

**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
IN RE: WIRE HARNESS	:	Case No. 2:12-cv-00103-MOB-MKM
IN RE: INSTRUMENT PANEL CLUSTERS	:	Case No. 2:12-cv-00203-MOB-MKM
IN RE: FUEL SENDERS	:	Case No. 2:12-cv-00303-MOB-MKM
IN RE: HEATER CONTROL PANELS	:	Case No. 2:12-cv-00403-MOB-MKM
IN RE: OCCUPANT SAFETY RESTRAINT SYSTEMS	:	Case No. 2:12-cv-00603-MOB-MKM
IN RE: ALTERNATORS	:	Case No. 2:13-cv-00703-MOB-MKM
IN RE: RADIATORS	:	Case No. 2:13-cv-01003-MOB-MKM
IN RE: STARTERS	:	Case No. 2:13-cv-01103-MOB-MKM
IN RE: SWITCHES	:	Case No. 2:13-cv-01303-MOB-MKM
IN RE: IGNITION COILS	:	Case No. 2:13-cv-01403-MOB-MKM
IN RE: MOTOR GENERATORS	:	Case No. 2:13-cv-01503-MOB-MKM
IN RE: STEERING ANGLE SENSORS	:	Case No. 2:13-cv-01603-MOB-MKM
IN RE: HID BALLASTS	:	Case No. 2:13-cv-01703-MOB-MKM
IN RE: INVERTERS	:	Case No. 2:13-cv-01803-MOB-MKM
IN RE: AIR FLOW METERS	:	Case No. 2:13-cv-02003-MOB-MKM
IN RE: FUEL INJECTION SYSTEMS	:	Case No. 2:13-cv-02203-MOB-MKM
IN RE: AUTOMATIC TRANSMISSION FLUID WARMERS	:	Case No. 2:13-cv-02403-MOB-MKM
IN RE: VALVE TIMING CONTROL DEVICES	:	Case No. 2:13-cv-02503-MOB-MKM
IN RE: ELECTRONIC THROTTLE BODIES	:	Case No. 2:13-cv-02603-MOB-MKM
THIS DOCUMENT RELATES TO: ALL END-PAYOR ACTIONS	:	

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**MOTION FOR AUTHORIZATION TO DISSEMINATE COMBINED NOTICE  
TO THE END-PAYOR PLAINTIFFS SETTLEMENT CLASSES**

On October 13, 2015, the Court entered a Corrected Order Granting End-Payor Plaintiffs' Motion for Authorization to Disseminate Notice to the End-Payor Plaintiffs Settlement Classes ("Notice Order").<sup>1</sup> The Notice Order: (i) approved End-Payor Plaintiffs' ("EPPs") proposed notice plan; (ii) authorized EPPs to disseminate notice of their settlements with Hitachi Automotive Systems, Ltd. ("HIAMS") and T.RAD Co., Ltd. and T.RAD North America, Inc. (together, "T.RAD"); and (iii) appointed Kinsella Media, LLC ("Kinsella") and Garden City Group, LLC ("GCG") as Notice Administrator and Settlement Claims Administrator, respectively.

EPPs respectfully move the Court, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for an order: (i) approving their combined notice plan; and (ii) authorizing EPPs to disseminate an updated, combined notice concerning settlements reached with nine defendant families in addition to HIAMS and T.RAD ("Motion"). In support of this Motion, EPPs rely upon the accompanying memorandum of law as well as the supporting declarations and exhibits, all of which are incorporated by reference herein.

Settling Defendants<sup>2</sup> do not oppose this Motion and entry of the proposed order authorizing EPPs to disseminate an updated, combined notice to the End-Payor Plaintiff Settlement Classes.

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<sup>1</sup> *Alternators*, 2:13-cv-00703, ECF No. 55; *Starters*, 2:13-cv-01103, ECF No. 65; *Radiators*, 2:13-cv-01003, ECF No. 99; *Ignition Coils*, 2:13-cv-01403, ECF No. 53; *Motor Generator*, 2:13-cv-01503, ECF No. 63; *Inverters*, 2:13-cv-01803, ECF No. 55; *Air Flow Meters*, 2:13-cv-02003, ECF No. 28; *Fuel Injection Systems*, 2:13-cv-02203, ECF No. 152; *Automatic Transmission Fluid Warmers*, 2:13-cv-02403, ECF No. 26; *Valve Timing Control Devices*, 2:13-cv-02503, ECF No. 105; and *Electronic Throttle Bodies*, 2:13-cv-02603, ECF No. 28.

<sup>2</sup> EPPs have reached settlements with the following Defendants with respect to the following parts: (1) Autoliv, Inc., Autoliv ASP, Inc., Autoliv B.V. & Co. KG, Autoliv Safety Technology, Inc., and Autoliv Japan Ltd. (collectively, "Autoliv") (*Occupant Safety Restraint Systems*); (2) Fujikura, Ltd. and Fujikura Automotive America LLC (together, "Fujikura") (*Wire Harness*

Dated: January 13, 2016

Respectfully submitted,

/s/ Hollis Salzman

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*Systems*); (3) HIAMS (*Alternators; Starters; Ignition Coils; Motor Generators; Inverters; Air Flow Meters; Fuel Injection Systems; Valve Timing Control Devices; Electronic Throttle Bodies*); (4) Kyungshin-Lear Sales and Engineering, LLC (“KL Sales”) (*Wire Harness Systems*); (5) Lear Corporation (“Lear”) (*Wire Harness Systems*); (6) Nippon Seiki Co., Ltd., N.S. International, Ltd., and New Sabina Industries, Inc. (collectively, “Nippon Seiki”) (*Instrument Panel Clusters*); (7) Panasonic Corporation and Panasonic Corporation of North America (together, “Panasonic”) (*Switches; Steering Angle Sensors; HID Ballasts*); (8) T.RAD (*Automatic Transmission Fluid Warmers; Radiators*); (9) TRW Deutschland Holding GmbH and ZF TRW Automotive Holdings Corp. (formerly known as TRW Automotive Holdings Corp.) (together, “TRW”) (*Occupant Safety Restraint Systems*); (10) Sumitomo Electric Industries, Ltd., Sumitomo Wiring Systems, Ltd., Sumitomo Electric Wiring Systems, Inc. (incorporating K&S Wiring Systems, Inc.), Sumitomo Wiring Systems (U.S.A.) Inc., (collectively, “Sumitomo”) (*Wire Harness Systems; Heater Control Panels*); and (11) Yazaki Corporation and Yazaki North America, Incorporated (together, “Yazaki”) (*Wire Harness Systems; Instrument Panel Clusters; Fuel Senders*).

The Court has preliminarily certified settlement classes for 22 of the 25 settlements. EPPs have filed motions for preliminary approval of their settlements with Fujikura (*Wire Harness Systems*) and Sumitomo (*Wire Harness Systems; Heater Control Panels*) (together, the “Settlement Classes”).

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

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IN RE: AUTOMOTIVE PARTS  
ANTITRUST LITIGATION

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:  
: Master File No. 12-md-02311  
: Honorable Marianne O. Battani  
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IN RE: WIRE HARNESS  
IN RE: INSTRUMENT PANEL CLUSTERS  
IN RE: FUEL SENDERS  
IN RE: HEATER CONTROL PANELS  
IN RE: OCCUPANT SAFETY RESTRAINT  
SYSTEMS  
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THIS DOCUMENT RELATES TO:  
ALL END-PAYOR ACTIONS

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**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR AUTHORIZATION TO  
DISSEMINATE COMBINED NOTICE TO THE  
END-PAYOR PLAINTIFFS SETTLEMENT CLASSES**

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**STATEMENT OF ISSUES PRESENTED**

1. Whether the Court should approve the Combined Notice Plan described in detail below;  
and
2. Whether the Court should authorize the dissemination of an updated Combined Notice of the settlements reached between End-Payor Plaintiffs and Settling Defendants (defined below).

**STATEMENT OF CONTROLLING OR MOST APPROPRIATE AUTHORITIES**

*Karkoukli's, Inc. v. Dohany*, 409 F.3d 279 (6th Cir. 2009)

*Mullane v. Central Hanover Bank & Trust*, 339 U.S. 306 (1950)

*In re Packaged Ice Antitrust Litig.*, 08-MD-01952, 2011 U.S. Dist. LEXIS 17255 (E.D. Mich. Feb. 22, 2011)

*In re Google Referrer Header Privacy Litig.*, No. 5:10-cv-04809, 2014 U.S. Dist. LEXIS 41695 (N.D. Cal. Mar. 26, 2014)

*In re Warfarin Sodium Antitrust Litigation*, 391 F.3d 516 (3d Cir. 2004)

On October 13, 2015, the Court entered a Corrected Order Granting End-Payor Plaintiffs' Motion for Authorization to Disseminate Notice to the End-Payor Plaintiffs' Settlement Classes ("Notice Order").<sup>1</sup> The Notice Order: (i) approved End-Payor Plaintiffs' ("EPPs") proposed notice plan; (ii) authorized EPPs to disseminate notice of their settlements with Hitachi Automotive Systems, Ltd. ("HIAMS") and T.RAD Co., Ltd. and T.RAD North America, Inc. (together, "T.RAD"); and (iii) appointed Kinsella Media, LLC ("Kinsella") and Garden City Group, LLC ("GCG") as Notice Administrator and Settlement Claims Administrator, respectively.

In this Motion for Authorization to Disseminate Combined Notice to the End-Payor Plaintiff Settlement Classes ("Motion"), EPPs respectfully seek approval of their combined notice plan and authorization to disseminate an updated, combined notice concerning settlements reached with nine defendant families (described below) in addition to HIAMS and T.RAD.

## **I. INTRODUCTION**

This Motion is brought in connection with the settlements reached in the above-captioned actions between EPPs and (1) Autoliv, Inc., Autoliv ASP, Inc., Autoliv B.V. & Co. KG, Autoliv Safety Technology, Inc., and Autoliv Japan Ltd. (collectively, "Autoliv"); (2) Fujikura, Ltd. and Fujikura Automotive America LLC (together, "Fujikura"); (3) HIAMS; (4) Kyungshin-Lear Sales and Engineering, LLC ("KL Sales"); (5) Lear Corporation ("Lear"); (6) Nippon Seiki Co., Ltd., N.S. International, Ltd., and New Sabina Industries, Inc. (collectively, "Nippon Seiki"); (7)

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<sup>1</sup> *Alternators*, 2:13-cv-00703, ECF No. 55; *Starters*, 2:13-cv-01103, ECF No. 65; *Radiators*, 2:13-cv-01003, ECF No. 99; *Ignition Coils*, 2:13-cv-01403, ECF No. 53; *Motor Generator*, 2:13-cv-01503, ECF No. 63; *Inverters*, 2:13-cv-01803, ECF No. 55; *Air Flow Meters*, 2:13-cv-02003, ECF No. 28; *Fuel Injection Systems*, 2:13-cv-02203, ECF No. 152; *Automatic Transmission Fluid Warmers*, 2:13-cv-02403, ECF No. 26; *Valve Timing Control Devices*, 2:13-cv-02503, ECF No. 105; and *Electronic Throttle Bodies*, 2:13-cv-02603, ECF No. 28.

Panasonic Corporation and Panasonic Corporation of North America (together, “Panasonic”); (8) T.RAD; (9) TRW Deutschland Holding GmbH and ZF TRW Automotive Holdings Corp. (formerly known as TRW Automotive Holdings Corp.) (together, “TRW”); (10) Sumitomo Electric Industries, Ltd., Sumitomo Wiring Systems, Ltd., Sumitomo Electric Wiring Systems, Inc. (incorporating K&S Wiring Systems, Inc.), Sumitomo Wiring Systems (U.S.A.) Inc., (collectively, “Sumitomo”); and (11) Yazaki Corporation and Yazaki North America, Incorporated (together, “Yazaki”) (collectively, “Settling Defendants”).

With the exception of the Fujikura and Sumitomo settlements, each settlement has been preliminarily approved by the Court<sup>2</sup>, and a settlement class in each case has been conditionally certified. Along with the Fujikura and Sumitomo settlements, these settlements provide a partial resolution of the following 19 pending cases: *Wire Harness Systems*, 2:12-cv-00103, ECF No. 209 (Lear Corporation, KL Sales), ECF No. 231 (Yazaki), preliminary approval pending (Fujikura, Sumitomo); *Instrument Panel Clusters*, 2:12-cv-00203, ECF No. 75 (Nippon Seiki), ECF No. 103 (Yazaki); *Fuel Senders*, 2:12-cv-00303, ECF No. 95 (Yazaki); *Heater Control Panels*, 2:12-cv-00403, preliminary approval pending (Sumitomo); *Occupant Safety Restraint Systems*, 2:12-cv-00603, ECF No. 83 (Autoliv), ECF No. 88 (TRW); *Alternators*, 2:13-cv-00703, ECF No. 38 (HIAMS); *Radiators*, 2:13-cv-01003, ECF No. 96 (T.RAD); *Starters*, 2:13-cv-01103, ECF No. 48 (HIAMS); *Switches*, 2:13-cv-01303, ECF No. 46 (Panasonic); *Ignition Coils*, 2:13-cv-01403, ECF No. 33 (HIAMS); *Motor Generators*, 2:13-cv-01503, ECF No. 49 (HIAMS); *Steering Angle Sensors*, 2:13-cv-01603, ECF No. 28 (Panasonic); *HID Ballasts*, 2:13-cv-01703, ECF No. 95 (Panasonic); *Inverters*, 2:13-cv-01803, ECF No. 47 (HIAMS); *Air Flow*

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<sup>2</sup> EPPs have filed motions for preliminary approval of their settlements with Fujikura and Sumitomo. These motions are unopposed, and EPPs are not aware of any objections. The Court has indicated that it will rule, based on the papers, without oral argument.

*Meters*, 2:13-cv-02003, ECF No. 23 (HIAMS); *Fuel Injection Systems*, 2:13-cv-02203, ECF No. 90 (HIAMS); *Automatic Transmission Fluid Warmers*, 2:13-cv-02403, ECF No. 24 (T.RAD); *Valve Timing Control Devices*, 2:13-cv-02503, ECF No. 83 (HIAMS); and *Electronic Throttle Bodies*, 2:13-cv-02603, ECF No. 23 (HIAMS).

In each of the aforesaid preliminary approval orders, the Court approved EPPs' request for Settlement Class Counsel, at the appropriate time, to propose notice to the members of the Settlement Classes, including the form of, method for, and date of dissemination of notice. *See, e.g., Instrument Panel Clusters*, 2:12-cv-00203, ECF No. 103, ¶ 9. In its Notice Order, the Court previously approved EPPs' notice plan with respect to their settlements with HIAMS and T.RAD and authorized EPPs to disseminate notice to the HIAMS and T.RAD settlement classes. In this Motion, Plaintiffs seek to combine notice of the HIAMS and T.RAD settlements with notice of settlements with nine additional defendants. Importantly, under EPPs' Motion, the proposed hearing date for final approval of each of these settlements would remain May 4, 2016, the date that the Court previously set aside for EPPs' settlements with HIAMS and T.RAD.

## **II. NOTICE TO MEMBERS OF THE SETTLEMENT CLASSES IS APPROPRIATE AT THIS TIME**

The eleven Settling Defendants, and their affiliates, have entered into settlements in nineteen Auto Parts cases for a total of approximately \$225 million<sup>3</sup>. By this Motion, EPPs submit for the Court's approval a plan for combined notice to the Settlement Classes and a schedule for the final approval of these settlements.

Courts routinely grant final settlement approval of interim settlements with one or more but less than all defendants in multi-defendant antitrust class actions. *See, e.g., In re Transpacific*

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<sup>3</sup> The amount of each Settlement and the Settlement Fund in each of the 19 cases is set forth in Exhibit A of the Declaration of William Reiss in Support of Motion for Authorization to Disseminate Combined Notice to the End-Payor Plaintiff Settlement Classes.

*Passenger Air Transportation Antitrust Litig.*, No. 07-05634, MDL No. 1913 (N.D. Cal. May 26, 2015);<sup>4</sup> *In re Cathode Ray Tube (CRT) Antitrust Litig.*, 07-cv-05944, MDL No. 1917 (N.D. Cal. Apr. 18, 2014); *Precision Associates, Inc. v. Panalpina World Transport (Holding) Ltd.*, No. 08-cv-00042 (E.D.N.Y. Aug. 27, 2013); *In re Processed Egg Products Antitrust Litig.*, 08-md-02002 (E.D. Pa. July 16, 2012); *In re CRT* (N.D. Cal. Mar. 22, 2012); *In re Korean Air Lines Co., Ltd. Antitrust Litig.*, 2:07-cv-05107, MDL No. 1891 (C.D. Cal. July 15, 2011); *In re Air Cargo Shipping Services Antitrust Litig.*, 1:06-md-01775 (E.D.N.Y. March 14, 2011); *In re Packaged Ice Antitrust Litig.*, 08-MD-01952, 2011 U.S. Dist. LEXIS 17255 (E.D. Mich. Feb. 22, 2011); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 3:07-MD-1827 (N.D. Cal. Feb. 18, 2011); *In re Urethane Antitrust Litig.*, 04-MD-1616 (D. Kan. Aug. 30, 2006); *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 643 (E.D. Pa. 2003).

It is common in antitrust class actions where some but not all defendants have settled and where final approval of those settlements has been granted to postpone the distribution of the Net Settlement Funds<sup>5</sup> to settlement class members to some future date, such as after additional class settlements occur or subsequent to the final disposition of the pending litigation. *Packaged Ice*, 2011 U.S. Dist. LEXIS 17255, at \*73 (“Without affecting the finality of this Final Order and Judgment, the Court retains jurisdiction for the purposes of . . . entering any Orders or conducting any hearings in connection with any final plan of distribution or claims submission process . . . .”); *Linerboard*, 292 F.Supp. at 636 (distribution expected at a much later stage in the litigation pursuant to a plan of distribution after further notice to class members). Courts also

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<sup>4</sup> All unpublished decisions cited herein were attached to Exhibit B to the Declaration of William V. Reiss in Support of Motion for Authorization to Disseminate Notice to the End-Payor Plaintiff Settlement Classes (“Reiss Decl.”). *See, e.g.*, Ex. B to Reiss Decl., 2:13-cv-00703, ECF No. 51-3.

<sup>5</sup>“Net Settlement Funds” are the Settlement Funds minus court-approved attorneys’ fees, costs and expenses.

routinely grant the application of class counsel to set aside a portion of these early settlements in an escrow account to reimburse counsel for litigation expenses incurred on behalf of the class to date and to be used to fund ongoing litigation expenses incurred in prosecuting claims against the remaining defendants.<sup>6</sup> See *In re Transpacific*, (N.D. Cal. May 26, 2015); *Packaged Ice*, 2011 U.S. Dist. LEXIS 17255, at \*60-64; *In re Plastic Additives Antitrust Litigation*, No. 03-cv-2038 (E.D. Pa., Feb. 17, 2006); *In re Microcrystalline Cellulose Antitrust Litigation*, No. 01-cv-111 (E.D. Pa., June 15, 2005); *Newby v. Enron Corp.*, 394 F.3d 296, 303 (5th Cir. 2004); *In re Auto Refinishing Paint Antitrust Litigation*, MDL No. 1426, 2004 U.S. Dist. LEXIS 29162 (E.D. Pa. Oct. 13, 2004); *In re Brand Name Prescription Drugs Antitrust Litigation*, No. 94-c-897 (N.D. Ill., Feb. 18, 1998); and *In re High Fructose Corn Syrup Antitrust Litigation*, MDL No. 1087 (C.D. Ill., Jan. 15, 1997).

### **III. THE NOTICE PROVIDES THAT THE MEMBERS OF THE SETTLEMENT CLASSES MAY OPT OUT OF THE SETTLEMENTS**

The Settlement Classes in the 19 auto parts cases referred to in the notice to be sent to Settlement Class Members (“Combined Notice”) include settlement class members who purchased or leased new motor vehicles<sup>7</sup> or indirectly purchased replacement parts in states which permit indirect purchasers to bring antitrust damage claims (“Damages States”)<sup>8</sup> as well

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<sup>6</sup> The Combined Notice provides that Settlement Class Counsel will be moving for an order seeking reimbursement of litigation costs and expenses incurred to date and the establishment of a litigation fund to cover future litigation expenses in connection with the continued litigation against the Non-Settling Defendants.

<sup>7</sup> New motor vehicles include, but are not limited to, automobiles, cars, light trucks, pickup trucks, crossovers, vans, mini-vans, and sport utility vehicles.

<sup>8</sup> The Damages States include the District of Columbia and 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. (The TRW Settlement does not

as those who made such purchases in states which do not permit such damage claims. Those class members who made purchases in any of the Damages States may be eligible to file a claim for one or more of the Net Settlement Funds; the remaining class members would solely be eligible to obtain the equitable non-monetary benefits contained in the proposed final judgments, including cooperation and certain Defendants' agreement not to engage in the specified conduct that is the subject of the lawsuits for a period of two years from the date of entry of the final judgment. Payments will be based on a number of factors, including at least the number of valid claims filed by all Settlement Class members and the number of (1) new motor vehicles purchased or leased or (2) replacement parts purchased.

The proposed Combined Notice describes the right of the members of each Settlement Class to opt out of some or all of the Settlement Classes, including those members of Settlement Classes when the EPPs are seeking only non-monetary equitable relief.<sup>9</sup> Accordingly, any Settlement Class member can opt out and thus not be bound by any of the Settlements or final judgments entered in connection therewith.

#### **IV. THE NOTICE PLAN SHOULD BE APPROVED AS SATISFYING THE REQUIREMENTS OF RULE 23**

EPPs respectfully move the Court for approval of the Combined Notice program (“Combined Notice Program”), the Notice Forms, and the schedule for implementing the Combined Notice Program. As set forth in the Declaration of Katherine Kinsella on Adequacy of Combined Notice and Notice Plan (“Kinsella Decl. on Combined Notice”), the Proposed

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include Arkansas or South Carolina or provide any Settlement Funds for distribution to Settlement Class members in those states).

<sup>9</sup> Joseph M. McLaughlin, 1 *McLaughlin on Class Actions* § 5:21 (8th ed. 2011); William B. Rubenstein, 2 *Newberg on Class Actions* § 4:36 (5th ed. 2012); *Penson v. Terminal Transp. Co.*, 634 F.2d 989, 993-54 (5th Cir. 1981); *In re Celera Corp. Shareholder Litig.*, 59 A.3d 418, 422 (Del. 2012).

Combined Notice Program (attached as Exhibit A to the Kinsella Decl. on Combined Notice) is as effective as the notice program previously approved by the Court in connection with the HIAMS and T.RAD settlements. *See, e.g.*, Kinsella Decl. on Combined Notice, ¶ 21; Notice Program, Exhibit C to the Declaration of Katherine Kinsella on Adequacy of Notices and Notice Program, 2:13-cv-00703, ECF No. 51-7. The Proposed Combined Notice Program and forms of Combined Notice would be disseminated in a “reasonable manner to all class members who [will] be bound by the proposal” and provide for the “best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort,” as required by Rules 23(e)(1) and 23(c)(2)(B) of the Federal Rules of Civil Procedure.

**a. The Combined Notice Program**

EPPs propose a multi-faceted and comprehensive Combined Notice Program to provide notice of the above-referenced settlements to the members of the Settlement Classes. As with EPPs’ notice program for HIAMS and T.RAD that was previously approved by the Court, EPPs have retained Kinsella to develop the notice program and forms of Combined Notice for these settlements.<sup>10</sup> EPPs’ proposed Notice Program, attached as Ex. A to the Kinsella Decl. on Combined Notice, contains the following elements:

- Paid Media (Publication and Internet), Earned and Social Media, a website, and a Toll-Free Telephone Support Line to provide the best notice practicable;
- Kinsella will publish the Summary Notice in selected consumer magazines,<sup>11</sup> a newspaper,<sup>12</sup> and newspaper supplements.<sup>13</sup> Similarly, Kinsella will purchase

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<sup>10</sup> In the Notice Order, the Court appointed Kinsella and GCG as Notice Administrator and Settlement Claims Administrator, respectively. Accordingly, in this Motion, EPPs do not recite their qualifications.

<sup>11</sup> People, Sports Illustrated, Time, and TV Guide. See Notice Plan at 9-12, for an explanation of the rationale for selecting these publications.

Internet advertising with 337,849,000 gross impressions across various websites, including websites targeted at automotive fleet owners, driving potential members of the Settlement Classes to the case website where they can obtain the Long Form Notice, additional documents, and information. See Notice Plan at 13-16. Kinsella estimates that publication of the Summary Notice and the Internet Advertising will reach 80.5% of New Vehicle Owners/Lesseees with an average estimated frequency of 3.1 times.<sup>14</sup>

- Kinsella will also publish the Summary Notice in a trade publication that reaches fleet owners.<sup>15</sup> The Summary Notice will, in turn, refer potential Settlement Class members to the Call Center and the website where they can obtain the Long Form Notice and additional documents and information.
- Kinsella will implement an earned media press outreach program, including a Multimedia News Release, statewide press releases on PR Newswire, and outreach to traditional print and online news outlets in the Damages States. See Notice Plan at 18-20.
- GCG will post the Long-Form Notice, proposed final judgments, along with other court documents, and the various Settlement Agreements, on the specially created website designed to provide notice of the settlements in these litigations, [www.AutoPartsClass.com](http://www.AutoPartsClass.com), which will be made easily findable through searches conducted on the Internet;
- GCG will staff a toll-free hotline (877-940-5043) to answer any questions by any potential members of the Settlement Classes about the settlements and to provide copies of court-approved notices and other documents.
- GCG will send an email or mailed notice to those individuals who previously registered on the website, [www.AutoPartsClass.com](http://www.AutoPartsClass.com), notifying them about changes in the case and directing them to visit the website to read updated information about the settlements.

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<sup>12</sup> Wall Street Journal. See Notice Plan at 9-12, for an explanation of the rationale for selecting this publication.

<sup>13</sup> Parade and American Profile, which together appear in a combined 1,599 newspapers that cover all 50 states and the District of Columbia. These two newspaper supplements have a combined circulation of 28,000,000. See Notice Plan at 10-11.

<sup>14</sup> The trade publication (Automotive News) and Internet advertising on the National Association of Fleet Administrators, Auto Rental News, and Automotive Fleet websites are not measured for this target audience, and their contribution to the overall reach of the media is not calculated.

<sup>15</sup> Automotive News. See Notice Plan at 12.

Fed. R. Civ. P. 23(e)(1) requires that notice of the settlement of a class action be given “in a reasonable manner to all class members who would be bound by the proposal,” and Fed. R. Civ. P. 23(c)(2)(B) provides that in any class certified under Rule 23(b)(3) “the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” EPPs’ proposed Combined Notice Plan meets these requirements.

The Long Form Notice will be mailed to each potential Settlement Class member who requests it in response to the various forms of paid and earned media notice described in detail in the Combined Notice Plan. Kinsella Decl. on Combined Notice, Ex. A-7. Further, the Long Form Notice as well as other settlement documents will be available for view, download, and printing at the settlement website [www.AutoPartsClass.com](http://www.AutoPartsClass.com).

Because Settling Defendants’ products are incorporated into new motor vehicles assembled and sold or leased by others, Settling Defendants do not have the names and addresses necessary to send notice by direct mail to each member of the Settlement Classes. In such circumstances, “[n]either Rule 23 nor due process . . . requires actual notice to each party intended to be bound by the adjudication of a class action.” *Roberts v. Shermeta, Adams & Von Allmen, P.C.*, No. 13-cv-01241, 2015 U.S. Dist. LEXIS 38434, \*16-17 (W.D. Mich. Feb. 23, 2015) (citing *Fidel v. Farley*, 534 F.3d 508, 514 (6th Cir. 2008)). Due process requires only notice that is reasonably calculated to reach interested parties. *Fidel*, 534 F.3d at 514; *Karkoukli’s, Inc. v. Dohany*, 409 F.3d 279, 283 6th Cir. 2009). See also *Mullane v. Central Hanover Bank & Trust*, 339 U.S. 306, 315 (1950).

Thus, for example, in *In re Warfarin Sodium Antitrust Litigation*, 212 F.R.D. 231 (D. Del. 2002), the court determined that where, like here, the names and addresses of absent class

members were unavailable, publication notice was the best notice practicable under the circumstances. *Id.* at 252. The Third Circuit affirmed, rejecting challenges to the notice. *In re Warfarin Sodium Antitrust Litigation*, 391 F.3d 516, 536-37 (3d Cir. 2004). *See also In re Google Referrer Header Privacy Litig.*, No. 5:10-cv-04809, 2014 U.S. Dist. LEXIS 41695, at \*24 (N.D. Cal. Mar. 26, 2014) (approving notice plan consisting solely of publication notice because “the size and nature of the class renders it nearly impossible to determine exactly who may qualify as a class member. . . . That being the case, direct notice to class members by mail, e-mail or other electronic individualized means is impractical.”); *In re Heartland Payment Sys.*, 851 F. Supp. 2d 1040, 1061 (S.D. Tex. 2012) (approving notice plan that consisted exclusively of publication notice because “[Defendants] did not have the names and addresses of those affected by the data breach and could not reasonably request this information for 130 million accounts from the issuer banks.”); *Manual for Complex Litigation, Fourth* § 21.312 at p. 294 (Federal Judicial Center 2004) (“Posting notices and other information on the Internet, publishing short, attention-getting notices in newspapers and magazines, and issuing public service announcements may be viable substitutes for, or more often supplements to, individual notice if that is not reasonably practicable”).

**b. The Proposed Notice Plan Schedule**

As outlined in the Proposed Order submitted herewith, EPPs propose the following notice schedule<sup>16</sup>:

- **March 4, 2016:** Kinsella commences publication of the Summary Notice in newspaper supplements, newspaper, and trade and consumer publications; begins online media notice activities, including Internet banner ads and keyword search; begins earned media activities. (Proposed Order ¶ 6);

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<sup>16</sup> Pursuant to the Notice Order, GCG has already launched the Toll Free Settlement Hotline and published on its website EPPs settlements with HIAMS and T.RAD. GCG will publish the documents relevant to the Settling Defendants included in this Motion or before March 4, 2016.

- **March 11, 2016:** Filing of Kinsella and GCG affidavits/declarations reflecting that mailing, posting, and publication were made in accordance with this Order (*id.* ¶ 7);
- **March 11, 2016:**
  - Filing of motions for final approval of the Settlements (*id.* ¶ 8);
  - Filing of Plaintiffs’ Motion for Reimbursement of Expenses and the creation of a fund for future litigation expenses (*id.*); and
  - If Settlement Class Counsel so elect, filing of motion for attorneys’ fees by Settlement Class Counsel and incentive awards for the named class representatives (*id.*).
- **April 11, 2016:** Deadline for objections and requests for exclusion from some or all of the Settlement Classes (*id.* ¶¶ 10, 11); and
- **May 4, 2016:** Final Fairness Hearing. (*id.* ¶ 13).

For the above reasons, EPPs respectfully request that the Court adopt the schedule contained in the Proposed Order.

**c. The Form and Content of the Proposed Combined Notices**

EPPs also seek approval of the proposed form and content of the Complete (Long Form) and the Summary (Short or Publication Form) Notices.<sup>17</sup> The information required by Rule 23(c)(2)(B) is set forth “clearly and concisely . . . in plain, easily understood language” at the following sections of the notices:

- Nature of the actions—Long Form § 2, Short Form ¶ 1;
- Settlement Classes’ Definition—Long Form § 7, Short Form ¶ 2;
- Settlement Classes’ Claims, Issues & Defenses—Long Form § 2, Short Form ¶ 1;
- Right to appear—Long Form §§ 23, 24, Short Form ¶ 8;
- Right to exclude/Time & Manner to Request Exclusion— Long Form § 15, Short Form ¶ 7; and

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<sup>17</sup> The Long-Form and Publication Notices are attached as Exhibits A-7 and A-8 to the Kinsella Decl. on Combined Notice.

- Binding effect— Long Form §§ 14-17, Short Form ¶ 7.

Additionally, the Long Form Notice informs potential Settlement Class Members about the identity of the Settling Defendants; the auto parts covered in these Settlements; the amount of each of the Settlements; the potential for future settlements; where to access the complete Settlement Agreements, proposed final judgments and other Court documents; how the lawyers may be paid in the future; when the lawyers will file their petition for reimbursement of litigation expenses; Settlement Class Members' right to object or opt out and how to do so; and the date, place and time of the Fairness Hearing, among other information. This additional information conforms with Rule 23(e)'s requirement for distribution of the settlement notice in a reasonable manner. *See In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 327 (3d Cir. 1998) ("The Rule 23(e) notice is designed to summarize the litigation and the settlement and to apprise class members of the right and opportunity to inspect the complete settlement documents, papers, and pleadings filed in the litigation." (internal quotation marks omitted)).

Finally, the Long Form Notice explains to potential members of the Settlement Classes that a distribution of the Net Settlement Funds will occur at a future time, possibly in conjunction with future settlements, and encourages Settlement Class Members to register with the Settlement website to obtain information on future settlements and the filing of claims. *See* Long Form §§ 9-10, 12.

For the reasons stated above, the proposed Notice Plan and Form of Notices fulfill the requirements of Rule 23 and due process. Accordingly, approval of the Notice Plan and Form of Notices is appropriate.

**V. CONCLUSION**

For the foregoing reasons, EPPs request that the Court approve the proposed Notice Plan described herein and the Form and content of the Notices submitted herewith.

Dated: January 13, 2016

Respectfully submitted,

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