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

IN RE: AUTOMOTIVE PARTS ANTITRUST LITIGATION	:	Master File No. 12-md-02311
PRODUCT(S):	:	
In Re: Instrument Panel Clusters	:	2:12-cv-00202
In Re: Heater Control Panels	:	2:12-cv-00402
In Re: Bearings	:	2:12-cv-00502
In Re: Occupant Safety Restraint Systems	:	2:12-cv-00602
In Re: Radiators	:	2:13-cv-01002
In Re: Automotive Lamps	:	2:13-cv-01202
In Re: Switches	:	2:13-cv-01302
In Re: Ignition Coils	:	2:13-cv-01402
In Re: Steering Angle Sensors	:	2:13-cv-01602
In Re: Hid Ballasts	:	2:13-cv-01702
In Re: Electric Powered Steering Assemblies	:	2:13-cv-01902
In Re: Fuel Injection Systems	:	2:13-cv-02202
In Re: Automatic Transmission Fluid Warmers	:	2:13-cv-02402
In Re: Valve Timing Control Devices	:	2:13-cv-02502
In Re: Air Conditioning Systems	:	2:13-cv-02702
In Re: Constant Velocity Joint Boot Products	:	2:14-cv-02902
In Re: Spark Plugs	:	2:15-cv-03002
In Re: Automotive Hoses	:	2:15-cv-03202
In Re: Shock Absorbers	:	2:16-cv-03302
In Re: Body Sealing Products	:	2:16-cv-03402
In Re: Interior Trim Products	:	2:16-cv-03502
In Re: Brake Hoses	:	2:16-cv-03602
In Re: Exhaust Systems	:	2:16-cv-03702
In Re: Ceramic Substrates	:	2:16-cv-03802
In Re: Power Window Switches	:	2:16-cv-03902
In Re: Automotive Steel Tubes	:	2:16-cv-04002
In Re: Access Mechanisms	:	2:16-cv-04102
In Re: Side Door Latches	:	2:17-cv-04302
This Document Relates to: ALL DEALERSHIP ACTIONS	:	Hon. Marianne O. Battani

AUTO DEALERS' MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES FOR ROUND FOUR SETTLEMENTS

Pursuant to Federal Rule of Civil Procedure 23(h) and Federal Rule of Civil Procedure 54(d)(2), the Interim Co-Lead Counsel for the Auto Dealers will move the Court for an Order awarding attorneys' fees, reimbursement of past expenses, and allowing them to set aside a fund for future litigation expenses.

Dated: November 8, 2019

By: /s/ Gerard V. Mantese
Gerard V. Mantese (P34424)
MANTESE HONIGMAN, P.C.
1361 E. Big Beaver Road
Troy, MI 48083
Telephone: (248) 457-9200 Ext. 203
Facsimile: (248) 457-9201
gmantese@manteselaw.com

Interim Liaison Counsel for the Automobile Dealer Plaintiffs

Jonathan W. Cuneo
CUNEO GILBERT & LADUCA, LLP
4725 Wisconsin Ave., NW
Suite 200
Washington, DC 20016
Telephone: (202) 789-3960
Facsimile: (202) 789-1813
jonc@cuneolaw.com

Don Barrett
BARRETT LAW GROUP, P.A.
P.O. Box 927
404 Court Square
Lexington, MS 39095
Telephone: (662) 834-2488
Facsimile: (662)834.2628
dbarrett@barrettlawgroup.com

Shawn M. Raiter
LARSON KING, LLP
2800 Wells Fargo Place
30 East Seventh Street
St. Paul, MN 55101
Telephone: (651) 312-6500
Facsimile: (651) 312-6618
sraiter@larsonking.com

Interim Co-Lead Counsel for the Automobile Dealer Plaintiffs

CERTIFICATE OF SERVICE

I, Gerard V. Mantese, hereby certify that I caused a true and correct copy of **AUTO DEALERS' MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES FOR ROUND FOUR SETTLEMENTS** to be served via e-mail upon all registered counsel of record via the Court's CM/ECF system on November 8, 2019.

/s/ Gerard V. Mantese
Gerard V. Mantese

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

IN RE: AUTOMOTIVE PARTS ANTITRUST LITIGATION	:	Master File No. 12-md-02311
PRODUCT(S):	:	
In Re: Instrument Panel Clusters	:	2:12-cv-00202
In Re: Heater Control Panels	:	2:12-cv-00402
In Re: Bearings	:	2:12-cv-00502
In Re: Occupant Safety Restraint Systems	:	2:12-cv-00602
In Re: Radiators	:	2:13-cv-01002
In Re: Automotive Lamps	:	2:13-cv-01202
In Re: Switches	:	2:13-cv-01302
In Re: Ignition Coils	:	2:13-cv-01402
In Re: Steering Angle Sensors	:	2:13-cv-01602
In Re: Hid Ballasts	:	2:13-cv-01702
In Re: Electric Powered Steering Assemblies	:	2:13-cv-01902
In Re: Fuel Injection Systems	:	2:13-cv-02202
In Re: Automatic Transmission Fluid Warmers	:	2:13-cv-02402
In Re: Valve Timing Control Devices	:	2:13-cv-02502
In Re: Air Conditioning Systems	:	2:13-cv-02702
In Re: Constant Velocity Joint Boot Products	:	2:14-cv-02902
In Re: Spark Plugs	:	2:15-cv-03002
In Re: Automotive Hoses	:	2:15-cv-03202
In Re: Shock Absorbers	:	2:16-cv-03302
In Re: Body Sealing Products	:	2:16-cv-03402
In Re: Interior Trim Products	:	2:16-cv-03502
In Re: Brake Hoses	:	2:16-cv-03602
In Re: Exhaust Systems	:	2:16-cv-03702
In Re: Ceramic Substrates	:	2:16-cv-03802
In Re: Power Window Switches	:	2:16-cv-03902
In Re: Automotive Steel Tubes	:	2:16-cv-04002
In Re: Access Mechanisms	:	2:16-cv-04102
In Re: Side Door Latches	:	2:17-cv-04302
This Document Relates to: ALL DEALERSHIP ACTIONS	:	Hon. Marianne O. Battani

AUTO DEALERS' MEMORANDUM IN SUPPORT OF MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES FROM ROUND FOUR SETTLEMENTS

Gerard V. Mantese (P34424)
Mantese Honigman, P.C.
1361 E. Big Beaver Road
Troy, MI 48083
Telephone: (248) 457-9200 Ext. 203
gmantese@manteselaw.com

Interim Liaison Counsel For The Automobile Dealer Plaintiffs

Jonathan W. Cuneo
Cuneo Gilbert & LaDuca, LLP
4725 Wisconsin Ave., NW
Suite 200
Washington, DC 20016
Telephone: (202) 789-3960
jonc@cuneolaw.com

Don Barrett
Barrett Law Group, P.A.
P.O. Box 927
404 Court Square
Lexington, MS 39095
Telephone: (662) 834-2488
dbarrett@barrettlawgroup.com

Shawn M. Raiter
Larson King, LLP
2800 Wells Fargo Place
30 East Seventh Street
St. Paul, MN 55101
Telephone: (651) 312-6500
sraiter@larsonking.com

Interim Co-Lead Counsel for Automobile Dealer Plaintiffs

Statement of the Issues Presented

1. Should counsel for the Auto Dealers, who obtained more than $86 million in this group of Auto Dealer class settlements, be awarded a portion of those settlements for attorneys' fees?

   Yes

2. Should counsel for the Auto Dealers be reimbursed the out-of-pocket expenses they paid in pursuing the cases in which settlements have been presented?

   Yes

Controlling or Most Apposite Authorities

Blum v. Stenson, 465 U.S. 886, 104 S. Ct. 1541, 79 L. Ed. 2d 891 (1984)

Boeing Co. v. Van Gemert, 444 U.S. 472, 100 S. Ct. 745, 62 L. Ed. 2d 676 (1980)

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

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

Rawlings v. Prudential-Bache Properties, Inc., 9 F.3d 513 (6th Cir. 1993)

Table of Contents

Page

Table of Authorities

Page

Cases

Rules

Other Authorities

Background

Counsel for the Auto Dealers have negotiated and presented to the Court a fourth group ("Round Four") of settlements totaling more than $86 million. These settlements represent another substantial step to concluding this litigation: the settlements cover 31 Defendant groups and 28 different parts. By the time this motion is heard, eligible Auto Dealers will have received their payments from the first three Rounds of settlements. Some Auto Dealer class members have *already* received settlement payments totaling more than several million dollars.

Like the first groups of Auto Dealer settlements, the Round Four settlements also provide significant non-cash benefits, such as fulsome cooperation from the settling Defendants and injunctive relief against some settling defendants prohibiting anti-competitive behavior. All the net proceeds from the Round Four settlements will be paid to eligible new car automobile dealerships—there is no reversion to Defendants or *cy pres* payments to third-party charities.

Counsel for the Auto Dealers have zealously pursued this complex antitrust litigation and the Defendants have mounted aggressive defenses. The Defendants resolutely maintain that the Auto Dealers did not suffer an antitrust injury and that, even if they did, litigation classes cannot be certified. The Round Four settlements provide substantial benefits to Auto Dealer class members and are remarkable in light of the complexity of this litigation. Pursuant to Rules 23(h) and 54(d)(2) of the Federal Rules of Civil Procedure, Interim Co-Lead Counsel for the Auto Dealers submit this motion in support of their request for: (1) reimbursement of litigation expenses already incurred in the cases in the Round Four settlements; and (2) an award of attorneys' fees from the settlements.

Factual and Procedural Background

A. Disbursement of Prior Settlements.

The primary aim of these actions is the recovery and reimbursement of overcharges that Auto Dealers paid as a result of the antitrust violations alleged in the complaints. Counsel for the Auto

Dealers, working with the claim administrator and the court-appointed allocation consultant, have already disbursed the settlement funds from the first two rounds of Auto Dealer settlements. (Raiter Decl.) Some Auto Dealer class members have received millions of dollars for their claims. *Id.* The Round Three settlement payments should be received by eligible Auto Dealers well before the final approval hearing on this motion. *Id.*

B. Settlements Achieved Since the Round Three Final Approvals.

Since the Round Three final approvals, the Court has granted preliminary approval for Auto Dealer settlements with 31 Defendant groups covering 28 different parts. These settlements provide substantial cash benefits, injunctive relief as to many of the Round Four settling Defendants, and valuable cooperation as the Auto Dealers conclude any remaining claims in this MDL. The settlements included in Round Four total more than $86 million and are set out below, grouped by the parts case at issue:

Auto Parts Settlements and Settlement Funds			
Automotive Parts Case	**Settling Defendant**	**Amount Settled**	**Settlement Fund**
Access Mechanisms	Alpha	$852,000.00	$1,092,000.00
	Valeo	$240,000.00	
Air Conditioning Systems	Calsonic	$1,627,534.94	$6,895,534.94
	MAHLE Behr	$468,000.00	
	Mitsubishi	$2,160,000.00	
	Panasonic	$240,000.00	
	Sanden	$2,400,000.00	
ATF Warmers	Calsonic	$120,115.87	$120,115.87
Automotive Hoses	Toyoda Gosei	$1,714,157.85	$1,714,157.85
Automotive Lamps	Stanley	$3,889,541.05	$3,889,541.05
Automotive Steel Tubes	Maruyasu	$1,645,728.00	$5,965,728.00
	Sanoh	$2,640,000.00	
	Usui	$1,680,000.00	
Bearings	Nachi	$1,020,000.00	$3,420,000.00
	SKF	$2,400,000.00	
Body Sealing Products	Green Tokai	$300,000.00	$8,873,258.96
	Toyoda Gosei	$8,573,258.96	
Brake Hoses	Toyoda Gosei	$208,249.33	$208,249.33

Ceramic Substrates	Corning	$8,400,000.00	$8,400,000.00
Constant Velocity Joint Boots	Toyoda Gosei	$226,264.76	$226,264.76
Electronic Power Steering Assemblies	Showa	$1,305,390.12	$1,305,390.12
Exhaust Systems	Bosal	$48,000.00	$6,276,000.00
	Faurecia	$468,000.00	
	Meritor	$240,000.00	
	Tenneco	$5,520,000.00	
Fuel Injection Systems	Keihin	$264,000.00	$1,143,072.00
	Maruyasu	$34,272.00	
	Mikuni	$844,800.00	
Heater Control Panels	Tokai Rika	$431,550.97	$431,550.97
HID Ballasts	Stanley	$910,458.95	$910,458.95
Ignition Coils	Delphi	$240,000.00	$480,000.00
	Toyo Denso	$240,000.00	
Instrument Panel Clusters	Continental	$1,200,000.00	$1,200,000.00
Interior Trim Products	Toyoda Gosei	$1,607,208.53	$1,607,208.53
Occupant Safety Restraint Systems	TKH[1]	$16,800,000.00	$27,708,370.24
	Tokai Rika	$9,077,509.67	
	Toyoda Gosei	$1,830,860.57	
Power Window Switches	Toyo Denso	$1,392,000.00	$1,392,000.00
Radiators	Calsonic	$1,764,509.19	$1,764,509.19
Shock Absorbers	KYB	$9,120,000.00	$12,254,609.88
	Showa	$3,134,609.88	
Side Door Latches	Brose	$720,000.00	$720,000.00
Spark Plugs	NGK	$4,020,000.00	$4,020,000.00
Steering Angles Sensors	Tokai Rika	$214,014.95	$214,014.95
Switches	Tokai Rika	$1,076,924.41	$1,076,924.41
Valve Timing Control Devices	Mikuni	$211,200.00	$211,200.00
		Total	**$103, 520,160.00, including TKH bankruptcy claim**

[1] The potential payment by TKH is a general, unsecured, non-priority claim under the TKH bankruptcy plan and the expected bankruptcy payout is expected to be considerably less than the settlement amount.

The total money recovered in Auto Dealer settlements has been: Round One ($58,947,900.00), Round Two ($124,730,927.00), Round Three ($115,180,799.90), and Round Four ($86,720,160.00) of this litigation is $385,579,786.00. When the $16,800,000.00 general, unsecured, non-priority claim in the TKH bankruptcy from the Round Four settlements is included, the total recovered for Auto Dealers could total as much as $402,389,786.00.[2]

C. Counsel for Auto Dealers Have Devoted Significant Resources to Obtain the Auto Dealer Settlements in this Litigation.

1. The Complexity of this Litigation.

The Department of Justice ("DOJ") has described its investigation of the bid-rigging and price-fixing conspiracies at issue here as the largest criminal investigation it has ever undertaken. The DOJ has collected from certain Defendants fines totaling billions of dollars. The conduct involves many parts, affected models, and conspiring participants. Many of the Defendant groups had one or more of their employees or corporate affiliates convicted of a serious crime in the United States, Europe, and/or Asia. The 160 Defendants include well-known companies that are dominant players in their industries. There were 41 separate antitrust class actions alleging distinct violations of antitrust and/or consumer protection laws, making this a decidedly complex litigation.

Although the DOJ has prosecuted the criminal aspects of the price-fixing and bid rigging, it did not seek restitution for those injured by the conduct. The guilty pleas specifically note that "[i]n light of the availability of civil causes of action, which potentially provide for a recovery of multiple actual damages, the recommended sentence does not include a restitution order . . ." *See, e.g.,* Plea Agreement, Mitsuba Corp., *United States v. Mitsuba Corp.*, No. 2:13-cr-20712, para. 10(c), ECF Doc.

[2] As of November 7, 2019, the settlement funds being held in escrow for Round Four had earned interest totaling $1,342,403.65 and had paid taxes and tax preparation fees of $476,367.00 for a net gain of $866,036.65.

No. 10 (E.D. Mich. 2013). Without these actions, Auto Dealers would have been left without a remedy unless they each decided to sue more than 160 defendants in dozens of individual cases.

2. The Time and Resources Devoted to Achieve These Settlements.

Antitrust litigation is inherently risky, with high stakes, and the outcome of this litigation has never been certain. From the outset, counsel for the Auto Dealers worked on a contingent basis to advance the claims of automobile dealerships authorized by OEMs to sell new vehicles. While working efficiently, counsel for the Auto Dealers could not have effectively represented these class members without the commitment of a substantial amount of time, effort, and money.

The Auto Dealers asserted damage claims under the laws of 30 states and the District of Columbia, as well as a federal claim for injunctive relief. Some states permit indirect purchaser actions under state antitrust laws; others permit them under state consumer protection laws; and others permit them under general laws of restitution. Nearly every Defendant moved to dismiss the Auto Dealers' claims, while others challenged personal jurisdiction. For the most part, the Auto Dealers prevailed on those motions.

Some of the attorneys for the Auto Dealers worked full-time on this litigation. It was a huge undertaking to take the cases through discovery in preparation for class certification and trial. Counsel for the Auto Dealers performed the following type of work to advance the cases in the Round Four settlements:

- Research and investigation of the automotive parts supply industry and the sale of new vehicles through franchised automotive dealerships;
- Collecting information from a variety of sources, including the DOJ indictments, guilty pleas, and evidence that Defendants produced;
- Extensive research of the various aspects of the antitrust and other laws of more than 30 states and the District of Columbia, and drafting and editing dozens of initial and amended complaints;
- Analyzed and prepared liability and damages claims against more than 160 Defendants;

- Collecting and analyzing information and discovery including voluminous discovery produced by the Defendants and third parties, such as the OEMs;

- Consultation with economic and other liability and damages experts;

- Communicating and working with experts to develop appropriate damages methodologies in preparation for class certification and class-wide damages calculations for use at trial;

- Drafting and negotiating key case-management documents, protocols, and stipulations;

- Review, in conjunction with the other plaintiff groups, of millions of pages of foreign-language and translated documents produced by the Defendants;

- Receipt of cooperation materials from amnesty applicants, and attending in-person proffers from amnesty applicants who disclose the details of the conspiracies;

- Drafting, preparing for, and arguing numerous oppositions to motions to dismiss;

- Drafting and opposing numerous discovery motions, motions to quash, and other discovery sought by the Defendants from the Auto Dealers;

- Negotiating dealership and discovery issues with defense counsel including innumerable meet-and-confer sessions, each of which required substantial preparation;

- Preparing correspondence with respect to timing, stipulations, and case planning issues;

- Corresponding and attending calls with dealership co-counsel regarding client discovery and trial preparation issues;

- Obtaining and analyzing documents and data from over 40 class representative dealerships, including many in-person trips to the dealerships;

- Locating, review, redaction, and production of nearly 1 million pages of documents from class representative dealerships;

- Exchanging information and coordinating with end-payor, direct purchaser, truck and equipment dealers, City of Richmond, California, Florida, and Ford counsel regarding various issues;

- Attending calls and meetings to help formulate OEM subpoenas and discovery from third-parties;

- Responding to hundreds of discovery emails from Defendants demanding Auto Dealer discovery;

- Innumerable telephone calls with Defendants regarding Auto Dealer discovery and motion practice before the Special Master and appeals to Judge Battani;

- Exchanging information and conferring with counsel for the other Plaintiff groups regarding various discovery, procedural, and substantive issues;

- Attending MDL status conferences and motions with Judge Battani and conferences and motions with the discovery Special Master;

- Preparing for, traveling to, and attending more than 140 depositions of third-party automobile dealerships and class representative dealerships;

- Preparing for, traveling to, and attending more than 190 depositions of Defendants and their representatives;

- Preparing, through Japanese-speaking attorneys, key deposition outlines and strategy used by all Plaintiffs' groups in this litigation;

- Preparing for class certification motions by analyzing thousands of pages of depositions, thousands of pages of key discovery, working with experts, analyzing relevant case law, and drafting pleadings;

- Performing all the tasks necessary to reach more than 70 settlements, including formulating demands, negotiating, in some cases mediation, dozens of in-person meetings, exchange of drafts, preparing escrow agreements;

- Drafting settlement agreements, preliminary approval motions, and in some cases attend and argue preliminary approval motions;

- Analyzing discovery and materials received from cooperating Defendants and working with the special allocation consultant to develop allocation plans for each of the dozens of parts for which Auto Dealer settlements have been reached;

- Receiving cooperation materials from settling Defendants, attend in-person proffers from settling Defendants who disclose the details of the conspiracies, and review and analyze cooperation materials from settling Defendants and incorporate that information into the ongoing case strategy; and

- Drafting notices, claim forms, and other settlement-related documents and consult with the special allocation consultant and claims administrator

(*See generally*, Raiter Decl.)

The Auto Dealers were the primary target of Defendants' discovery efforts and responded to countless discovery requests relating to nearly every aspect of an automobile dealer's business. Counsel for the Auto Dealers weathered ongoing motions to compel, meet and confers, and innumerable communications from defense counsel about the Auto Dealers and their data, documents, and information. Defendants sought documents and data located on any computer, database, or back-up tape anywhere in the dealerships, as well as hard copy documents located throughout the dealerships. Defendants also sought documents and other electronic data from the automobile dealership class representatives, including: (1) invoices documenting new car purchases; (2) hundreds of fields of dealership management system (DMS) data; (3) data from back-up media going back to 1999; (4) monthly OEM financial statements submitted by dealers to the OEMs for 15 years; and (5) documents located in OEM portals showing monetary and non-monetary incentives, promotions and rebates offered to customers purchasing new cars and showing incentives, promotions and rebates offered to the dealers and advertisements showing special offers, promotions and incentives on new car purchases advertised to customers. (Raiter Decl.)

Over the Auto Dealers' objections, the Defendants insisted on taking an unlimited number of depositions of non-party automobile dealerships. The Court granted the Defendants' request and Defendants took more than 100 such depositions. (Raiter Decl.) Counsel for the Auto Dealers prepared for and attended these depositions, while at the same time defending the depositions of the Auto Dealer class representatives. *Id.* Defendants conducted approximately 140 depositions of class representative and third-party Auto Dealers in this litigation. *Id.*

Counsel for the Auto Dealers also invested considerable time, effort, and money in the prosecution of discovery and liability claims against the Defendants. This work included the review, translation, and analysis of millions of pages of documents Defendants produced to the DOJ and to the Plaintiffs in this litigation. Several Japanese-speaking attorneys for the Auto Dealers prepared and

led the deposition questioning of Defendant representatives and received numerous informal witness statements from cooperating and settling Defendants. Counsel for the Auto Dealers received, analyzed, and used in the litigation the documents and other information received from the settling and cooperating Defendants. Finally, counsel for the Auto Dealers worked with their experts to prepare the opinions and economic models used to support class certification, damages, and at trial. (Raiter Decl.)

3. The Auto Dealers' Unique Position in this Litigation.

Because of their role as intermediate indirect purchasers, the Auto Dealers shouldered the burden of a disproportionate amount of discovery aimed at them by the Defendants. The Defendants sought discovery regarding both the Auto Dealers' claims and antitrust injury and the injury claimed by the End Payors. (Raiter Decl.) Since the Auto Dealer class representatives run businesses and generate financial and other records that Defendants believe are relevant to damage and pass on issues, the Auto Dealers were targeted for discovery that related to the End Payors' claims. *Id.* The Auto Dealers were the primary focus of the Defendants' discovery relating to the transfer of antitrust overcharges through the indirect purchaser chain. As will be discussed in greater detail below, this required a substantial amount of work by counsel for the Auto Dealers that was not directly proportional to the settlements achieved for the Auto Dealers' benefit.

D. The Settlements Were Reached After Arms-Length Negotiation and Adversarial Proceedings.

In this group of settlements, the Auto Dealers seek final approval of settlements with 31 different Defendants and their affiliates. The Round Four settlements involve Auto Dealer claims covering 28 different parts and total more than $86 million. The Round Four settlements are the result of substantial litigation and negotiations by experienced counsel. The Defendants involved in these settlements had mounted vigorous defenses. The settlements were reached through lengthy negotiations and in each case, counsel was armed with transactional data, documents produced in

discovery, cooperation materials, and a strong understanding of the claims and defenses. (Raiter Decl.) Some settlements were only reached after mediation. *Id.*

Attorneys' Fees and Expenses Standard of Review.

Rule 23(h) of the Federal Rules of Civil Procedure provides that "[i]n a certified class action, the court may award reasonable attorney's fees and non-taxable costs that are authorized . . . by law." District courts may award reasonable attorneys' fees and expenses from the settlement of a class action upon motion under Fed. R. Civ. P. 54(d)(2) and 23(h). The court engages in a two-part analysis when assessing the reasonableness of a petition seeking an award of attorneys' fees. *In re Cardinal Health Inc. Sec. Litig.,* 528 F. Supp. 2d 752, 760 (S.D. Ohio 2007). The court first determines the method of calculating the attorneys' fees: it applies either the percentage of the fund approach or the lodestar method. *Id.; Van Horn v. Nationwide Prop. and Cas. Inc. Co.,* 436 F. App'x 496, 498 (6th Cir. 2011). The court will then analyze and weigh the six factors described in *Ramey v. Cincinnati Enquirer, Inc.,* 508 F.2d 1188 (6th Cir. 1974).

The "percentage of the fund" fee award sought by counsel for the Auto Dealers is supported by Sixth Circuit precedent, *see Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993), and the amount sought is well within the range of fee awards made by courts in this and other Circuits. *See, e.g.*, *In re Prandin Direct Purchaser Antitrust Litig.*, No. 2:10-CV-12141-AC-DAS, 2015 WL 1396473 (E.D. Mich. Jan. 20, 2015) (awarding one-third of the fund). The court has the discretion to select the appropriate method for calculating attorneys' fees "in light of the unique characteristics of class actions in general, and of the unique circumstances of the actual cases before them." *Rawlings*, 9 F.3d at 516. In common fund cases, the award of attorneys' fees need only "be reasonable under the circumstances." *Id.*

Argument

I. The Court Should Reimburse Class Counsel for Unreimbursed Past Expenses.

Since the Court's orders regarding expenses related to the previous settlements, counsel for the Auto Dealers have incurred and paid expenses that were not reimbursed through those orders and were not reimbursed from future expense funds. Counsel for the Auto Dealers seek reimbursement for those costs.

The future litigation funds previously allowed by the Court have been used to fund ongoing litigation expenses for the parts cases in the first three settlement groups. (Declaration of Marie Thomas; Raiter Decl.) Because some of the settlements in Round Four involve parts for which no prior settlements had been reached (and hence no future expense funds were created), counsel for the Auto Dealers paid the expenses required to advance the litigation for the different parts / cases not involved in the earlier settlements. *Id.* Having achieved the settlements currently before the Court, counsel for the Auto Dealers should be reimbursed the litigation expenses incurred in the settled cases for which a future expense fund was not previously established.

Unreimbursed litigation expenses incurred in the cases involved in the settlements should be awarded to counsel for the Auto Dealers. *See, e.g.*, Fed. R. Civ. P. 23(h); *In re Delphi Corp. Sec. Derivative & ERISA Litig*, 248 F.R.D. 483, 504 (E.D. Mich. 2008) ("Under the common fund doctrine, class counsel are entitled to reimbursement of all reasonable out-of-pocket litigation expenses and costs in the prosecution of claims and in obtaining settlement, including expenses incurred in connection with document production, consulting with experts and consultants, travel and other litigation-related expenses." (Citation and internal quotation marks omitted.)); *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 535 (E.D. Mich. 2003); *B & H Med., L.L.C. v. ABP Admin., Inc.,* No. 02–73615, 2006 WL 123785, at *3 (E.D. Mich. Jan.13, 2006).

Counsel for the Auto Dealers have advanced $153,720.12 in unreimbursed litigation expenses to advance the Round Four cases. (*See* Thomas Decl.; Raiter Decl.; Declarations of Don Barrett, Jonathan Cuneo, Gerard Mantese, Dewitt Lovelace, Tom Thrash, John Kakinuki, Charles Barrett, Brian Herrington, and Pierce Gore). These costs included expenses related to: (1) experts, (2) document review, gathering, hosting, and production, (3) mediator expenses, (4) domestic and international travel, and (5) other reasonable litigation expenses. *Id.* These unreimbursed expenses are properly awarded, on a *pro rata* basis, from the Round Four settlements.

III. The Court Should Award Attorneys' Fees to Counsel for the Auto Dealers.

The Round Four settlements total more than $86 million for the benefit of the Auto Dealers. Counsel for the Auto Dealers litigated these cases on a contingent basis, some for more than eight years, and have spent thousands of hours prosecuting the cases in which settlements have been reached. Counsel for the Auto Dealers request an interim award of attorneys' fees based on the work done to achieve the Round Four settlements.

Fee awards for settlements are appropriate in large-scale litigation in which settlements are reached periodically. *See In re Air Cargo Shipping Servs. Antitrust Litig.*, No. 06-MD-1775 JG VVP, 2011 WL 2909162, at *5–7 (E.D.N.Y. July 15, 2011) (interim fee award granted); *In re Sterling Foster & Company, Inc. Sec. Litig.*, 238 F. Supp. 2d 480, 484-85, 489-90 (E.D.N.Y. 2002) (interim attorneys' fees awarded). Counsel for the Auto Dealers have litigated these cases for more than eight years and will continue to vigorously represent the interests of the dealership class members. An award of fees on these settlements is appropriate. *See In re Air Cargo Shipping Serv. Litig.* , No. 06-md-1775, 2015 WL 5918273 (E.D.N.Y. Oct. 9, 2015) (awarding fourth round of interim fees); *In re Diet Drugs Prod. Liab. Litig.*, No. 1203, 2002 WL 32154197, at *12 (E.D. Pa. Oct. 3, 2002) (awarding an interim fee after four years of litigation, noting that "to make them wait any longer for at least some award would be grossly unfair").

A. The Court Should Again Use the Percentage-of-the-Fund Approach.

The Supreme Court recognizes that "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478, 100 S. Ct. 745, 62 L. Ed. 2d 676 (1980); *see also Delphi*, 248 F.R.D. at 502. When calculating attorneys' fees under the common fund doctrine, "a reasonable fee is based on a percentage of the fund bestowed on the class." *Blum v. Stenson*, 465 U.S. 886, 900 n.16, 104 S. Ct. 1541, 79 L. Ed. 2d 891 (1984).

The Court has used the percentage-of-the-fund approach in this litigation. Courts in this Circuit prefer this method of awarding attorneys' fees because it eliminates disputes about the reasonableness of rates and hours, conserves judicial resources, and aligns the interests of class counsel and the class members. *See, e.g.*, *Rawlings,* 9 F.3d at 515; *In re Packaged Ice Antitrust Litig.*, 2011 WL 6209188, at *16; *In re Delphi*, 248 F.R.D. at 502; *In re Cardinal*, 528 F. Supp. 2d at 762 (the Sixth Circuit has "explicitly approved the percentage approach in common fund cases"); *In re Skelaxin (Metaxalone) Antitrust Litig.*, No. 2:12-CV-83, 2014 WL 2946459, at *1 (E.D. Tenn. June 30, 2014) ("the lodestar method is cumbersome; the percentage-of-the-fund approach more accurately reflects the result achieved; and the percentage-of-the-fund approach has the virtue of reducing the incentive for plaintiffs' attorneys to over-litigate or 'churn' cases.") (citations omitted).

The lodestar method, on the other hand, "has been criticized for being too time-consuming of scarce judicial resources," as it requires that courts "pore over time sheets, arrive at a reasonable hourly rate, and consider numerous factors in deciding whether to award a multiplier." *Rawlings,* 9 F.3d at 516-17. *In re Cardizem Antitrust Ltig.,* 218 F.R.D. at 532 ("the lodestar method is too cumbersome and time-consuming of the resources of the Court" and "more importantly, the `percentage of the fund' approach more accurately reflects the result achieved."); *see* also *Fournier v.*

PFS Invs., Inc., 997 F.Supp. 828, 831-32 (E.D. Mich. 1998) (the percentage of recovery method "allows for a more accurate approximation of a reasonable award of fees.").

Moreover, "[w]ith the emphasis it places on the number of hours expended by counsel rather than the results obtained, it also provides incentives for overbilling and the avoidance of early settlement." *In re Cardizem Antitrust Litig.*, 218 F.R.D. at 517; *see also* Manual for Complex Litigation (Third) § 24.12 at 189 (West 1995). There is a "'trend towards adoption of a percentage-of-the-fund method in [common fund] cases.'" *In re Delphi*, 248 F.R.D. at 502 (quoting *Rawlings*, 9 F.3d at 516-517).

B. The Fee Requested by Counsel for the Auto Dealers is Appropriate.

The Court is well-versed with the complexity of this litigation; on the cases included in these settlements, counsel for the Auto Dealers worked for more than eight years and dedicated more than 100,000 hours of work from attorneys, paralegals, law clerks, and other processionals.[3] Interim Co–Lead Counsel coordinated the efforts of counsel representing the Auto Dealers to maximize efficiency and to avoid duplicative efforts and unnecessary billing. (Raiter Decl.) They also monitored counsel to avoid unauthorized work and have been mindful of the Auto Dealers' role in this litigation and the potential recoveries for their clients. *Id.*

Counsel for the Auto Dealers request that the Court award fees totaling 30 percent of the settlement funds remaining after the deduction of: (1) notice and administration costs, and (2) costs set aside for future litigation expenses.[4] Reasonable fee awards generally range from 20 to 50 percent

[3] *See* Declarations of Jonathan Cuneo, Don Barrett, Shawn Raiter, Gerard Mantese, Dewitt Lovelace, Tom Thrash, John Kakinuki, Charles Barrett, Brian Herrington, and Pierce Gore.

[4] Although not sought here, precedent supports applying the selected percentage to the settlement fund *before* deducting the litigation costs and expenses from the funds. *See, e.g., In re Sulzer Orthopedics, Inc.,* 398 F.3d 778, 780-82 (6th Cir. 2005) (affirming fee awards from a common benefit fund based on the gross settlement amount); *In re Packaged Ice Antitrust Litig.*, 2011 WL 6209188, at *17 ("The fee percentage is applied to the settlement fund before the separate award of litigation costs and expenses are deducted from the fund."); *In re Delphi*, 248 F.R.D. at 505 (attorneys' fees awarded on gross

of the common fund. *In re Telectronics Pacing Sys., Inc., Accufix Atrial "J" Leads Prods. Liab. Litig.,* 137 F.Supp.2d 1029, 1046 (S.D. Ohio 2001); *In re Cincinnati Gas & Elec. Co. Sec. Litig.,* 643 F. Supp. 148, 150 (S.D. Ohio 1986); Alba Conte & Herbert Newberg, *Newberg on Class Actions* (4th ed. 2002), §14:6 at 551 ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.").

Courts in the Sixth Circuit routinely approve attorneys' fees in antitrust class actions of one-third of the common fund created for the settlement class. *In re Packaged Ice Antitrust Litig.,* 2011 WL 6209188, at *19; *Thacker v. Chesapeake Appalachia, L.L.C.*, 695 F. Supp. 2d, 521, 528 (E.D. Ky. 2010); *Bessey v. Packerland Plainwell, Inc.*, No. 4:06-CV-95, 2007 WL 3173972, at *4 (W.D. Mich. 2007); *Delphi*, 248 F.R.D. at 502-03; *In re National Century Financial Enterprises, Inc. Investment Litig.*, 2009 WL 1473975 (S.D. Ohio May 27, 2009); *New England Health Care Employees Pension Fund v. Fruit of the Loom, Inc.*, 234 F.R.D. 627, 635 (W.D. Ky. 2006) ("[A] one-third fee from a common fund case has been found to be typical by several courts.') (citations omitted), *aff'd*, 534 F.3d 508 (6th Cir. 2008)*; Kogan v. AIMCO Fox Chase, L.P.,* 193 F.R.D. 496, 503 (E.D. Mich. 2000). For example, in *Prandin*, the court awarded one-third of a $19 million settlement fund and in *Skelaxin*, 2014 WL 2946459, at *1, the court awarded one-third of a $73 million settlement fund, finding that a "counsel fee of one-third is fair and reasonable and fully justified" and "within the range of fees ordinarily awarded." *See also In re Se. Milk Antitrust Litig.*, No. 2:07-CV 208, 2013 WL 2155387, at *8 (E.D. Tenn. May 17, 2013) (one-third fee from settlements totaling $158.6 million and finding that 33 percent "is certainly within the range of fees often awarded in common fund cases both nationwide and in the Sixth Circuit").[5]

---

settlement fund); *In re Cardizem Antitrust Litig.*, 218 F.R.D. at 531–535 (awarding costs in addition to percentage of the fund fee).

[5] The same is true in other districts. *See Standard Iron Works v. Arcelormittal*, 2014 WL 77815572, at *1 (N.D. Ill. Oct. 22, 2014) (attorneys' fee award of one-third of $163.9 million settlement); *In re Fasteners Antitrust Litig.*, No. CIV.A. 08-MD-1912, 2014 WL 296954, at *7 (E.D. Pa. Jan. 27, 2014) ("Co-Lead Counsel's request for one third of the settlement fund is consistent with other direct purchaser

Fee awards of more than one-third are also common. *See*, *e.g.*, *In re Combustion, Inc.*, 968 F. Supp. 1116, 1133, 1142 (W.D. La. 1997) (awarding fee of 36 percent and noting that "50 percent of the fund is the upper limit on a reasonable fee award from a common fund . . . . [D]istrict courts in the Fifth Circuit have awarded percentages of approximately one-third contingency fee"); *In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002) (fee of 36 percent); *Waters v. Intern. Precious Metals Corp.*, 190 F.3d 1291, 1292-94 (11th Cir. 1999); *In re Vitamins Antitrust Litig.*, 2001 WL 34312839, at *10 (D.D.C. 2001) (awarding one-third of $359 million antitrust recovery, which is "within the fifteen to forty-five percent range established in other cases."); *In re Ampicillin Antitrust Litig.*, 526 F. Supp. 494, 498 (D.D.C. 1981) (awarding fee of 45 percent).

Although the settlements benefitting the Auto Dealers are substantial, the Court should not apply a reduced fee percentage simply because the recoveries have grown. *See In re Se. Milk Antitrust Litig.*, 2013 WL 2155387 (stating that "the Court has not found any Sixth Circuit case endorsing [a reduced percentage] approach."). Numerous courts have criticized the "mega fund" approach because it may provide an incentive for counsel to settle early and for less money. *See, e.g., In re Cendant Corp. Litig.,* 264 F.3d 201, 284 n. 55 (3d Cir. 2001) ("[The megafund] position. . . has been criticized by respected courts and commentators, who contend that such a fee scale often gives counsel an incentive

---

antitrust actions."); *In re Titanium Dioxide Antitrust Litig.*, No. 10-CV-00318 RDB, 2013 WL 6577029, at *1 (D. Md. Dec. 13, 2013) (one-third fee from $163.5 million fund); *In re Flonase Antitrust Litig.*, 951 F. Supp. 2d 739, 748-52 (E.D. Pa. 2013) (noting that "in the last two-and-a-half years, courts in eight direct purchaser antitrust actions approved one-third fees" and awarding one-third fee from $150 million fund); *Heekin v. Anthem, Inc.*, No. 1:05-CV-01908-TWP, 2012 WL 5878032 (S.D. Ind. Nov. 20, 2012) (awarding one-third fee from $90 million settlement fund); *In re Ready-Mixed Concrete Antitrust Litig.*, No. 1:05-CV-00979-SEB, 2010 WL 3282591, at *3 (S.D. Ind. Aug. 17, 2010) (approving one-third fee); *Williams v. Sprint/United Mgmt. Co.*, No. CIV. 03-2200-JWL, 2007 WL 2694029, at *6 (D. Kan. Sept. 11, 2007)(awarding fees equal to 35 percent of $57 million common fund); *Lewis v. Wal-Mart Stores, Inc.*, No. 02-CV-0944 CVE FHM, 2006 WL 3505851, at *1 (N.D. Okla. Dec. 4, 2006) (awarding one-third of the settlement fund and noting that a "one-third [fee] is relatively standard in lawsuits that settle before trial."); *In re AremisSoft Corp., Sec., Litig.*, 210 F.R.D. 109, 134 (D.N.J. 2002) ("Scores of cases exist where fees were awarded in the one-third to one-half of the settlement fund.") (citations omitted); *Moore v. United States*, 63 Fed. CI. 781, 787 (2005) ("one-third is a typical recovery").

to settle cases too early and too cheaply.") (citation omitted); *Allapattah Services, Inc. v. Exxon Corp.,* 454 F. Supp. 2d 1185, 1213 (S.D. Fla. 2006) ("By not rewarding Class Counsel for the additional work necessary to achieve a better outcome for the class, the sliding scale approach creates the perverse incentive for Class Counsel to settle too early for too little."); *In re TFT-LCD (Flat Panel) Antitrust Litig.,* No. 07-md-01827 SI, 2013 WL 1365900, at *8 (N.D. Cal. Apr. 3, 2013) (awarding 28.6 percent of $1.082 billion settlement fund and expressly rejecting the suggestion that fees should be reduced based on the "mega fund" concept).

Many courts have awarded fees greater than 30 percent even for recoveries much larger than those made here by the Auto Dealers. *See, e.g., Allapattah,* 454 F. Supp. 2d at 1210-11 (awarding 31.5 percent of a $1.06 billion settlement fund and citing fourteen cases involving settlement funds between $40-$696 million with fee awards between 25 percent and 35 percent of the fund); *In re Cathode Ray Tube Antitrust Litig.,* No. C-07-5944-JST, 2016 U.S. Dist. LEXIS 102408, at *56 (N.D. Cal. Aug. 3, 2016) (awarding 27.5 percent of $576 million settlement fund); *In re IPO Secs. Litig.,* 671 F. Supp. 2d 467, 516 (S.D.N.Y. 2009) (awarding 33-1/3 percent of a $510,253,000 settlement fund); *In re Checking Account Overdraft Litig.,* 830 F. Supp. 2d 1330, 1358 (S.D. Fla. 2011) (awarding 30 percent of $410 million settlement fund); *In re Vitamins Antitrust Litig.*, 2001 U.S. Dist. LEXIS 25067, at *6 (awarding 34.06 percent of $359 million settlement fund).

The 30 percent attorney fee award being sought is fair and reasonable considering the work performed by counsel for the Auto Dealers, the results achieved, and the work undertaken. Beginning in 2011, some of the attorneys for the Auto Dealers worked full-time on this litigation. As described earlier in this brief, counsel for the Auto Dealers have performed, and continue to perform, an

enormous amount of work to achieve the settlements and to move these cases to conclusion. (Raiter Decl.)[6]

This litigation is much more complex than typical antitrust class actions. The DOJ describes its investigation of the bid-rigging and price-fixing conspiracies at issue here as the largest criminal cartel it has ever uncovered. The litigation involves at least 41 automotive component parts, many hundreds of affected vehicle models, and more than 160 foreign and domestic Defendants. There are 41 separately filed Auto Dealer class cases within this MDL. The Auto Dealers asserted claims under federal and state antitrust, consumer protection, and unjust enrichment laws. As indirect purchasers, their claims for damages and restitution are based on the laws of approximately thirty states and the District of Columbia.

The Auto Dealers' position in the distribution chain made them targets of discovery for both their own claims and for the claims of the End Payors. The Auto Dealers' position as intermediate indirect purchaser creates complex liability, damage, and class certification issues. *In re Flat Panel Antitrust Litig.,* 2013 U.S. Dist. LEXIS 49885, at *70; s*ee also In re Cathode Ray Tube (CRT) Antitrust Litig.,* MDL No. 1917, 2013 U.S. Dist. LEXIS 137945, at *65 (N.D. Cal. June 20, 2013) (recommending class certification for indirect purchasers and noting that the plaintiffs "still have the burden of demonstrating that there is a reasonable method for determining on a class-wide basis whether and to what extent that overcharge was passed on to each of the indirect purchasers at all levels of the distribution chain.") (internal quotation marks omitted); *In re Cardizem Antitrust Litig.,*

[6] In the Round One fee approval, the Court awarded counsel for the Auto Dealers one-third of the net settlement funds. *See* Order Regarding Auto Dealers' Motion for an Attorney of Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Awards, No. 2:12-md-00102-MOB-MKM, ECF Doc. No. 401 (E.D. Mich. 2015). In the Round Two fee approval, the Court awarded 20 percent and reserved awarding an additional 10 percent that is being held escrow. *See* Order Regarding Auto Dealers' Motion for an Attorney of Attorneys' Fees, Reimbursement of Litigation Expenses, and a Set Aside for Future Litigation Expenses, No. 2:12-md-00102-MOB-MKM, ECF Doc. No. 188 (E.D. Mich. 2016).

218 F.R.D. at 533 (granting indirect purchaser plaintiffs' motion for final approval and for attorneys' fees and noting that plaintiffs "also faced substantial additional difficulties as indirect purchasers.").

The Auto Dealers' role here caused them to carry a disproportionate share of the discovery burden of certain aspects of the indirect purchaser claims. Although the aggregate Auto Dealer settlement recoveries are substantial, they total about one-third of the amounts recovered by the End Payors. When viewed in the context of the work done by counsel for the Auto Dealers and the settlements achieved, the 30 percent fee requested in this motion is fair and reasonable.

C. Consideration of the Factors Used by the Sixth Circuit Supports the Requested Fee Award.

When using the percentage-of-the-fund approach, the Court will consider the six *Ramey* factors: (1) the value of the benefits rendered to the class; (2) society's stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others; (3) whether the services were undertaken on a contingent fee basis; (4) the value of the services on an hourly basis [the lodestar cross-check]; (5) the complexity of the litigation; and (6) the professional skill and standing of counsel on both sides. *Ramey*, 508 F.2d at 1194-97. When applied here, these factors confirm that the requested fee is fair.

1. Counsel Secured Valuable Benefits for Auto Dealers.

The result achieved for the class members is the principal consideration. *In re Delphi*, 248 F.R.D. at 503. As shown in the documents filed in support of the preliminary approval of the Round Four settlements, counsel for the Auto Dealers achieved excellent recoveries. These are cash settlements coupled with meaningful cooperation and, in many cases, injunctive relief against anti-competitive behavior. The settlement funds now total more than $87 million and represent a significant recovery for eligible Auto Dealers that sell new vehicles in the indirect purchaser states.

After the deduction of fees, notice and claims administration costs, and expenses, all the settlement funds will be paid to eligible dealerships that file a valid claim. None of the money will

revert to the settling Defendants or to a *cy pres* designee. Minimum payments of $350 will be made to eligible dealerships that file a claim for new vehicles and parts purchased in the indirect purchaser states. In addition to the money benefits, the cooperation terms of the settlements provide significant value to Auto Dealers in their prosecution of claims against any remaining non-settling Defendants. With this fourth round of settlements, approximately $385 million has already been recovered to benefit members of the Auto Dealer settlement classes who are eligible to receive money benefits. The monetary recovery alone is substantial but, when coupled with the cooperation and injunctive relief, the value of these Round Four settlements is considerable.

2. Society Has an Important Stake in Rewarding Attorneys With Reasonable Fees In This Litigation.

There is a "need in making fee awards to encourage attorneys to bring class actions to vindicate public policy (e.g., the antitrust laws) as well as the specific rights of private individuals." *In re Folding Carton Antitrust Litig.*, 84 F.R.D. 245, 260 (N.D. Ill. 1979). Courts in the Sixth Circuit weigh "society's stake in rewarding attorneys who [win favorable outcomes in antitrust class actions] in order to maintain an incentive to others . . . . Society's stake in rewarding attorneys who can produce such benefits in complex litigation such as in the case at bar counsels in favor of a generous fee . . . . Society also benefits from the prosecution and settlement of private antitrust litigation." *In re Cardizem CD Anittrust Litig.*, 218 F.R.D. at 534 (internal quotation marks omitted); *see also Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 653-54 (1985); *Alpine Pharmacy, Inc. v. Chas. Pfizer & Co.,* 481 F.2d 1045, 1050 (2d Cir.), *cert. denied*, 414 U.S. 1092 (1973); *Ramey,* 508 F.2d at 1196; *In re Delphi*, 248 F.R.D. at 504; *see also* Declaration of Arthur J. Miller, 2:12-md-02311-MOB-MKM, ECF Doc. No. 1398-1 (E.D. Mich. 2016); Declaration of Frank J. Kelley, 2:12-md-02311-MOB-MKM, ECF Doc. No. 1398-2 (E.D. Mich. 2016). Without the willingness of counsel to assume the risks inherent to these cases (or in other cases of similar magnitude and complexity) the settlement class members would not have recovered anything, let alone the substantial recoveries secured here.

The DOJ did not seek restitution from the settling Defendants. Any recovery for Auto Dealers needed to come through the effort of lawyers working on a contingent basis. The significant expenses, combined with the high degree of uncertainty of ultimate success, make contingent fees a virtual necessity for cases like these. The public interest is served by awarding compensation in an amount appropriate to encourage skilled attorneys to assume the risks of this type of litigation.

The substantial recoveries counsel for the Auto Dealers have achieved help serve the public policy of holding those who violate antitrust laws in the United States accountable. Society benefits when those who have violated laws fostering fair competition and honest pricing are required to reimburse affected consumers in civil proceedings. *Vendo v. Lektro-Vend Corp.*, 433 U.S. 623, 635 (1977) ("Section 16 undoubtedly embodies congressional policy favoring private enforcement of the antitrust laws, and undoubtedly there exists a strong national interest in antitrust enforcement."); *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 122 (2d Cir. 2005) (concluding that it is "especially important to provide appropriate incentives to attorneys pursuing antitrust actions because public policy relies on private sector enforcement of the antitrust laws.")

3. Counsel for the Auto Dealers Have Worked On A Contingent Basis.

Counsel for the Auto Dealers have and will continue to pursue this litigation on a contingent basis. The risk inherent to doing so supports a reasonable fee award from a common fund. *See In re Packaged Ice Antitrust Litig.*, 2011 WL 6209188, at *19 (risk of non-payment a factor supporting the requested fee). The contingency factor "stands as a proxy for the risk that attorneys will not recover compensation for the work they put into a case." *In re Cardinal Health Ins. Sec. Litig.*, 528 F. Supp. 2d at 766. Indeed, "'some courts consider the risk of non-recovery as the most important factor in fee determination.'" *Kritzer v. Safelite Solutions, LLC*, 2012 WL 1945144, at *9 (S.D. Ohio May 30, 2012) (quoting *Cardinal*, 528 F. Supp. 2d at 766). "[W]ithin the set of colorable legal claims, a higher risk of loss does argue for a higher fee." *In re Trans Union Corp. Privacy Litig.*, 629 F. 3d 741, 746 (7th Cir.

2011). "This antitrust litigation, like all litigation of its species, promises to be extremely complex and time intensive and there is no question that if settlement fails, the Defendants will mount a strong defense." *In re Packaged Ice*, 2011 WL 6209188, at *19.

The Sixth Circuit counsels that the specific characteristics of a class action case can govern the appropriateness of a fee award. *Rawlings*, 9 F.3d at 516 (finding that the district court can determine the appropriate method for calculating attorneys' fees considering the "unique characteristics of class actions"). The legal and factual issues surrounding these cases are extremely complex. Being rewarded only for success in litigation this complex creates a high degree of risk. The substantial risk undertaken by counsel for the Auto Dealers strongly favors the fee requested. *In re Delphi*, 248 F.R.D. at 503-54.

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

The Court is well-familiar that "[a]ntitrust class actions are inherently complex . . . ." *In re Cardizem Antitrust Litig.*, 218 F.R.D. at 533; *In re Packaged Ice Antitrust Litig.*, 2011 WL 6209188, at *19; *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 639 (E.D. Pa. 2003) ("An antitrust class action is arguably the most complex action to prosecute. The legal and factual issues involved are always numerous and uncertain in outcome.") (citations and internal quotation marks omitted).

Although any antitrust action is complex, the scale of this litigation magnifies that complexity. This litigation is decidedly complex given the numerous conspiracies and parts involved, the international Defendants, and the sheer magnitude of the conduct and regulatory investigations. This factor also supports the fee requested. Defendants focused their discovery efforts on the Auto Dealers and the Court is acquainted with much of the work done by counsel for the Auto Dealers. Responding to Defendants' nearly constant fusillade of discovery required the Auto Dealers and their attorneys to devote an enormous amount of time and resources. Defendants conducted 140 depositions of non-party and class representative Auto Dealers. The calculation of the indirect purchaser damages and

the preparation of the expert opinions necessary to calculate and present those damages are extremely complicated.

5. Skill and Experience of Counsel.

The skill and experience of counsel on both sides of the litigation is a factor courts consider in determining a reasonable fee award. *In Re Polyurethane Foam Antitrust Litig.*, No. 1:10 MD 2196, 2015 WL 1639269 at * 7; *In re Packaged Ice Antitrust Litig.*, 2011 WL 6209188, at *19. The Court has found that Interim Co-Lead Counsel have the requisite skill and experience in class action and antitrust litigation to serve effectively as class counsel for the Auto Dealers.

In assessing this *Ramey* factor, courts also look to the qualifications of the defense counsel opposing the class. Defense counsel here are also extremely well-qualified and experienced antitrust and class action firms. The Court has seen first-hand the skill of the attorneys and the quality of the work done to represent their respective clients. This factor supports the fee being requested by counsel for the Auto Dealers.

6. A Lodestar Cross-check Confirms that the Requested Fee Is Reasonable.

Some courts apply a lodestar "cross-check" on the reasonableness of the fee calculated as a percentage of the fund. *In re Cardinal Health Ins. Sec. Litig.*, 528 F. Supp. 2d at 764; *In re Packaged Ice Antitrust Litig.*, 2011 WL 6209188, at *18. A lodestar cross-check is optional, however, and the Court is not required to engage in a detailed scrutiny of time records. *In re Cardinal Health Ins. Litig.*, 528 F. Supp. 2d at 767. The cross-check does not require mathematical precision and it allows the Court to rely on summaries submitted by the attorneys and not review actual billing records. *In re Prudential Ins. Co. of America Sales Prac. Litig.*, 148 F.3d 283, 342 (3d Cir. 1998). Here, however, the time counsel for the Auto Dealers had to expend confirms that the fee requested is well "aligned with the amount of work the attorneys contributed" to the recovery and does not constitute a "windfall." *Id.*

To calculate a reasonable fee under the lodestar method, the court determines the base amount of the fee by multiplying the number of hours counsel reasonably expended by their hourly rate. *Isabel v. City of Memphis*, 404 F.3d 404, 415 (6th Cir. 2005). In multi-district cases involving multiple cases and defendants, the courts consider requests for attorneys' fees from partial settlements by looking at all of the work done on those cases to-date. *See, e.g., In re Air Cargo Shipping Servs. Antitrust Litig.*, 2015 WL 5918273 (granting fees from settlements with multiple defendants based on an analysis of all of the work done on the cases); *In re Processed Eggs Prods. Antitrust Litig.*, No. 08-md-2002, 2012 U.S. Dist. LEXIS 160764, at *18 (E.D. Pa. Nov. 9, 2012) (granting motion for attorneys' fees from settlement with single defendant based upon all work on case to-date).

The law firms that have worked to advance the claims of the Auto Dealers have done so under the direction of Interim Co-Lead Counsel for the Auto Dealers. An enormous amount of work has been done. Discovery has been extensive, and Defendants were relentless in their pursuit of discovery and motion practice directed at the Auto Dealers. Counsel for the Auto Dealers have received substantial cooperation provided by amnesty applicants and the settling Defendants and used that information to prosecute the claims against non-settling Defendants. All the while, counsel for the Auto Dealers prepared to certify classes and bring unsettled cases to trial.

Counsel for the Auto Dealers have vigorously prosecuted these cases but have done so efficiently and without unnecessary duplication. To calculate a lodestar for this optional cross-check, Auto Dealer attorneys and their firms provided declarations that set forth the timekeepers, customary rates, and hours worked to advance the litigation for the Auto Dealers. As shown in those declarations, counsel representing the Auto Dealers and their professional staff have worked more than 100,624 hours to advance the cases involved in the Round Four settlements (up to September 30, 2019). (*See* Declarations of Don Barrett, Jonathan Cuneo, Shawn Raiter, Gerard Mantese, Dewitt

Lovelace, Tom Thrash, John Kakinuki, Charles Barrett, Brian Herrington, and Pierce Gore).[7] The total lodestar for the work done by counsel for the Auto Dealers is $86,502,565.17. (Raiter Decl.)

Using the cumulative hours worked for the parts cases included in the Round Four settlements recognizes that the work previously done by counsel for the Auto Dealers applied to and assisted the cases currently before the Court. This Court, and others, has concluded that it is appropriate to count the cumulative lodestar in a cross-check. *See In re Se. Milk Antitrust Litig.*, 2013 U.S. Dist. LEXIS 70167, at *26-27; *Lobatz v. U.S. West Cellular of California, Inc.*, 222 F.3d 1142 (9th Cir. 2000); *see also* 2:12-cv-00103-MOB-MKM, ECF Doc. No. 578, fn. 2 (E.D. Mich. 2017).

The Auto Dealers' lodestar is conservative because it does not include the time spent prosecuting these cases since September 30, 2019 or the time that will continue to be needed to bring the cases to conclusion and final judgment. While the hours already worked are substantial, they are reasonable and reflect the challenging nature of the litigation. Defendants are represented by extremely capable counsel who have asserted vigorous defenses. Defendants' efforts have required the Auto Dealers to expend considerable effort and skill in prosecuting these cases.

As the starting point for the lodestar cross-check, the hourly rates of Auto Dealer counsel are reasonable for attorneys with specialized experience in bringing antitrust cases. "A reasonable hourly rate is determined according to the prevailing market rates in the relevant community. To ascertain that community, district courts 'are free to look to a national market, an area of specialization market, or any other market they believe appropriate to fairly compensate particular attorneys in individual cases." *Ford v. Fed.-Mogul Corp.*, No. 2:09-cv-14448, 2015 U.S. Dist. LEXIS 3399, at *2-3 (E.D. Mich. Jan. 7, 2015) (quoting *McHugh v. Olympia Entm't, Inc.*, 37 F. App'x 730, 740 (6th Cir. 2002)). Even if

[7] Counsel have provided declarations and summaries of the time spent on this litigation. Unlike the lodestar-based fee request in *Shane Grp., Inc. v. Blue Cross Blue Shield of Michigan*, 825 F.3d 299 (6th Cir. 2016), the cross-check used in a percentage-of-the-fund request may be based on summaries of time spent by counsel. *Cardinal*, 528 F. Supp. 2d at 767; *In re Prudential*, 148 F.3d at 342.

counsel's "requested rates are high for this district. . . Class Counsel should be compensated at rates that reflect their skill and their success." *Schumacher v. AK Steel Corp. Ret. Accumulation Pension Plan*, 995 F. Supp. 2d 835, 847 (S.D. Ohio 2014).

The Auto Dealer counsel charging the highest hourly rates are well within the parameters of reasonableness. In national markets, "partners routinely charge between $1,200 and $1,300 an hour, with top rates at several large law firms exceeding $1,400.[8] In specialties such as "antitrust and high-stakes litigation and appeals . . . [f]or lawyers at the very top of those fields, hourly rates can hit $1,800 or even $1,950." *Id.* Some "difference makers" in the most complex fields, including antitrust litigation, even charge $2,000 an hour.[9] This Court has recognized that rates charged by End Payor and Direct Purchaser counsel in this matter, which in some cases significantly exceed those being charged by counsel for the Auto Dealers, "are well in line with the market, with recent reports explaining that senior lawyers at top law firms routinely charge well over $1,000." *See, e.g.,* 2:12-cv-00103-MOB-MKM (Doc. No. 578) at 7.[10]

---

[8] *See* Sara Randazzo & Jacqueline Palank, *Legal Fees Cross New Mark: $1,500 an Hour*, The Wall Street Journal (Feb. 16, 2016), https://www.wsj.com/articles/legal-fees-reach-new-pinnacle¬1-500-an-hour-1454960708; *see also* Martha Neil, *Top partner billing rates at BigLaw firms approach $1,500 per hour*, ABA Journal (Feb. 8, 2016), http://www.abajournal.comnews/article/toppartner billing rates at biglaw firms nudge 1500 per hour.

[9] *See* Natalie Rodriguez, *Meet the $2,000 An Hour Attorney: What it Takes to Earn Top Dollar in the Rate-Crunch Era*, Law360, June 11, 2016, https://www.1aw360.com/in-depth/articles/804421 ("[E]arlier this year, BTI Consulting Group found that a handful of in-house counsel had paid as much as $2,000 per hour, after discounts, to attorneys in the past year. Several other in-house counsel, meanwhile, had paid highs of $1,900 per hour or $1,800 per hour."

[10] The use of current rates is appropriate to compensate counsel for inflation and the delay in receipt of the funds. *Missouri v. Jenkins*, 491 U.S. 274, 282-84 (1989); *see also Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 483 U.S. 711, 716 (1987). This approach has been approved by the Sixth Circuit Court of Appeals and has been used in the fee awards made in this MDL. *See* 2:12-cv-00103-MOB-MKM, ECF Doc. No. 578, para. 18 (E.D. Mich. 2017).

The requested fee is $26,170,859.00, which represents 30 percent of the Round Four settlement funds after notice and administration expenses have been deducted.[11] The Court previously awarded counsel for the Auto Dealers attorneys' fees of $76,764,245.00 in the first three rounds of Auto Dealer settlements. Adding those awards to the fees sought here results in a cumulative award of $102,935,104.00. Comparing that fee total to the total lodestar for the work done on all Auto Dealer cases results in a multiplier of time spent to-date of approximately 1.19 of the lodestar.[12]

Whether analyzed as a "cross-check" on the percentage-of-the-fund method—or under the lodestar method—the requested fee is reasonable. The requested fee represents a "multiplier" of 1.19 of the lodestar. This multiplier is reasonable and much lower than the multipliers approved in other cases. *See, e.g.*, *In re Cardinal Health Ins. Sec. Litig.*, 528 F. Supp. 2d at 767-68 (approving multiplier of 6, and observing that "[m]ost courts agree that the typical lodestar multiplier" on a large class action "ranges from 1.3 to 4.5"); *In re Prandin Direct Purchase Antitrust Litig.*, 2015 WL 1396473, at *4 (3.01 multiplier); see also Order Granting Interim Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Costs and Expenses, No. 2:12-cv-00601-MOB-MKM, ECF Doc. No. 128, para. 19 (awarding direct purchaser fees of 2.09 times the lodestar) (E.D. Mich. 2015); Order granting Direct Purchaser's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Costs and Expenses, No. 2:17-cv-04201-MOB-MKM, ECF Doc. No. 21 (awarding direct purchaser fees of 1.79 times the lodestar) (E.D. Mich. 2018).

Given the excellent results achieved, the complexity of the claims and defenses, the real risk of non-recovery, the formidable defense teams, the delay in receipt of payment, and the substantial experience and skill of counsel, the requested multiplier on the lodestar and the resulting fee is reasonable compensation for the work done by counsel for the Auto Dealers. With no guarantee

[11] The calculation is ($87,586,196 – $350,000.00) X .30 = $26,170,859.00.

[12] The calculation is $102,935,104 ÷ $86,502,565.17 = 1.189.

about the extent of work required to conclude the litigation or the fees that will be generated from that work, it is possible that the multiplier on the current lodestar will be eroded.

Conclusion

For the foregoing reasons, Interim Co-Lead Counsel for the Auto Dealers respectfully request that the Court grant their motion and award attorneys' fees and reimbursement of already incurred litigation expenses.

Dated: November 8, 2019

By: /s/ Gerard V. Mantese
Gerard V. Mantese (P34424)
MANTESE HONIGMAN, P.C.
1361 E. Big Beaver Road
Troy, MI 48083
Telephone: (248) 457-9200 Ext. 203
Facsimile: (248) 457-9201
gmantese@manteselaw.com

Interim Liaison Counsel for the Automobile Dealer Plaintiffs

Jonathan W. Cuneo
CUNEO GILBERT & LADUCA, LLP
4725 Wisconsin Ave, NW, Suite 200
Washington, DC 20016
Telephone: (202) 789-3960
Facsimile: (202) 789-1813
jonc@cuneolaw.com

Don Barrett
BARRETT LAW GROUP, P.A.
P.O. Box 927
404 Court Square
Lexington, MS 39095
Telephone: (662) 834-2488
Facsimile: (662)834.2628
dbarrett@barrettlawgroup.com

Shawn M. Raiter
LARSON KING, LLP
2800 Wells Fargo Place
30 East Seventh Street
St. Paul, MN 55101
Telephone: (651) 312-6500
Facsimile: (651) 312-6618
sraiter@larsonking.com

Interim Co-Lead Counsel for Automobile Dealer Plaintiffs

CERTIFICATE OF SERVICE

I, Gerard V. Mantese, hereby certify that I caused a true and correct copy of **AUTO DEALERS' MEMORANDUM IN SUPPORT OF MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES FOR ROUND FOUR SETTLEMENTS** to be served via e-mail upon all registered counsel of record via the Court's CM/ECF system on November 8, 2019.

/s/ Gerard V. Mantese
Gerard V. Mantese