UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

Fond Du Lac Bumper Exchange, Inc., and Roberts Wholesale Body Parts, Inc. on Behalf of Themselves and Others Similarly Situated,

Plaintiffs,

v.

Jui Li Enterprise Company, Ltd., et al.,

Defendants.

Case No. 2:09-cv-00852-LA

MEMORANDUM OF LAW IN SUPPORT OF DIRECT PURCHASER PLAINTIFFS' CLASS COUNSEL'S MOTION FOR AN INTERIM AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND APPROVAL OF SERVICE AWARDS FOR CLASS REPRESENTATIVES

INTRODUCTION

Class Counsel, Jason S. Hartley of Stueve Siegel Hanson, LLP and Vincent J. Esades of Heins Mills & Olson, P.L.C., and their respective law firms began their investigation into the alleged conspiracy to fix-prices and limit supply of Aftermarket Automotive Sheet Metal Parts nearly six years ago. In the time between then and the Settlements achieved with the Tong Yang Defendants and Gordon Defendant,[1] Class Counsel and their legal team successfully prepared a detailed Second Amended Complaint, defeated motions to dismiss and for summary judgment, engaged in extensive discovery-related motion practice, reviewed millions of pages of documents (mostly Chinese- language business records) and took numerous depositions (mostly of the Defendants' executives and employees located in Taiwan), retained and consulted a preeminent antitrust economist, analyzed Defendants' transactional data productions in preparation for class certification, and engaged in protracted, arm's length settlement negotiations. This extraordinary effort resulted in cumulative settlements of $25 million with the Tong Yang Defendants and the Gordon Defendant. As explained more fully herein and in Direct Purchaser Plaintiffs' prior motions for preliminary approval of the Settlements (ECF Nos. 630-633 and 606-608), this is an excellent result for the Class.

Pursuant to the terms of the Settlements, the Court's preliminary approval orders (ECF Nos. 619 and 641) and Rule 23(h) of the Federal Rules of Civil Procedure, Class Counsel respectfully submit this memorandum in support of their Motion for an Interim Award of Attorneys' Fees, Reimbursement of Litigation Expenses, and Approval of Incentive Awards for Class Representatives from the Settlement Fund. As compensation for their significant work on

[1] Tong Yang Industry Co. Ltd, Taiwan Kai Yih Industrial Co. Ltd., and TYG Products, LP are herein collectively referred to as the "Tong Yang Defendants" and Gordon Auto Body Parts Co. Ltd. is herein referred to as the "Gordon Defendant" or "Gordon".

behalf of the Class, Class Counsel seek an award of one-third of the $20 million Settlement Fund (the fund amount *after* withholding of Taiwan taxes[2] (hereinafter "Settlement Fund")) in the amount of $6,600,000.[3] Class Counsel respectfully submit that this fee is eminently fair and reasonable given that Direct Purchaser Plaintiffs' counsel have invested over 35,681 professional hours, valued at more than $14,823,638 and invested $1,391,787.77 without any guarantee of payment.

To date, no Class Member has objected to either the proposed Settlements or to Class Counsel's request for fees or reimbursement of expenses. Additionally, to date, not a single Class Member has opted-out of the Class. Given the complexity of the litigation, involving an international price-fixing conspiracy of foreign defendants, and the fact that most members of the Settlement Class are businesses, many of which have legal counsel of their own, the fact that, to date, no Class Member has objected to the Settlements or opted-out of the Class speaks volumes about the quality of the Settlements and the remarkable result achieved by Class Counsel on behalf of the Class.

Taking into consideration the magnitude of Class Counsel's investment in this action, the complexity of the litigation and the unique risks and challenges the case posed, and the excellent result achieved for the Class, the requested fee is fair and reasonable whether measured as a

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[2] Under Taiwan law, the settlement amount paid to the payee of funds is subject to a withholding tax of 20% of the funds because those funds originate in Taiwan. The payors (the Tong Yang Defendants and Gordon Defendant) are required to make that deduction before the funds leave Taiwan. Pursuant to the terms of the Settlement Agreements, the Tong Yang Defendants and Gordon Defendant are obligated to produce proof of this tax deduction. Class Counsel are investigating the possibility of receiving a refund on the amount withheld or a tax credit for Class Members.

[3] The Declaration of Jason S. Hartley ("Hartley Decl.") which accompanies this motion contains a description of the history of the litigation, the work performed by DPPs' counsel, and negotiation, finalization, and preliminary approval of the Settlements. Class Counsel also submit in support of this motion a summary of all firms' fees and expenses (Hartley Decl. Ex. 1), a summary of expenses (*Id.* Ex. 2), and the declarations of each firm requesting attorneys' fees and expenses in this case (*Id*. Exs. 3-16) for the Court's review.

percentage of the common fund or with respect to Class Counsel's lodestar, and is amply supported by the relevant case law.

I. ARGUMENT

A. The Requested Attorneys' Fees Are Fair and Reasonable

It is well-settled that attorneys who, by their efforts, create a common fund for the benefit of a class are entitled to reasonable compensation for their services. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("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"); *Florin v. Nationsbank of Ga., N.A.* ("Florin I"), 34 F.3d 560, 563 (7th Cir. 1994) ("When a case results in the creation of a common fund for the benefit of the plaintiff class, the common fund doctrine allows plaintiffs' attorneys to petition the court to recover its fees out of the fund."). Courts have recognized that, in addition to providing just compensation, substantial counsel fees encourage forceful prosecution of cases. *See Halverson v. Convenient Food Mart, Inc.*, 458 F.2d 927, 931 n.5 (7th Cir. 1972). Moreover, providing reasonable attorneys' fees in successful private antitrust actions promotes "[p]rivate antitrust litigation [which] is widely recognized as an effective supplement to government enforcement of the antitrust laws and contributes to the maintenance of a competitive economy." *In re Clark Oil & Refining Corp. Antitrust Litig.*, 422 F. Supp. 503, 510 (E.D. Wis. 1976) (citing *Hawaii v. Standard Oil Co. of Cal.*, 405 U.S. 251, 262 (1972)).

In making the determination regarding the appropriate amount of attorneys' fees to be awarded to counsel who have successfully prosecuted litigation on behalf of a class, the Seventh Circuit has instructed:

> "[W]hen deciding on appropriate fee levels in common-fund cases, courts must do their best to award counsel the market price for legal services, in

> light of the risk of nonpayment and the normal rate of compensation in the market at the time."

Taubenfeld v. Aon Corp. 415 F.3d 597, 599 (7th Cir. 2005) (citation omitted); *see also In re Synthroid Mktg. Litig.*, 264 F.3d 712, 718 (7th Cir. 2001) (same). In affirming an award of fees equal to nearly one third of the settlement fund plus expenses, the Seventh Circuit considered, among others, the following factors: (1) "awards made by courts in other class actions" which "amount[ed] to 30-39% of the settlement fund"; (2) "the quality of legal services rendered"; and (3) "the contingent nature of the case." *Taubenfeld*, 415 F.3d at 600. An examination of these three factors demonstrates that an award of attorneys' fees equal to one-third of the Settlement Fund is both fair and reasonable.

B. The Requested Fees are Fair and Reasonable as a Percentage of the Fund

The Seventh Circuit has strongly endorsed the percentage of the fund method, pursuant to which fees are awarded as a percentage of the total recovery, because it most closely approximates the manner in which attorneys are compensated in the marketplace for contingent work. *See Gaskill v. Gordon*, 160 F.3d 361, 362 (7th Cir. 1998) ("When a class suit produces a· fund for the class, it is commonplace to award the lawyers for the class a percentage of the fund in recognition of the fact that most suits for damages in this country are handled on the plaintiff's side on a contingent-fee basis.") (citation omitted). The Seventh Circuit also recognized "that there are advantages to utilizing the percentage method in common fund cases because of its relative simplicity of administration." *Florin I*, 34 F.3d at 566; *see also In re Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 573 (7th Cir. 1992) (noting it is easier to award a percentage "than it would be to hassle over every item or category of hours and expenses and what multiple to fix and so

forth").[4] The fee award requested here, amounting to one-third of the recovery, is reasonable and well-justified in light of the significant risks faced in the litigation, the obstacles overcome, and the quality of Class Counsel's work.

Moreover, the requested fee is also plainly consistent with fee awards made by courts in other, similar cases. In complex class action cases like this one, percentages in the range of 33% to 40% of the recovery have been held appropriate within the Seventh Circuit. *See Retsky Family Ltd. P'ship v. Price Waterhouse LLP*, No. 97 C 7694, 2001 WL 1568856, at *4 (N.D. Ill. Dec. 10, 2001) ("A customary contingency fee would range from 33 1/3% to 40% of the amount recovered."); *Goldsmith v. Tech. Solutions Co.*, No. 92 C 4374, 1995 WL 17009594, at *8 (N.D. Ill. Oct. 10, 1995) ("Thus, where the percentage method is utilized, courts in this District commonly award attorneys' fees equal to approximately one-third or more of the recovery."); *see also In re Dairy Farmers of Am., Inc. Cheese Antitrust Litig.*, No. 09-cv-3690, 2015 WL 753946, at *3 (N.D. Ill. Feb. 20, 2015) (awarding counsel one third of $46 million common fund and noting that the percentage method "has emerged as the favored method for calculating fees in common-fund cases").[5] Consistent with the foregoing, Class Counsel respectfully request that

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[4] Although the Seventh Circuit has strongly endorsed the percentage method, district courts retain discretion to choose either the percentage or lodestar method of calculating fees. *See, e.g., American Art China Co., v. Foxfire Printing and Packaging, Inc.*, 743 F.3d 243, 247 (7th Cir. 2014).

[5] *See also, e.g., Campbell v. Advantage Sales & Mktg. LLC*, No. 1:09-01430-LSM-MJD, 2012 WL 1424417, at *2 (S.D. Ind. Apr. 24, 2012) (awarding one-third of recovery as attorneys' fees); *In re Ready Mixed Concrete Antitrust Litig.*, No. 05-cv-00979-SEB-TAB, 2010 WL 3282591, at *3 (S.D. Ind. Aug. 17, 2010) (awarding 33.3% of the common fund as fees in direct-purchaser antitrust action); *Taubenfeld*, 415 F.3d at 600 (affirming award of 30%); *McKinnie v. JP Morgan Chase Bank, NA.*, 678 F. Supp. 2d 806, 816 (E.D. Wis. 2009) (awarding 30% of common fund); *Great Neck Capital Appreciation Inv. P'ship, L.P. v. PricewaterhouseCoopers, L.L.C.*, 212 F.R.D. 400, 417 (E.D. Wis. 2002) (approving 30% fee award); *Retsky*, 2001 WL 1568856, at *4-5 (awarding 33 1/3% of fund); *Goldsmith*, 1995 WL 17009594, at *9 (awarding fee of 33 1/3%); *Long v. Trans World Airlines, Inc*., No. 86 C 7521, 1993 WL 121824, at *2 (N.D. Ill. Apr. 19, 1993) (32% of settlement or $1.3 million); *see also In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 516 (S.D.N.Y. 2009) (33.3% of $586 million settlement); *In re Bisys Sec. Litig*., No. 04 Civ. 3840(JSR), 2007 WL 2049726, at *3 (S.D.N.Y. July 16, 2007) (30% of $65.87 million settlement); *In re Priceline.com, Inc. Sec. Litig*., No. 3:00-CV-1884(AVC), 2007 WL 2115592, at *5 (D. Conn. Jan. 20, 2007) (30% of $80 million settlement); *Nichols v. SmithKline Beecham Corp*., No. Civ.A.00-6222, 2005 WL 950616, at *24 (E.D. Pa. Apr. 22, 2005) (approving 30% fee); *In re Linerboard Antitrust Litig*., No. MDL 1261,

the Court adopt the percentage of the fund approach and award one-third of the common fund as attorneys' fees.

C. The Lodestar/Multiplier Method Confirms the Requested Attorneys' Fees are Fair and Reasonable

Using the lodestar/multiplier method as a cross-check confirms the appropriateness of the requested fees. The lodestar/multiplier method entails multiplying the number of hours each attorney or other professional expended on the case by his or her hourly rate to derive the lodestar figure. *See, e.g., Great Neck*, 212 F.R.D. at 411. The court then typically adjusts the lodestar, by applying a multiplier, to reflect factors such as the contingent nature of the case, the consequent risk of non-payment (or under-payment), and the quality of work performed. "[A] risk multiplier is not merely available in a common fund case but mandated, if the court finds that counsel 'had no sure source of compensation for the services.'" *Florin I*, 34 F.3d at 565 (quoting *In re Cont'l Ill. Sec. Litig.*, 962 F.2d at 569) ("The need for such an adjustment is particularly acute in class action suits."). There are numerous class actions in which plaintiffs' counsel expended thousands of hours and advanced significant[6] litigation expenses on behalf of a proposed class and yet received no remuneration whatsoever, despite their hard work and expertise.

As the Seventh Circuit has emphasized, "court[s] must also be careful to sustain the incentive for attorneys to continue to represent such clients on an 'inescapably contingent' basis." *Florin v. Nationsbank of Ga., N.A.* ("*Florin II*"), 60 F.3d 1245, 1247 (7th Cir. 1995) (citation omitted). *See also Gaskill*, 160 F.3d at 363 (recognizing contingent-fee contracts "shift

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Civ.A. 98-5055, Civ.A. 99-1000, Civ.A. 99-1341, 2004 WL1221350,*17 (E.D. Pa. June 2, 2004) (approving 30% fee of a $202 million settlement in an antitrust class action).

[6] *See also In re Prudential Sec. Ltd. P'ships Litig.*, 985 F. Supp. 410, 414 (S.D.N.Y. 1997) ("Because counsel who rendered services were not being compensated for their work as it was being performed and because of the significant risk that they might never receive any compensation if the action was unsuccessful, courts have, when warranted, applied a multiplier to the lodestar to arrive at a fair contingent fee.").

part of the risk of loss from client to lawyer"). This is particularly true in complex antitrust matters, which are notoriously complex and risky, and frequently involve unpredictable "battles of experts." *See In re Linerboard Antitrust Litig.*, 2004 WL 1221350, at *16 (using a multiplier to "reflect the risks of nonpayment facing counsel, to serve as an incentive for counsel to undertake socially beneficial litigation, or as a reward to counsel for an extraordinary result" in a complex antitrust matter); *see also Skelton v. Gen. Motors Corp.*, 860 F.2d 250, 253 (7th Cir. 1988) ("The stronger the defense, the higher the risk involved in bringing the suit and the greater the multiplier necessary to compensate plaintiff's attorney for bringing the action.").

From the beginning of the litigation years ago, the possibility existed that Plaintiffs would not prevail on a given motion, trial, or appeal and that Class Counsel and their team of lawyers would receive no compensation. Despite years of work, to date Class Counsel have received no compensation. Class Counsel here were not "assured of a paycheck." *See Florin II*, 60 F.3d at 1247. Nonetheless, they collectively risked significant amounts of time and expense to achieve a recovery for the Class.

Here, Plaintiffs' counsel collectively expended approximately 35,681.92 hours of professional time[7] prosecuting the Class's claims. Hartley Decl. ¶ 46. Counsel's total lodestar, derived by multiplying the number of hours by each firm's historical[8] hourly rates, amounts to more than 14,823,636.23. *Id*. The requested fee of $6,600,000 reflects a negative multiplier of .45. *Id*. ¶ 47. In short, Class Counsel at this time request an interim award that is significantly

[7] Since it is customary to bill paralegals at hourly rates, it is appropriate to include their time in the lodestar. *In re Cont'l Ill. Sec. Litig.*, 962 F.2d at 569. Courts have recognized the economic value of using paralegals to do work that otherwise would be performed by attorneys. *See id., United States Football League v. Nat'l Football League*, 887 F.2d 408, 416 (2d Cir. 1989).

[8] Courts have held use of current rates is appropriate to compensate counsel for the loss of use of funds. *See Smith v. Vill. of Maywood*, 17 F.3d 219, 221 (7th Cir. 1994) ("A court may elect to use ... current rates ... as acceptable compensation for the delay in payment of fees."); *Heder v. City of Two Rivers*, 255 F. Supp. 2d 947, 958 (E.D. Wis. 2003) ("awarding fees at the current rate ... is an accepted method"). Class Counsel's use here of historical rates, in lieu of current rates, results in a smaller lodestar and a more conservative fee request.

less than the lodestar to date. Given the risks Class Counsel endured in bringing this complex international price-fixing case (unsupported by any parallel proceedings by the United States Department of Justice) and the overwhelming case law supporting the use of risk multipliers, the fees requested are plainly conservative and reasonable. As discussed in greater detail in the accompanying Declaration of Jason S. Hartley, during the course of this litigation Class Counsel have, among other things:

- Researched the law pertinent to the claims against Defendants and the potential defenses thereto;
- Prepared a detailed Second Amended complaint based on the extensive factual and expert information Class Counsel collected;
- Researched and drafted comprehensive briefs (and assembled supporting materials) in opposition to Defendants' motions to dismiss and for summary judgment;
- Prepared and served numerous discovery requests on Defendants;
- Responded to numerous discovery requests propounded by Defendants including responses to Defendants' onerous contention interrogatories;
- Briefed and argued multiple discovery disputes before this Court including at monthly status conferences;
- Prepared and served subpoenas for the production of documents on third parties;
- Engaged in the protracted negotiation of discovery issues with Defendants including the negotiation of an ESI protocol, a protective order, document custodians, keywords, and a search methodology.

- Briefed and argued eight motions to compel against Defendants upon which Plaintiffs prevailed in part or in total.
- Reviewed and analyzed hundreds of thousands of documents, consisting of millions of pages, produced by Defendants and third parties in this litigation, including Defendants' Chinese-language business records.
- Prepared for and conducted numerous depositions including the interpreted depositions of Defendants' executives and employees in Taiwan;
- Retained and consulted the preeminent antitrust economist, Dr. Russell Lamb, to examine the economics of the aftermarket sheet metal industry, to analyze Defendants' transactional data, and prepare for class certification;
- Conducted discovery regarding issues related to the Defendants' transactional data, including attorney proffers which were verified by Defendants as interrogatory responses;
- Managed an extensive document review including the training and oversight of numerous document review attorneys, including Chinese-fluent bilingual attorneys;
- Conducted arm's-length settlement negotiations with the Tong Yang Defendants and Gordon Defendant over the course of months with the assistance of a mediator;
- Prepared and negotiated the Settlement Agreements;
- Prepared the motions and briefs in support of Preliminary Approval of the Tong Yang and Gordon Settlements;

- Coordinated issuance of Notice and various settlement administration-related matters with the Claims Administrator and with the escrow agent that is presently holding the Settlement Fund assets in an interest-bearing account for the benefit of the Class; and
- Communicated with the Class Representatives with updates on litigation status throughout the course of the litigation.

See Hartley Decl. at ¶¶ 2-37,41, 55.

Class Counsel, through the course of the litigation, made every effort to be efficient in litigating this action. As much as possible, Class Counsel managed the assignment of work in this case to avoid unnecessarily duplicative or overlapping work.

Courts have held the hourly rates to be applied in calculating the lodestar are those normally charged for similar work by attorneys of comparable skill and experience in the community where the attorney practices. *See In re Synthroid*, 264 F.3d at 718 ("when deciding on appropriate fee levels in common-fund cases, courts must do their best to award counsel the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time").[9] "The attorney's actual billing rate for comparable work is 'presumptively appropriate' to use as the market rate." *Aspacher v. Rosenthal Collins Group*, No. 00 C 7520, 2001 WL 1386614, at *1 (N.D. Ill. Nov. 7, 2001) (quoting *People Who*

[9] *See also Kirchoff v. Flynn*, 786 F.2d 320, 324 (7th Cir. 1986) ("When the 'prevailing' method of compensating lawyers for 'similar services' is the contingent fee, then the contingent fee *is* the 'market rate'"); *Luciano v. Olsten Corp.*, 109 F.3d 111, 115 (2d Cir. 1997) ("[t]he 'lodestar' figure should be 'in line with those [rates] prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation'"); *In re NASDAQ Mkt.-Makers Antitrust Litig*., 187 F.R.D. 465, 489 (S.D.N.Y. 1998) (appropriate rate in performing lodestar analysis is "the rate 'normally charged for similar work by attorneys of like skill in the area,' taking into account factors such as the experience of the attorney performing the work and the type of work performed").

Care v. Rockford Bd. of Educ., 90 F.3d 1307, 1310 (7th Cir. 1996)). *See also In re Cont'l Ill. Sec. Litig.*, 962 F.2d at 569 ("lawyers ... are entitled to be compensated at market rates").

The hourly fee rates of Direct Purchaser Plaintiffs' counsel are the same as the regular rates historically charged for their services, which have been approved in other complex class action litigation. *See* Hartley Decl. ¶ 47. In short, the hours expended by Direct Purchaser Plaintiffs' Counsel, which produced the Settlements, were reasonable in view of the work performed and the developed stage of the litigation (including the near-close of extensive deposition discovery), and the complexity of the claims asserted.

D. The Quality of Legal Services Rendered Supports the Fee Request

Class Counsel respectfully submit that they rendered superior representation to the Class through their efforts and persistence in litigating this complex international antitrust action. The "prosecution and management of a complex national class action requires unique legal skills and abilities." *Edmonds v. United States*, 658 F. Supp. 1126, 1137 (D.S.C. 1987). Class Counsel practice extensively in the challenging field of antitrust litigation and have skillfully litigated these types of actions in courts across the country. *See* Hartley Decl.¶ 48. This expertise proved essential in litigating the Class's claims.

Throughout the course of this case, Class Counsel were confronted with a number of legal and factual challenges in establishing, among other things, the details and extent of the illegal conspiracy among Defendants, antitrust impact, and damages. Further, the Defendants asserted a number of affirmative defenses to the Class's claims.

Despite the substantial complexity of the case, Class Counsel litigated to great effect and led the Class in achieving this remarkable recovery. It was through the extensive efforts of Class Counsel in preparing a detailed complaint following a comprehensive investigation, successfully opposing Defendants' motions to dismiss and for summary judgment, and persevering through

numerous challenges in discovery – including prevailing on numerous motions to compel – to develop Direct Purchaser Plaintiffs' claims, that Class Counsel secured the Tong Yang and Gordon Settlements.

E. To Date, No Class Member Has Objected to the Fee and Expense Request

In accordance with the Court's Order granting preliminary approval of the Joint Notice Plan (*See* ECF No. 641) copies of the Long-Form Notice regarding the proposed settlements of this class action, the settlement fairness hearing and Class Counsel's motion for an award of attorneys' fees and reimbursement of litigation expenses ("the Notice") were directly distributed to potential class members. *See* Declaration of Carla Peak accompanying Plaintiffs' Motion for Preliminary Approval; Preliminary Approval Order (ECF Nos. 633-1; 641). In addition, this information was posted on a website maintained by the Claims Administrator pursuant to the Court-approved Notice Plan. Hartley Decl. ¶ 56.

The Notice advised Class Members that Class Counsel would be seeking fees of up to 33 1/3% of the Settlement Fund, after withholding for Taiwan taxes, and reimbursement of expenses. *See* Long-Form Notice Exhibit 1 to Declaration of Carla Peak accompanying Plaintiffs' Motion for Preliminary Approval (ECF No. 633-1). The Notice further apprised Class Members of their right to object to this motion for fees and expenses. *Id.* The Court's deadline for filing objections or requests for exclusion from the Class is June 29, 2015. (ECF No. 641). To date, no Class Member has objected to the Settlements or to Class Counsel's request for attorneys' fees and expenses and no Class Member has opted-out of the Class. The fact that not one Class Member has objected to the motion for fees and expenses to date highlights the reasonableness of the fee and expense award sought, especially where, as here, the Class is

comprised of businesses, many of which likely have their own counsel.[10] *See In re Remeron Direct Purchaser Antitrust Litig.*, No. Civ. 03-0085 FSH, 2005 WL 3008808, at *13 (D.N.J. Nov. 9, 2005) ("The lack of objections from the Class supports the reasonableness of the fee request.").

II. THE REQUEST FOR REIMBURSEMENT OF COSTS AND EXPENSES IS FAIR AND REASONABLE.

Class Counsel seek reimbursement from the Settlement Fund of $1,391,787.77 in litigation expenses reasonably and actually incurred by Class Counsel in connection with commencing and prosecuting the claims against the Defendants.[11] Courts regularly award reimbursement of the expenses counsel incurred in prosecuting the litigation. *See Spicer v. Chicago Bd. Options Exch., Inc*., 844 F. Supp. 1226, 1256-57 (N.D. Ill. 1993) (detailing and awarding expenses incurred during litigation); *Miltland Raleigh-Durham v. Myers*, 840 F. Supp. 235, 239 (S.D.N.Y. 1993) ("Attorneys may be compensated for reasonable out-of-pocket expenses incurred and customarily charged to their clients, as long as they 'were incidental and necessary to the representation' of those clients.").[12] In prosecuting this complex antitrust action, Class Counsel collectively have incurred litigation costs and expenses in the total amount of $1,391,787.77. Hartley Decl. ¶ 46, Ex. 2.

These costs and expenses were incidental and necessary to the prosecution of the Class's claims, and are set forth in the Hartley Declaration (¶ 46, Exs. 1-2) and the declarations of the

[11] Expenses related to the Notice and claims administration process are separate and already recoverable from the Settlement Fund pursuant to paragraphs 22 of the Settlement Agreements which have been approved by the Court. *See* Tong Yang Settlement Agreement (ECF No. 607, Ex. A. Hartley Decl.); Gordon Settlement Agreement (ECF No. 632, Ex. A. Hartley Decl.) and Preliminary Approval Orders (ECF Nos. 619 and 641), approving Settlements).
[12] *In re Ikon Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166, 192 (E.D. Pa. 2000) ("Counsel for each firm has submitted an affidavit attesting to the unreimbursed expenses paid out, and the court sees no reason to disallow any particular category or claim.").

individual firms involved in the prosecution of this case. *Id*. Exs. 3-16. Two significant components of these expenses were (1) the retention and consultation of Direct Purchaser Plaintiffs' expert antitrust economist, and (2) expenses incurred in the preparation and taking of depositions in Taiwan, including court reporter expenses, interpreter expenses, document translation expenses, and international travel expenses. *Id*. ¶ 50. As these expenses were critical to achieving the excellent result obtained for the Class, and fully reasonable in light of the demands of this complex antitrust case, Class Counsel respectfully request that their expenses be reimbursed.

III. THE REQUEST FOR SERVICE AWARDS FOR THE TWO CLASS REPRESENTATIVES IS FAIR AND REASONABLE.

Class Counsel respectfully request that the Court approve service awards to the Settlement Class Representatives, Fond Du Lac Bumper Exchange, Inc. and Roberts Wholesale Body Parts, Inc., payable from the Settlement Fund, in recognition of their services as class representatives in this litigation. Class Counsel request an award of $25,000 for each representative from the Tong Yang Settlement and $10,000 for each representative from the Gordon Settlement.

Service payments sufficient to induce a named plaintiff to participate in the lawsuit are appropriate within the Seventh Circuit. *See In re Cont'l Ill. Sec. Litig.*, 962 F.2d at 571. Further, by participating as named plaintiffs in this litigation, these Class Representatives opened themselves to scrutiny and attention which, in and of itself, has been found worthy of remuneration. *See Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 600-01 (N.D. Ill. 2011). The Class Representatives also courageously stepped forward notwithstanding the possibility that the Defendants could have retaliated by cutting off their product supply, which, if such concerns materialized, would have had a crippling effect on Plaintiff Fond du Lac's

business. Retaliation fears in this industry were a substantial reason more complaints were not filed around the country, which is typical in nationwide antitrust cases like this. *See* Hartley Decl. ¶ 54.

These two Class Representatives have shouldered a substantial burden during the several years of this litigation, including conferring with counsel regarding the litigation and the aftermarket sheet metal industry, responding to Defendants' requests for production of documents and interrogatories, and reviewing and approving the settlements. As the case continues, and discovery draws to a close, Roberts Wholesale has already prepared and presented a corporate representative for deposition pursuant to Defendants' Rule 30(b)(6) deposition notices and Fond du Lac Bumper will be presenting its corporate representative for deposition on June 23. *Id.* ¶ 35. Each of the Class Representatives could have simply waited for the outcome of the litigation. Instead, they stepped into a leadership role and invested their time and effort in moving the case forward on behalf of the Class.

Importantly, the Notice plan in this case notified Class Members that Class Counsel would be seeking service awards in the exact amounts described above. Class Counsel have received no objections to the proposed service awards to date, which bears significantly on the reasonableness and fairness of the request. *Id.* ¶ 56. Indeed, the requested service awards are fair and within the range of awards deemed reasonable under relevant case law. *See, e.g.*, *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (affirming service awards of $25,000 out of $13 million settlement); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 376 (S.D. Ohio 1990) (court approved two service awards of $55,000.00 and three of $35,000.00 to five representative plaintiffs). As such, and because each Class Representative provided valuable

services that benefitted the Class as a whole, Class Counsel request that the proposed service awards be approved.

IV. CONCLUSION

Class Counsel respectfully request that the Court approve their motion for an award of attorneys' fees equal to one third of the Settlement Fund to be paid out of the Settlement Fund ($6,600,000). In addition, Class Counsel request reimbursement of $1,391,787.77 from the Settlement Fund for reimbursement of their actual costs and expenses incurred in connection with their representation of the Class in this Action. Finally, Class Counsel respectfully request that the Court approve service awards for the two class representatives in the amount of $25,000 each and $10,000 each from the Tong Yang Settlement and the Gordon Settlement, respectively.

Dated: June 9, 2015

Respectfully submitted,

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