

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

IN RE AUTOMOTIVE PARTS
ANTITRUST LITIGATION

Master File No. 2:12-md-02311
Hon. Sean F. Cox

IN RE EXHAUST SYSTEMS
IN RE ELECTRONIC BRAKING
SYSTEMS
IN RE HYDRAULIC BRAKING
SYSTEMS

Case No. 2:16-cv-03703
Case No. 2:21-cv-04403
Case No. 2:21-cv-04503

THIS DOCUMENT RELATES TO:
End-Payor Actions

**END-PAYOR PLAINTIFFS' MOTION FOR AN ORDER APPROVING
THE PROPOSED PLAN OF ALLOCATION IN CONNECTION WITH
THE ROUND 5 SETTLEMENTS**

Pursuant to Federal Rule of Civil Procedure (“Rule”) 23, End-Payor Plaintiffs (“EPPs”)¹ respectfully move for an order approving the proposed Plan of Allocation in connection with the Bosal,² Bosch,³ and TRW⁴ settlements (together, “Round 5 Settlements”). On August 10, 2022, in connection with the Round 5 Settlements, the Court granted EPPs’ Motion to Disseminate Settlement Notice (*see, e.g.*, ECF Nos. 202 (motion), 203 (order)).⁵

The Court should approve the proposed Plan of Allocation in connection with the Round 5 Settlements. In support of this motion, EPPs rely on the accompanying Memorandum of Law, the proposed Plan of Allocation (attached hereto as **Exhibit 1**), EPPs’ Motion to Disseminate Settlement Notice, and EPPs’ Motion for Final Approval of the Round 5 Settlements filed concurrently herewith, all of which are incorporated by reference herein.

¹ Unless otherwise defined, capitalized terms shall have the meaning ascribed to them in EPPs’ Unopposed Motion for Authorization to Disseminate Notice to the Settlement Classes in Connection with the Bosal, Bosch, and TRW Settlements (“Mot. to Disseminate Settlement Notice”) (*see, e.g.*, Case No. 2:16-cv-03703, ECF No. 202).

² “Bosal” collective refers to Defendants Bosal Industries Georgia, Inc. and Bosal USA, Inc.

³ “Bosch” collectively refers to Defendants Robert Bosch GmbH and Robert Bosch LLC.

⁴ “TRW” collectively refers to Defendants ZF TRW Automotive Holdings Corp, ZF Friedrichshafen AG (the successor in interest into which TRW KFZ Ausrüstung GmbH merged), and Lucas Automotive GmbH (now known as ZF Active Safety GmbH).

⁵ Unless otherwise noted, all ECF references are to *Exhaust Systems*, Case No. 2:16-cv-03703.

Dated: November 18, 2022

Respectfully submitted,

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STATEMENT OF THE ISSUE PRESENTED

Whether the Court should approve the proposed Plan of Allocation in connection with the Round 5 Settlements, which is substantially similar to the Plans of Allocation proposed by EPPs and approved by the Court in connection with the Rounds 1 through 4 Settlements.

**STATEMENT OF CONTROLLING OR MOST APPROPRIATE
AUTHORITIES**

In re Packaged Ice Antitrust Litig., No. 08-MD-01952, 2011 WL 6209188 (E.D. Mich. Dec. 13, 2011)

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

I. INTRODUCTION

EPPs respectfully submit this Memorandum of Law in support of their Motion for an Order Approving the Proposed Plan of Allocation in Connection with the Round 5 Settlements. The proposed Plan of Allocation in connection with Round 5 Settlements (attached hereto as **Exhibit 1**) is substantially similar to the Plans of Allocation proposed by EPPs and approved by the Court in connection with the Rounds 1 through Round 4 Settlements. EPPs discuss the differences between the proposed Plan of Allocation and the previously approved Plans of Allocation by the Court below.

II. BACKGROUND

A. The Previously Approved Plans of Allocation

The Court previously approved a Plan of Allocation in connection with each of first four rounds of settlements. *See, e.g.*, Master File No. 2:12-md-02311 (Oct. 11, 2016), ECF No. 1473 (order approving plan of allocation in connection with Round 1 Settlements); Case No. 2:12-cv-00103 (July 10, 2017), ECF No. 577 (order approving Plan of Allocation in connection with Round 2 Settlements); Case No. 2:15-cv-03003 (June 14, 2018), ECF No. 93 (order approving Plan of Allocation in connection with Round 3 Settlements); Master File No. 2:12-md-02311 (Dec. 20, 2019), ECF No. 2032 (order approving Further Revised Plan of Allocation in connection with Round 4 Settlements). The Plans of Allocation for the first three

rounds of settlements are substantially identical and provide that authorized claimants will share and share alike on a *pro rata* basis in the Net Settlement Funds⁶ established for each Settlement Class of which they are members. *See, e.g.*, No. 2:15-cv-03003 (June 14, 2018), ECF No. 93 (order approving plan of allocation in connection with Round 3 Settlements).

The Plan of Allocation for the Round 4 Settlements is substantially similar to that of the Rounds 1 through 3 Settlements except it (1) modifies the *pro rata* allocation by initially distributing \$100 to all eligible class members (assuming sufficient funds exist for each class member claimant to receive at least \$100); (2) modifies the *pro rata* allocation based on the adjusted weighting of certain purchases or leases of Vehicles⁷ containing automotive parts that defendants' anticompetitive conduct targeted (which will be weighted at four times in comparison to other Vehicles and replacement Automotive Parts); and (3) clarifies that Settlement Class members who purchased or leased a qualifying Vehicle not for resale or purchased a qualifying replacement Automotive Part not for resale in a damages state are eligible to share in the Round 5 Net Settlement Funds regardless of whether the individual resided, or the business had its principal place of business, in a non-

⁶ "Net Settlement Funds" means the total settlement funds less all taxes, class notice and claim administration expenses, and attorney's fees and costs awarded by the Court to Settlement Class Counsel.

⁷ "Vehicles" shall refer to new four-wheeled passenger automobiles, vans, sports utility vehicles, and crossover or pick-up trucks.

damages state at the time of such purchase or lease. *See, e.g.*, Master File No. 2:12-md-02311 (Dec. 20, 2019), ECF No. 2032 (order approving further revised plan of allocation in connection with Round 4 Settlements).

B. The Proposed Plan of Allocation

The proposed Plan of Allocation in connection with the Round 5 Settlements is substantially similar to the Plan of Allocation in connection with the Round 4 Settlements proposed by EPPs and approved by the Court except it clarifies that: (1) a Settlement Class member who has a claim in the Round 5 Settlements as well as the Rounds 1 through 4 Settlements will only receive one \$100 minimum payment covering all of the Settlement Class member's claims across the Rounds 1 through 5 Settlements; and (2) additional identified qualifying Vehicles or qualifying replacement Automotive Parts claimed for the Round 5 Settlements will only apply to the Round 5 Settlements and will not apply to the Rounds 1 through 4 Settlements.⁸

⁸ Earlier this year, the Court entered an order setting forth the terms and conditions under which the claims administrator, Epiq, will process and administer claims submitted by Class Action Capital on behalf of Fleet Management Companies represented by Class Action Capital to recover based on eligible Vehicles in the EPP settlements. *See* Master File No. 2:12-md-02311 (Jan. 10, 2022), ECF No. 2182.

III. THE COURT SHOULD APPROVE THE PROPOSED PLAN OF ALLOCATION

Pursuant to Federal Rule of Civil Procedure (“Rule”) 23, “[a]pproval of a plan of allocation of a settlement fund in a class action is governed by the same standards of review applicable to approval of the settlement as a whole; the distribution plan must be fair, reasonable and adequate.” *In re Packaged Ice Antitrust Litig.*, No. 08-MD-01952, 2011 WL 6209188, at *15-16 (E.D. Mich. Dec. 13, 2011) (quoting *Meijer, Inc. v. 3M*, Civ. No. 04-5871, 2006 WL 2382718, at*17 (E.D. Pa. 2006)); *In re Ikon Office Solutions Sec. Litig.*, 194 F.R.D. 166, 184 (E.D. Pa. 2000)). The purpose of a plan of allocation is to create a method that will permit the equitable distribution of settlement proceeds to all eligible members of the class.

Courts have observed, “[a] district court’s ‘principal obligation’ in approving a plan of allocation ‘is simply to ensure that the fund distribution is fair and reasonable as to all participants in the fund.’” *Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 326 (3d Cir. 2011) (quoting *Walsh v. Great Atl. & Pac. Tea Co., Inc.*, 726 F.2d 956, 964 (3d Cir. 1983)). “Typically, a class recovery in antitrust or securities suits will divide the common fund on a *pro rata* basis among all who timely file eligible claims, thus leaving no unclaimed funds.” *In re Packaged Ice Antitrust Litig.*, at *12 (quoting 3 Newberg on Class Actions, § 8:45 (4th ed. 2011)); *see also In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 531 (E.D. Mich. 2003) (approving a plan of allocation that adopted a *pro rata* method for calculating each

class member's share of the settlement fund as fair and reasonable). As a result, courts have previously found that using a *pro rata* formula for calculating each class member's share of a settlement fund is fair and reasonable.

Courts have also determined that a plan of allocation providing for a minimum payment, to incentivize claims distribution and avoid *de minimis* settlement payments, can be fair and reasonable. *See, e.g., Downes v. Wis. Energy Corp. Ret. Account Plan*, No. 09-C-0637, 2012 WL 1410023, at *3 (E.D. Wis. Apr. 20, 2012) (\$250 minimum); *In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 498 (S.D.N.Y. 2009) (\$10 minimum); *In re Ins. Brokerage Antitrust Litig.*, 297 F.R.D. 136, 143 (D.N.J. 2013) (\$10 minimum); *Mehling v. N.Y. Life Ins. Co.*, 248 F.R.D. 455, 463-64 (E.D. Pa. 2008) (\$50 minimum); *Slipchenko v. Brunel Energy, Inc.*, No. CIV.A. H-11-1465, 2015 WL 338358, at *21 (S.D. Tex. Jan. 23, 2015) (\$100 minimum).

It is well-settled that “a Plan of Allocation need not be, and cannot be, perfect.” *In re Cendant Corp. Sec. Litig.*, 109 F. Supp. 2d 235, 272 (D.N.J. 2000), *aff'd*, 264 F.3d 201 (3d Cir. 2001), *cert. denied*, 535 U.S. 929 (2002); *see also Meredith Corp. v. SESAC, LLC*, 87 F. Supp. 3d 650, 667 (S.D.N.Y. 2015) (As many courts have held, a plan of allocation need not be perfect. Instead, “[a]n allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel.” (internal quotations omitted)). Although

the satisfaction of everyone is generally unobtainable, *In re Warfarin Sodium Antitrust Litigation*, 212 F.R.D. 231, 258 (E.D. Del. 2002), *aff'd*, 391 F.3d 516, 534 (3d Cir. 2004), a plan of allocation should strive to obtain a delicate balance between precision and administrative convenience, *see, e.g., Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 326 (3d Cir. 2011). EPPs' proposed Plan of Allocation in connection with the Round 5 Settlements does just that.

As stated, *supra* at Section II(B), the proposed Plan of Allocation in connection with the Round 5 Settlements is substantially similar to the Plans of Allocation submitted by the EPPs and approved by the Court in connection with the Rounds 1 through 4 Settlements. EPPs have directed due and adequate notice to the Settlement Classes of the proposed Plan of Allocation and the right of Settlement Class members to be heard or object. *See, generally*, EPPs' Motion to Disseminate Notice. EPPs have also provided a full and fair opportunity for Settlement Class members to be heard with respect to the proposed Plan of Allocation. *Id.* The Court should approve the proposed Plan of Allocation to ensure allocation of the Net Settlement Funds is made in a manner consistent across the Rounds 1 through 5 Settlements.

As noted, *supra* at Section II(B), the only updates to the proposed Plan of Allocation vis-à-vis the previously approved Plans of Allocation are to clarify that: (1) a Settlement Class member who has a claim in the Round 5 Settlements as well

as the Rounds 1 through 4 Settlements will only receive a \$100 minimum payment covering all of the Settlement Class member's claims across all settlement rounds; and (2) that additional claims may only be filed in connection with the Round 5 Settlements. These revisions are appropriate for two reasons: *first*, the amount of the Round 5 Settlements (\$3,152,000) significantly differs from the amount involved in the Rounds 1 through 4 Settlements (\$1.2 billion) and, *second*, the claims submission deadline for the Rounds 1 through 4 Settlements (*i.e.*, June 18, 2020) has long since passed.

As part of the proposed Plan of Allocation, timely and otherwise valid claims previously submitted by potential members of the Round 5 Settlement Classes will automatically be considered for participation in the Round 5 Settlements (*i.e.*, claimants are not required to submit a new claim, but they can supplement their existing claim with information relating to qualifying Vehicles not for resale or qualifying replacement Automotive Parts not for resale included for the first time in the Round 5 Settlements, which are separately identified on the Settlement Website).⁹ Potential members of the Round 5 Settlement Classes who have not previously submitted claims, however, may only submit a claim to participate in the Round 5 Settlements. This is proper because, to allow potential members of the prior Settlement Classes to file a claim to the Rounds 1 through 4 Settlements now—two

⁹ "Settlement Website" refers to www.autopartsclass.com.

years after the deadline to file a claim has passed—would cause further delay, expense, and inefficiency to the claims administration process. Additionally, there is overlap between the qualifying Vehicles not for resale and qualifying replacement Automotive Parts not for resale included in the Rounds 1 through 4 Settlements and the Round 5 Settlements.

IV. CONCLUSION

For the foregoing reasons, EPPs request that the Court issue an order approving the proposed Plan of Allocation in connection with the Round 5 Settlements.

Dated: November 18, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 18, 2022 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/ Elizabeth T. Castillo
Elizabeth T. Castillo

EXHIBIT 1

**PROPOSED PLAN OF ALLOCATION AND DISTRIBUTION
OF THE AUTOMOTIVE PARTS SETTLEMENT FUNDS**

The Round 5 Net Settlement Funds,¹ *i.e.*, the total Settlement Funds associated with the Round 5 Settlements, less all taxes, class notice and claim administration expenses, and attorney’s fees and costs awarded by the Court to Settlement Class Counsel, will be distributed to qualifying claimants who are members of one or more of the Round 5 Settlement Classes and who submit timely and valid Claim Forms and whose Claims are allowed by the Court (“Authorized Claimants”). The distribution will take place after the following: (1) final approval of the Round 5 Settlements by the Court and/or final judgment as to each of the actions subject to the Round 5 Settlements and the expiration of any period for further review or appeal of the Court’s orders of approval and/or final judgments or the resolution of any such review or appeal; (2) receipt of Claim Forms by the Claims Administrator; (3) review of the Claim Forms by the Claims Administrator and the determination of the amounts recommended to be paid to Authorized Claimants; and (4) approval by the Court of the Claims Administrator’s recommendations as to the amounts to be paid to Authorized Claimants.

¹ All capitalized terms shall have the same meaning set forth in End-Payor Plaintiffs’ Motion for An Order Approving the Proposed Plan of Allocation in Connection with the Round 5 Settlements concurrently filed herewith.

Distribution of the Round 5 Net Settlement Funds will be based on Authorized Claimants' indirect purchase of Automotive Parts manufactured by the respective Settling Defendants and their respective Co-Defendants (as defined in the respective Complaints) contained in any new four-wheeled passenger automobile, light truck, pickup truck, crossover, van, mini-van, or sport utility vehicle (the "Vehicles") purchased or leased (not for resale) during Class Periods applicable to the Round 5 Settlements relating to such Automotive Parts and the indirect purchase (not for resale) of any replacement Automotive Parts. As to individuals, only those Settlement Class Members who purchased or leased a Vehicle or purchased a replacement Automotive Part in the states listed below, or purchased or leased a Vehicle or purchased a replacement Automotive Part while residing in the states listed below, will be entitled to share in the Round 5 Net Settlement Funds. As to businesses, only those Settlement Class Members who purchased or leased a Vehicle or purchased a replacement Automotive Part in the states listed below, or had their principal place of business at the time of such purchase or lease in the states listed below, will be entitled to share in the Round 5 Net Settlement Funds. If you indirectly purchased Automotive Parts in years other than those included in the Class Periods applicable to the settlements relating to those Automotive Parts, you will not be entitled to recover with respect to those purchases. If you did not indirectly purchase, or purchased for resale, any Automotive Parts during the applicable time

periods or in any of the states listed below, you will not be entitled to share in any of the Round 5 Net Settlement Funds.

Persons or entities who purchased or leased a Vehicle not for resale or purchased a replacement Automotive Part not for resale at any time during the applicable Class Periods can submit a claim providing the following information in their Claim Forms:

1. The make, model, model year, and VIN number of the Vehicle you purchased or leased.
2. The date you purchased or leased the Vehicle.
3. For individuals, the state in which you resided at the time you purchased or leased the Vehicle or the state in which you purchased or leased the Vehicle. For businesses, the state where your principal place of business was located at the time you purchased or leased the Vehicle or the state where you purchased or leased the Vehicle.
4. For individuals, if you indirectly purchased any replacement Automotive Parts, you must specify the type of Automotive Part you purchased, the date of purchase, and the state in which you resided at the time of purchase or the state in which you purchased the Automotive Part. For businesses, you must specify the type of Automotive Part you purchased, the date of purchase, and the state

where your principal place of business was located at the time of purchase or the state in which you purchased the Automotive Part.

5. If you seek to share in the monetary recovery provided by a settlement based on the place of purchase or lease, you shall be required to provide satisfactory evidence demonstrating the purchase or lease took place, or that you resided or had your principal place of business, in the states listed below.

Please note you may also be required to provide documentary proof of or additional information regarding your purchase or lease of a qualifying Vehicle or replacement Automotive Part.

The Claims Administrator will use the information you provide in your Claim Form regarding the Vehicle you purchased or leased to determine whether your Vehicle contains one or more of the Automotive Parts. Information about which Vehicles contain the Automotive Parts that are the subject of the Settlements is available for review at the *Automotive Parts Antitrust Litigation* website, which may be found at www.autopartsclass.com. That information may be supplemented from time to time and will also be available for review at the *Automotive Parts Antitrust Litigation* website. You should consult that website for information about whether your purchase or lease of a Vehicle, or purchase of a replacement Automotive Part, qualifies you to share in one or more of the Net Settlement Funds.

Authorized Claimants will share and share alike on a pro rata basis in the Round 5 Net Settlement Funds established for each Settlement Class of which they are members based on their Allowed Claim Amounts, subject to the Minimum Payment Amount. Under the Plan of Allocation, each Authorized Claimant shall be paid the percentage of the Net Settlement Fund established with respect to a particular Settlement Class that each Authorized Claimant's Allowed Claim Amount bears to the total of the Allowed Claim Amounts of all Authorized Claimants with respect to the same Settlement Class, subject to the modifications set forth below. The Allowed Claim Amount for a particular Automotive Part based on the purchase or lease of a Vehicle that contains the Automotive Part in question will be calculated based on the number of such Vehicles that you purchased or leased. The Allowed Claim Amount for a particular replacement Automotive Part will similarly be based on the number of such parts that you purchased.

This *pro rata* allocation will be modified by initially distributing \$100 (the Minimum Payment Amount) to all Authorized Claimants, and then distributing the remaining funds to Authorized Claimants on a classwide basis whose weighted *pro rata* allocation exceeds \$100 (subject to their being sufficient funds for each Authorized Claimant to receive at least \$100). An Authorized Claimant will only receive one minimum payment of \$100 covering all the Authorized Claimant's claims across all settlement rounds. If the net settlement funds across all settlement

rounds are insufficient to allow a minimum payment of \$100 to each Authorized Claimant, the amount to be paid to all Authorized Claimants shall be adjusted so that Claimants share in the Round 5 Net Settlement Funds on a *pro rata* basis based on the amounts of their respective net allowed claim amounts.

For purposes of this Plan of Allocation, Allowed Claim Amounts for each Authorized Claimant will be determined separately for each Automotive Part. With respect to the specific Vehicles containing Automotive Parts or replacement Automotive Parts which were allegedly targeted by the collusive conduct of Defendants, the per vehicle Allowed Claim Amounts for the purchase or lease of such Vehicle makes, models and years will be weighted at four times the Allowed Claim Amount for other Vehicles and replacement Automotive Parts. This weighting reflects Settlement Class Counsel's determination based on information obtained by Settlement Class Counsel during discovery as well as the cooperation provided by the Settling Defendants. Although all persons who purchased or leased Vehicles or replacement Automotive Parts not for resale were affected by the conspiracy and are therefore members of one or more classes, some class members were more affected than others, which is reflected in this weighting.

Claimants to the Round 5 Settlements may only submit a claim to participate in the Round 5 Settlements. Claimants who previously submitted timely and valid claims in connection with the Rounds 1 through 4 Settlements will automatically be

considered for participation in the Round 5 Settlements with respect to the Vehicles and replacement Automotive Parts included in their prior claim(s). In other words, Claimants need not submit new claims for Vehicles and replacement Automotive Parts for which they previously submitted claims, , but if they wish to recover from the Round 5 Net Settlement Funds for additional Vehicles or replacement Automotive Parts, they must file an additional claim with information relating to qualifying Vehicles not for resale or qualifying replacement Automotive Parts not for resale included for the first time in the Round 5 Settlements, which will be separately identified on the *Automotive Parts Antitrust Litigation* website. These Claimants who submit additional identified qualifying Vehicles or qualifying replacement Automotive Parts in connection with the Round 5 Settlements will only be considered for participation in the Round 5 Settlements and will not be considered for participation in the Rounds 1 through 4 Settlements.

Please note that submission of a Claim Form does not necessarily assure the right to payment out of the Net Settlement Funds. The Court may deny, in whole or in part, any claim if it determines that the claimant is excluded from the definition of the Settlement Classes or if there are legal or equitable grounds for the rejection of such claim.

Payment pursuant to the Plan of Allocation shall be conclusive against all Authorized Claimants. No person shall have any claim against Settlement Class

Counsel, the Settling Parties, or the Claims Administrator or any other person designated by Settlement Class Counsel based on distributions made substantially in accordance with the Plan of Allocation, or further orders of the Court.

All Settlement Class Members who fail to complete and submit a valid and timely Claim Form shall be barred from participating in distributions from the Round 5 Net Settlement Funds (unless otherwise ordered by the Court), but otherwise shall be bound by all of the terms of the settlements, including the terms of the judgments entered and the releases given pursuant to the Round 5 Settlements. The deadline for the submission of Claim Forms in connection with the Round 5 Settlements is **January 7, 2023**. The deadline for the submission of Claim Forms in connection with the Rounds 1 through 4 Settlements passed on June 18, 2020. You should check the Automotive Parts Antitrust Litigation website for updated information regarding the submission of Claim Forms. Please note that the Court may modify the Plan of Allocation without further notice to the settlement classes. Any such modifications will be described in subsequent postings on the Automotive Parts Antitrust Litigation website (www.autopartsclass.com).

States of Damages Eligibility

Damages are available to members of the Settlement Classes who purchased or leased a qualifying vehicle or purchased a qualifying vehicle replacement Automotive Part in, or while residing in or having their principal place of business

in, the District of Columbia or one or more of the following States: Arizona, Arkansas, California, Florida, Hawaii, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, West Virginia, and Wisconsin.