

**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
Honorable Sean F. Cox

IN RE EXHAUST SYSTEMS
IN RE ELECTRONIC BREAKING
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' UNOPPOSED MOTION FOR
AUTHORIZATION TO DISSEMINATE NOTICE TO THE SETTLEMENT
CLASSES IN CONNECTION WITH THE BOSAL, BOSCH, AND TRW
SETTLEMENTS**

Pursuant to Federal Rule of Civil Procedure (“Rule”) 23, End-Payor Plaintiffs (“EPPs”)¹ respectfully move the Court for an order:

1. Approving the proposed notice program (“Notice Program”) and notice forms (“Notice Forms”) (together, “Final Notice”) in connection with the Bosal,² Bosch,³ and TRW⁴ settlements (together, “Round 5 Settlements” or “Round 5 Settlement Agreements”);

2. Approving the continued use of the claim form (“Claim Form”), which the Court previously approved in connection with the prior rounds of settlements;

3. Approving the proposed schedule for Final Notice and final approval of the Round 5 Settlements; and

4. Authorizing the dissemination of the Final Notice and Claim Form to potential members of the Settlement Classes in connection with the Round 5 Settlements (“Round 5 Settlement Classes”).

¹ Unless otherwise set forth herein, all capitalized terms shall have the same meaning set forth in the applicable settlement agreements.

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).

In support of this motion, EPPs rely upon the accompanying memorandum of law and the Declaration of Cristen Stephansky, Senior Notice Program Manager at Kinsella Media, LLC, and exhibits thereto, all of which EPPs incorporate herein by reference.

Pursuant to Local Rule 7.1, Plaintiffs informed Bosal, Bosch, and TRW (collectively, “Round 5 Settling Defendants”) that they would file this motion, and none of them indicated that they would oppose this motion.

Dated: August 8, 2022

Respectfully submitted,

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**END-PAYOR PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF
UNOPPOSED MOTION FOR AUTHORIZATION TO DISSEMINATE
NOTICE TO THE SETTLEMENT CLASSES IN CONNECTION WITH
THE BOSAL, BOSCH, AND TRW SETTLEMENTS**

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STATEMENT OF THE ISSUES PRESENTED

1. Whether the Court should approve the Final Notice in connection with the Round 5 Settlements;
2. Whether the Court should approve the previously approved Claim Form in connection with the Round 5 Settlements;
3. Whether the Court should approve the proposed schedule for Final Notice and for final approval of the Round 5 Settlements; and
4. Whether the Court should authorize the dissemination of the Final Notice and Claim Forms to potential members of the Round 5 Settlement Classes.

**CONTROLLING OR MOST APPROPRIATE AUTHORITIES
FOR THE RELIEF SOUGHT**

Karkoukli's, Inc. v. Dohany, 409 F.3d 279 (6th Cir. 2005)

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

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 Litig., 391 F.3d 516 (3d Cir. 2004)

I. INTRODUCTION

EPPs respectfully submit this memorandum of law in support of their Motion for Authorization to Disseminate Notice to the Settlement Classes in connection with the Bosal, Bosch, and TRW Settlements (“Round 5 Settlement Classes”). EPPs have settled with the last three Defendants named in this massive multidistrict litigation for a total of \$3,152,000. Through this Motion, EPPs seek to provide notice to potential members of the Round 5 Settlement Classes established pursuant to the Round 5 Settlements regarding these settlements and the claim procedures applied to the settlements.

As with the earlier notice programs, EPPs have retained Kinsella Media, LLC (“Kinsella”) as Settlement Notice Provider and Epiq, the successor to Garden City Group, LLC (“Epiq”), as Settlement Claims Administrator.⁵

Proposed Schedule

EPPs propose the following schedule for notice and claims administration in connection with the Round 5 Settlements:

Event	Date
Begin issuing notice to potential members of the Round 5 Settlement Classes	10/18/2022

⁵ The Court previously appointed Kinsella and GCG as Notice Administrator and Settlement Claims Administrator, respectively. *See, e.g.*, Order Granting EPPs’ Motion for Authorization to Disseminate Notice, *Alternators*, No. 2:13-cv-00703, ECF No. 54. Accordingly, EPPs do not recite their qualifications in this motion.

Deadline for Settlement Class Counsel to file motion for final approval of the Round 5 Settlements	11/18/2022
Deadline for Epiq and Kinsella to file declarations reflecting that they implemented their respective portions of the Notice Program	11/28/2022
Deadline for class members to object or request exclusion	12/20/2022
Deadline to submit claims to Round 5 Settlements	01/07/2023
Fairness Hearing	01/12/2023 at 2 p.m.

To meet publication deadlines and the proposed notice schedule, EPPs respectfully request that the Court act on this motion by no later than August 29, 2022. Kinsella has informed Settlement Class Counsel that if the Court does not approve this motion by that date, EPPs will likely need to propose a new schedule.

Furthermore, at a later date, and without further notice to the Settlement Classes in the Rounds 1 through 5 Settlements, other than a posting on the Settlement Website and email notice to those who submitted claims or who previously registered to receive settlement updates, Settlement Class Counsel will apply to the Court for an award of attorneys' fees and reimbursement of costs and expenses to be paid out of the proceeds of the Round 5 Settlements and the prior settlements in *In re Automotive Parts Antitrust Litigation* ("Litigation"), Master File No. 2:12-md-02311 (E.D. Mich.), for all of their services in the Litigation, including, but not limited to, their services rendered in connection with claims

administration of all of the settlements reached in this Litigation. The fees sought in any future fee application, combined with the fee awards previously made by the Court, will not exceed 30 percent of the total Settlement Amounts⁶ of the Rounds 1 through 5 Settlements, including interest earned on the settlement proceeds.

Proposed Structure

EPPs propose the following procedure for notice and claims administration in connection with the Round 5 Settlements given that the claims submission deadline for the first four rounds of settlements (*i.e.*, December 31, 2019) has long since passed and the amount of the Round 5 Settlements (\$3,152,000) significantly differs from the amount involved in the prior four rounds of settlements (\$1.2 billion):

1. 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 new Vehicles⁷ not for resale or qualifying replacement

⁶ “Settlement Amounts” means the total proceeds of the Round 1 through 5 Settlements.

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

automotive parts not for resale included for the first time in the Round 5 Settlements, which will be separately identified on the Settlement Website⁸);

2. Potential members of the Round 5 Settlement Classes who have not previously submitted claims may only submit a claim to participate in the Round 5 Settlements;

3. Epiq will provide potential members of the Round 5 Settlement Classes who submitted claims to participate in the first four rounds of settlements, or who previously registered to receive settlement updates, with individual notice of the Round 5 Settlements by email or, alternatively, by postcard;

4. Kinsella will provide potential members of the Round 5 Settlement Classes with notice of the Round 5 Settlements through paid media in various digital forms and a nationally designated press release in addition to the notice on the Settlement Website; and

5. The notice will include a claims submission deadline with respect to these three last settlements.

Round 5 Settlements

Figure 1 provides a summary of the Round 5 Settling Defendants, the amounts of the settlements, and the specific cases resolved by the settlements. The

⁸ “Settlement Website” shall refer to www.autopartsclass.com.

Court has already granted preliminary approval of each of the Round 5 Settlements.

Figure 1

Settling Defendant	Settlement Funds	Case
Bosal	\$150,000.00	Exhaust Systems
Bosch	\$2,242,000.00	Hydraulic Braking Systems
		Electronic Braking Systems
TRW	\$760,000.00	Hydraulic Braking Systems
Total	\$3,152,000.00	

Prior Settlements

In the prior four rounds of settlements, EPPs settled with 73 groups of defendants and their affiliates.⁹ The Court entered orders finally approving the first round of settlements on August 9, 2016¹⁰ (*see, e.g.*, Amended Opinion and

⁹ EPPs also have a \$53,200,000 authorized claim against the Reorganized TK Holdings Trust in bankruptcy proceeding, but they can expect to receive only a small fraction of this amount for distribution to the class. The EPP class representatives have also reached a settlement with Takata Corp. in Japanese insolvency proceedings. The settlement provides for a payment of 25,000,000 Japanese Yen (equivalent to approximately \$220,000). This settlement as a formal matter is with the class representatives only, but the proceeds of the settlement will be paid to the same group of purchasers included in the Settlement Class agreed to pursuant to the settlement agreement with Takata Corp.'s U.S. subsidiary, Reorganized TK Holdings Trust.

¹⁰ The Round 1 Settling Defendants are: (1) Autoliv, Inc., Autoliv ASP, Inc., Autoliv B.V. & Co. KG, Autoliv Safety Technology, Inc., and Autoliv Japan Ltd.; (2) Fujikura, Ltd. and Fujikura Automotive America LLC; (3) Hitachi Automotive Systems, Ltd.; (4) Kyungshin-Lear Sales and Engineering, LLC; (5) Lear

Order Granting Final Approval, *Wire Harness Systems*, Case No. 2:12-cv-00103, ECF No. 512); the second round of settlements on July 10, 2017¹¹ (*see, e.g.*, Order Granting Final Approval to the Round 2 Settlements, *Wire Harness Systems*, No. 2:12-cv-00103, ECF No. 576); the third round of settlements on November 8, 2018¹² (*see, e.g.*, Order Granting Final Approval to the Round 3 Settlements (*see,*

Corporation; (6) Nippon Seiki Co., Ltd., N.S. International, Ltd., and New Sabina Industries, Inc.; (7) Panasonic Corporation and Panasonic Corporation of North America; (8) T.RAD Co., Ltd. and T.RAD North America, Inc.; (9) TRW Deutschland Holding GmbH and ZF TRW Automotive Holdings Corp. (formerly known as TRW Automotive Holdings Corp.); (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.; and (11) Yazaki Corporation and Yazaki North America, Incorporated.

¹¹ The Round 2 Settling Defendants are: (1) Aisin Seiki Co., Ltd. and Aisin Automotive Casting, LLC; (2) DENSO Corporation, DENSO International America, Inc., DENSO International Korea Corporation, DENSO Korea Automotive Corporation, DENSO Automotive Deutschland GmbH, ASMO Co., Ltd., ASMO North America, LLC, ASMO Greenville of North Carolina, Inc., and ASMO Manufacturing, Inc.; (3) Furukawa Electric Co., Ltd. and American Furukawa, Inc.; (4) G.S. Electech, Inc., G.S. Wiring Systems Inc., and G.S.W. Manufacturing, Inc.; (5) Leoni Wiring Systems, Inc. and Leonische Holding Inc.; (6) Mitsubishi Electric Corporation, Mitsubishi Electric US Holdings, Inc., and Mitsubishi Electric Automotive America, Inc.; (7) NSK Ltd., NSK Americas, Inc., NSK Steering Systems Co., Ltd., and NSK Steering Systems America, Inc.; (8) Omron Automotive Electronics Co. Ltd.; (9) Schaeffler Group USA Inc.; (10) Sumitomo Riko Co.Ltd. and DTR Industries, Inc.; (11) Tokai Rika Co., Ltd. and TRAM, Inc. d/b/a Tokai Rika U.S.A.Inc. (settlement in *Wire Harness* only); and (12) Valeo Japan Co., Ltd., on behalf of itself and Valeo Inc., Valeo Electrical Systems, Inc., and Valeo Climate Control Corp.

¹² The Round 3 Settling Defendants are: (1) Aisan Industry Co., Ltd.; Franklin Precision Industry, Inc.; Aisan Corporation of America; and Hyundam

Industrial Co., Ltd.; (2) ALPHA Corporation and Alpha Technology Corporation; (3) Alps Electric Co., Ltd.; Alps Electric (North America), Inc.; and Alps Automotive Inc.; (4) Robert Bosch GmbH and Robert Bosch LLC; (5) Bridgestone Corporation and Bridgestone APM Company; (6) Calsonic Kansei Corporation and Calsonic Kansei North America, Inc.; (7) Chiyoda Manufacturing Corporation and Chiyoda USA Corporation; (8) Continental Automotive Electronics LLC, Continental Automotive Korea Ltd., and Continental Automotive Systems, Inc.; (9) Diamond Electric Mfg. Co., Ltd. and Diamond Electric Mfg. Corporation; (10) Eberspächer Exhaust Technology GmbH & Co. KG and Eberspächer North America Inc.; (11) Faurecia Abgastechnik GmbH; Faurecia Systèmes d'Échappement; Faurecia Emissions Control Technologies, USA, LLC; and Faurecia Emissions Control Systems, N.A. LLC f/k/a Faurecia Exhaust Systems, Inc.; (12) Hitachi Automotive Systems, Ltd.; (13) Hitachi Metals, Ltd.; Hitachi Cable America Inc.; and Hitachi Metals America, Ltd.; (14) INOAC Corporation; INOAC Group North America, LLC; and INOAC USA Inc.; (15) JTEKT Corporation; JTEKT Automotive North America, Inc.; and JTEKT North America Corp. (formerly d/b/a Koyo Corporation of U.S.A.); (16) Kiekert AG and Kiekert U.S.A., Inc.; (17) Koito Manufacturing Co., Ltd. and North American Lighting, Inc.; (18) MAHLE Behr GmbH & Co. KG and MAHLE Behr USA Inc.; (19) MITSUBA Corporation and American Mitsuba Corporation; (20) Nachi-Fujikoshi Corp. and Nachi America Inc.; (21) NGK Insulators, Ltd. And NGK Automotive Ceramics USA, Inc.; (22) NGK Spark Plug Co., Ltd. and NGK Spark Plugs (U.S.A.), Inc.; (23) Nishikawa Rubber Company, Ltd.; (24) NTN Corporation and NTN USA Corporation; (25) Sanden Automotive Components Corporation, Sanden Automotive Climate Systems Corporation, and Sanden International (U.S.A.) Inc.; (26) SKF USA Inc.; (27) Stanley Electric Co., Ltd., Stanley Electric U.S. Co., Inc., and II Stanley Co., Inc.; (28) Tenneco Inc., Tenneco GmbH and Tenneco Automotive Operating Co., Inc.; (29) Toyo Tire & Rubber Co. Ltd.; Toyo Tire North America OE Sales LLC; and Toyo Automotive Parts (USA), Inc.; (30) Usui Kokusai Sangyo Kaisha, Ltd and Usui International Corporation; (31) Valeo S.A.; (32) Yamada Manufacturing Co. Ltd. and Yamada North America, Inc.; and (33) Yamashita Rubber Co., Ltd. and YUSA Corporation.

e.g., *Wire Harness Systems*, No. 2:12-cv-00103, ECF No. 628); and the fourth round of settlements on September 23, 2020¹³ (*see, e.g.*, Order Granting Final Approval of the Round 4 Settlements, *Occupant Safety Systems*, No. 2:12-cv-00603, ECF No. 230).

II. ROUND 5 SETTLEMENT CLASSES

The Round 5 Settlement Classes include consumers and businesses who purchased or leased qualifying new Vehicles (not for resale) containing automotive parts at issue in the Round 5 Settlements, or who indirectly purchased qualifying replacement automotive parts at issue (not for resale) in states that

¹³ The Round 4 Settling Defendants are: (1) Brose SchlieBsysteme GmbH & Co. Kommanditgesellschaft and Brose North America (collectively, “Brose”), (2) Corning International Kabushiki Kaisha and Corning Incorporated (collectively, “Corning”), (3) Delphi Technologies PLC, and Delphi Powertrain Systems, LLC (together, “Delphi”), (4) Green Tokai Co., Ltd. (“Green Tokai”), (5) Keihin Corporation and Keihin North America, Inc. (collectively, “Keihin”), (6) KYB Corporation (f/k/a Kayaba Industry Co., Ltd.) and KYB Americas Corporation (collectively, “KYB”), (7) Maruyasu Industries, Co., Ltd. and Curtis-Maruyasu America, Inc. (collectively, “Maruyasu”), (8) Meritor, Inc. f/k/a ArvinMeritor, Inc. (“Meritor”), (9) Mikuni Corporation (“Mikuni”), (10) Mitsubishi Heavy Industries, Ltd. and Mitsubishi Heavy Industries Climate Control, Inc. (collectively, “Mitsubishi Heavy”), (11) Panasonic Corporation and Panasonic Corporation of North America (together, “Panasonic”), (12) Sanoh Industrial Co., Ltd. and Sanoh America, Inc. (collectively, “Sanoh”), (13) Showa Corporation and American Showa, Inc. (collectively, “Showa”), (14) Reorganized TK Holdings Trust (“TKH”), (15) Tokai Rika, Co. Ltd. and TRAM, Inc. d/b/a Tokai Rika U.S.A. Inc. (collectively, “Tokai Rika”), (16) Toyo Denso Co., Ltd. and Weastec, Inc. (collectively, “Toyo Denso”), and (17) Toyoda Gosei Co., Ltd., Toyoda Gosei North America Corp., TG Missouri Corp., TG Kentucky, LLC, TG Missouri Corp., and TG Fluid Systems USA Corp. (collectively, “Toyoda Gosei”).

permit indirect purchasers to bring antitrust damages claims (Damages States)¹⁴ or while residing or having their principal place of business in the Damages States. The Round 5 Settlement Classes also include as well as those who reside or have their principal place of business in states that do not permit such damages claims (together, the “Settlement Class Members”).

Only those Round 5 Settlement Class Members who purchased or leased qualifying new Vehicles (not for resale) containing automotive parts at issue in the Round 5 Settlements, or who indirectly purchased qualifying replacement automotive parts at issue (not for resale) in the Damages States, or who resided or had their principal place of business in the Damages States at the time of purchase or lease will be entitled to recover from the net settlement funds of the Round 5 Settlements. All Round 5 Settlement Class Members will obtain the benefits of the non-monetary relief provided for in the Round 5 Settlements and proposed final judgments, including Settling Defendants’ agreement not to engage in the specified conduct that is the subject of the lawsuits for a period of two years (except for Bosal).

¹⁴ The Damages States are 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.

III. THE NOTICE PROGRAM

With this Motion, EPPs submit for the Court's approval the proposed Notice Program. Attached hereto is the Declaration of Cristen Stephansky, Senior Notice Program Manager at Kinsella Media, LLC, which includes two exhibits. The proposed Long-Form Notice is Exhibit A. The proposed Short-Form Notice is Exhibit B.

The Notice Program and Notice Forms are similar to the previous Notice Programs and the previous Notices proposed by EPPs and approved by this Court in connection with the Round 4 Settlements, with two notable distinctions.

First, as the deadline to file a claim to the first four rounds of settlements in this litigation passed on June 18, 2020, a separate claim submission deadline for the Round 5 Settlements with respect to the Vehicles and automotive parts at issue in the Round 5 Settlements is appropriate. Potential members of the Round 5 Settlement Classes who previously filed claims to the first four rounds of settlements will automatically be considered for the Round 5 Settlements. They are not required to submit a new claim to share in the Round 5 Settlements. These potential Round 5 Settlement Class Members may supplement their existing claim; however, additional new Vehicles or replacement automotive parts claimed for the Round 5 Settlements will apply only to the Round 5 Settlements. All qualifying

new Vehicles and qualifying replacement automotive parts included in the Round 5 Settlements will be noted and posted on the Settlement Website.

Potential members of the Round 5 Settlement Classes who have not previously filed claims with qualifying claims relating to the Vehicle and replacement automotive parts included for the first time in the Round 5 Settlements may only submit a claim to share in the Round 5 Settlements. To allow potential members of the prior Settlement Classes to file a claim to the first four rounds of settlements now—two years after the deadline to file a claim has passed—would cause further delay, expense, and inefficiency to the claims administration process.

Second, given that potential members of the Round 5 Settlement Classes have already received four rounds of notice and that the monetary value of the Round 5 Settlements is much lower than each of the previous rounds (*i.e.*, the Round 5 Settlements total \$3,152,000 while the Round 4 Settlements—the lowest of the first four rounds of settlement—total \$183,958,000), EPPs propose a targeted Notice Program that would include (1) direct email or postcard notice to potential members of the Round 5 Settlement Classes who filed claims to the first four rounds of settlements or who previously registered to receive settlement updates and (2) paid media in various digital forms and a national press release.

Regarding the Notice and Claim Forms, EPPs propose to continue using substantially the same Notice and Claim Form previously approved by this Court for the Round 4 Settlements. *See, e.g.*, No. 2:12-cv-00403 (Aug. 2, 2019), ECF No. 291 (order approving EPPs' motion for authorization to disseminate notice to the EPP Settlement Classes in connection with the Round 4 Settlements).

The proposed Short-Form Notice and Long-Form Notice will reflect the following changes:

- Update of the new and total settlement funds;
- Information for potential members of the Round 5 Settlement Classes who previously filed claims;
- Information for potential members of the Round 5 Settlement Classes who have not previously filed claims; and
- Claims deadline to share in the Round 5 Settlements.

The proposed Claim Form will remain the same as the Claim Form approved by this Court for the Round 4 Settlements.

IV. PLAN 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); No. 2:12-cv-00103 (July 10, 2017), ECF No. 577 (order

approving plan of allocation in connection with Round 2 Settlements); 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 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 funds 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 fourth round of settlement is substantially similar to that of the prior three rounds of 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 Vehicles containing automotive parts that defendants' anticompetitive conduct targeted (which will be weighted at four times in comparison to other Vehicles), and (3) allows Settlement Class members who purchased or leased a new Vehicle or purchased a replacement Automotive Part in a damages state to share in the Net Settlement Funds even if the individual

resided in, or the business had its principal place of business in, a non-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). The proposed Plan of Allocation in connection with the Round 5 Settlements is substantially similar to the one proposed by EPPs and approved by the Court in connection with the Round 4 Settlements except (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, and (2) additional identified qualifying new 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 prior four rounds of settlements.¹⁵ EPPs will seek the Court's approval to use the proposed Plan of Allocation in connection with the Round 5 Settlements when EPPs move for final approval of the Round 5 Settlements.

¹⁵ Earlier this year, the Court entered an order setting forth the terms and conditions under which 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.

V. THE PROPOSED NOTICE PROGRAM SATISFIES RULE 23 AND DUE PROCESS

As the Round 5 Settling Defendants' automotive parts are incorporated into Vehicles assembled and sold or leased by others, the Round 5 Settling Defendants do not have the names and addresses to enable notice to be sent by direct mail to each member of the Round 5 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. 2005); *see also Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950).

In another antitrust class action, where the court determined that, like here, the names and addresses of absent class members were unavailable, publication notice was found to be the best notice practicable under the circumstances. *In re Warfarin Sodium Antitrust Litigation*, 212 F.R.D. 231, 252 (D. Del. 2002) ("*Warfarin*"). The Third Circuit affirmed, rejecting challenges to the adequacy of the notice. *Warfarin*, 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.”); Ann. Manual Complex Lit. § 21.312 (4th ed.) (“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”).

A. The Notice Program Is Reasonably Calculated to Target Interested Parties

EPPs will provide Final Notice in a “reasonable manner to all class members who [will] be bound by the proposal” and will 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 Federal Rules of Civil Procedure 23(e)(1) and 23(c)(2)(B). The proposed Notice Program for the Round 5 Settlements provides for direct notice to all potential members of the

Round 5 Settlement Classes who have previously filed a claim or registered on the Settlement Website. Stephansky Decl. ¶¶ 4-5.

The proposed Notice Program, attached as Exhibit A to the Stephansky Declaration, contains the following elements:

- **Direct Notice (Email):** For those potential Round 5 Settlement Class Members who previously provided an email address through registering on the Settlement Website or filing a claim, Epiq will send email notice. The email will inform these potential Round 5 Settlement Class Members about the Round 5 Settlements and direct them to visit the Settlement Website for updated information.
- **Direct Notice (Postcard):** For those potential Round 5 Settlement Class Members who did not provide an email address, but provided a home or business address through registering on the Settlement Website or filing a claim, Epiq will send postcard notice to the home or business address of these potential Round 5 Settlement Class Members. The postcard will inform these potential Round 5 Settlement Class Members about the Round 5 Settlements and direct them to visit the Settlement Website for updated information.¹⁶

¹⁶ In addition, Epiq will mail the Long Form Notice via First-Class Mail to all potential Round 5 Settlement Class Members who call or write to request a copy of it.

- **Direct Notice (Fleets):** Additionally, Epiq will send an email or mailed postcard to reasonably identifiable potential Round 5 Settlement Class Members that purchase or lease large fleets of vehicles for fleet management companies and automobile dealers about the Round 5 Settlements and direct them to visit the Settlement Website for updated information.
- **Paid Media (Digital Advertising):** Kinsella will purchase targeted internet “banner advertisements” across various websites and networks. The banner advertisements will direct potential members of the Round 5 Settlement Classes to the Settlement Website.
- **Paid Media (Facebook/Instagram):** Kinsella will use social media advertising on Facebook and Instagram to target potential members of the Round 5 Settlement Classes.
- **Paid Media (Keyword Search):** Kinsella will use sponsored keyword advertising to target potential members of the Round 5 Settlement Classes by displaying ad text on Google AdWords, Bing (Microsoft Advertising), and their search partners.
- **National Press Release:** Kinsella will issue a national press release distributed on PR Newswire’s US1 national wire as part of its earned media press outreach program.

- **Settlement Website:** Epiq will post the Long-Form Notice, the Settlement Agreements, preliminary approval orders, proposed final judgments, and other court documents on the class website, www.autopartsclass.com. The website will be available through searches conducted on the internet.
- **Toll-Free Hotline:** Epiq will staff a toll-free hotline (877-940-5043) to answer questions by any potential members of the Round 5 Settlement Classes about the settlements and provide copies of court-approved notices and other documents.
- **P.O. Box:** Epiq will maintain the post office box that allows Settlement Class Members to contact Settlement Class Counsel by mail with any specific requests or questions.

B. The Court Should Approve the Long-Form and Short-Form Notices

EPPs seek approval of the proposed form and content of the Long-Form and Short-Form Notices. The Long-Form Notice is Exhibit A to the Stephansky Declaration. The Short-Form Notice is Exhibit B to the Stephansky Declaration. These are substantially similar to the Long-Form and Short-Form Notices previously approved by the Court in connection with the Round 4 Settlements.

Rule 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 Rule 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 Notice Program meets these requirements.

The proposed Long-Form Notice provides the most important information to potential members of the Round 5 Settlement Classes. First, it instructs Round 5 Settlement Class Members how to submit a Claim Form. *See* Stephansky Decl., Ex. A, Question 10 (“How Do I Submit a Claim?”). Next, it describes the right of the Round 5 Settlement Class Members to exclude themselves from some or all of the Round 5 Settlement Classes, including those Round 5 Settlement Class Members who are only entitled to non-monetary equitable relief.¹⁷ *See id.* Question 17 (“How Do I Get Out of the Settlement Classes?”). Accordingly, any Round 5 Settlement Class Member can exclude themselves and therefore not be bound by any of the Round 5 Settlements or final judgments entered in connection therewith. Third, the proposed Long-Form Notice describes the right of the Round 5 Settlement Class Members to object to the settlements for which they are members. *See id.* Questions 23-25 (“Objecting to the Round 5 Settlements”).

¹⁷ Joseph M. McLaughlin, 1 *McLaughlin on Class Actions* § 5:21 (8th ed. 2011); William B. Rubenstein, *Newberg on Class Actions* § 4:36 (5th ed.); *Penson v. Terminal Transp. Co.*, 634 F.2d989, 993-94 (5th Cir. 1981); *In re Celera Corp. Shareholder Litig.*, 59 A.3d 418, 422 (Del. 2012).

Finally, it describes the proposed Plan of Allocation. *See id.* Question 12 (“How Much Money Can I Get?”).

Furthermore, the proposed Long-Form Notice provides relevant information to potential members of the Round 5 Settlement Classes “clearly and concisely . . . in plain, easily understood language” at the following sections of the notices:

- Nature of the Actions—Long-Form Notice Question 2; Short-Form Notice ¶ 1;
- Settlement Classes’ Definition—Long-Form Questions 7-8, Short-Form Notice ¶ 2;
- Settlement Classes’ Claims, Issues & Defenses—Long-Form Notice Questions 1-8, Short-Form Notice ¶ 1;
- Right to Appear—Long-Form Notice Questions 26-28, Short-Form Notice ¶ 7;
- Right to Exclude/Time & Manner to Request Exclusion—Long-Form Notice Questions 17-20, Short-Form Notice ¶ 6; and
- Binding Effect—Long-Form Notice Question 16, Short-Form Notice ¶ 6.

Moreover, the Long-Form Notice provides information to potential Round 5 Settlement Class Members regarding, *inter alia*, the identity of the Round 5 Settling Defendants; the three automotive parts covered in the Round 5

Settlements; the amount of each of the Round 5 Settlements; where to access the relevant documents, including settlement agreements, proposed final judgments, the proposed Plan of Allocation, and other Court filings in connection with the Round 5 Settlements; how the attorneys may be paid in the future; Settlement Class Members' right to object or exclude themselves and how to do so; and the date, place, and time of the Fairness Hearing. *See, generally, id.* 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 Round 5 Settlement Class Members that they are entitled to a distribution of the net settlement funds only if: (1) the Court finally approves Round 5 Settlements and after any appeals are resolved and (2) after the Court approves the proposed Plan of Allocation. *See* Long-Form Notice at 2. To receive payment, the Long-Form Notice explains to potential members of the Round 5 Settlement Classes that they must submit a Claim Form no later than a date to be specified by the Court. *Id.* at Question 10.

The Long-Form Notice further informs potential Round 5 Settlement Class Members that it is not known how much each Round 5 Settlement Class Member who submits a valid Claim Form will receive at this time because payment under the proposed Plan of Allocation will be made on a *pro rata* basis to each Authorized Claimant based on the ratio the Allowed Claim Amount bears to the total Allowed Claim Amounts of all Authorized Claimants with respect to each Round 5 Settlement Class; however, subject to fund sufficiency, each Round 5 Settlement Class Member will receive at least \$100. *Id.* at Question 12. A Settlement Class Member who has a claim to share in the Round 5 Settlements as well as the prior settlements shall only have one \$100 minimum payment that covers their claims across all Settlements (depending on the availability of funds). *Id.*

C. The Court Should Approve the Schedule for the Notice Program

As outlined in the Proposed Order submitted herewith, EPPs propose the following schedule for the Notice Program:

Event	Date
Epiq begins issuing email or postcard notice to potential members of the Round 5 Settlement Classes who previously filed claims or who previously registered to receive settlement updates, directing them to visit the website to read updated information about the settlements. Proposed Order ¶ 5.	10/18/2022
Kinsella begins earned media activities, including paid media and the national press release. Proposed Order ¶ 6.	10/18/2022

Settlement Class Counsel to file motion for final approval of the Round 5 Settlements. Proposed Order ¶ 7.	11/18/2022
Epiq and Kinsella file declarations reflecting that they implemented their respective portions of the Notice Program. Proposed Order ¶ 8.	11/28/2022
Deadline for Round 5 Settlement Class Members to object or request exclusion. Proposed Order ¶¶ 9-10.	12/20/2022
Deadline to submit claims to Round 5 Settlements. Proposed Order ¶ 11.	01/07/2023
Fairness Hearing. Proposed Order ¶ 12.	01/12/2023 at 2 p.m.

This proposed schedule will provide ample time for any interested class members to respond and for the Court to consider their submissions.

VI. CONCLUSION

For the foregoing reasons, EPPs request that the Court: (1) approve the Final Notice in connection with the Round 5 Settlements; (2) approve the previously approved Claim Form in connection with the Round 5 Settlements; (3) approve the proposed schedule for Final Notice and final approval of the Round 5 Settlements; and (4) authorize the dissemination of Final Notice and Claim Forms to potential members of the Round 5 Settlement Classes.

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Dated: August 8, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 8, 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