs and expenses incurred in pursuing the claims in this litigation?

Yes.

INTRODUCTION

Pursuant to Rules 23(h) and 54(d)(2) of the Federal Rules of Civil Procedure, End-Payor Plaintiffs' ("EPPs'") Class Counsel ("EPP Class Counsel") respectfully request an award of attorneys' fees equal to 27.5% of the amount paid by twelve additional defendants in this litigation net certain litigation costs and expenses (\$104,076,332.26) ("Requested Net Award"), and for reimbursement of these costs and expenses totaling \$941,878.09.²

EPP Class Counsel make this application for attorney's fees and reimbursement of expenses in connection with End-Payor Plaintiffs' ("EPPs'") Motion for Final Approval of Settlements with Aisin Seiki, DENSO, Furukawa, G.S. Electech, LEONI, MELCO, NSK, Omron, Schaeffler, Sumitomo Riko, Tokai Rika, and Valeo (the "Round 2 Settling Defendants"). These settlements with the Round 2 Settling Defendants, each of which was separately negotiated and therefore are separate and independent of the other, total \$379,401,268 in cash ("Round 2 Settlement Amount") and also include, among other things, injunctive relief obtained from, with one exception, each of the Round 2 Settling Defendants and agreements by each of the Settling Defendants to cooperate in the EPPs' continued prosecution of their claims against the Defendants remaining in the Actions ("Non-Settling Defendants"). These Round 2 Settlements are only possible because of the dedication, effort, and skill of interim co-lead counsel and the firms working at their direction, including their substantial multi-year investment of time and expenses. The request for 27.5% of each settlement net of certain litigation costs and expenses is in line with Sixth Circuit authority and is exactly in line with what EPP Class

² Contemporaneously with this motion, End-Payor Plaintiffs are filing their Motion for Orders Granting Final Approval of the Round 2 Settlements and Approving the Plan of Allocation in Connection with the Round 2 Settlements and Memorandum in Support.

Counsel advised this Court it would request related to these settlements.³ EPP Class Counsel have taken a significant risk, invested substantial amounts of their time and money on a contingent basis, and forgone other work opportunities to dedicate their professional efforts to this case. The litigation costs for which reimbursement is sought were reasonably advanced by EPP Class Counsel and incurred in furtherance of the prosecution of the EPP claims.

In sum, EPP Class Counsel have obtained an excellent settlement result for the settlement classes included in the Round 2 Settlements (“Round 2 Settlement Classes”), and respectfully request that the Court approve the requested award of fees and costs as contemplated under Rule 23(h). The fees and expenses requested are fair and reasonable in light of the risks undertaken in this litigation, the effort and resources required to prosecute litigation of this enormous scope and magnitude, and the exceptional recovery obtained to date for the settlement classes.

A. Settlements achieved since the May 11, 2016 final approval hearing.

Since May 11, 2016, when the Court granted final approval of the EPPs’ settlements with eleven defendants and their affiliates in nineteen cases (“Round 1 Settlements”), the Court has granted preliminary approval of settlements with 16 additional defendants and their affiliates in 26 cases. Settlements with 12 of those defendants are part of the EPPs’ September 2016 Notice Program,⁴ making up the second round of settlements that are the subject of this motion (“Round 2 Settlements”).⁵ The Round 2 Settlements have resulted in a combined total of \$379,401,268.

³ See End-Payor Plaintiffs’ Supplemental Memorandum in Support of End-Payor Plaintiffs’ Motion for an Award of Attorneys’ Fees and Reimbursement of Costs, *Wire Harness, Wire Harness*, 2:12-cv-00103, ECF No. 491.

⁴ See Order Granting End-Payor Plaintiffs’ Motion to Amend the September 2016 Notice Program, *Wire Harness*, 2:12-cv-00103, ECF No. 542.

⁵ The Settling Defendants and corresponding affiliated cases and settlement amounts are listed in Appendix A.

These settlements provide the Round 2 Settlement Classes with substantial cash benefits and valuable cooperation from the Settling Defendants while EPPs continue to prosecute claims in this MDL Litigation, *In re Automotive Parts Antitrust Litigation*, MDL 2311 (“*Auto Parts*”).

B. EPP Class Counsel’s Vigorous Prosecution on Behalf of the Round 2 Settlement Classes

Since 2012, attorneys for EPPs have diligently worked to advance the claims of members of the proposed Round 2 Settlement Classes. As the Court has repeatedly recognized, the EPP class actions are extraordinarily complex, involving over 70 defendant groups in 39 separate but coordinated antitrust class actions alleging violations of 31 separate antitrust and/or consumer protection laws. *See* Transcript of May 11, 2016 Fairness Hearing, at 72-73 (noting the complexity of the EPP action and referring to the difficulty of the case as “extraordinary”); *see also In re Packaged Ice*, No. 08-md-01952, 2011 U.S. Dist. LEXIS 150427, at *76 (E.D. Mich. Dec. 13, 2011) (stating that antitrust class actions are “arguably the most complex action(s) to prosecute” given the “legal and factual issues” which are “numerous and uncertain in outcome”); *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508 (E.D. Mich. 2003) (“Antitrust class actions are inherently complex.”).

The size and complexity of the *Auto Parts* litigation has required a huge undertaking by all involved. EPP Class Counsel’s activities have included:

- Performing extensive research into the worldwide automotive parts industry, as well as the federal antitrust laws and the antitrust, consumer protection, and unjust enrichment laws of more than 30 states and the District of Columbia;
- Researching and drafting scores of class action complaints, including numerous amended complaints, incorporating extensive new factual information obtained as a result of additional factual investigation, document review, and proffers and interviews of witnesses made available by certain settling and cooperating Defendants;

- Successfully opposing scores of motions to dismiss filed by Defendants through extensive briefing and oral argument before the Court;
- Reviewing and analyzing millions of pages of English and foreign language documents (many of which EPP Class Counsel were required to translate) produced by Defendants;
- Drafting and coordinating discovery by all Plaintiff groups against well over 100 Defendants, as well as preparing and arguing numerous contested discovery motions;
- Meeting with Defendants' counsel in connection with factual proffers obtained pursuant to the cooperation provisions of settlement agreements or the Antitrust Criminal Penalty Enhancement Reform Act, interviewing key witnesses from various Defendant groups, including in federal prison in the United States;
- Coordinating the actions of EPPs, and sometimes of all Plaintiff groups, with the DOJ;
- Negotiating the terms of Defendants' subpoenas to non-plaintiff Auto Dealers and assisting in the preparation and service of numerous documents subject to Defendants' subpoenas;
- Obtaining, analyzing and producing thousands of pages of documents and data from more than 50 EPP class representatives, and responding to multiple rounds of detailed Interrogatories from ten separate sets of Defendants;
- Spearheading the negotiation and drafting of written discovery, discovery plans, protocols, and stipulations with Defendants and Plaintiffs' groups;
- Exchanging information and coordinating with counsel for Direct Purchaser Class Plaintiffs, Auto Dealer Class Plaintiffs, Truck Dealer Class Plaintiffs, City of Richmond, Ford Motor Company, and State Attorneys General regarding various issues;
- Preparing for and defending more than 50 EPP class representative depositions;
- Preparing for and taking the depositions of approximately 150 defendant witnesses in the U.S. and abroad;
- Participating in nearly 140 depositions of automotive dealer class representatives and third-parties;

- Meeting and coordinating with EPP economic and industry experts to analyze facts learned through investigation and discovery;
- Working with experts to discuss and craft appropriate damages methodologies in preparation for class certification, motion practice, and computation of class-wide damages for purposes of trial;
- Drafting, serving, negotiating, and engaging in non-party discovery directed to automobile manufacturers and distributors including depositions, and extensive discovery-related motion practice before the Special Master and the Court, in collaboration with Defendants and other plaintiffs' groups over the course of several years;
- Performing the many tasks necessary to achieve the settlements in the *Auto Parts Litigation*, including: analyzing economic evidence and data and formulating settlement demands; engaging in extensive arm's-length negotiations with the Round 2 Settling Defendants dozens of in-person meetings, countless other communications, and in many instances, working with the assistance of outside neutral mediators; negotiating and preparing drafts of settlement agreements; and preparing escrow agreements for each settlement; and
- Crafting, in consultation with the class-notice expert, the extensive notice program that was approved by the Court.

(Joint Declaration of Hollis Salzman, Steven N. Williams, and Marc M. Seltzer in Support of End-Payor Plaintiffs' Motion for an Award of Attorneys' Fees and Reimbursement of Expenses ("Joint Decl.") at ¶ 5).

EPP Class Counsel's efforts are particularly important because the United States Department of Justice ("DOJ") in its criminal prosecutions did not seek or obtain restitution for the victims of Defendants' unlawful conduct. Indeed, the criminal fines negotiated by the DOJ were determined in light of the fact that the EPPs would be seeking restitution for the victims. The guilty pleas each recite that "[i]n light of the availability of civil causes of action, which potentially provide for a recovery of a multiple of actual damages, the recommended sentence does not include a restitution order." *See, e.g.*, Plea Agreement, DENSO Corp., *United States v. DENSO Corp.*, No. 2:12-cr-20063 (E.D. Mich. 2012), ECF No. 9. Thus, EPP Class Counsel have

undertaken the responsibility of recovering monetary restitution for the American consumers and other purchasers and lessees of new motor vehicles.

I. AWARD OF ATTORNEYS' FEES

A. Legal Standards and General Practice.

1. Substantial fee awards are common and necessary in actions such as Auto Parts.

District courts may award reasonable attorneys' fees and expenses from the settlement of a class action under Federal Rules of Civil Procedure 54(d)(2) and 23(h). The Supreme Court "has recognized consistently that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see also Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 393 (1970). This doctrine recognizes that "those who benefit from the creation of the fund should share the wealth with the lawyers whose skill and effort helped create it." *In re Washington Public Power Supply System Sec. Litig.*, 19 F.3d 1291, 1300 (9th Cir. 1994).

The Supreme Court has also consistently recognized that private antitrust litigation is a necessary and desirable tool to assure the effective enforcement of the antitrust laws. *See, e.g., Pillsbury Co. v. Conboy*, 459 U.S. 248, 262-63 (1983); *Reiter v. Sonotone Corp.*, 442 U.S. 330, 331 (1979); *State of Hawaii v. Standard Oil Co.*, 405 U.S. 251, 266 (1972); *Perma Life Mufflers, Inc. v. International Parts Corp.*, 392 U.S. 134, 139 (1968), *overruled on other grounds by Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752 (1984). Substantial fee awards in successful cases, such as this one, encourage meritorious class actions, and thereby promote private enforcement of, and compliance with, antitrust laws. In *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 653-54 (1985), the Supreme Court explained:

What we have described as “the public interest in vigilant enforcement of the antitrust laws through the instrumentality of the private treble-damage action,” is buttressed by the statutory mandate that the injured party also recover costs, “including a reasonable attorney’s fee.” 15 U.S.C. § 15(a). The interest in wide and effective enforcement has thus, for almost a century, been vindicated by enlisting the assistance of “private Attorneys General”; we have always attached special importance to their role because “[e]very violation of the antitrust laws is a blow to the free-enterprise system envisaged by Congress.” (Citations omitted.)

See also Alpine Pharmacy, Inc. v. Charles Pfizer & Co., Inc. 481 F.2d 1045, 1050 (2d Cir.), *cert. denied*, 414 U.S. 1092 (1973) (“In the absence of adequate attorneys’ fee awards, many antitrust actions would not be commenced.”).

2. Whether fee awards are reasonable are judged by the circumstances of the case.

The Sixth Circuit and district courts within this Circuit have repeatedly held it is within the district court’s discretion to determine the “appropriate method for calculating attorneys’ fees” based on the “the unique circumstances of the actual cases before it.” *In re Sulzer Ortho. Inc.*, 398 F.3d 778, 780 (6th Cir. 2005) (internal quotation omitted); *see also In re Southeastern Milk*, 2013 U.S. Dist. LEXIS 70167, at *10. Accordingly, “[t]he district court’s award of attorneys’ fees in common fund cases need only be ‘reasonable under the circumstances.’” *Bowling v. Pfizer, Inc.*, 102 F.3d 777, 779 (6th Cir. 1996) (quoting *Rawlings v. Prudential-Bache Props., Inc.*, 9 F.3d 513, 516 (6th Cir. 1993)); *see also In re Polyurethane Foam Antitrust Litig.*, No. 10-md-2196, 2016 U.S. Dist. LEXIS 49592, at *12-13 (N.D. Ohio Apr. 13, 2016) (stating that, in common fund cases, a district court’s award of attorneys’ fees “need only be ‘reasonable under the circumstances’”) (internal citations omitted).

To assess the reasonableness of a fee application in a class action case, the court first determines the appropriate method of calculating the attorneys’ fees by applying either the percentage-of-the-fund approach or the lodestar multiplier method. *Van Horn v. Nationwide*

Prop. & Cas. Inc. Co., 436 F. App'x 496, 498 (6th Cir. 2011); *In re Cardinal Health Inc. Sec. Litig.*, 528 F. Supp. 2d 752, 760 (S.D. Ohio 2007). To confirm the reasonableness of the fee award, courts then analyze and weigh the six factors described in *Ramey v. Cincinnati Enquirer, Inc.*, 508 F.2d 1188 (6th Cir. 1974). See *Rawlings v. Prudential-Bache Props., Inc.*, 9 F.3d 513, 516 (6th Cir. 1993).

3. *Interim fee awards are common in cases such as Auto Parts.*

Interim fee awards are appropriate in large-scale litigation, such as this one, where the litigation will last several years, and in which settlements are reached periodically throughout the course of the ongoing litigation. See, e.g., *In re Air Cargo Shipping Serv. Litig.*, No. 06-md-1775, 2015 WL 5918273, at *6-7 (E.D.N.Y. Oct. 9, 2015) (awarding fourth round of interim attorneys' fees); *In re Diet Drugs Prod. Liab. Litig.*, No. 99-md-1203, 2002 WL 32154197, at *12 (E.D. Pa., Oct. 3, 2002) (awarding attorneys' fees after four years of litigation and noting "[t]o make them wait any longer for at least some award would be grossly unfair").

This litigation fits this paradigm. The litigation has been ongoing for nearly five years, and will likely continue for several more. End-Payor Plaintiffs are actively litigating this case against more than thirty additional defendant groups. Indirect purchaser cases such as this are notoriously complex and difficult, involving proof of pass-on, among other issues. There is much more work to be done in litigating the cases against the non-settling defendants, including conducting a massive amount of discovery, preparing numerous class certification motions, and preparing for and potentially conducting a lengthy trial or multiple trials. Indeed, the Court has awarded the Auto Dealer Plaintiff Class and Direct Purchaser Plaintiff Class

counsel multiple fee awards⁶ and should do the same for the EPP Class Counsel.

B. The Court Should Use the Percentage-of-the-Fund Approach.

As noted above, the court should first determine whether to apply the percentage-of-the-fund approach or the lodestar multiplier method. Courts in this District almost always utilize the percentage-of-the-fund approach in common fund cases. *See, e.g., In re Rawlings*, 9 F.3d at 515; *In Re Caraco Pharm. Labs., Ltd. Sec. Litig.*, No. 09-cv-12830, ECF No. 96 (E.D. Mich. June 26, 2013); *In re Packaged Ice Antitrust Litig.*, No. 08-md-01952, 2011 U.S. Dist. LEXIS 150427 (E.D. Mich. Dec. 13, 2011); *In Re General Motors Corp. Sec. and Derivative Litig.*, No. 06-md-1749, ECF No. 139 (E.D. Mich. Jan. 6, 2009); *In re Delphi Corp. Sec., Derivative & “ERISA” Litig.*, 248 F.R.D. 483, 503 (E.D. Mich. 2008); Order No. 49, *Cardizem CD Antitrust Litig.*, No. 99-md-1278, (E.D. Mich. Nov. 26, 2002). This approach eliminates the need for detailed consideration of the time devoted to the litigation, conserves judicial resources, and aligns the interests of class counsel and the class members. *See, e.g., Rawlings*, 9 F.3d at 515; *Shane Group, Inc. v. Blue Cross Blue Shield of Michigan*, No. 10-cv-14360, 2015 WL 1498888 at *15 (E.D. Mich. Mar. 31, 2015); *Packaged Ice*, 2011 U.S. Dist. LEXIS 150427, at *69-70; *Delphi*, 248 F.R.D. at 502. Indeed, this Court has awarded interim fees to date for class counsel for the

⁶ *See, e.g.,* Order Regarding Auto Dealers’ Motion for an Award of Attorneys’ Fees, Reimbursement of Litigation Expenses, and Service Awards, *Wire Harness*, 2:12-cv-00103, ECF Nos. 401, 523.

Direct Purchasers, Auto Dealers, and EPPs in this litigation using the percentage-of-the-fund approach.⁷

By contrast, the lodestar multiplier method is “too time-consuming of scarce judicial resources,” requiring courts to “pore over time sheets, arrive at a reasonable hourly rate, and consider numerous factors in deciding whether to award a multiplier.” *Rawlings*, 9 F.3d at 516-17; see also *In re Cardizem CD*, 218 F.R.D. at 532 (quoting *In re F & M Distribs., Inc. Sec. Litig.*, No. 95-CV-71778, 1999 U.S. Dist. LEXIS 11090, at *8 (E.D. Mich. 1999)) (“[T]he lodestar method is too cumbersome and time-consuming for the resources of the Court.”). The lodestar multiplier approach emphasizes “the number of hours expended by counsel rather than the results obtained, [and] it . . . provides incentives for overbilling and the avoidance of early settlement.” *Rawlings*, 9 F.3d at 517. The percentage-of-the-fund approach is preferable because it “more accurately reflects the results achieved.” *Id.* at 516. The Court should continue to follow the well-settled approach in large multi-year class actions of awarding attorneys’ fees through successive fee awards based on the percentage-of-the-fund approach. See, e.g., *Southeastern Milk*, 2013 U.S. Dist. LEXIS 70167, at *10-11 (noting that the court previously granted class counsel an interim award of attorneys’ fees equaling approximately one-third of a settlement fund with certain defendants and granting class counsel’s subsequent application for an additional award of attorneys’ fees equaling one-third of the settlement fund obtained with an

⁷ See, e.g., Order Granting Fees, *Occupant Safety Systems*, 2:12-cv-00601, ECF No. 128 (awarding attorneys’ fees to Direct Purchaser Plaintiffs counsel based on a percentage of the settlement fund); Order Regarding Auto Dealers’ Motion for an Award of Attorneys’ Fees, Reimbursement of Litigation Expenses, and Service Awards, *Wire Harness*, 2:12-cv-00103, ECF No. 401 (same); *id.* at ECF No. 523; Order Granting in Part End-Payor Plaintiffs’ Motion for Award of Attorneys’ Fees, Reimbursement of Expenses, and Establishment of a Fund for Future Litigation Expenses, *Wire Harness*, 2:12-cv-00103, ECF No. 498 (same); Supplemental Order Granting End-Payor Plaintiffs Additional Attorneys’ Fees, *Wire Harness*, 2:12-cv-00103, ECF No. 545 (awarding additional ten percent of settlement proceeds as attorneys’ fees).

additional set of defendants); *see also Precision Associates, Inc. v. Panalpina World Transport (Holding) Ltd.*, No. 08-cv-00042, 2015 U.S. Dist. LEXIS 152688, at *2-3 (E.D.N.Y. Nov. 10, 2015) (granting class counsel’s application for a second interim award of attorneys’ fees based on the percentage-of-the-fund approach); *In re Air Cargo Shipping Services Antitrust Litig.*, No. 06-cv-00706, 2015 U.S. Dist. LEXIS 138479, at *135 (E.D.N.Y. Oct. 9, 2015) (the court made three successive interim attorneys’ fee awards and a fourth interim award with respect to a fourth settlement based on the percentage-of-the-fund approach).

C. The Court should not apply a single reduced percentage to all EPP fee applications.

The Court should not adopt a single reduced percentage to be applied to these and future recoveries obtained subsequently in this litigation. Rather, each application should be judged based on the facts and circumstances pertaining to those settlements, including consideration of the total attorneys’ fee lodestar incurred as of the time of such subsequent applications.

While some courts have employed a reduced percentage based on the overall size of the settlement fund, this so-called “megafund” limitation on percentage fees has been criticized. *See, e.g., In re Cendant Corp. Litig.*, 264 F.3d 201, 284 n. 55 (3d Cir. 2001) (“[The megafund] position . . . has been criticized by respected courts and commentators, who contend that such a fee scale often gives counsel an incentive to settle cases too early and too cheaply.”); *Allapattah Servs. Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1213 (S.D. Fla. 2006) (“By not rewarding Class Counsel for the additional work necessary to achieve a better outcome for the class, the sliding scale approach creates the perverse incentive for Class Counsel to settle too early for too little.”). There is nothing inherently unreasonable in awarding attorneys’ fees in an amount equal to 25 to 33% of a common settlement fund simply due to the size of that particular common settlement fund. Many courts have awarded fees greater than EPPs’ requested 27.5% of large

so-called “mega fund” recoveries. *See, e.g., Allapattah Servs. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1210-11 (S.D. Fla. 2006) (awarding 31.5% of a \$1.06 billion settlement fund and citing fourteen cases involving settlement funds between \$40-696 million with fee awards between 25 and 35% of the fund); *In re Checking Account Overdraft Litigation*, 830 F. Supp. 2d 1330, 1358 (S.D. Fla. 2011) (awarding 30% of \$410 million settlement fund); *In re Vitamins Antitrust Litig.*, 2001 WL 34312839, at *10 (D.D.C. July 16, 2001) (awarding 34.06% of \$359 million settlement fund); *In re Linerboard Antitrust Litig.*, 2004 WL 1221350, at *1 (E.D. Pa., June 2, 2004) (awarding 30% of \$202 million settlement fund); *In re Apollo Group Inc. Securities Litigation*, 2012 WL 1378677, at *9 (D. Ariz., Apr. 20, 2012) (awarding 33% of \$145 million settlement fund); *In re Combustion Inc.*, 968 F.Supp. 1116, 1142 (W.D. La. 1997) (36% of \$127 million settlement fund); *Kurzwell v. Philip Morris Companies*, 1999 WL 1076105, at *1 (S.D.N.Y., Nov. 30, 1999) (awarding 30% of \$123 million settlement fund); *In re Ikon Office Solutions, Inc. Securities Litig.*, 194 F.R.D. 166, 197 (E.D. Pa. 2000) (awarding 30% of \$111 million settlement fund). Indeed, recently a district court awarded indirect purchaser counsel 27.5% of the common fund on a gross recovery of \$576,750,000—whereas here, EPPs are asking for that same percentage net of expenses. *In re Cathode Ray Tube Antitrust Litigation*, No. C-07-5944-JST, 2016 WL 4126533, at *1 (N.D. Cal. Aug. 3, 2016).

To take one example, *In re TFT LCD (Flat Panel) Antitrust Litig.*, No. 07-md-01827 SI, 2013 WL 1365900, at *8 & n. 11 (N.D. Cal. Apr. 3, 2013), the court expressly rejected the suggestion that fees should be reduced based on the “megafund” concept. In that case, indirect purchaser plaintiffs settled antitrust price-fixing claims for a total of \$1.082 billion. The Court awarded fees equal to 28.6% of the settlement funds, plus \$8.7 million in expenses, which resulted in lodestar multipliers ranging up to 3.24 to 4.24 for lead and liaison counsel and with

multipliers averaging between 2.4 to 2.6 for all counsel. *See also In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1367 (S.D. Fla. 2011) (awarding 30% of a \$410 million settlement fund); *see also Allapattah*, 454 F. Supp. 2d at 2010 (“In particular, federal district courts across the country have, in the class action settlement context, routinely awarded class counsel fees in excess of the 25% ‘benchmark,’ even in so-called ‘megafund’ cases.”). The 27.5% fee (net of expenses) requested is in line with awards in similar cases and is warranted here. *See In re Cathode Ray Tube Antitrust Litigation*, No. C-07-5944-JST, 2016 WL 4126533 (N.D. Cal. Aug. 3, 2016); *In re IPO Secs. Litig.*, 671 F. Supp. 2d 467, 516 (S.D.N.Y. 2009) (awarding 33-1/3% of a \$510,253,000 settlement fund). And as noted in *In re Southeastern Milk Antitrust Litigation*, No. 07-cv-208, 2013 U.S. Dist. LEXIS 70167, at *10 (E.D. Tenn. May 17, 2013), the Sixth Circuit has declined to endorse a reduced percentage fee approach in so-called “megafund” cases.

It is also well known that standard contingency-fee percentages in individual litigation are usually at least 33%, which is greater than the percentage award requested here. *See, e.g.*, Lester Brickman, *ABA Regulation of Contingency Fees: Money Talks, Ethics Walks*, 65 *Fordham L. Rev.* 247, 248 (1996) (noting that “standard contingency fees” are “usually thirty-three percent to forty percent of gross recoveries” (emphasis omitted)); Herbert M. Kritzer, *The Wages of Risk: The Returns of Contingency Fee Legal Practice*, 47 *DePaul L. Rev.* 267, 286 (1998) (reporting the results of a survey of Wisconsin lawyers, which found that “[o]f the cases with a [fee calculated as a] fixed percentage [of the recovery], a contingency fee of 33% was by far the most common, accounting for 92% of those 2 cases”). But even courts that employ reduced percentages to very large settlement funds emphasize that the attorneys’ fee awarded by the court must nonetheless be commensurate with the results achieved and the work performed

by class counsel. See *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, 991 F. Supp. 2d 437, 444 – 448 & n. 6 (E.D.N.Y. 2014) (awarding fees resulting in 3.41 multiplier, plus expenses of more than \$27 million; and noting that in an appropriate case, a fee award of 33-1/3 % of a \$510 million settlement fund could be justified and not constitute a “windfall”), *vacated on other grounds by In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, 827 F.3d 223 (2d Cir. 2016).

Significantly, as noted above, the Sixth Circuit has not endorsed the reduced percentage approach. See *Southeastern Milk*, 2013 U.S. Dist. LEXIS 70167, at *14 (stating that the “Court has not found any Sixth Circuit case endorsing [a reduced percentage] approach”). Indeed, the notion that a court should necessarily apply reduced percentages to a particularly large settlement fund—regardless of the time and expense incurred by class counsel, the results achieved for the class, or the risk and complexity of the case—contradicts the very principle under which a court is permitted to award attorneys’ fees. That is, the court must “make sure that counsel is fairly compensated for the amount of work done as well as for the results achieved.” *Rawlings*, 9 F.3d at 516.

If the Court were to consider a reduced percentage approach, it is important to note that, in cases where courts have followed that approach, the lodestar/multipliers have been quite large.⁸ For example, recently in *In re Credit Default Swaps Antitrust Litig.*, No. 13 Md 2476 (DLC) (Apr. 18, 2016 S.D.N.Y.), the court awarded \$253,758,000 in attorneys’ fees, an amount equal to 13.61% of a nearly \$1.9 billion settlement fund, plus \$10.2 million in expenses,

⁸ To be clear, however, EPPs respectfully submit that each fee application should be reviewed on the basis of the specific percentage-of-the-fund requested by Settlement Class Counsel in that application based on the Court’s consideration of all of the relevant circumstances at the time of the application.

resulting in a 6.36 multiplier. In *Merkner v. AK Steel Corp.*, No. 1:09-cv-00423, 2011 U.S. Dist. Lexis 157375 (Ohio Jan. 10, 2011), in applying a reduced percentage, the fees resulted in a multiplier of 5.3. In the *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465 (S.D.N.Y. 1998), the court awarded 14% of a \$1.027 billion settlement, but the multiplier was 3.97. Similarly, in *In re Visa Check/MasterMoney Antitrust Litig.*, 297 F. Supp. 2d 503 (S.D.N.Y. 2003), the court awarded \$220 million, which was 6.5% of a \$3.3 billion settlement, but the lodestar multiplier amounted to 3.5. Other cases had similar results. *See, e.g., In re AOL Time Warner, Inc. Sec. & ERISA Litig.*, 2006 WL 3057232 (S.D.N.Y. Oct. 25, 2006) (5.9% fees awarded on \$2.65 billion settlement; multiplier of 3.69); *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319 (S.D.N.Y. 2005) (fees of 5.5% of \$6.133 billion settlement; multiplier of 4). Indeed, the Delaware Supreme Court approved a Chancery Court fee award of 15% of a \$2.03 billion recovery, approximately \$305 million, despite objections that it “pa[id] the Plaintiff’s counsel over \$35,000 per hour worked and a multiplier of 66 times the value of their time and expenses.” *Americas Mining Corp. v. Theriault*, No. 29, 2012 WL 3642345, at *34-42 (Del. Aug. 27, 2012). In contrast, as discussed in detail below, the lodestar multiplier here is less than 2.

D. The Fee Requested by EPP Class Counsel is Appropriate.

EPPs respectfully request an award of attorneys’ fees for the Round 2 Settlements in the amount of \$104,076,332.26, which represents 27.5% of the Round 2 Settlement Amount net of expenses (“Net Settlement Amount”).⁹ *See* May 11, 2016 Fairness Hearing Transcript at 77:8-9 (granting EPPs’ motion for reimbursement of litigation expenses and stating that “[t]he costs are

⁹ The Net Settlement Amount is equal to the Round 2 Settlement Amount (\$379,401,268) less the expenses sought to be reimbursed (\$941,878.09). The chart at Appendix B reflects the proposed allocation of the requested fees among the applicable cases.

to come out of the total sum of money before there is any discussion of attorney fees.”). EPPs’ request for an amount equal to 27.5% of the Second Round Settlement Fund is in line with what Counsel advised the Court it would request in applications after the first round of settlements.¹⁰

Such an award is entirely appropriate; courts in this District routinely approve attorneys’ fees of 30% or more of the common fund created for the settlement class. *Packaged Ice*, 2011 U.S. Dist. LEXIS 150427, at *80-81; *In re Prandin Direct Purchaser Antitrust Litig.*, No. 10-cv-12141, 2015 WL 1396473 (E.D. Mich. Jan. 20, 2015); *In re Skelaxin (Metaxalone) Antitrust Litig.*, No. 12-md-2343, 2014 U.S. Dist. LEXIS 91661, at *5-6 (E.D. Tenn. June 30, 2014); *In Re Caraco Pharm. Labs.*, No. 09-cv-12830, ECF No. 96 (E.D. Mich. June 26, 2013); *Bessey v. Packerland Plainwell, Inc.*, No. 06-cv-95, 2007 U.S. Dist. LEXIS 79606, at *13 (W.D. Mich. Oct. 26, 2007); *Delphi*, 248 F.R.D. at 502-03; *Kogan v. AIMCO Fox Chase, L.P.*, 193 F.R.D. 496, 503 (E.D. Mich. 2000).

Likewise, awards of 30% or more of the Settlement Amount are common in antitrust class actions. *See, e.g., In re Southeastern Milk Antitrust Litig.*, No. 08-md-1000, 2013 U.S. Dist. LEXIS 70167 (E.D. Tenn. May 17, 2013) (awarding one-third of \$158 million settlement fund); *In re Iowa Ready-Mix Concrete Antitrust Litig.*, No. 10-cv-4038, 2011 U.S. Dist. LEXIS 130180 (N.D. Iowa Nov. 9, 2011) (awarding fee equal to 36 percent of the recovery); *In re Vitamins Antitrust Litig.*, No. 99-md-1285, 2001 WL 34312839, at *10 (D.D.C. July 16, 2001) (awarding fee of one-third of recovery); *In re Ampicillin Antitrust Litig.*, 526 F. Supp. 494, 498 (D.D.C. 1981) (awarding 45 percent of recovery); *see also Allapattah Servs. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1210-11 (S.D. Fla. 2006) (awarding 31.5% of a \$1.06 billion settlement fund

¹⁰ *See, e.g.,* End-Payor Plaintiffs’ Supplemental Memorandum in Support of End-Payor Plaintiffs’ Motion for an Award of Attorneys’ Fees and Reimbursement of Costs, *Wire Harness, Wire Harness*, 2:12-cv-00103, ECF No. 491.

and citing fourteen cases involving settlement funds between \$40-696 million with fee awards between 25–35% of the fund).

Moreover, the requested fee percentage is in line with attorneys' fees in large private, non-class litigation. There are plenty of examples. In *ETSI Pipeline Project v. Burlington Northern, Inc.*, Misc. No. 87-0615, (D.D.C. 1987), the plaintiff recovered over \$630 million and, pursuant to the retention agreement, paid its attorneys at Vinson & Elkins one-third of that amount, or just over \$210 million. See Declaration of Harry Reasoner, filed in *In re Washington Public Power Supply System Securities Litigation*, MDL No. 551 (D. Arizona, Nov. 30, 1990). Of note, Vinson & Elkins received that amount even though it had no liability for costs and expenses because the client had agreed to incur those charges. *Id.* In contrast, EPP Class Counsel have advanced millions of dollars to cover costs and bore the risk associated here. In a case between NTP Inc. and Research In Motion Ltd., the company that manufactured the Blackberry, the plaintiff's attorney recovered a contingent fee of \$200 million after the case settled for \$612.5 million.¹¹

More recently, the National Credit Union Administration ("NCUA"), a federal agency, paid attorneys' fees of just over \$1 billion for recoveries of \$4.3 billion in lawsuits against banks regarding faulty residential mortgage-backed securities. The fees were paid pursuant to contingency agreements in which the attorneys also bore costs of litigation. The NCUA board's chairman vigorously defended the appropriateness of the attorneys' fees paid to its counsel,

¹¹ Yuki Noguchi, D.C. Law Firm's Big BlackBerry Payday: Case Fees of More Than \$200 Million Are Said to Exceed Its 2004 Revenue, Washington Post, March 18, 2006, D03, available at https://www.washingtonpost.com/archive/business/2006/03/18/dc-law-firms-big-blackberry-payday-span-classbankheadcase-fees-of-more-than-200-million-are-said-to-exceed-its-2004-revenuespan/8a76dbb5-0918-46b9-a7b2-4d9284d5e0d3/?utm_term=.06608ec06f76 (accessed February 8, 2017).

saying that the “outcome was far from certain” when it first engaged outside counsel and that fee arrangement had “shifted most of the risk of these legal actions to outside counsel.”¹²

Although private cases, these examples are instructive. For one, they show that the market does not adjust attorneys’ fees simply because counsel achieved excellent results. They also show that EPP Class Counsel’s fee request is well within market rates for legal fees in similar complex cases. Judge Richard A. Posner has written on awarding fees in a settled class action, “[t]he object in awarding a reasonable attorney’s fee ... is to give the lawyer what he would have gotten in the way of a fee in arm’s length negotiation, had one been feasible.” *In re Continental Illinois Securities Litigation*, 962 F.2d 566, 572 (7th Cir. 1992); *see also Williams v. Rohm & Haas Pension Plan*, 658 F.3d 629, 635 (7th Cir. 2011) (“When attorney’s fees are deducted from class damages, the district court must try to assign fees that mimic a hypothetical ex ante bargain between the class and its attorneys.”); *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 718–19 (7th Cir. 2001) (“We have held repeatedly that, when deciding on appropriate fee levels in common-fund cases, courts must do their best to award counsel the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time.”).

E. Consideration of the *Ramey* Factors Supports the Requested Fee.

After selecting a method for awarding attorneys’ fees, courts consider the six *Ramey* factors: (1) the value of the benefits to the class; (2) society’s stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others; (3) whether the services were

¹² “NCUA Reveals it paid \$1 billion to Lawyers in Fight to Recover Credit Union Crisis Losses,” Housingwire, Oct. 21, 2006, available at <http://www.housingwire.com/articles/38346-ncua-reveals-it-paid-1-billion-to-lawyers-in-fight-to-recover-credit-union-crisis-losses> (accessed February 8, 2017).

undertaken on a contingent fee basis; (4) the complexity of the litigation; (5) the professional skill and standing of counsel on both sides; and (6) the value of the services on an hourly basis. *Ramey*, 508 F.2d at 1194-97. These factors indicate that the fee requested here is fair and reasonable.

1. EPP Class Counsel have Secured Valuable Benefits for the Round 2 Settlement Classes.

The principal consideration in awarding attorneys' fees is the result achieved for the class. *Delphi*, 248 F.R.D. at 503. EPP Class Counsel have secured a Settlement Amount totaling over \$604 million which, after costs and expenses and fees, will be distributed to class members years earlier than it would be if litigation against the Settling Defendants continued and Plaintiffs were successful through trial and appeal. Of course, this litigation was undertaken entirely on a contingency fee basis with no assurances of any recovery, much less a recovery in the amount of the settlements. Further, EPP Class Counsel negotiated for and obtained significant non-monetary benefits from the Settling Defendants, including injunctive relief and carefully crafted discovery cooperation clauses for the benefit of the Round 2 Settlement Classes.

This recovery is especially important because, despite Defendants' myriad guilty pleas, the DOJ did not obtain any monetary restitution for the victims of Defendants' unlawful conduct. Yet, at the same time, the United States Attorney General made clear that "as a result of these conspiracies, Americans paid more for their cars." *Remarks as Prepared for Delivery by Attorney General Eric Holder at Auto Parts Press Conference*, U.S. Department of Justice (Sept. 26, 2013), <http://www.justice.gov/opa/speech/remarks-prepared-delivery-attorney-general-eric-holder-auto-parts-press-conference>. These settlements will provide much needed restitution to American consumers and other class members.

In addition to all-cash settlements totaling over \$604 million, EPP Class Counsel have, as

noted above, also secured equitable relief, including: (i) substantial cooperation by Settling Defendants, who have or will provide fact proffers, witness interviews, documents, depositions, and trial testimony; and (ii) an agreement by certain Settling Defendants for a period of two years not to engage in certain specified conduct that would violate the antitrust laws involving the automotive parts that are at issue in these lawsuits.¹³ This cooperation provides access to critical documents and witnesses without the delay and expense of contested discovery. *See, e.g., In re Packaged Ice Antitrust Litig.*, No. 08-md-01952, 2010 U.S. Dist. LEXIS 77645, at *44 (E.D. Mich. Aug. 2, 2010) (“[T]here is the potential for a significant benefit to the class in the form of cooperation on the part of the settling Defendant”); *see also In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 643 (E.D. Pa. 2003); *In re Corrugated Container Antitrust Litig.*, No. 81-md-310, 1981 WL 2093, at *16 (S.D. Tex. June 4, 1981). This cooperation has already assisted, and will continue to assist, EPPs in the prosecution of their claims against non-settling Defendants, providing substantial value to the Round 2 Settlement Classes.

2. *Society has a Significant Stake in Awarding Reasonable Attorneys’ Fees in this Litigation.*

Attorneys’ fees should be awarded so as “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), *aff’d in part and rev’d on other grounds*, 744 F.2d 1252, 1253 (7th Cir. 1984). Courts in the Sixth Circuit weigh “society’s stake in rewarding attorneys who [obtain favorable outcomes for a class] in order to maintain an incentive to others,” and counsel’s success in complex antitrust

¹³ *See, e.g.*, Long Form Notice attached as Exhibit A to EPPs’ Motion to Amend the Long Form Notice in Connection with the Round 2 Settlements, *Wire Harness*, 2:12-cv-00103, ECF No. 538. All Settling Defendants have agreed to injunctive relief except defendant group Leoni. *See* Settlement Agreement with Leoni at ¶ 21, *Wire Harness*, 12-cv-00103, ECF No. 509-1.

litigation “counsels in favor of a generous fee.” *Cardizem*, 218 F.R.D. at 534 (internal quotation marks omitted); *Delphi*, 248 F.R.D. at 503.

Members of the Round 2 Settlement Classes will only recover here through the work of lawyers pursuing this litigation entirely on a contingent fee basis. The substantial recoveries obtained to date serve the invaluable public policy of holding accountable those who violate U.S. antitrust laws, thereby promoting fair competition and honest pricing. *Vendo Co. v. Lektro-Vend Corp.*, 433 U.S. 623, 635 (1977) (“Section 16 undoubtedly embodies congressional policy favoring private enforcement of the antitrust laws, and undoubtedly there exists a strong national interest in antitrust enforcement.”); *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 122 (2d Cir. 2005) (“[I]t is especially important to provide appropriate incentives to attorneys pursuing antitrust actions because public policy relies on private sector enforcement of the antitrust laws.”); *In re Linerboard Antitrust Litig.*, MDL No. 1261, 2004 U.S. Dist. LEXIS 10532, at *53 (E.D. Pa. June 2, 2004) (“[T]he incentive for ‘the private attorney general’ is particularly important in the area of antitrust enforcement because public policy relies so heavily on such private action for enforcement of the antitrust laws.”) (citation omitted).

3. EPP Class Counsel are Working on a Contingent Fee Basis.

The determination of a reasonable fee must include consideration of the contingent nature of any EPP Class Counsel’s fee, the equally contingent outlay of millions of dollars of out-of-pocket costs and expenses, and the fact that the risks of failure in a class action are notoriously high. A number of courts “consider the risk of non-recovery as the most important factor in fee determination.” *Kritzer v. Safelite Solutions, LLC*, No. 10-cv-0729, 2012 WL 1945144, at *9 (S.D. Ohio May 30, 2012) (quoting *Cardinal*, 528 F. Supp. 2d at 766).

The contingency fee factor “stands as a proxy for the risk that attorneys will not recover

compensation for the work they put into a case.” *Cardinal*, 528 F. Supp. 2d at 766. Indeed, “within the set of colorable legal claims, a higher risk of loss does argue for a higher fee.” *In re Trans Union Corp. Privacy Litig.*, 629 F. 3d 741, 746 (7th Cir. 2011). Since 2012, EPP Class Counsel have undertaken significant financial risks prosecuting these antitrust class cases, an inherently complex and risky form of litigation, of unprecedented size and scope against scores of Defendants represented by the largest defense law firms in this country. EPP Class Counsel have devoted millions of dollars of their financial resources to this litigation, with no guarantee of success, and will continue to devote significant time to continue to prosecute the Auto Parts cases against the remaining Defendants as well as administer the settlements reached. The requested fee award is reasonable in light of the substantial risks involved.

4. *The Complexity of the Litigation Supports the Requested Fee.*

Antitrust class actions are “arguably the most complex action(s) to prosecute. The legal and factual issues involved are always numerous and uncertain in outcome.” *Packaged Ice*, 2011 U.S. Dist. LEXIS 150427, at *76 (quoting *Linerboard*, 292 F. Supp. 2d at 639); *see also Cardizem*, 218 F.R.D. at 533 (“Antitrust class actions are inherently complex”).

This litigation is manifestly more complex than typical antitrust class actions. The DOJ has described its investigation of Defendants’ bid-rigging and price-fixing conspiracies at issue here as the largest criminal cartel it has ever uncovered. The misconduct at issue in this litigation is unprecedented in breadth – involving at least 40 automotive component parts, many hundreds of affected vehicle models, and scores of foreign and domestic Defendants. Based on sheer volume alone – with 39 separately filed EPP cases within this MDL – this antitrust litigation is unparalleled.

EPPs have asserted a number of claims under both federal and state antitrust, consumer protection, and unjust enrichment laws. Because EPPs’ claims for damages and restitution are

based on the laws of approximately thirty states and the District of Columbia, they face additional substantial risks.¹⁴ As one court noted in a similar indirect purchaser action involving allegations of price-fixing of component parts by defendants, “[a]ssessment of damages involved a difficult analysis, which required taking into account the impact of and relationship between federal and state rules concerning damage analysis . . .” *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. 07-md-1827, 2013 U.S. Dist. LEXIS 49885, at *70 (N.D. Cal. Apr. 1, 2013). *See also In re Cathode Ray Tube (CRT) Antitrust Litig.*, MDL No. 1917, 2013 U.S. Dist. LEXIS 137945, at *65 (N.D. Cal. June 20, 2013) (recommending class certification for indirect purchasers and noting that the indirect purchaser plaintiffs “still have the burden of demonstrating that there is a reasonable method for determining on a class-wide basis whether and to what extent that overcharge was passed on to each of the indirect purchasers at all levels of the distribution chain.”) (Internal quotation marks omitted); *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 533 (E.D. Mich. 2003) (granting indirect purchaser plaintiffs’ motion for final approval and for attorneys’ fees and noting that plaintiffs “also faced substantial additional difficulties as indirect purchasers.”).

Issues attendant to serving and conducting discovery against numerous foreign defendants located around the world compounds the complexity of this case. Further, the vast majority of Defendants brought at least one motion to dismiss EPPs’ claims challenging standing and the sufficiency of EPPs various state law claims, among other issues. EPPs overwhelmingly prevailed on those motions. *See* Joint Decl. ¶ 5. EPP Class Counsel also had to manage multiple and overlapping processes of pleading, discovery, and settlement with multiple Defendants. It is

¹⁴ Some states permit indirect purchaser actions under state antitrust laws; others under state consumer protection laws and still others under both state antitrust and consumer protection laws.

respectfully submitted that the unique and complex nature of this litigation has required extraordinary time and effort, and the expenditure of significant funds by EPP Class Counsel which justifies the requested fee and expense award.

5. Skill and Experience of Counsel.

Courts consider the skill and experience of counsel on both sides of the litigation in determining a reasonable fee award. *In re Polyurethane Foam Antitrust Litig.*, No. 10-md-2196, 2015 U.S. Dist. LEXIS 23482, at *13 (N.D. Ohio Feb. 26, 2015); *Packaged Ice*, 2011 U.S. Dist. LEXIS 150427, at *69. The Court has found EPP Class Counsel to have the requisite skill and experience in class action and antitrust litigation to effectively serve the interests of EPPs. EPP Class Counsel's vigorous prosecution of this litigation, including the highly favorable settlements achieved to date and the denial, in substantial part, of Defendants' motions to dismiss, demonstrates EPP Class Counsel's skill. Likewise, Defendants are represented by highly skilled and experienced attorneys at some of the largest law firms in the world. This final factor also weighs in favor of awarding the requested fees and expenses.

6. A Lodestar Crosscheck Confirms That The Requested Fee Is Reasonable.

Some courts apply a lodestar "cross-check" on the reasonableness of the requested fee calculated as a percentage of the fund. *Cardinal*, 528 F. Supp. 2d at 764; *Packaged Ice*, 2011 U.S. Dist. LEXIS 150427, at *72. Because a lodestar cross-check is optional, the Court need not engage in a detailed scrutiny of time records. *Cardinal*, 528 F. Supp. 2d at 767. The substantial time EPP Class Counsel have expended confirms that the fee requested is well "aligned with the amount of work the attorneys contributed" to the recovery, and does not, in any way, constitute a "windfall." *Id.* at 764.

For purposes of calculating EPP Class Counsel's lodestar and lodestar multiplier in connection with subsequent interim attorneys' fee applications, the Court should follow the approach used in *Southeastern Milk* and a number of other courts by considering EPP Class Counsel's total lodestar from the time of EPP Class Counsel's appointment as interim lead class counsel to the date of the respective applications.¹⁵ In order to perform this lodestar cross-check, the Court should add any previous awards of attorneys' fees to the fee requested in the pending interim fee application and then divide that total fee amount by the total lodestar from the time of the appointment as lead counsel to the date of the pending interim fee application. *See Southeastern Milk*, 2013 U.S. Dist. LEXIS 70167, at *26-27 (rejecting objection based on the proposition that the calculation of class counsel's lodestar should be limited to work performed after the period covered by a prior fee award, and instead calculating (i) the lodestar based on work performed by class counsel from the time of lead counsel's appointment through the then-current application for an award of attorneys' fees and (ii) the lodestar/multiplier by dividing the lodestar by the sum of the previously awarded attorneys' fees and the newly awarded attorneys' fees); *see also Lobatz v. U.S. West Cellular of California, Inc.*, 222 F.3d 1142 (9th Cir. 2000) (same); *In re Insurance Brokerage Antitrust Litig.*, 282 F.R.D. 92 (D.N.J. 2012) (calculating lodestar and lodestar multiplier using the same method).

Indeed, in calculating the attorneys' fee lodestar for the cross-check purposes, it would be impractical to compartmentalize and isolate the work that EPP Class Counsel did in any

¹⁵ Settlement Class Counsel require the plaintiff law firms working on behalf of EPPs to keep contemporaneous time and expense records. Settlement Class Counsel have monitored the work of the firms working for EPPs to ensure efficiency and avoid unauthorized and unnecessary work. The detailed time and expense records submitted by Settlement Class Counsel have been, and will continue to be, reviewed and analyzed by Settlement Class Counsel prior to their submission to the Court in conjunction with any attorneys' fee applications.

particular case, as most of their work has provided and will continue to provide a significant benefit to the End-Payor classes in all cases and had, and will continue to have, a material impact in strengthening the claims of the EPPs against the non-settling defendants. EPP Class Counsel have provided ongoing litigation efficiencies because the work and effort spent in an early-filed case benefited subsequently-filed cases. EPP Class Counsel's briefing of EPPs' oppositions to defendants' multiple motions to dismiss provides an example. As the Court is aware, defendants' motions to dismiss filed in later cases advanced many of the same arguments rejected by the Court in earlier cases. As a result, EPP Class Counsel relied and built on previous work when we drafted successful responses to defendants' motions to dismiss in the later-filed cases. Joint Decl. at ¶ 5. Thus, the time and effort EPP Class Counsel devoted to one or more of the earlier-filed cases directly benefited the EPP classes in later-filed cases, including those in which there will be subsequent settlements and recoveries.¹⁶ *Id.*

Under the lodestar method, the court determines the base amount of the fee by multiplying the number of hours reasonably expended by counsel's hourly rate. *Isabel v. City of Memphis*, 404 F.3d 404, 415 (6th Cir. 2005). Under the direction of EPP Class Counsel, EPP Class Counsel have done an enormous amount of work. Discovery has been extensive, and includes coordinating discovery for more than 50 of the named plaintiffs, and directing discovery from the Defendants. Joint Decl. at ¶ 5. Over the course of the cases EPPs received substantial cooperation from multiple amnesty applicants and Settling Defendants, and are using that information to assist in the prosecution of the claims against the non-settling Defendants. *Id.* There has also been extensive motion practice related to the merits of the case as well as a multitude of discovery disputes. *Id.* at ¶ 5. All the while, EPP Class Counsel have

¹⁶ Settlement Class Counsel efficiencies are described in further detail below.

been working toward filing motions to certify the classes and bringing these cases to trial. *Id.* ¶5.

EPP Class Counsel have vigorously prosecuted this litigation with a keen eye to efficiency and economy. *See* Joint Decl. at ¶¶ 5, 11. As shown in each of the firm’s declarations submitted with this motion, counsel representing EPPs and their professional staff have worked more than 250,000 hours from EPP Class Counsel’s appointment as Interim Co-Lead Class Counsel on March 23, 2012 through December 31, 2016.¹⁷ Applying the rates charged by counsel to the hours expended yields a “lodestar” of \$108,693,616.93. The requested fee in this motion is \$104,076,332.26, which represents 27.5% of the Second Round Settlement Amount. When combined with the \$44,936,070 fee awarded for the First Round Settlement Amount,¹⁸ the total requested fees to date have been \$149,012,402.26, which is 24.7% of the \$604,069,618 in settlements either finally approved or pending final approval. These requested fees represent a 1.37 multiplier of the lodestar. Joint Decl. at ¶ 25.¹⁹

The resulting multiplier is consistent with (and in fact below) awards made in numerous other class action cases. *See* NEWBERG ON CLASS ACTIONS § 15:89 (5th ed.) (noting that “multipliers increase as fund size increases”); *see also* Order Granting Fees, *Occupant Safety Systems*, 2:12-cv-00601, ECF No. 128 (awarding attorneys’ fees resulting in a multiplier of

¹⁷ Settlement Class Counsel performed work in the case at the direction of Settlement Class Counsel. As more fully explained in the Joint Declaration, Settlement Class Counsel imposed rules and guidelines on the work assigned to and billing practices of Settlement Class Counsel. Joint Decl. at ¶ 22. All time submitted by Settlement Class Counsel in support of this motion was reviewed by Settlement Class Counsel for compliance with these rules and guidelines. *Id.*

¹⁸ *See* End-Payor Plaintiffs’ Supplemental Memorandum in Support of End-Payor Plaintiffs’ Motion for an Award of Attorneys’ Fees and Reimbursement of Costs, *Wire Harness*, 2:12-cv-00103, ECF No. 491 at 12 of 27.

¹⁹ If the Court awarded the full fee amount requested by Settlement Class Counsel in the Round 1 Settlements (\$65,117,397), the multiplier would be 1.56. Joint Decl. at ¶25.

approximately 2.09 of Direct Purchaser Plaintiffs' lodestar); *In re Prandin Direct Purchaser Antitrust Litig.*, No. 2:10-cv-12141, 2015 U.S. Dist. LEXIS 5964, at *14 (E.D. Mich. Jan. 20, 2015) (awarding attorneys' fees in the amount of one-third of a \$19 million settlement fund, which equated to a multiplier of 3.01); *Bailey v. AK Steel Corp.*, No. 06-cv-468, 2008 U.S. Dist. LEXIS 18838, at *8 (S.D. Ohio Feb. 28, 2008) (awarding attorneys' fees with a multiplier of approximately 3.01); *Nichols v. SmithKline Beecham Corp.*, No. 00-6222, 2005 WL 950616, at *24 (E.D. Pa. April 22, 2005) (awarding attorneys' fees in an antitrust action totaling 30% of \$65 million settlement fund, which amounted to a multiplier of 3.15); *In re Sumitomo Copper Litig.*, 74 F. Supp. 2d 393 (S.D.N.Y. 1999) (awarding attorneys' fees in a commodities manipulation action totaling 27.5% of \$116.6 million settlement fund, which amounted to a multiplier of 2.5).

For example, in *Southeastern Milk*, the court made two interim awards of attorneys' fees both equaling one-third of the settlement funds, where the amount awarded in the second award resulted in class counsel's lodestar/multiplier being nearly double the amount resulting from the court's first award of attorneys' fees. *See Southeastern Milk*, 2013 U.S. Dist. LEXIS 70167, at *20 (E.D. Tenn. May 17, 2013) (noting an award of attorneys' fees on counsel's first motion for attorneys' fees in the amount of 33-1/3% of a \$145 million settlement fund, representing a multiplier of 1.03, and subsequently granting counsel's second motion for fees in the amount of 33-1/3% of a \$158 million settlement fund, resulting in a multiplier of 1.9).

Similarly, in *Air Cargo*, where over \$1.2 billion in settlements have been achieved, the court granted class counsel three interim awards of attorneys' fees representing 22 to 25% of each of the *gross* total settlement funds and reflecting an increasing lodestar/multiplier, calculated based on all of the work done from the time of the appointment of lead counsel to the date of each application. *See Air Cargo*, 2011 U.S. Dist. LEXIS 79786, at *34-40

(E.D.N.Y. July 15, 2011) (lodestar multiplier of 0.63 based on all work from appointment as lead counsel to date of application for attorneys' fees in connection with \$153 million settlement fund); *Air Cargo*, 2012 U.S. Dist. LEXIS 108299, at *68-71 (E.D.N.Y. Aug. 2, 2012) (lodestar multiplier of 1.11 based on all work from appointment as lead counsel to date of application for attorneys' fees in connection with \$200 million settlement fund); *Air Cargo*, 2015 U.S. Dist. LEXIS 138479, at *135 (E.D.N.Y. Oct. 9, 2015) (lodestar multiplier of 1.45 based on all work from appointment as lead counsel to date of application for attorneys' fees in connection with \$332 million settlement fund). Indeed, it is entirely reasonable for EPP Class Counsel to receive an award of attorneys' fees that reflects an increasing lodestar multiplier due to the substantial work and effort expended in the earlier-filed cases that has had, and will continue to confer, a direct benefit in advancing the later-filed cases which has led and will lead to future recoveries.

The substantial amount of time over the last five-plus years EPP Class Counsel have devoted to representing EPPs confirms that the fee currently requested is well "aligned with the amount of work the attorneys contributed" to the recovery, and does not, in any way, constitute a "windfall." *Cardinal*, 528 F. Supp. 2d at 764. While the hours EPP Class Counsel have worked are substantial, they are reasonable and reflect the difficult and challenging nature of this extraordinarily large and complex international cartel litigation. See Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, 1 J. EMPIRICAL LEGAL STUD. 27, 64-66 (2004) (noting that "complexity is correlated with higher fees" and that "fees as a percentage of recovery tend to be higher in high-risk cases"). Given the excellent results achieved to date, the legal and factual complexity of the claims and defenses, the risk of non-recovery, the formidable opposing counsel for defendants, the experience and skill of EPP Class Counsel, and the fact that the resulting multiplier on the lodestar is 1.37, the

requested fee amount is eminently fair and reasonable.

II. THE PROPOSED FEE STRUCTURE MAXIMIZES EFFICIENCIES AND PREVENTS DOUBLE COUNTING

The time and expense devoted to prosecuting claims against Defendants related to one automotive part are intimately related to and overlap with the prosecution of EPPs' claims related to other automotive parts and against other Defendants. As the Judicial Panel on Multidistrict Litigation specifically contemplated here, the centralization of numerous auto parts cases has drastically reduced duplicative discovery and conserved the resources of the parties, their counsel, and the judiciary. *In re Automotive Wire Harness Systems Antitrust Litig.*, 867 F. Supp. 2d 1349 (J.P.M.L. 2012).

EPP Class Counsel have worked to take advantage of the overlapping and interrelated nature of the cases in this litigation to maximize efficiencies. Two types of efficiencies have very much benefited the classes overall. The first is a collective efficiency, where the time and expense devoted by EPP Class Counsel have benefited multiple cases. The second is an ongoing efficiency, where work or expenses incurred in an early filed case benefits subsequent cases. These efficiencies have allowed EPP Class Counsel to maximize their efforts where time dedicated to one case can and does benefit the classes in other cases.

Significant collective efficiencies occurred throughout the litigation. For example, EPP Class Counsel secured a collective efficiency in this litigation by arguing for and obtaining an Order ensuring that each EPP Class Representative would only be deposed once by Defendants across all cases. Joint Decl. ¶ 20. This resulted in a substantial savings of time and attorneys' fees across all of the cases. *Id.* Any attempt to parcel out how much time devoted to each deposition benefited each of EPPs' claims against each Defendant in each Auto Parts case would be arbitrary.

A second example of a collective efficiency can be found in briefing motions to dismiss. In several rounds of briefing, EPPs proposed and entered into stipulations with Defendants to brief certain collective issues across multiple cases rather than on a case-by-case basis. Joint Decl. ¶ 19. Like EPP depositions, this resulted in a substantial cost and time savings and reflects the overlapping nature of the issues to be litigated in all of the cases.

Another example of a collective efficiency is EPPs drafting, serving, and negotiating subpoenas directed to original equipment manufacturers, including discovery-related motion practice. *Id.* at ¶ 13. These subpoenas covered all of the parts in the Auto Parts Action and will ensure that the parties are not required to engage in the burdensome process of seeking this discovery 35 or more separate times, depending upon the ultimate number of cases in the Auto Parts Action. *Id.*

In addition, EPP Class Counsel helped to bring about substantial ongoing efficiencies, an example of which can be found in EPP Class Counsel's document review work. For instance, during the initial stages of the review of documents in the Wire Harness Systems case – the first-filed case and first to proceed to discovery – each reviewing attorney was learning about the auto parts industry as a whole, its methods of conducting business and its vocabulary. *Id.* at ¶ 14. This understanding naturally increased throughout the review process and enabled reviewing attorneys to review, process, and analyze documents in subsequent cases more effectively and efficiently. *Id.* Reviewers also became increasingly familiar with Defendants' internal and industry acronyms, organizational structure, business practices, and conspiratorial behavior. The review process permitted EPPs to create a cast of characters of defendants' employees, many of whom had responsibility for multiple parts during the alleged class period. But this efficiency is not just limited to the Wire Harness Systems case; subsequent cases all clearly benefited from the

work done in Wire Harness Systems. Indeed, since these cases are inextricably intertwined, the review and analysis of documents and proffers in one case has provided EPP Class Counsel with knowledge and information applicable to the other cases. *Id.* at ¶ 15.

Yet another example of ongoing efficiencies is reflected in EPPs' briefing of their oppositions to Defendants' multiple motions to dismiss, which have presently been filed in 21 cases. Joint Decl. ¶ 15. As the Court is aware, Defendants in subsequent cases filed motions to dismiss advancing many of the very same arguments rejected by the Court in prior cases. The time EPP Class Counsel spent researching and drafting successful responses to Defendants' motions to dismiss in the earlier cases therefore greatly benefited the EPP classes in subsequent cases, where in many instances, the Court adopted its prior rulings. *Id.* Similarly, stipulations and other protocols negotiated in the earlier-filed cases served as templates for similar stipulations and protocols in the remaining cases. *Id.*

Understanding the global benefits to class members from the inherent efficiencies in multi-district litigation, courts grant attorneys' fees from partial settlements based on all work done to-date. *See, e.g., In re Air Cargo Shipping Services Antitrust Litig.*, 06-md-1775 (E.D.N.Y. Oct. 9, 2015), ECF No. 2362 (granting motion for attorneys' fees from settlements with multiple defendants based upon all work on the case from the last fee award to-date); *In re Processed Egg Prods. Antitrust Litig.*, No. 08-md-2002, 2012 U.S. Dist. LEXIS 160764, at *18 (E.D. Pa. Nov. 9, 2012) (granting motion for attorneys' fees from settlement with single defendant based upon all work on case to-date); *In re Automotive Refinishing Paint Antitrust Litig.*, No. 08-md-1426, 2008 U.S. Dist. LEXIS 569 (E.D. Pa. Jan. 3, 2008) (granting interim award of attorneys' fees in connection with initial settlements based on analysis of all work done on case to-date, and later granting subsequent fee motion based on settlements with remaining

defendants and work done after previous fee award). Thus, the time devoted to one or more cases directly benefited the EPP classes in other cases.

EPPs request that the Court award fees totaling 27.5% of the Settlement Amount net of expenses or, in other words, 27.5% of each individual settlement fund net of expenses. EPPs seek a *pro rata* award of fees from the settlement funds similar to that approved by the Court in the Automotive Dealers cases. *See In re Automotive Parts Antitrust Litig.*, No. 12-cv-00103, Doc. 401, at 5 (E.D. Mich. Dec. 7, 2015). The chart at Appendix B reflects the proposed allocation of the requested fees among the applicable cases.

III. EPP CLASS COUNSEL SHOULD BE AUTHORIZED TO DISTRIBUTE FEES AMONG EPP CLASS COUNSEL

EPP Class Counsel also request the Court's authorization to distribute the awarded attorneys' fees in a manner that, in the judgment of EPP Class Counsel, fairly compensates each firm for its contribution to the prosecution of EPPs' claims. "Courts routinely permit counsel to divide common benefit fees among themselves." *In re Polyurethane Foam Antitrust Litig.*, No. 10-md-2196, 2016 U.S. Dist. LEXIS 9609, at *51 (N.D. Ohio Jan. 27, 2016); *see, e.g., In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 533 n.15 (3d Cir. 2004) (affirming the district court's decision to permit co-chairs of the Executive Committee to divide attorney fees according to their discretion, and declining to "deviate from the accepted practice of allowing counsel to apportion fees amongst themselves"); *In re Broadwing, Inc. ERISA Litig.*, 252 F.R.D. 369, 383 (S.D. Ohio 2006) ("Class Counsel shall allocate the award of attorneys' fees among counsel for the Class based on their good-faith assessment of the contribution of such counsel to the prosecution of this Action."); *In re Telectronics Pacing Sys., Inc.*, 137 F. Supp. 2d 1029, 1033 (S.D. Ohio 2001) (approving distribution of a "single fee from which the [plaintiffs' Steering Committee] will allocate the attorneys' fees among the attorneys who provided a benefit

to the Class”); *see also* *Bowling v. Pfizer, Inc.*, 102 F.3d 777 (6th Cir. 1996) (suggesting the Sixth Circuit would adopt this approach to fee distribution, observing that the critical inquiry is whether the fee fairly reflects the work done by all plaintiffs’ counsel.). Accordingly, EPP Class Counsel respectfully request that the Court authorize them to allocate the fees that are awarded among EPP Class Counsel.

IV. AWARD OF EXPENSES AND COSTS

For the first five years of this case, EPP Class Counsel funded and advanced the substantial expenses and costs required to prosecute the litigation, and did so without any guarantee of reimbursement. In approving the Round 1 Settlements and Request for Reimbursement of Expenses, the Court granted EPPs reimbursement of expenses incurred up to that date and provide for a future fund for litigation costs. Counsel have incurred additional expenses since that time which were not reimbursed through the Court’s prior order, and respectfully seek reimbursement of those costs now. Specifically, EPP Class Counsel should be reimbursed for litigation expenses and costs which include: (1) certain costs and expenses incurred from the Litigation Fund between March 2, 2016²⁰ and February 6, 2017, that have not yet been reimbursed; and (2) individual costs and expenses incurred by each EPP Class Counsel from January 1, 2016 through December 31, 2016 that have not yet been reimbursed.²¹ The expenses from the Litigation Fund for which reimbursement is sought, as well as a description of all costs paid by the Litigation Fund since March 1, 2016, are set forth in the Supplemental

²⁰ The Court previously awarded costs and expenses incurred from the Litigation Fund between March 23, 2012 and February 29, 2016. Order Granting in Part End-Payor Plaintiffs’ Motion for Award of Attorneys’ Fees, Reimbursement of Expenses, and Establishment of a Fund for Future Litigation Expenses, *Wire Harness*, 2:12-cv-00102, ECF No. 498.

²¹ The Court previously awarded individual costs and expenses incurred by each EPP Class Counsel from March 23, 2012 through December 31, 2015. *Id.*

Declaration of Steven N. Williams in Support of End-Payor Plaintiffs' Motion for an Award of Attorneys' Fees and Reimbursement of Certain Expenses in Connection with the Round 2 Settlements. The individual costs and expenses incurred by each EPP Class Counsel are also set forth in declarations attached hereto.

A. Pro Rata Allocation of Expenses Maximizes Efficiencies and Prevents Duplicate Billing

This sprawling, multi-case litigation is far more complex than virtually any other antitrust litigation. As with the time devoted by EPP Class Counsel, there also have been significant efficiencies with regard to the costs and expenses incurred. Prosecuting claims related to one auto part or against one Defendant has greatly benefited EPPs' prosecution of claims related to other auto parts and against other Defendants. As such, EPP Class Counsel have systematically taken advantage of and capitalized on the efficiencies in this litigation to minimize expenses as much as possible. Therefore, the most equitable allocation of the expenses incurred in this litigation is a *pro rata* allocation of expenses incurred to date among each of the settlement funds.

Because of these efficiencies, a case-by-case expense allocation is not only impracticable, but essentially arbitrary because the expenditures may have benefited multiple cases and claims. For example, Defendants' taking of each named plaintiff's deposition drastically reduced travel, court reporter, copy, and other deposition expenses – a great benefit to the classes. Joint Decl. at ¶14. However, because each deposition applies to each case, it would not be feasible to try to allocate which portion of each deposition expense benefited which case. *Id.* Further, expenses incurred early in the litigation have clearly benefited the later-filed cases. For example, initial service on foreign Defendants was much more expensive because each foreign Defendant originally had to be served pursuant to the Hague Convention. *Id.* at ¶ 16. In subsequently-filed

auto parts cases, foreign Defendants (who had previously been served via the Hague) were then served through their U.S counsel, saving End-Payors tens of thousands of dollars in these subsequently-filed actions. *Id.* The classes in later filed cases have obviously benefited from reduced service costs in the later filed cases.

Similarly, expenses incurred in connection with document review and experts have benefited all of the cases. In addition to the common expenses attendant with document review in each case, EPP Class Counsel incurred a substantial initial set-up fee by the document hosting service provider. *Id.* at ¶ 19. Because Wire Harness Systems was the first case for which EPPs received a DOJ production, it was charged this start up expense. Yet, each subsequent case clearly benefited from use of the same document review platform, and EPP Class Counsel's review and analysis of these documents has greatly contributed to the settlements before the Court. *Id.* Allocating the entire start-up fee to the Wire Harness Systems settlements would provide other settlement classes with an unfair windfall. The same is true for expert costs. EPP Class Counsel have incurred costs in connection with work performed by their experts in certain cases, but the experts' work benefits all of EPPs' claims across the entire litigation. For instance, work done on issues such as pass-on and the relationship between EPPs and Automotive Dealers may well be similar, if not identical, across multiple cases. *Id.* The experts' work also involved ongoing efficiencies, as the experts have utilized the knowledge and work done in all of the cases in a collective basis.

B. Reimbursement of Costs Already Incurred

The Court should award reimbursement of (1) costs and expenses incurred between March 1, 2016 and January 31, 2017 that have not yet been reimbursed; and (2) individual costs and expenses incurred by each EPP Class Counsel from January 1, 2016 through December 31, 2016 that have not yet been reimbursed. *See, e.g.,* Fed. R. Civ. P. 23(h) (allowing the court to award

reasonable attorneys' fees and expenses); *In re Delphi Corp. Sec. Derivative & ERISA Litig.*, 248 F.R.D. 483, 504 (E.D. Mich. 2008) ("Under the common fund doctrine, class counsel are entitled to reimbursement of all reasonable out-of-pocket litigation expenses and costs in the prosecution of claims and in obtaining settlement, including expenses incurred in connection with document production, consulting with experts and consultants, travel and other litigation-related expenses." (Citation and internal quotation marks omitted)); *Cardizem*, 218 F.R.D. at 535.

EPP Class Counsel have incurred \$941,878.09 in unreimbursed litigation costs and expenses, as set forth more fully above, for the benefit of the Round 2 Settlement Class Members the settlements before the Court. These costs include, among other items, expert fees, document review and hosting for the millions of pages of documents produced by defendants, scanning and preparing EPP documents, deposition expenses, travel around the world for court appearances, depositions, and witness interviews, legal research, and other reasonable litigation costs and expenses. *See generally* Declaration of Steven N. Williams Regarding End-Payor Plaintiffs' Litigation Fund in Support of End-Payor Plaintiffs' Motion for an Award of Attorneys' Fees and Reimbursement of Expenses ("Williams Decl.") attached as Exhibit B to the Joint Decl. EPP Class Counsel incurred these expenses for the benefit of the class without any guarantee of recovery and should be reimbursed from the Round 2 Settlements. Joint Decl. at ¶ 28.

Accordingly, EPP Class Counsel ask the Court to allocate the \$941,878.09 of costs and expenses incurred on a *pro rata* basis between the settlement funds, as set forth in the chart at Appendix C.

C. Previously Established Future Litigation Expense Fund

The Court previously awarded EPP Class Counsel \$11,250,000 from the Round 1 Settlement Fund to use for future expenses incurred in the ongoing litigation against the Non-Settling Defendants. Since that award, EPP Class Counsel have used a portion of this fund for

costs including (1) economic and industry expert fees in connection with upcoming class certification motions; (2) document review hosting; (3) translation of documents; and (4) deposition reporting costs in connection with depositions in the U.S. and abroad. EPP Class Counsel are not seeking any further award of future litigation costs at this time. The accounting for these payments of litigation expenses is detailed in the Supplemental Declaration of Steve Williams Regarding the End-Payor Plaintiffs' Litigation Fund, filed with this memorandum.

CONCLUSION

For the reasons set forth above, EPP Class Counsel respectfully request that the Court grant their motion and award attorneys' fees and reimburse litigation expenses.

Date: February 9, 2017

Respectfully submitted,

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APPENDIX A

| End-Payor Plaintiffs' Settlement Funds | | |
|--|---|-------------------------|
| Round 2 Settling Defendant | Automotive Parts Case | Settlement Fund |
| Aisin Seiki | Valve Timing Control Devices | \$18,620,000.00 |
| DENSO | Air Conditioning Systems | \$21,836,133.00 |
| | Alternators | \$50,449,261.00 |
| | ATF Warmers | \$1,662,943.00 |
| | Automotive Wire Harness Systems | \$14,531,801.00 |
| | Ceramic Substrates | \$1,531,138.00 |
| | Fan Motors | \$142,120.00 |
| | Fuel Injection Systems | \$19,392,650.00 |
| | Fuel Senders | \$187,823.00 |
| | Heater Control Panels | \$14,676,679.00 |
| | HID Ballasts | \$1,424,803.00 |
| | Ignition Coils | \$16,746,824.00 |
| | Instrument Panel Clusters | \$7,525,762.00 |
| | Inverters | \$142,120.00 |
| | Motor Generators | \$142,120.00 |
| | Power Window Motors | \$142,120.00 |
| | Radiators | \$15,760,989.00 |
| | Spark Plugs, Oxygen Sensors, and Air Fuel Ratio Sensors | \$9,760,366.00 |
| | Starters | \$9,709,228.00 |
| | Valve Timing Control Devices | \$4,362,039.00 |
| Windshield Washer Systems | \$362,978.00 | |
| Windshield Wiper Systems | \$3,310,103.00 | |
| Furukawa | Automotive Wire Harness Systems | \$42,560,000.00 |
| G.S. Electech | Automotive Wire Harness Systems | \$3,040,000.00 |
| LEONI | Automotive Wire Harness Systems | \$1,482,000.00 |
| MELCO | Alternators | \$17,129,946.08 |
| | Automotive Wire Harness Systems | \$3,211,463.34 |
| | Electronic Powered Steering Assemblies | \$3,211,463.34 |
| | Fuel Injection Systems | \$3,211,463.34 |
| | HID Ballasts | \$3,211,463.34 |
| | Ignition Coils | \$14,567,197.98 |
| | Starters | \$16,474,807.24 |
| Valve Timing Control Devices | \$3,211,463.34 | |
| NSK | Automotive Bearings | \$22,420,000.00 |
| | Electronic Powered Steering Assemblies | \$3,800,000.00 |
| Omron | Power Window Switches | \$3,040,000.00 |
| Schaeffler | Automotive Bearings | \$7,600,000.00 |
| Sumitomo Riko | Anti-Vibrational Rubber Parts | \$10,283,916.10 |
| | Automotive Hoses | \$1,116,083.90 |
| Tokai Rika | Automotive Wire Harness Systems | \$760,000.00 |
| Valeo | Air Conditioning Systems | \$6,650,000.00 |
| | TOTAL | \$379,401,268.00 |

APPENDIX B

| End-Payor Plaintiffs' Attorneys' Fees | | | |
|---------------------------------------|---|-------------------------|-------------------------|
| Round 2 Settling Defendant | Automotive Parts Case | Settlement Fund | Attorneys' Fees |
| Aisin Seiki | Valve Timing Control Devices | \$18,620,000.00 | \$5,120,500.00 |
| DENSO | Air Conditioning Systems | \$21,836,133.00 | \$6,004,936.58 |
| | Alternators | \$50,449,261.00 | \$13,873,546.78 |
| | ATF Warmers | \$1,662,943.00 | \$457,309.33 |
| | Automotive Wire Harness Systems | \$14,531,801.00 | \$3,996,245.28 |
| | Ceramic Substrates | \$1,531,138.00 | \$421,062.95 |
| | Fan Motors | \$142,120.00 | \$39,083.00 |
| | Fuel Injection Systems | \$19,392,650.00 | \$5,332,978.75 |
| | Fuel Senders | \$187,823.00 | \$51,651.33 |
| | Heater Control Panels | \$14,676,679.00 | \$4,036,086.73 |
| | HID Ballasts | \$1,424,803.00 | \$391,820.83 |
| | Ignition Coils | \$16,746,824.00 | \$4,605,376.60 |
| | Instrument Panel Clusters | \$7,525,762.00 | \$2,069,584.55 |
| | Inverters | \$142,120.00 | \$39,083.00 |
| | Motor Generators | \$142,120.00 | \$39,083.00 |
| | Power Window Motors | \$142,120.00 | \$39,083.00 |
| | Radiators | \$15,760,989.00 | \$4,334,271.98 |
| | Spark Plugs, Oxygen Sensors, and Air Fuel Ratio Sensors | \$9,760,366.00 | \$2,684,100.65 |
| | Starters | \$9,709,228.00 | \$2,670,037.70 |
| | Valve Timing Control Devices | \$4,362,039.00 | \$1,199,560.73 |
| | Windshield Washer Systems | \$362,978.00 | \$99,818.95 |
| Windshield Wiper Systems | \$3,310,103.00 | \$910,278.33 | |
| Furukawa | Automotive Wire Harness Systems | \$42,560,000.00 | \$11,704,000.00 |
| G.S. Electech | Automotive Wire Harness Systems | \$3,040,000.00 | \$836,000.00 |
| LEONI | Automotive Wire Harness Systems | \$1,482,000.00 | \$407,550.00 |
| MELCO | Alternators | \$17,129,946.08 | \$4,710,735.17 |
| | Automotive Wire Harness Systems | \$3,211,463.34 | \$883,152.42 |
| | Electronic Powered Steering Assemblies | \$3,211,463.34 | \$883,152.42 |
| | Fuel Injection Systems | \$3,211,463.34 | \$883,152.42 |
| | HID Ballasts | \$3,211,463.34 | \$883,152.42 |
| | Ignition Coils | \$14,567,197.98 | \$4,005,979.44 |
| | Starters | \$16,474,807.24 | \$4,530,571.99 |
| | Valve Timing Control Devices | \$3,211,463.34 | \$883,152.42 |
| NSK | Automotive Bearings | \$22,420,000.00 | \$6,165,500.00 |
| | Electronic Powered Steering Assemblies | \$3,800,000.00 | \$1,045,000.00 |
| Omron | Power Window Switches | \$3,040,000.00 | \$836,000.00 |
| Schaeffler | Automotive Bearings | \$7,600,000.00 | \$2,090,000.00 |
| Sumitomo Riko | Anti-Vibrational Rubber Parts | \$10,283,916.10 | \$2,828,076.93 |
| | Automotive Hoses | \$1,116,083.90 | \$306,923.07 |
| Tokai Rika | Automotive Wire Harness Systems | \$760,000.00 | \$209,000.00 |
| Valeo | Air Conditioning Systems | \$6,650,000.00 | \$1,828,750.00 |
| | TOTAL | \$379,401,268.00 | \$104,335,348.70 |

APPENDIX C

| End-Payor Plaintiffs' Settlement Funds | | | | |
|--|---|-------------------------|-------------------------------|----------------------|
| Round 2 Settling Defendant | Automotive Parts Case | Settlement Fund | Perecent of Total Settlements | Expense Contribution |
| Aisin Seiki | Valve Timing Control Devices | \$18,620,000.00 | 4.91% | \$0.00 |
| DENSO | Air Conditioning Systems | \$21,836,133.00 | 5.76% | \$0.00 |
| | Alternators | \$50,449,261.00 | 13.30% | \$0.00 |
| | ATF Warmers | \$1,662,943.00 | 0.44% | \$0.00 |
| | Automotive Wire Harness Systems | \$14,531,801.00 | 3.83% | \$0.00 |
| | Ceramic Substrates | \$1,531,138.00 | 0.40% | \$0.00 |
| | Fan Motors | \$142,120.00 | 0.04% | \$0.00 |
| | Fuel Injection Systems | \$19,392,650.00 | 5.11% | \$0.00 |
| | Fuel Senders | \$187,823.00 | 0.05% | \$0.00 |
| | Heater Control Panels | \$14,676,679.00 | 3.87% | \$0.00 |
| | HID Ballasts | \$1,424,803.00 | 0.38% | \$0.00 |
| | Ignition Coils | \$16,746,824.00 | 4.41% | \$0.00 |
| | Instrument Panel Clusters | \$7,525,762.00 | 1.98% | \$0.00 |
| | Inverters | \$142,120.00 | 0.04% | \$0.00 |
| | Motor Generators | \$142,120.00 | 0.04% | \$0.00 |
| | Power Window Motors | \$142,120.00 | 0.04% | \$0.00 |
| | Radiators | \$15,760,989.00 | 4.15% | \$0.00 |
| | Spark Plugs, Oxygen Sensors, and Air Fuel Ratio Sensors | \$9,760,366.00 | 2.57% | \$0.00 |
| | Starters | \$9,709,228.00 | 2.56% | \$0.00 |
| | Valve Timing Control Devices | \$4,362,039.00 | 1.15% | \$0.00 |
| | Windshield Washer Systems | \$362,978.00 | 0.10% | \$0.00 |
| Windshield Wiper Systems | \$3,310,103.00 | 0.87% | \$0.00 | |
| Furukawa | Automotive Wire Harness Systems | \$42,560,000.00 | 11.22% | \$0.00 |
| G.S. Electech | Automotive Wire Harness Systems | \$3,040,000.00 | 0.80% | \$0.00 |
| LEONI | Automotive Wire Harness Systems | \$1,482,000.00 | 0.39% | \$0.00 |
| MELCO | Alternators | \$17,129,946.08 | 4.51% | \$0.00 |
| | Automotive Wire Harness Systems | \$3,211,463.34 | 0.85% | \$0.00 |
| | Electronic Powered Steering Assemblies | \$3,211,463.34 | 0.85% | \$0.00 |
| | Fuel Injection Systems | \$3,211,463.34 | 0.85% | \$0.00 |
| | HID Ballasts | \$3,211,463.34 | 0.85% | \$0.00 |
| | Ignition Coils | \$14,567,197.98 | 3.84% | \$0.00 |
| | Starters | \$16,474,807.24 | 4.34% | \$0.00 |
| | Valve Timing Control Devices | \$3,211,463.34 | 0.85% | \$0.00 |
| NSK | Automotive Bearings | \$22,420,000.00 | 5.91% | \$0.00 |
| | Electronic Powered Steering Assemblies | \$3,800,000.00 | 1.00% | \$0.00 |
| Omron | Power Window Switches | \$3,040,000.00 | 0.80% | \$0.00 |
| Schaeffler | Automotive Bearings | \$7,600,000.00 | 2.00% | \$0.00 |
| Sumitomo Riko | Anti-Vibrational Rubber Parts | \$10,283,916.10 | 2.71% | \$0.00 |
| | Automotive Hoses | \$1,116,083.90 | 0.29% | \$0.00 |
| Tokai Rika | Automotive Wire Harness Systems | \$760,000.00 | 0.20% | \$0.00 |
| Valeo | Air Conditioning Systems | \$6,650,000.00 | 1.75% | \$0.00 |
| | TOTAL | \$379,401,268.00 | 100.00% | \$0.00 |

CERTIFICATE OF SERVICE

I hereby certify that on February 9, 2017, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ E. Powell Miller
E. Powell Miller