

**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 IN SUPPORT OF DIRECT PURCHASER PLAINTIFFS'
MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT WITH
GORDON AUTO BODY PARTS CO. LTD.**

INTRODUCTION

Plaintiffs, on behalf of themselves and other members of a proposed settlement class of Direct Purchaser Plaintiffs (“DPPs”), respectfully submit this memorandum in support of their motion for an order granting preliminary approval of a settlement (the “Settlement”) with Gordon Auto Body Parts Co. Ltd. (“Gordon”).¹ To facilitate the Settlement, DPPs also ask the Court to certify a settlement class (the “Settlement Class” or “Class”), appoint Fond du Lac Bumper Exchange Inc. and Roberts Wholesale Body Parts Inc. as the Settlement Class representatives, appoint Vincent J. Esades of Heins Mills & Olson, P.L.C. (“Heins Mills”) and Jason S. Hartley of Stueve Siegel Hanson, LLP (“Stueve Siegel”) as Co-Lead Settlement Class Counsel and K. Scott Wagner of Hale & Wagner, S.C. as Liaison Settlement Class Counsel, direct dissemination and publication of notice to the members of the Settlement Class, and set a schedule for final approval of the Settlement.

The Settlement provides that Gordon will pay \$9 million for the benefit of the Settlement Class, with no less than \$7.2 million to be placed into escrow following a 20% mandatory Taiwanese withholding tax. Plaintiffs and Gordon also entered into a confidential letter agreement detailing additional terms of the Settlement, very similar to the one previously entered in the Tong Yang settlement. In return for the payment and Gordon’s promised cooperation, DPPs will release all claims asserted in this action against Gordon.

This is the second settlement reached in the case. On March 6, 2015, the DPPs and the Tong Yang Defendants (Tong Yang Industrial Co. Ltd. and TYG Products Inc.) reached a settlement for \$16 million. On April 24, 2015, this Court entered its order granting preliminary

¹ The Settlement Agreement, fully executed on April 29, 2015, is attached as Exhibit A to the accompanying Declaration of Jason S. Hartley (“Hartley Decl.”). The Settlement Agreement does not affect DPPs’ claims against Jui Li Enterprise Co. Ltd. (“Jui Li”), or Auto Parts Industrial Ltd. (“API”) and Cornerstone Auto Parts, LLC (“Cornerstone”) (collectively, the “Remaining Defendants”).

approval of that settlement and certified a settlement class. (ECF. No. 619). The final approval hearing for the Tong Yang settlement is currently set for August 14, 2015.

DPPs' Interim Co-Lead Counsel believe that the Gordon Settlement, reached only after five years of vigorous litigation and intensive arm's-length negotiations, is an excellent result for the Settlement Class. As detailed below, the Settlement reflects experienced counsel's thorough consideration and balancing of all relevant circumstances, including the risk of trial, the expense of further litigation against Gordon, the relative strengths and weaknesses of the claims and defenses asserted by the parties, the substantial benefits obtained for the Class, the financial condition of the defendant, and the uncertainty of enforcing a United States judgment in Taiwan.

For these reasons, the Settlement is well within the range of possible approval sufficient to justify notifying the Settlement Class Members and setting a final fairness hearing. In particular, given the close proximity in time between the Tong Yang settlement and the Gordon settlement, notice of both settlements may occur at the same time through a joint notice program that will minimize confusion to Class members, conserve notice costs to the Class, and facilitate a consolidated Final Approval Hearing during which class members may be heard regarding the settlements. Accordingly, Plaintiffs respectfully request that the Court, upon full consideration of Plaintiffs' motion, grant preliminary approval by May 7, 2015 so that Notice can be effectuated efficiently and as ordered by the Court for the Tong Yang settlement.

I. PROCEDURAL HISTORY

A. Consolidation of Actions

This litigation began in September 2009 with the filing of two putative class actions against the Settling and Non-Settling Defendants (collectively, "Defendants") on behalf of direct purchasers: *Vehimax International, LLC v. Jui Li Enterprise Co., Ltd., et al.* (C.D. Cal. Case No.

2:09-6437) (“Vehimax”) in the Central District of California; and *Fond Du Lac Bumper Exchange, Inc. v. Jui Li Enterprises Co. Ltd. et al.*, No. 2:09-cv-00852-LA (E.D. Wis.). Both alleged that Defendants violated Section 1 of the Sherman Act by engaging in a horizontal conspiracy to fix prices and output of aftermarket automotive sheet metal parts.

On December 3, 2009, the Judicial Panel on Multidistrict Litigation denied a motion by Vehimax International, LLC, supported by the other parties, to transfer *Vehimax* to this Court for coordinated or consolidated pretrial proceedings. ECF No. 8. As suggested in the Manual for Complex Litigation, counsel for Vehimax and Fond Du Lac Bumper Exchange, Inc. (“Fond Du Lac”) then agreed that the *Fond du Lac* case, because it was more procedurally advanced, should be designated as the lead case to avoid or minimize duplicative activity and conflicts and conserve judicial resources, and that *Vehimax* should be stayed. Accordingly, Fond du Lac filed a First Amended Complaint (“FAC”) in this Court on January 8, 2010. ECF No. 32.

On February 9, 2010, Vehimax moved the California court to stay the pretrial proceedings in its case. On the same day, pursuant to agreement of counsel for Fond Du Lac and Vehimax, Fond Du Lac asked this Court to designate *Fond Du Lac* as the lead case. ECF No. 36. Defendants opposed the stay motion and moved to transfer *Vehimax* to this Court pursuant to 28 U.S.C. § 1404(a). The California district court denied the motion to stay and transferred *Vehimax* on March 16, 2010.

On May 4, 2010, this Court consolidated the two actions for all purposes and ordered that the FAC would be the operative complaint for both. (The motion to designate a lead case was accordingly denied as moot.) ECF No. 63. On September 16, 2010, the Court designated Vincent J. Esades of Heins Mills and Jason S. Hartley of Stueve Siegel as DPPs’ Interim Co-Lead

Counsel for the consolidated cases, and K. Scott Wagner of Hale & Wagner, S.C. as DPPs' Interim Liaison Counsel. ECF No. 126.

On February 2, 2011, Roberts Wholesale Body Parts Inc. ("Roberts") moved to intervene as a DPP. ECF No. 152. The Court granted that motion and on March 29, 2011 ordered consolidation of DPPs' actions with actions brought on behalf of indirect purchasers. ECF No. 57. DPPs filed their Second Amended Class Action Complaint ("SACAC") on August 3, 2011. ECF No. 217. The SACAC became the operative complaint in this action, superseding the FAC.²

B. DISPOSITIVE MOTIONS

On May 11, 2010, Defendants filed four separate motions challenging all or part of the First Amended Complaint ("FAC"). In one, API, Cornerstone, Gordon, Taiwan Kai Yih, and TYG Products moved to dismiss the FAC under Rule 12(b)(6) and under Rule 12(c) for judgment on the pleadings. ECF No. 71. In another, Taiwan Kai Yih, Cornerstone, Gordon, TYG Products and API moved to dismiss the FAC under Rule 12(b)(1) and a provision of the Foreign Trade Antitrust Improvements Act (15 U.S.C. § 6a) for lack of subject matter jurisdiction. ECF No. 74. In the third, TYG Products moved for partial summary judgment on the claims against it. ECF No. 76. Finally, Defendants moved for partial summary judgment on the grounds that sales of AM Sheet Metal Parts before September 3, 2005 were time-barred. ECF No. 71.

A week later, on May 18, 2010, Taiwan Kai Yih, Gordon, API, TYG Products, and Cornerstone sought a stay of discovery until the Court decided the pending motions. ECF No. 80. On June 17, 2010, after being served with the FAC, Defendant Jui Li filed its own 12(b)(6) and 12(b)(1) motions, and the next day it also moved for a stay. ECF Nos. 84, 86 & 92.

² Vehimax has since been dismissed as a Class representative, and its complaint was dismissed pursuant to a motion filed by Defendants on January 31, 2011 and not opposed by DPPs. ECF No. 291.

On November 30, 2010, the Court denied all of the dispositive motions. ECF No. 129. On December 30, 2010, API and Cornerstone responded with motions to reconsider asking the Court to either grant their 12(b)(1) motions or certify both the 12(b)(1) and 12(b)(6) motions for interlocutory appeal. ECF No. 138. On March 4, 2011, Gordon brought a motion seeking the same relief. ECF No. 162. The Court denied the motions on July 6, 2011. ECF No. 201.

C. DOCUMENT DISCOVERY AND DISCOVERY DISPUTES

DPPs have engaged in extensive discovery for more than five years, serving their first requests on Defendants on April 12, 2010. The discovery process has been protracted by numerous discovery battles, requiring DPPs to repeatedly move to compel discovery from Defendants. DPPs filed no fewer than eight motions to compel discovery or to enforce one of the Court's orders (not counting DPPs' numerous requests for discovery orders during the Court's monthly status conferences). These include the following motions, all of which were fully briefed, supported by declarations and exhibits, and argued before the Court:

- a. On May 13, 2011 DPPs filed a Motion to Compel Responses to Plaintiffs' First Set of Document Requests to Defendants (ECF No. 179);
- b. On August 29, 2011 DPPs filed a Motion to Compel Rule 30(b)(6) Depositions of Defendants (ECF No. 229);
- c. On December 2, 2011 DPPs filed a Motion to Compel the Production of Documents (ECF No. 241);
- d. On March 13, 2012 DPPs filed a Motion to Compel Defendants' Production of Discovery and for an Order Setting a Timetable for Production (ECF No. 270);
- e. On October 11, 2012 DPPs filed a Motion to Compel Production of Documents by TYG Products, L.P., and for Sanctions (ECF No. 320);

- f. On December 5, 2012 DPPs filed a Motion to Enforce Court Orders and to Compel the Immediate Production of Electronic Files from Defendants (ECF No. 335);
- g. On November 22, 2013 DPPs filed a Motion for Sanctions and to Compel the Immediate Production of Defendants' ESI and Other Appropriate Relief (ECF No. 410); and
- h. On February 27, 2014 DPPs filed an Expedited Motion Pursuant to Civil Local Rule 7(h) to Compel the Production of Documents (ECF No. 447).

The motions were either granted in whole or in part by the Court or were reserved pending further attempts by the parties to resolve their disputes.

In addition to document discovery propounded on Defendants, DPPs subpoenaed documents from several third parties, including KerenOr Consultants (Defendants' jointly-retained consultant); the Auto Body Parts Association (a U.S. aftermarket automotive sheet metal parts trade association); the Certified Automotive Parts Association (an aftermarket auto parts certification organization); and Kenneth J. Rubin (counsel for Superior Production Partnership in *Superior Production Partnership d/b/a PBSI v. Gordon Auto Body Parts Co.*, 2:06-cv-916 (S.D. Ohio)). DPPs negotiated with counsel to the third parties regarding the scope of the *subpoenas deuces tecum*. DPPs inspected the documents produced by KerenOr Consultants and the Auto Body Parts Association in Washington, D.C. and Houston, Texas, respectively.

DPPs propounded seventeen sets of Interrogatories upon Defendants. DPPs met and conferred extensively with Defendants regarding their interrogatory responses and contested several of Defendants' interrogatory responses. DPPs also propounded requests for admission to API. DPPs, likewise, responded to four sets of Defendants' document requests and produced documents from the named plaintiffs to Defendants. DPPs also responded to seven sets of

Defendants' interrogatories to Direct Purchaser Plaintiffs, including responses to Defendants' onerous contention interrogatories.

D. DPPS' DOCUMENT REVIEW

After Defendants failed to timely produce documents in discovery, DPPs spent numerous hours assisting Defendants Gordon, Tong Yang, Jui Li, and TYG Products in revising and refining their ESI search methodology. DPPs negotiated and agreed upon keywords and a methodology for identifying documents that these Defendants indicated would locate documents responsive to DPPs' document requests and the Court's discovery orders. DPPs also assisted these Defendants by identifying document custodians that Defendants failed to identify or disclose.

DPPs reviewed hundreds of thousands of documents that Defendants ultimately produced in discovery. In doing so, DPPs established, organized, and managed a Relativity database of over nine hundred thousand documents, including Chinese-language business documents and extensive spreadsheets. DPPs trained and managed a team of document review attorneys, including bi-lingual, Chinese-fluent attorneys, in reviewing and organizing Defendants' documents. In this ongoing process, DPPs hierarchized the review of Defendants' documents while identifying issues and deficiencies with Defendants' productions. DPPs identified and compiled Defendants' documents that support the allegations in the SACAC and translated key documents to use in depositions and to prepare for class certification and summary judgment.

E. DEPOSITION DISCOVERY

DPPs conducted or took part in numerous depositions in this litigation including Rule 30(b)(6) depositions of each of the Defendants and depositions of Defendants' executives and current employees. Depositions taken in the litigation to date include the following:

- a. Rule 30(b)(6) deposition of API on February 14, 2012 in Taipei, Taiwan.
- b. Rule 30(b)(6) deposition of Jui Li on February 15, 2012 in Taipei, Taiwan.
- c. Rule 30(b)(6) deposition of Taiwan Kai Yih Industrial on February 16, 2012 in Taipei, Taiwan.
- d. Rule 30(b)(6) deposition of Gordon Auto Body Parts on February 17, 2012 in Taipei, Taiwan.
- e. Third party deposition of KerenOr Consultants on January 24, 2012 in Washington, D.C.
- f. Rule 30(b)(6) deposition of Cornerstone, Inc. on August 8, 2012 in Troy, Michigan.
- g. Rule 30(b)(6) deposition of TYG Products on August 9, 2012 in Troy, Michigan.
- h. Deposition of Henry Lin of API on August 26, 2014 in Taipei, Taiwan.
- i. Deposition of Jack Hsieh of API on August 27, 2014 in Taipei, Taiwan.
- j. Deposition of K.D. Cheng of API on August 28, 2014 in Taipei, Taiwan.
- k. Rule 30(b)(6) deposition of API regarding transactional data and amount of commerce on September 26, 2014 in Taipei, Taiwan.
- l. Deposition of Zhao Long Chen of API on September 29-30, 2014 in Taipei, Taiwan.
- m. Deposition of Sheila Tung of API on October 1-2, 2014 in Taipei, Taiwan.
- n. Deposition of Richard Wang of Gordon, on October 8-9, 2014 in Taipei, Taiwan.
- o. Deposition of Jones Lin of Gordon, on October 29-30, 2014 in Taipei, Taiwan.
- p. Deposition of Joseph Guan of Jui Li on November 3-4, 2014 in Taipei, Taiwan.
- q. Deposition of Angus Tai of Gordon on November 6-7, 2014 in Taipei, Taiwan.
- r. Deposition of Kevin Wang of Jui Li on November 13-14, 2014 in Taipei, Taiwan.
- s. Deposition of Richard Li of Jui Li on November 18-19, 2014 in Taipei, Taiwan.

t. Deposition of Yong Kun Lin of API on November 22, 2014 in Taipei, Taiwan.

The majority of depositions in this litigation required lengthy and expensive travel to Taiwan and required the assistance of an interpreter to translate between English and Mandarin Chinese. DPPs' preparation for these depositions involved the selection and translation of Defendants' Chinese-language business records into English for use as exhibits at the depositions.

F. ONGOING DISCOVERY

As the Court is well aware, discovery remains contentious. Since December 2013 the Court ordered nearly monthly status conferences. In preparation for these status conferences, Plaintiffs met and conferred with Defendants and briefed outstanding discovery issues for the Court in Status Conference Statements. *See* ECF Nos. 458, 463, 473, 474, 484, 491, 502, 516, 518, 530, 557, 592, 604 & 617. At the status conferences, Plaintiffs raised and argued numerous discovery issues before the Court. The parties skirmished over the Defendants' conduct in discovery, the adequacy of Defendants' document productions, and deposition parameters, including the number and duration of depositions.

On September 30, 2014, Defendants moved the Court to reconsider part of its September 22, 2014 discovery Order requiring Defendants to provide information regarding their former employees. ECF No. 509. DPPs opposed that motion, which the Court denied. ECF No. 521. Most recently, Plaintiffs filed a Motion for Evidentiary Relief under FRCP 37(b) Due to Defendants' Discovery Failures which is currently pending. ECF Nos. 621-625.

G. ECONOMIC ANALYSIS

In prosecuting this antitrust case, DPPs retained and consulted the renowned antitrust economist, Dr. Russell Lamb of Nathan Associates Inc., who examined the economics of the

aftermarket automotive sheet metal parts industry and developed a class certification report and regression analysis demonstrating class-wide antitrust impact and damages to the Settlement Class Members. DPPs consulted Dr. Lamb and his staff throughout the course of this litigation on a wide range of substantive issues, including evidence common to the Class in support of Plaintiffs' claims, class certification requirements, and damages. This information was important in preparing pleadings, deposing witnesses, reviewing documents, briefing issues, and evaluating the fairness of the Settlement to the Class.

Dr. Lamb interpreted Defendants' transactional data for use in his regression analysis. This process involved meet and confer teleconferences and numerous written correspondence between DPPs and Defendants to interpret and understand the fields and content of Defendants' transactional data. DPPs also engaged in an extensive attorney proffer process with Defendants Gordon, TYG Products, Gordon, and Jui Li to understand the scope of those Defendants' transactional data and their amount of commerce. The results of these proffers were reduced to formal discovery responses, verified by those Defendants.

II. SETTLEMENT NEGOTIATIONS

In August, 2014, all Defendants and DPPs engaged in mediation before Martin Quinn of JAMS in San Francisco, California. Although the mediation was unsuccessful, DPPs and Gordon continued settlement negotiations including further efforts with the assistance of the mediator. These efforts at settlement were conducted through numerous teleconferences and emails between DPPs and Gordon. Following months of settlement negotiations, in November 2014, the DPPs and Gordon all but finalized a Memorandum of Understanding to settle the DPPs' claims against Gordon. Unfortunately, issues soon arose regarding the payment of the settlement amount. Again, DPPs, Gordon, and the mediator spent months working through these

issues in an attempt to preserve the settlement. Over the nine month period since the mediation, DPPs either emailed or teleconferenced with the mediator on tens of occasions.

DPPs and Gordon ultimately entered into a Memorandum of Understanding that was signed on March 19, 2015. After further discussions to finalize the settlement terms, the parties executed a final Settlement Agreement on April 29, 2015.

III. SETTLEMENT TERMS

The Settlement Agreement requires Gordon to make five equal payments totaling \$9,000,000 into an interest-bearing escrow account (“Gross Settlement Fund”). Settlement Agreement, Hartley Decl. Ex. A, at ¶ 19. Under Taiwanese law, a withholding tax of 20% must be paid before the funds are deposited into a United States based escrow account. Accordingly, the Settlement Fund that will be deposited into the United States based escrow account will be no less than \$7,200,000. *Id.* (“Settlement Fund”). The first payment of USD\$1.44 million net to the designated United States escrow account will be made by May 14, 2015; the second payment of USD\$1.44 million net to the designated United States escrow account will be made by October 15, 2015; the third payment of USD\$1.44 million net to the designated United States escrow account will be made by April 15, 2016; the fourth payment of USD\$1.44 million net to the designated United States escrow account will be made by October 15, 2016; and the fifth payment of USD\$1.44 million net to the designated United States escrow account will be made by April 15, 2017. *Id.* In addition, Gordon has agreed to assist Plaintiffs to seek a refund of the Taiwan tax if Plaintiffs pursue a refund. *Id.* ¶ 20.

Subject to the Court’s approval, the cost of providing notice of the Settlement to the members of the Settlement Class and for claims administration may be paid from the Settlement Fund, none of which are recoverable by the Settling Defendant if the Settlement does not become

final. *Id.* ¶ 22. Under the terms of the Settlement Agreement, any attorneys’ fees, costs, expenses, or service awards awarded by the Court shall be payable from the Settlement Fund. *Id.* ¶ 25.

Class Counsel will seek attorneys’ fees of up to 33% of the Settlement Fund (after withholding of the Taiwanese tax) and incentive awards of \$10,000 each payable to the two Named Plaintiffs.

IV. ARGUMENT

Federal courts have developed a well-accepted procedure and specific criteria for approval of class action settlements under Rule 23(e). The process entails three steps:

1. Certification of a settlement class and preliminary approval of the proposed settlement;
2. Dissemination of notice of the proposed settlement to the class members; and
3. A fairness hearing, also called the final approval hearing, at which class members may be heard regarding the settlement, and at which the parties may introduce evidence and present argument concerning the fairness, adequacy, and reasonableness of the settlement.

This procedure safeguards class members’ procedural due process rights and enables the Court to fulfill its role as guardian of class interests. *See* 4 NEWBERG ON CLASS ACTIONS §§ 11.22 *et seq.* (4th ed. 2002) (“NEWBERG”) (describing class action settlement procedure).

In this motion DPPs ask the Court to take the first step by certifying a settlement class and preliminarily approving the proposed Settlement. DPPs further request that the Court appoint the Named Plaintiffs as Class Representatives and appoint Interim Co-Lead and Liaison Class Counsel as Co-Lead Settlement Class Counsel and Liaison Settlement Class Counsel, respectively. DPPs also seek the Court’s approval of their proposed class notice program so that the second step of the approval process, notice to all affected class members, may occur.

A. Because the Settlement Is Within the Range of Possible Approval, the Court Should Grant Preliminary Approval Under Rule 23(e).

“Federal courts naturally favor the settlement of class action litigation.” *Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir.1996). Indeed, “[i]t is axiomatic that the federal courts look with great favor upon the voluntary resolution of litigation through settlement. In the class action context in particular, there is an overriding public interest in favor of settlement.” *Armstrong v. Bd. of Sch. Dirs. of City of Milwaukee*, 616 F.2d 305, 312-13 (7th Cir. 1980), *overruled on other grounds by Felzen v. Andreas*, 134 F.3d 873 (7th Cir. 1998) (quotations omitted). Evaluations of fairness, reasonableness, and adequacy require that the facts be viewed in a light most favorable to the settlement. *Isby v. Bayh*, 75 F.3d at 1199.

As the first step in the settlement approval process, the Court must decide whether to grant preliminary approval of the Settlement. To do this, the Court determines whether the Settlement is within the range of possible approval sufficient to justify sending notice to the Class and holding a final approval hearing. *See In re AT&T Mobility Wireless Data Servs. Sales Litig.*, 270 F.R.D. 330, 346 (N.D. Ill. 2010). At this preliminary approval stage, “the court’s task is merely to determine whether the proposed settlement is within the range of possible approval, not to conduct a full-fledged inquiry into whether the settlement meets Rule 23(e)’s standards.” *Am. Int’l Grp., Inc. v. ACE INA Holdings, Inc.*, Nos. 07 C 2898, 09 C 2026, 2011 WL 3290302, *6 (N.D. Ill. July 26, 2011) (quotation omitted); *see also In re Bromine Antitrust Litig.*, 203 F.R.D. 403, 416 (S.D. Ind. 2001).

Only after notice to the Settlement Class and the fairness hearing will the Court decide whether to grant final approval of the Settlement. In so doing, the standard to be applied is whether the Settlement is fair, reasonable, and adequate. *Isby*, 75 F.3d at 1196; *E.E.O.C. v. Hiram Walker & Sons, Inc.*, 768 F.2d 884, 889 (7th Cir. 1985).

The Seventh Circuit has identified five primary factors for the Court to consider in deciding whether to preliminarily approve the Settlement. They are “the strength of plaintiffs’ case compared to the amount of defendants’ settlement offer, an assessment of the likely complexity, length and expense of the litigation, an evaluation of the amount of opposition to settlement among affected parties, the opinion of competent counsel, and the stage of the proceedings and the amount of discovery completed at the time of the settlement.” *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006) (quoting *Isby*, 75 F.3d at 1199). All of these factors support preliminary approval of the Settlement.

1. The Settlement Properly Considers the Strength of DPPs’ Case.

“The most important factor relevant to the fairness of a class action settlement is the first one listed: the strength of the plaintiffs’ case on the merits balanced against the amount offered in the settlement.” *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d at 653 (internal citation and quotes omitted). “Because the essence of settlement is compromise, courts should not reject a settlement solely because it does not provide a complete victory to plaintiffs.” *In re AT & T Mobility*, 270 F.R.D. at 347 (citation omitted); see *Isby*, 75 F.3d at 1200.

This factor strongly militates in favor of preliminary approval. The Settlement provides \$9,000,000 paid on behalf of the Settlement Class, which will result in a Settlement Fund of at least \$7,200,000 following the mandatory Taiwanese withholding tax. The Class Members will be advised that the Class may be entitled to a tax credit of the 20% payment to the Taiwanese government to offset U.S. taxes, if any, due on the settlement proceeds; alternatively Gordon has agreed to assist Plaintiffs if they decide to seek a refund from the Taiwan government of the tax. This is a substantial recovery in view of the challenges of litigating an international price-fixing conspiracy against Gordon, whose central operations are located in Taiwan. But the benefit of

the Settlement goes beyond the cash payment. The Settlement compounds the already strong message to the Non-Settling Defendants that they must now defend DPPs' claims without any further financial and litigation support from Gordon. As the few remaining Non-Settling Defendants know, the Settlement leaves them exposed to joint and several liability for all damages caused by the conspiracy and to potential trebling of those damages. *See Paper Systems Inc. v. Nippon Paper Indus. Co.*, 281 F.3d 629, 633 (7th Cir. 2002) (recognizing that in antitrust cases "[j]oint and several liability is another vital instrument for maximizing deterrence"); *see also In re Corrugated Container Antitrust Litig.*, MDL 310, 1981 WL 2093, at *23 (S.D. Tex. June 22, 1981) (noting that settlements typically lead to others and that "the coercive impact of such a strategy, combined with the law on joint and several liability ... is increasingly great as one settlement succeeds another").

The cash payout provided by the Settlement represents a valuable benefit to the Class that will aid in the ongoing litigation against the Non-Settling Defendants. In addition to this value, the Settlement obviates the need for DPPs to face the additional expense and risk of continued litigation against the Gordon. Antitrust class actions are "notoriously complex, protracted, and bitterly fought," *Weseley v. Spear, Leeds & Kellogg*, 711 F. Supp. 713, 719 (E.D.N.Y. 1989). Continued litigation against Gordon "'would require the resolution of many difficult and complex issues,' would 'entail considerable additional expense,' and would 'likely involve weeks, perhaps months, of trial time.'" *Isby*, 75 F.3d at 1199 (quoting *Taifa v. Bayh*, 846 F. Supp. 723, 727 (N.D. Ind. 1994)).

Although DPPs and their counsel believe that their claims have substantial merit, they also recognize that an antitrust plaintiffs' case is fraught with issues that loom as potential obstacles to success at trial or on appeal. The determination of both liability and damages

invariably entails a battle of experts who typically proffer conflicting testimony about conceptually and factually complex matters. The reaction of a jury to contradictory and typically arcane expert testimony is notoriously unpredictable. Other uncertainty also inheres in the trial process. The Settlement, in part, reflects the possibility that a jury might award no damages or only a fraction of the claimed damages. It also recognizes there is no guarantee that any judgment would ultimately be sustained by the trial court or on appeal, or that it would be successfully enforced in Taiwan.

As detailed above, Interim Co-Lead Counsel conducted a thorough investigation of the facts alleged; reviewed and analyzed hundreds of thousands of pages of documents produced by Defendants; and took numerous depositions, including of Defendants and their executives and employees in Taiwan. The parties also participated in extensive settlement negotiations, with the assistance of a respected mediator, where the parties' respective claims and defenses were debated. The negotiations were informed by a number of the Court's rulings and a mature factual record which gave Interim Co-Lead Counsel a thorough understanding of the strengths and weaknesses of DPPs' claims, as well as the difficulty of obtaining a more favorable result after continued litigation.

2. The Substantial Complexity, Time, and Expense of Continued Litigation Also Favors the Settlement.

Although this case has reached a fairly advanced stage, with most of the discovery having been conducted, the complexity of an antitrust case like this one leaves a great deal of litigation to be waged between DPPs and Gordon in the absence of the Settlement. In addition to completing the remaining merits discovery, proceeding with litigation between the parties will entail a motion for class certification, expert discovery, exchanging expert reports, a potential summary judgment motion, any *Daubert* proceedings, extensive trial preparation, a lengthy jury

trial, and likely an appeal. Because a substantial part of this litigation would be specific to the claims against Gordon, the Settlement avoids a significant portion of the heavy costs, enormous commitments of time by the parties and their counsel, and additional demands on the Court's limited resources. This complexity, time, and cost is the primary reason that settlements are so favored in antitrust cases.

3. Little Opposition to the Settlement Is Anticipated.

The third factor, the extent of opposition to the Settlement, cannot be fully assessed at this juncture. The Named Plaintiffs are the only members of the Settlement Class who know of the Settlement's terms. Class Members will be informed about the Settlement and their right to object only when they receive Court-approved notice. Given the strength of the Settlement and the support it enjoys from Interim Co-Lead Counsel (discussed next), however, little opposition is expected. Hartley Decl. ¶¶ 28-30.

4. Interim Co-Lead Counsel Believe that the Settlement Is Favorable to the Class.

Interim Co-Lead Counsel and the other counsel of record representing DPPs, who have collectively prosecuted and settled hundreds of antitrust class actions, recommend approval of the Settlement as a favorable result for the Settlement Class. Hartley Decl. ¶¶ 28-30, 33. *See Am. Int'l Grp.*, 2011 WL 3290302, at *8 (noting that court is "entitled to rely heavily on the opinion of competent counsel") (citation omitted). They base their considered opinion on their extensive experience in litigating similar cases and a careful assessment of all relevant factors bearing on settlement in this case, principally the ones identified in the preceding discussion. *Id.*

5. The Advanced State of this Case Has Afforded DPPs and Their Counsel Ample Information to Properly Evaluate the Settlement.

As discussed above, the Settlement is a result of arms-length negotiations that took place after the DPPs claims had been tested by several motions to dismiss and the parties had engaged in contentious pre-trial proceedings and extensive discovery. Hartley Decl. ¶¶ 3-19. Class counsel's negotiation of the Settlement therefore had the benefit of thorough research and analysis of the myriad factual and legal issues informed by a number of the Court's rulings and a mature factual record.

B. The Court Should Preliminarily Certify the Settlement Class.

1. Classes Are Commonly Certified for Purposes of Settlement.

A court may certify a class action for settlement purposes. *See, e.g., Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 619-20 (1997). As for all classes, a settlement class must meet the certification requirements of Rule 23(a) and one or more of the requirements of 23(b). As shown below, the Settlement Class meets these requirements.

DPPs seek certification of the following Settlement Class, described in the Settlement Agreement:

Fond du Lac Bumper Exchange, Inc., Roberts Wholesale Body Parts Inc., and all persons and entities in the United States, and its territories and possessions, which purchased Aftermarket Automotive Sheet Metal Products³ directly from any of the Defendants between January 1, 2003 through the date notice is provided to the Class. Excluded from this definition are Defendants⁴, and their parents, subsidiaries, and affiliates; all governmental entities; any judicial officer presiding over the Action and the members of his/her immediate family and judicial staff.

Id. ¶ 2.

³ "Aftermarket Automotive Sheet Metal Products" is defined as "any and all directly purchased aftermarket automotive products comprised of any kind of sheet metal manufactured by companies other than original equipment manufacturers, including but not limited to such products as hoods, doors, bumpers, fenders, bonnets, floor panels, trunk assemblies, trunk lids, tailgates, roof panels, and reinforcement parts." *Id.* at ¶ 1.

⁴ "Defendants" for purposes of the Settlement and Settlement Class definition mean, "each and all parties named as defendants in the Second Amended Class Action Complaint filed August 3, 2011, as amended to add Tong Yang Industry Co. Ltd. as successor –in-interest to Taiwan Kai Yi[h] Industrial Co. Ltd.

The proposed class period is substantially similar to the one described in the SACAC. It does not, however, extend to the present (*see* SACAC ¶ 32) but instead defines “the date notice is provided to the Class” as the Class period end date.

2. The Requirements of Rule 23(a) Are Satisfied.

a. The Class Is So Numerous That Joinder Is Impracticable.

A class must be so numerous as to make joinder of all parties “impracticable.” Fed. R. Civ. P. 23(a)(1). Joinder is impracticable if it is extremely difficult or inconvenient. *Levitan v. McCoy*, No. 00-C-5096, 2003 WL 1720047, *3 (N.D. Ill. Mar. 31, 2003). In making this determination, courts consider the number of class members and “common sense assumptions.” *Scholes v. Stone, McGuire & Benjamin*, 143 F.R.D. 181, 184 (N.D. Ill. 1992) (certifying class comprising between 129 and 300 members). *See also Hubler Chevrolet, Inc. v. Gen. Motors Corp.*, 193 F.R.D. 574, 577 (S.D. Ind. 2000) (“While there is no magic number held to satisfy this requirement, classes of forty or more members have generally been found to be sufficiently numerous.”). While the precise number of entities that directly purchased AM Sheet Metal Products from at least one of the Defendants in the United States during the Class Period is unknown to DPPs, they believe that they number in the hundreds, geographically dispersed across the country. Hartley Decl. ¶ 31. The numerosity requirement is therefore easily satisfied.

b. There Are Questions of Law and Fact Common to the Class.

Commonality requires a legal or factual question common to the class. Fed. R. Civ. P. 23(a)(2). It does not require that all questions of law or fact be identical “but merely that the class claims arise out of the same legal or remedial theory.” *Johns v. DeLeonardis*, 145 F.R.D. 480, 483 (N.D. Ill. 1992). A “single course of conduct that results in injury to the class as a

whole” usually suffices. *Id.* Commonality is easily met in antitrust cases, because the members “‘have a shared interest in attempting to prove that Defendants engaged in a conspiracy to fix, raise, and maintain the prices’ of the product.” *In re Ready-Mixed Concrete Antitrust Litig.*, 261 F.R.D. 154, 167 (S.D. Ind. 2009) (quotation omitted).

DPPs’ core allegation is that Defendants violated section 1 of the Sherman Act by forming and operating a horizontal conspiracy to restrict supply and raise prices for Aftermarket Automotive Sheet Metal products. Because all of the Settlement Class members’ claims arise from the same set of facts and rest on the same legal theory, they have “a shared interest in attempting to prove” Defendants’ alleged conspiracy. In addition, the claims of DPPs and all other Settlement Class members share more specific questions of law and fact relating to the existence and nature of the alleged conspiracy and the type and pattern of injury they sustained as a result. These issues include but are not limited to:

- (a) Whether Defendants and their co-conspirators engaged in a combination and conspiracy among themselves to fix, raise, maintain and/or stabilize prices of AM Sheet Metal Parts and/or engaged in output restriction for those products sold in the United States, and its territories and possessions;

- (b) The identity of the participants in the conspiracy;

- (c) The duration of the conspiracy and the nature and character of the acts performed by Defendants and their co-conspirators in furtherance of the conspiracy;

- (d) Whether the alleged conspiracy violated Section 1 of the Sherman Act;

- (e) Whether the conduct of Defendants caused injury to the business or property of DPPs and other members of the Class;

(f) The effect of Defendants' conspiracy on the prices of AM Sheet Metal Parts sold in the United States and its territories and possessions during the Class Period; and

(g) The appropriate measure of damages sustained by DPPs and other members of the Class.

For these reasons, the Settlement Class satisfies Rule 23(a)(2)'s commonality requirement.

c. DPPs' Claims Are Typical of the Claims of the Class.

Claims of the class representatives must be typical of all class members' claims. Fed. R. Civ. P. 23(a)(3). Typicality does not require the claims of class members and representatives to be identical, only substantially similar. *Ruiz v. Stewart Assoc., Inc.*, 171 F.R.D. 238, 242 (N.D. Ill. 1997). A "plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members and his or her claims are based on the same legal theory." *Keele v. Wexler*, 149 F.3d 589, 595 (7th Cir. 1998) (quoting *De La Fuente v. Stokely-Van Camp, Inc.*, 713 F.2d 225, 232 (7th Cir. 1983)). "Typicality in the antitrust context will be established by plaintiffs and all class members alleging the same antitrust violations by the defendant." *Ready-Mixed Concrete*, 261 F.R.D. at 168 (quoting *Estate of Garrison v. Warner Bros.*, No. CV95-8328, 1996 WL 407849, at *2 (C.D. Cal. June 25, 1996)). *See also In re Mercedes-Benz Antitrust Litig.*, 213 F.R.D. 180, 185 (D.N.J. 2003) (typicality found where all members harmed by illegal price-fixing conspiracy).

DPPs allege and must prove the same Sherman Act violations that absent class members would have to prove: the existence, operation, and effects of the conspiracy to restrict output and fix prices. They assert identical claims of liability and damages on behalf of themselves and the Settlement Class, alleging that they were harmed by purchasing AM Sheet Metal Parts at supra-

competitive prices maintained by the alleged conspiracy among Defendants. Because DPPs' claims arise out of the same alleged anticompetitive conduct, claim the same kind harm, are based on the same legal theories, and will require the same kinds of evidence to prove their claims, Rule 23(a)(3)'s typicality requirement is satisfied.

d. DPPs Will Fairly and Adequately Represent the Interests of the Class.

Representative parties must “fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). Adequacy requires that class representatives retain adequate counsel and have no conflicting interests with other class members. *Ready-Mixed Concrete*, 261 F.R.D. at 168; *Eggleston v. Chicago Journeymen Plumbers' Local Union No. 130*, 657 F.2d 890, 896 (7th Cir. 1981) (requiring “competent and experienced counsel able to conduct the litigation”). Some cases also inquire whether the named plaintiff has a sufficient interest in the case ““to ensure vigorous advocacy.”” *Wahl v. Midland Credit Mgmt., Inc.*, 243 F.R.D. 291, 298 (N.D. Ill. 2007) (quoting *Sebo v. Rubenstein*, 188 F.R.D. 310, 316 (N.D. Ill. 1999)). When class representatives and members seek the common goal of the largest possible recovery for the class, their interests do not conflict. *In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 208 (5th Cir. 1981); *see also Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 453 (S.D.N.Y. 2004) (“There is no conflict between the class representatives and the other class members. All share the common goal of maximizing recovery.”).

The Settlement Class members' interests are well protected by the DPPs, who have no antagonistic interests. All Settlement Class Members share an aligned, overriding interest in obtaining the largest possible dollar recovery in this case. DPPs purchased AM Sheet Metal products from one or more Defendants, and they share with absent Class Members a common interest in pursuing these claims. Interim Co-Lead Counsel and the other counsel of record

representing DPPs are qualified and experienced and have collectively prosecuted and settled hundreds of antitrust class actions. The work Interim Co-Lead Counsel have accomplished since their appointment in this case demonstrates their fitness to continue their leadership.

3. The Proposed Settlement Class Satisfies Rule 23(b)(3).

In addition to the requirements of Rule 23(a), Plaintiffs here must show (1) that “questions of law and fact common to the members of the class predominate over any questions affecting only individual members”; and (2) that “a class action is superior to the other available methods for the fair and efficient adjudication of the controversy.” *Wahl*, 243 F.R.D. at 299 (quoting Fed. R. Civ. P. 23(b)(3)). Both of these requirements are satisfied here.

a. Common Questions of Law and Fact Predominate Over Individual Questions.

Common questions predominate when generalized evidence “proves or disproves an element in the case on a simultaneous, class-wide basis, since such proof obviates the need to examine each class member’s individualized position.” *In re Foundry Resins Antitrust Litig.*, 242 F.R.D. 393, 408 (S.D. Ohio 2007) (citation omitted). Predominance is shown when a business practice harms class members in a consistent way, aside from individual questions. *See Wahl*, 243 F.R.D. at 299 (form letters supported predominance). Antitrust claims naturally satisfy predominance. *See Amchem Prods.*, 521 U.S. at 625 (“Predominance is a test readily met in certain cases alleging consumer or securities fraud or violations of the antitrust laws.”). “As a general rule in price-fixing cases . . . courts have consistently found that common issues regarding the existence and scope of the conspiracy predominate over questions affecting only individual members.” *Foundry Resin*, 242 F.R.D. at 408; *see In re Carbon Black Antitrust Litig.*, No. CIV.A.03-10191-DPW, MDL No. 1543, 2005 WL 102966, *15 (D. Mass. Jan. 18, 2005) (observing that “the common question of the existence of a horizontal price-fixing conspiracy

has almost invariably been found to satisfy Rule 23(b)(3)”) (citing *In re NASDAQ Market-Makers Antitrust Litig.*, 169 F.R.D. 493, 517 (S.D.N.Y.1996)); *Hughes v. Baird & Warner, Inc.*, No. 76 C 3929, 1980 WL 1894, at *3 (N.D. Ill. Aug. 20, 1980) (“Clearly, the existence of a conspiracy is the common issue in this case. That issue predominates over issues affecting only individual sellers.”).

The existence, operation, and effects of the alleged conspiracy to restrict output and fix, raise and maintain prices are central issues, among others, in this case that call for proof common to DPPs and all other Settlement Class members. Therefore, the predominance requirement is satisfied in this case.

b. A Class Action Is Superior to Any Other Method of Adjudicating This Case.

Rule 23(b)(3) requires a “predominance” class action to be superior to other methods of handling the case. Courts recognize that in antitrust cases, class actions regularly are less complicated, time-consuming, and expensive than individual trials. *Carbon Black*, 2005 WL 102966, at *22 (“Antitrust class actions are expensive endeavors and joining forces with other similarly situated plaintiffs is often the only way to effectuate a case.”). Class actions also conserve judicial resources. *In re Bromine Antitrust Litig.*, 203 F.R.D. 403, 416 (S.D. Ind. 2001).

This case meets Rule 23(b)(3)’s superiority requirement. The efficiencies achieved through the class mechanism are enormous. Because numerous entities purchased AM Sheet Metal Parts during the Class Period, settling these claims in the context of a class action conserves judicial and private resources. It also hastens a recovery for the Settlement Class. The alternative is that few, if any, Class Members would prosecute individual actions, and any that did would have to invest large amounts of financial and other resources, surmount alone the same factual and legal obstacles facing the Class, and duplicate much of this litigation.

Co-Lead Counsel see no management difficulties posed by the Settlement. *Cf. Amchem*, 521 U.S. at 620 (for settlement-class certification, court need not review trial management “for the proposal is that there be no trial.”). In sum, the Settlement Class is substantially superior to other available methods for fair and efficient adjudication of the controversy.

C. Interim Co-Lead Counsel Should Be Appointed as Settlement Class Counsel.

“An order certifying a class action . . . must also appoint class counsel under Rule 23(g).” Fed. R. Civ. P. 23(c)(1)(B). In appointing class counsel, courts should consider (i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel’s knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class. Fed. R. Civ. P. 23(g)(1)(A). The work done by Interim Co-Lead Counsel and Interim Liaison Counsel since their appointment (*see generally* Hartley Decl.) and the time and resources they have dedicated in prosecuting DPPs’ claims, demonstrates their fitness to continue their leadership. Further, Interim Co-Lead Counsel and Interim Liaison Counsel have extensive experience handling class actions and other complex litigation, in particular antitrust class action litigation. Harley Decl. ¶ 33, Ex. B, C, D (attaching firm resumes of Heins Mills, Stueve Siegel, and Hale & Wagner). Accordingly, Interim Co-Lead Counsel and Interim Liaison Counsel should be appointed as Settlement Co-Lead Class Counsel and Liaison Class Counsel, respectively.

D. DPPs’ Proposed Class Notice Meets the Requirements of Rule 23(c).

Rule 23(e)(1) states that “[t]he court must direct notice in a reasonable manner to all class members who would be bound by a proposal.” Notice of a proposed settlement must inform class members of (1) the nature of the pending litigation; (2) the general terms of the proposed

settlement; (3) that complete information is available from court files; and (4) that any class member may appear and be heard at the fairness hearing. See NEWBERG § 8.32; *Packaged Ice*, No. 08-MD-01952, 2011 WL 717519, at *5 (E.D. Mich. Feb. 22, 2011) (quoting NEWBERG passage); see also *City of Greenville v. Syngenta Crop Prot., Inc.*, No. 3:10-cv-188, 2012 WL 1948153, at *4 (S.D. Ill. May 30, 2012) (stating Rule 23(e) notice contents “sufficient” with above elements) (quoting *AT&T Mobility*, 270 F.R.D. at 351). For a Rule 23(b)(3) predominance class, the notice must also state that class members have an opportunity to opt out, that the judgment will bind all class members who do not opt out, and that any member who does not opt out may appear through counsel. Fed. R. Civ. P. 23(c)(2)(B). The form of notice is “adequate if it may be understood by the average class member.” NEWBERG § 11.53.

Notice to class members must be “the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” *Amchem Prods.*, 521 U.S. at 617 (quoting Fed. R. Civ. P. 23(c)(2)); *City of Greenville*, 2012 WL 1948153, at *4 (same). Notice should be mailed to members who can be identified through reasonable effort, and other members should be notified by publication. *Id.*; see *Stoller v. Baldwin-United Corp.*, 650 F. Supp. 341, 343-44 (S.D. Ohio 1986) (approving combination of mailing and publication).

DPPs have retained Kurtzman Carson Consultants, LCC (“KCC”), an experienced national class action notice provider and class administrator, to assist with class notice for the Settlement. KCC has experience in administering 1,500 class action settlements and its services include settlement funds escrow and reporting, class member data management, legal notification, call center support, and claims administration. KCC’s Directors of Legal Notification Services, Carla A. Peak and Gina M. Intrepido-Bowden, have formulated the

following Notice Plan, which is substantially the same as the one the Court already approved on April 24, 2015 (ECF No. 619).

1. Individual Notice.

A Detailed Notice and Claim Form (containing pre-populated information obtained from the Defendants records) will be sent to a list of approximately 350 known direct purchaser Class Members provided by the parties. Prior to the mailing, the addresses will be checked against the National Change of Address (NCOA) database maintained by the United States Postal Service (USPS); certified via the Coding Accuracy Support System (CASS); and verified through Delivery Point Validation (DPV). Declaration of Carla A. Peak on Gordon Auto Body Parts Ltd. Settlement Notice Plan and Notice Documents (“Peak Decl.”) ¶¶ 10 – 11. Notices returned as undeliverable will be re-mailed to any address available through postal service information. (*Id.* ¶ 12). Factoring in return undeliverable mail, the Claims Administrator, estimates that the individual mailings alone will reach approximately 336 Class Members, or 90.8% of the Class. (*Id.* ¶ 13).

2. Publication Notice.

Publication notice will be used to supplement and enhance the direct notice effort. Specifically, a Summary Notice will appear once in selected trade publications. (*Id.* ¶ 15).

3. Internet Notice.

Internet advertising will also be used to provide notice to the Class. Eighty-two percent of the U.S. adult population has access to the internet and over 81% have accessed the internet in the past 30 days. Therefore, to further supplement and enhance the notice program, a combination of banner advertising and focused media outreach blogs will be used. *Id.* ¶ 15.

4. Informational Press Release.

An informational press release will be distributed to over 6,580 media outlets, including newspapers, magazines, national wire services, television and radio broadcast media, and web publications throughout the United States. In addition, the press release will be distributed to Automotive Industry and Automotive Repair micro lists, as well as a custom micro list of automotive industry bloggers. *Id.* ¶ 16.

5. Potential Free Media

In addition to the paid media described above, the Claims Administrator will also send a copy of the settlement press release to Collisionweek.com. Collisionweek.com does not accept paid advertising, however, it has agreed to review the press release. If the story would be of interest to their readers, they will work with the Claims Administrator to publish the press release or to print a short article. *Id.* ¶ 17.

6. Additional Support.

An informational website will be established that will allow Class Members the ability to obtain additional information and documents about the Settlement. The website address will be prominently displayed in the Notices, and accessible through a hyperlink embedded in the Internet Banners. A toll-free number will also be established, allowing Class Members to learn more about the Settlement by speaking directly with a live operator. The toll-free number will be prominently displayed in the Publication Notice and Detailed Notice. *Id.* ¶ 18.

7. Notice Design.

The Notices have been designed to be “noticed” and understood by Class Members. Many courts, as well as the FJC, have approved notices that have been written and designed in a similar fashion. The Notices contain easy-to-read summaries of all of the key information

affecting Class Members' rights and options. All information required by Federal Rule of Civil Procedure 23, as well the Manual for Complex Litigation, Fourth, has been incorporated in the notice documents. These notices are attached to the Peak Declaration at **Exhibit 1** (Consolidated Tong Yang and Gordon Settlement Notices) and **Exhibit 2** (Gordon Settlement Notice). In the event the Court grants preliminary approval of the Gordon settlement by May 7, 2015, the Settlement Notices found at Peak Decl. Exhibit 1, which apprise the Settlement Class Members of both the Gordon and Tong Yang Settlements, would apply. *Id.* ¶ 20.

The Notice Plan is expected to effectively reach approximately 90.8% of the Class by way of the individual notice effort alone. Not included in this reach percentage is the additional coverage that will be achieved through publication in industry related trade journals, internet banner placements on industry-related websites, and the distribution of the national and industry targeted press release. The Notice Plan has been designed to deliver "noticeable" Notices that will capture Class Members' attention and provide them with information necessary to understand their rights and options. *See id.*

V. PROPOSED SCHEDULE OF EVENTS

Inasmuch as notice to the Class of the Tong Yang Defendants settlement has not yet been sent pursuant to the Court schedule (whose deadline is May 14, 2015), it is possible to consolidate information about both settlements into a single notice. KCC has confirmed that if they received confirmation of preliminary approval of the Gordon settlement by May 7, 2015 they will be able to provide joint settlement notice to both the Tong Yang and Gordon Settlement Classes for publication in the trade journals and mailed to individual class members according to the Notice Plan approved by the Court at the same time. That way the notice could advise the Settlement Class of both settlements at once so as to avoid confusion to the Class, conserve

costs, and expedite notice to all Class members so that they may be heard at the final approval hearing. Plaintiffs believe it is extremely preferable to send a single notice to the Class. Prompt Preliminary Approval of the Gordon settlement will not prejudice anyone as Preliminary Approval merely authorizes notice to the Class of the settlement. All Class members have the chance to opt out or object to the settlement at the Final Approval hearing according to the schedule already entered by the Court for the Tong Yang settlement.

Accordingly, the Proposed Order submitted herewith sets forth the procedure and schedule for disseminating the Notice to the Settlement Class and for final approval of the Settlement in accordance with the dates set in the Court's April 24, 2015 Order granting preliminary approval of the Tong Yang settlement while supplementing that order to account for the joint Notice of both the Tong Yang and Gordon Settlements and is consistent with time periods approved by courts in this Circuit. *See, e.g., AT & T Mobility*, 270 F.R.D. at 354.⁵

CONCLUSION

WHEREFORE, for the above stated reasons, DPPs respectfully request that the Court (1) grant preliminary approval of the Settlement; (2) certify the Settlement Class; (3) appoint the Named Plaintiffs as the Settlement Class Representatives and appoint Class Counsel; (4) direct dissemination of the proposed notice to the Settlement Class Members; and (5) adopt the proposed schedule for final approval of the Settlement.

⁵ In the event the Court is unable to preliminarily approve the settlement by May 7, 2015, Direct Purchaser Plaintiffs will submit a revised proposed order directing separate notice for the Gordon Settlement.

Dated: April 30, 2015

Respectfully submitted,

By: s/ Jason S. Hartley
Jason S. Hartley
STUEVE SIEGEL HANSON, LLP
500 West C Street, Suite 1750
San Diego, CA 92101
Telephone: (619) 400-5822
Facsimile: (619) 400 5832
Email: hartley@stuevesiegal.com

Vincent J. Esades
Jessica N. Servais
HEINS MILLS & OLSON, P.L.C.
310 Clifton Avenue
Minneapolis, MN 55403
Telephone: (612) 338-4605
Facsimile: (612) 338-4692
Email: vesades@heinsmills.com
jservais@heinsmills.com

*Direct Purchaser Plaintiffs' Interim Co-
Lead Counsel*

K. Scott Wagner (SBN 1004668)
HALE & WAGNER, SC
839 N. Jefferson St., Suite 400
Milwaukee, WI 53202
Telephone: (414) 278-7000
Facsimile: (414) 278 7590
Email: ksw@halewagner.com

*Direct Purchaser Plaintiffs' Interim
Liaison Counsel*