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

IN RE: AUTOMOTIVE PARTS ANTITRUST LITIGATION	Master File No. 12-md-02311 Hon. Marianne O. Battani
In re: Starters Cases In re: Alternators Cases	Case No. 2:15-cv-00707-MOB-MKM Case No. 2:15-cv-01107-MOB-MKM Case No. 2:15-cv-14096-MOB-MKM
THIS DOCUMENT RELATES TO: TRUCK AND EQUIPMENT DEALER CASES	

TRUCK AND EQUIPMENT DEALER PLAINTIFFS' MOTION FOR FINAL APPROVAL OF PROPOSED SETTLEMENT WITH MISTUBISHI ELECTRIC AND FOR CERTIFICATION OF THE SETTLEMENT CLASS

Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Truck and Equipment Dealer Plaintiffs ("TED Plaintiffs") respectfully move the Court for final approval of a proposed settlement between the TED Plaintiffs and Defendants Mitsubishi Electric Corporation, Mitsubishi Electric US Holdings, Inc., and Mitsubishi Electric Automotive America, Inc. (collectively, "Settling Defendant" or "Mitsubishi Electric"), which the Court previously conditionally approved in the above matters, and for certification, pursuant to Fed. R. Civ. P. 23(b)(2) and 23(b)(3), for settlement purposes only, of the settlement class.

In support of this Motion, TED Plaintiffs rely upon and incorporate by reference herein the facts and legal arguments set forth in the accompanying Memorandum of Law, oral argument, and the Declarations of Erica Fruiterman and Tina Chiango.

Dated: February 21, 2018

Respectfully submitted,

/s/ J. Manly Parks

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Class Counsel for Truck and Equipment Dealer Plaintiffs

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MEMORANDUM OF LAW IN SUPPORT OF TRUCK AND EQUIPMENT DEALER PLAINTIFFS' MOTION FOR FINAL APPROVAL OF PROPOSED SETTLEMENT WITH MITSUBISHI ELECTRIC AND FOR CERTIFICATION OF THE SETTLEMENT CLASS

STATEMENT OF ISSUES PRESENTED

1. Whether a settlement between the Truck and Equipment Dealer Plaintiffs and Settling Defendant is fair, reasonable, and adequate and should be granted final approval under Fed. R. Civ. P. 23?

   Suggested Answer: Yes.

2. Whether the Court should grant final certification to the Truck and Equipment Dealer settlement class it previously conditionally certified?

   Suggested Answer: Yes.

CONTROLLING OR MOST APPROPRIATE AUTHORITIES

- *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508 (E.D. Mich. 2003)
- Fed. R. Civ. P. 23
- *Griffin v. Flagstar Bancorp, Inc.*, No. 2:10-cv-10610, 2013 WL 6511860 (E.D. Mich. Dec. 12, 2013)
- *In re Packaged Ice Antitrust Litig.*, No. 08-MD-01952, 2011 WL 717519 (E.D. Mich. Feb. 22, 2011)
- *Sheick v. Auto. Component Carrier LLC*, No. 2:09-cv-14429, 2010 WL 4136958 (E.D. Mich. Oct. 18, 2010)

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INTRODUCTION

This multidistrict litigation arises from a conspiracy to fix the prices of vehicle parts. Starters and Alternators are among the vehicle parts at issue in these coordinated proceedings, *In re Automotive Parts Antitrust Litigation*, MDL No. 2311 (E.D. Mich.) ("MDL Proceeding").

TED Plaintiffs respectfully seek final approval of a provisionally approved settlement with Settling Defendant in this MDL Proceeding. This settlement is meaningful and substantial and provides approximately $1.3 million in cash benefits. The settlement that is presently before the Court for final approval is the first settlement TED Plaintiffs' have reached against any Defendant in *Starters and Alternators*.

The settlement also provided additional value to the TED Plaintiffs because it required Settling Defendant to provide comprehensive cooperation in the form of, *inter alia*, attorney proffers, interviews with and depositions of witnesses, and the production of certain documents (including transactional data), related to the claims asserted in this case so that settlements with all remaining Defendants may be reached. The proposed settlement is fair, reasonable, and adequate and should be granted final approval.

The settlement provides excellent benefits in light of the conduct, damage, litigation risks, and cooperation provided by the Settling Defendant. The cash component of the settlement reflects a compromise that takes into account the liability claims and the volume of commerce believed to be affected by the Settling Defendant's conduct.

Notice of this settlement, as required by Rule 23, was provided through the notice plan previously approved by the Court. The response from the members of the settlement class was overwhelmingly positive. There were no objections to the settlement, requests for attorneys' fees, or requests for litigation expenses. There were no opt-outs. The favorable reception of this settlement provides good evidence that the settlement should be granted final approval.

The Court should also certify, for settlement purposes, the settlement class that it previously conditionally certified in the Court's preliminary approval orders. The settlement meets the Rule 23 requirements for settlement classes and should be granted certification. In doing so, the Court should confirm the appointment of settlement counsel and the class representatives for the class of Truck and Equipment Dealers.

BACKGROUND

I. THE SETTLEMENT PROVIDES SUBSTANTIAL BENEFITS TO TED PLAINTIFFS.

A. Cash Benefits.

On October 25, 2018, the Court preliminarily approved the settlement ("Settlement") between the Truck and Equipment Dealers and the Settling Defendant. (*See* Case No. 2:15-cv-14096, ECF No. 39 (the "Order")). The Settlement is now before the Court for final approval.

The Settlement involves Starters and Alternators, two of the component parts that the TED Plaintiffs contend were the subject of coordination, bid-rigging, and price-fixing. For the Settlement currently before the Court, the settlement amount is approximately $1.3 million. (*See* Order).

As part of their negotiations with Settling Defendant, TED Plaintiffs considered the Defendant's conduct, the estimated amount of commerce affected by that conduct, and the value of the other settlement terms like cooperation offered by the Settling Defendant. (*See* Decl. of Erica Fruiterman, attached hereto as Exhibit A). The Settlement provides approximately $1.3 million in gross settlement funds for the TED Plaintiffs. In the opinion of counsel for TED Plaintiffs, the Settlement provides an excellent result for the Settlement Class and is fair, reasonable, and adequate. (*Id.*)

B. Cooperation and Other Terms.

In addition to the cash payments, Settling Defendant is required to provide TED Plaintiffs with various forms of cooperation that include: (1) the production of certain documents and data relevant to the ongoing claims against the non-settling Defendants; (2) interviews with representatives of the Settling Defendant; (3) the assistance in understanding certain data and other information produced to TED Plaintiffs; and (4) facilitating the use of such data and information at trial. Those terms were set out in detail in the preliminary approval motion and the publicly available settlement agreement between the parties. Settling Defendant's cooperation will greatly enhance TED Plaintiffs' ability to prosecute their claims against the remaining non-Settling Defendants.

II. THE NOTICE PLAN WAS CARRIED OUT AND PROVIDED ADEQUATE NOTICE OF THE SETTLEMENT.

The Settlement provides cash benefits to Truck and Equipment Dealers that purchased Starters and Alternators and/or new vehicles containing Starters and Alternators in jurisdictions that the TED Plaintiffs contend allow antitrust indirect purchasers to seek money damages: Arizona, Arkansas, California, Florida, Hawaii, Illinois, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Mexico, North Carolina, North Dakota, Oregon, Tennessee, Utah, Vermont, and/or Wisconsin (the "Included States").

With the assistance of its claims administrator, RG/2 Claims Administration LLC ("RG/2"), TED Plaintiffs' notice plan included direct postal mail and email notice sent to approximately 47,230 executives representing known Truck and Equipment Dealership addresses in the Included States. (*See* Decl. of Tina Chiango, attached hereto as Exhibit B).[1] A

[1] Notice was originally emailed to 56,425 Truck and Equipment Dealership executives. RG/2 then retrieved the mailing file used in the previous *Bearings* notices that were mailed on January 4, 2017 and July 20, 2107 containing 47,192 addresses. RG/2 added 38 addresses from the

summary notice was also published in: (1) one insertion in *The Wall Street Journal*; (2) one insertion in *Automotive News*; (3) one insertion in *Work Truck* magazine; and (4) one insertion on PR Newswire. (*Id.*). Banner Ads linking to the settlement website, www.TruckDealerSettlement.com, were included in the National Trailer Dealers Association e-newsletter and the American Truck Dealers Insider e-newsletter. (*Id.*)

The website, www.TruckDealerSettlement.com was updated to include a new link on the "Landing Page", advising visitors that a Starters and Alternators Notice was available. (*Id.*) The webpage relating to the Starters and Alternators Settlement has included the following: (1) the "Homepage" contains a brief summary of the Settlement and advises potential Class Members of their rights under the Settlement; (2) the "Notice" page contains a pdf copy of the Court-Ordered Notice; (3) the "Court Documents" page contains the Settlement Agreement with Mitsubishi, the Motion for Preliminary Approval, the Preliminary Approval Order, and the Motion for Attorneys Fees, Reimbursement of Litigation Expenses and Service Awards; (4) the "Register Me" page contains information advising potential class members to email RG/2 Claims with their contact information to be included on the mailing list for future Notices; and (5) the "Contact" page contains the contact information of the Claims Administrator. (*Id.*)

The Starters and Alternators Homepage also includes information relating to the current Notice and the new deadlines for Objections and Opt-Outs. (*Id.*) New documents were also added to the "Court Documents" section of the Starters and Alternators Homepage. (*Id.*) Additionally, the website was updated to inform visitors of the exact time of the Final Approval Hearing that had been, and is, scheduled for February 28, 2018: 2:20 PM EST. (*Id.*)

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online registration section of the settlement website. RG/2 Claims arranged for the mailing via first class mail of Starters and Alternators Notices to the 47,230 addresses as described above.

III. THE REACTION OF SETTLEMENT CLASS MEMBERS WAS POSITIVE.

The reaction of Truck and Equipment Dealers to this Settlement was positive. There were no objections to the Settlement Class. (*Id.*) No class member has objected to the terms of the settlement, the notice plan, the requested attorneys' fees, cost reimbursement, or service awards. (*Id.*) No class member requested an opportunity to be heard at the final fairness hearing. (*Id.*) Of the approximately 47,230 recipients of direct mail and 56,425 recipients of email notices, no dealerships elected to opt-out. (*Id.*)

LEGAL STANDARD

The U.S. Court of Appeals for the Sixth Circuit and the U.S. District Court for the Eastern District of Michigan "have recognized that the law favors the settlement of class action lawsuits." *Griffin v. Flagstar Bancorp, Inc.*, No. 2:10-cv-10610, 2013 WL 6511860, at *2 (E.D. Mich. Dec. 12, 2013); *see also In re Packaged Ice Antitrust Litig.*, No. 08-MD-01952, 2011 WL 717519, at *7 (E.D. Mich. Feb. 22, 2011); *UAW v. General Motors Corp.*, 497 F.3d 615, 632 (6th Cir. 2007) (federal policy favors settlement of class actions).

To be given final approval, a class action settlement must be "fair, reasonable, and adequate." *Sheick v. Auto. Component Carrier LLC*, No. 2:09-cv-14429, 2010 WL 4136958, at *14 (E.D. Mich. Oct. 18, 2010); *see also Packaged Ice*, 2011 WL 717519, at *8. "There are three steps which must be taken by the court in order to approve a settlement: (1) the court must preliminarily approve the proposed settlement, (2) members of the class must be given notice of the proposed settlement, and (3) after holding a hearing, the court must give its final approval of the settlement." *In Re Telectronics Pacing Sys. Inc.*, 137 F. Supp. 2d 985, 1026 (S.D. Ohio 2001) (citing *Williams v. Vukovich*, 720 F.2d 909, 921 (6th Cir. 1983)); *In re Packaged Ice Antitrust Litig.*, No. 08-MD-01952, 2010 WL 3070161, at *4 (E.D. Mich. Aug. 2, 2010).

The court considers whether the proposed settlement is "fair, adequate, and reasonable to those it affects and whether it is in the public interest." *Lessard v. City of Allen Park*, 372 F. Supp. 2d 1007, 1009 (E.D. Mich. 2005) (citing *Vukovich*, 720 F.2d at 921-23). This determination requires consideration of "whether the interests of the class as a whole are better served if the litigation is resolved by the settlement rather than pursued." *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 522 (E.D. Mich. 2003) (citation omitted); *Sheick*, 2010 WL 4136958, at *14-15.

The court has broad discretion when approving a class action settlement. *UAW*, 497 F.3d at 636; *Girsh v. Jepson*, 521 F.2d 153, 156 (3d Cir. 1975). In exercising this discretion, courts give considerable weight and deference to the view of experienced counsel as to the merits of an arm's length settlement. *Dick v. Spring Commc'ns*, 297 F.R.D. 283, 297 (W.D. Ky. 2014) ("The Court defers to the judgment of the experienced counsel associated with the case, who have assessed the relative risks and benefits of litigation"). Indeed, a "presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's length negotiations between experienced, capable counsel after meaningful discovery." *New England Health Care Employees Pension Fund v. Fruit of the Loom, Inc.*, 234 F.R.D. 627, 632 (W.D. Ky. 2006) (citations omitted); *see also In re Automotive Refinishing Paint Antitrust Litig.*, MDL No. 1426, 2003 WL 23316645, at *6 (E.D. Pa. Sept. 5, 2003).

Because a settlement represents an exercise of judgment by the negotiating parties, a judge reviewing a settlement will not "substitute his or her judgment for that of the litigants and their counsel," *IUE-CWA v. General Motors Corp.*, 238 F.R.D. 583, 593 (E.D. Mich. 2006), or "decide the merits of the case or resolve unsettled legal questions." *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 88 n. 14 (1981). Because of the uncertainties and risks inherent in any litigation,

courts take a common sense approach and approve class action settlements if they fall within a "range of reasonableness." *Sheick*, 2010 WL 4136958, at *15 (citation omitted). The court should guard against demanding too large a settlement, because a settlement "represents a compromise in which the highest hopes for recovery are yielded in exchange for certainty and resolution." *Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am. v. Ford Motor Co.*, No. 05-74730, 2006 WL 1984363, at *23 (E.D. Mich. July 13, 2006) (citation omitted); *accord Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 324 (3d Cir. 2011).

ARGUMENT

I. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE AND SHOULD BE GIVEN FINAL APPROVAL.

The Settlement before the Court meets the criteria required for final approval under Fed. R. Civ. P. 23. The Settement provides meaningful benefits and was reached after negotiations between experienced counsel who were armed with sufficient background about the merits of and defenses to the claims asserted. The settlement reflects a reasonable compromise in light of the liability, damages, and procedural uncertainties facing both the TED Plaintiffs and the Settling Defendant.

Courts in the Sixth Circuit consider a number of factors when determining whether a settlement should be granted final approval: (1) the likelihood of success on the merits weighed against the amount and form of the relief offered in the settlement; (2) the complexity, expense, and likely duration of further litigation; (3) the opinions of class counsel and class representatives; (4) the amount of discovery engaged in by the parties; (5) the reaction of absent class members; (6) the risk of fraud or collusion; and (7) the public interest. *Packaged Ice*, 2011 WL 717519, at *8; *see also UAW*, 497 F.3d at 631; *Griffin*, 2013 WL 6511860, at *3; *Cardizem*, 218 F.R.D. 508 at 522. No single factor is determinative, and the Court may weigh each factor

based on the circumstances of the case. *Int'l Union*, 2006 WL 1984363, at *21. The Court may "choose to consider only those factors that are relevant to the settlement at hand." *Id.* at *22; *see also Grenada Invs., Inc. v. DWG Corp.*, 962 F.2d 1203, 1205-06 (6th Cir. 1992) (holding that a district court enjoys wide discretion in assessing the weight and applicability of factors).

A. The Likelihood of the TED Plaintiffs' Success on the Merits Weighed Against the Relief Offered in the Settlement Supports Approval.

The Court assesses class action settlements "with regard to a 'range of reasonableness,' which 'recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs inherent in taking any litigation to completion.'" *Sheick*, 2010 WL 4136958, at *15 (quoting *IUE-CWA*, 238 F.R.D. at 594); *Int'l Union*, 2006 WL 1984363, at *21. The fairness of such a settlement "turns in large part on the bona fides of the parties' legal dispute." *UAW*, 497 F.3d at 631. When considering the likelihood of plaintiffs' success on the merits of the litigation, the ultimate question is whether the interests of the class as a whole are better served if the litigation is resolved by settlement rather than pursued. *Sheick*, 2010 WL 4136958, at *16 (citing *IUE-CWA*, 238 F.R.D. at 595).

The TED Plaintiffs believe they will prevail in this case. But they also recognize that success is not guaranteed in any complex litigation. Although there were illegal conspiracies to coordinate pricing and other activities on Starters and Alternators, the Settling Defendant has vigorously defended this case. Defendant has claimed that the TED Plaintiffs cannot prove that the bid-rigging and price-fixing caused them an antitrust injury. Defendant has also previewed arguments about class certification, which it contends should not be granted in this case. The Settlement reflects both the strengths of the TED Plaintiffs' claims and the risk that the Settling Defendant may prevail on some of its arguments.

The Settling Defendant is represented by experienced and competent counsel and was prepared to defend the case through trial. While there is risk in any litigation, class actions are inherently high-stakes and high-risk. TED Plaintiffs remain optimistic about the outcome of this case, but must acknowledge that the Settling Defendant could prevail on certain legal or factual arguments and by doing so, could reduce or eliminate potential recoveries by TED Plaintiffs. The certainty and substantial benefits provided by the Settlement supports a finding that it was reasonable and adequate.

Interim Class Counsel for TED Plaintiffs believe that the Settlement represents an excellent recovery for Truck and Equipment Dealerships. Weighing the benefits of the Settlement against the risks of continued litigation tilts the scale heavily toward final approval. *See Griffin*, 2013 WL 6511860, at *4; *Packaged Ice*, 2011 WL 717519, at *9.

B. The Complexity, Expense, and Likely Duration of Continued Litigation Favor Final Approval.

"Settlement should represent 'a compromise which has been reached after the risks, expense and delay of further litigation have been assessed.'" *Cardizem*, 218 F.R.D. at 523 (quoting *Vukovich*, 720 F.2d at 922). "[T]he prospect of a trial necessarily involves the risk that Plaintiffs would obtain little or no recovery." *Id.* at 523. This is particularly true for class actions, which are "inherently complex." *Telectronics*, 137 F. Supp. 2d at 1013 (settlement avoids the costs, delays, and multitude of other problems associated with class actions, which are "inherently complex."); *Cardizem*, 218 F.R.D. at 533 ("Moreover, the complexity of this case cannot be overstated. Antitrust class actions are inherently complex . . . .").

The Court has had the opportunity to consider the claims and defenses in this litigation and knows that complex antitrust litigation of this scope has many inherent risks that settlements

extinguish. The fact that TED Plaintiffs have achieved a substantial recovery, which eliminates risk while ensuring substantial payments, supports final approval of the Settlement.

C. The Judgment of Experienced Counsel Who Have Evaluated the Strength of the Claims, Defenses, and Risks Supports Approval.

The Settlement was reached by experienced counsel after arm's-length negotiations and is therefore provided deference. *Dick*, 297 F.R.D. at 296 ("Giving substantial weight to the recommendations of experienced attorneys, who have engaged in arms-length settlement negotiations, is appropriate . . . .") (quoting *In re Countrywide Fin. Corp. Customer Data Sec. Breach Litig.*, No. 3:08-MD01998, 2010 WL 3341200, at *4 (W.D. Ky. Aug. 23, 2010)); *see also In re Auto. Refinishing Paint Antitrust Litig.*, 617 F. Supp. 2d. 336, 341 (E.D. Pa. 2007).

In deciding whether a proposed settlement warrants approval, "[t]he Court should also consider the judgment of counsel and the presence of good faith bargaining between the contending parties." *In re Delphi Corp. Sec., Deriv. & "ERISA" Litig.*, 248 F.R.D. 483, 498 (E.D. Mich. 2008). Counsel's judgment "that settlement is in the best interest of the class 'is entitled to significant weight, and supports the fairness of the class settlement.'" *Packaged Ice*, 2011 WL 717519, at *11 (quoting *Sheick*, 2010 WL 4136958, at *18). "In the absence of evidence of collusion (there is none here) this Court 'should defer to the judgment of experienced counsel who has competently evaluated the strength of his proofs.'" *Date v. Sony Electronics, Inc.*, No. 07-15474, 2013 WL 3945981, at *9 (E.D. Mich. Jul. 31, 2013) (quoting *Vukovich*, 720 F.2d at 922-23).

Interim Class Counsel for TED Plaintiffs are experienced in handling class action antitrust and other complex litigation. They have represented the interests of TED Plaintiffs from the inception of this litigation and negotiated the Settlement at arm's length with well-respected and experienced counsel for the Settling Defendant. Interim Class Counsel believe

that the Settlement provides an excellent result in light of the circumstances of the Settling Defendant's conduct and potential liability. (*See* Fruiterman Decl.)

Although formal discovery has not yet begun in these cases, Counsel for TED Plaintiffs not only received extensive proffers from the ACPERA applicant in these cases, but also pursued and obtained discovery directly from the settling defendants within the scope of Fed. R. Evid. 408. The amount of discovery completed is a factor to be considered in the settlement approval process, but there is no baseline required to satisfy this factor. *Packaged Ice*, 2010 WL 3070161, at *5-6. The "question is whether the parties had adequate information about their claims." *Griffin*, 2013 WL 6511860, at *4 (quoting *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 458 (S.D.N.Y. 2004)).

The informal discovery, proffers, and publicly available information allowed Interim Class Counsel for the TED Plaintiffs to evaluate the strengths and weaknesses of the claims and defenses and to evaluate the benefits of the Settlement. Interim Class Counsel for TED Plaintiffs believe that the Settlement is fair, reasonable, and in the best interests of Truck and Equipment Dealerships who purchased new parts and/or vehicles containing the Starters and Alternators at issue in the Settlement. (*See* Fruiterman Decl.) The opinion of counsel should thus support final approval of the Settlement.

D. Class Member Reaction.

There were no objections to any the settlement. (Chiango Decl. ¶ 15). This is remarkable because there are often at least a few objections to class settlements. "A certain number of opt-outs and objections are to be expected in a class action. If only a small number are received, that fact can be viewed as indicative of the adequacy of the settlement." *Cardizem*, 218 F.R.D. at 527. This reaction from the members of the settlement class strongly supports the adequacy of the settlement. *Stoetzner v. U.S. Steel Corp.*, 897 F.2d 115, 118-19 (3d Cir. 1990)

(holding that objections by about 10% of class "strongly favors settlement"); *see also TBK Partners, Ltd. v. Western Union Corp.*, 675 F.2d 456, 458, 462 (2d Cir. 1982) (approving settlement despite objections of large number of class); *Taifa v. Bayh*, 846 F. Supp. 723, 728 (N.D. Ind. 1994) (approving class settlement despite objections from more than 10% of class). Notice of this settlement was sent by direct mail and email to 56,425 executives representing known Truck and Equipment Dealerships in the Included States. (Chiango Decl.; *see also* n.1, *supra.*) The fact that no dealership opted-out strongly supports the adequacy of the Settlement.

E. The Public Interest Supports Granting Final Approval to the Settlement.

"[T]here is a strong public interest in encouraging settlement of complex litigation and class action suits because they are 'notoriously difficult and unpredictable' and settlement conserves judicial resources." *Cardizem*, 218 F.R.D. at 530 (quoting *Granada*, 962 F.2d at 1205); *see also Griffin*, 2013 WL 6511860, at *5; *Packaged Ice*, 2011 WL 717519, at *12. In light of the conduct at issue and guilty pleas related to the claims here, there is no countervailing public interest that provides a reason to disapprove the Settlement. *Griffin*, 2013 WL 6511860, at *5. This factor also supports final approval.

F. The Settlement Is Not the Product of Collusion.

There is a presumption that settlement negotiations were conducted in good faith and that the resulting agreement was reached without collusion unless there is contrary evidence. *Griffin*, 2013 WL 6511860, at *3; *Packaged Ice*, 2011 WL 717519, at *12; *Int'l Union*, 2006 WL 1984363, at *26; *Sheick*, 2010 WL 4136958, at *19-20. The Settlement here was reached after adversarial litigation and discovery. The negotiations leading to the Settlement were entirely arm's length and took many months of settlement proposal exchanges. The Settlement was negotiated in good faith with counsel on each side zealously representing the interests of their clients.

II. NOTICE OF THE SETTLEMENT WAS PROPER UNDER RULE 23 AND MET DUE PROCESS REQUIREMENTS.

Fed. R. Civ. P. 23(e)(1) provides that "[t]he court must direct notice in a reasonable manner to all class members who would be bound by the [proposed settlement]." For Rule 23(b)(3) actions, "the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B).

The purpose of notice in a class action is to "afford members of the class due process which, in the context of the Rule 23(b)(3) class action, guarantees them the opportunity to be excluded from the class action and not be bound by any subsequent judgment." *Peters v. Nat'l R.R. Passenger Corp.*, 966 F.2d 1483, 1486 (D.C. Cir. 1992) (citing *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-74 (1974)). Due process requires that absent class members be provided the best notice practicable, reasonably calculated to apprise them of the pendency of the action, and affording them the opportunity to opt out or object. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985); *see also UAW*, 497 F.3d at 629 (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)).

The "best notice practicable" does not mean actual notice, nor does it require individual mailed notice where there are no readily available records of class members' individual addresses or where it is otherwise impracticable. *Fidel v. Farley*, 534 F.3d 508, 514 (6th Cir. 2008); *In re Domestic Air Transp. Antitrust Litig.*, 141 F.R.D. 534, 548-53 (N.D. Ga. 1992); MANUAL FOR COMPLEX LITIGATION (Fourth) § 21.311, at 288 (2004) ("MANUAL"). The mechanics of the notice process "are left to the discretion of the court subject only to the broad 'reasonableness' standard imposed by due-process." *Grunin v. Int'l House of Pancakes*, 513 F.2d 114, 121 (8th Cir. 1975). Each class member need not receive actual notice for the due

process standard to be met, "so long as class counsel acted reasonably in selecting means likely to inform persons affected." *In re Prudential Sec. Inc. Ltd. P'ships Litig.*, 164 F.R.D. 362, 368 (S.D.N.Y. 1996).

Where names and addresses of known or potential class members are reasonably available, direct-mail notice should be provided. *See, e.g.*, *Eisen*, 417 U.S. at 175-76; MANUAL, § 21.311, at 292. If the names and addresses of class members cannot be determined by reasonable efforts, notice by publication is sufficient to satisfy the requirements of the Due Process clause and Fed. R. Civ. P. 23. *Mullane*, 339 U.S. at 317-18; *Carlough v. Amchem Prods.*, 158 F.R.D. 314, 325 (E.D. Pa. 1993).

No member of the Settlement Class objected to or criticized the notice program. (Chiango Decl. ¶ 15) The program was primarily a direct first-class and e-mail program that targeted class members and was supplemented by published notice in industry-specific publications. The notice program easily satisfied the requirements of Rule 23 and due process, and is consistent with notice programs previously approved by the Court in this MDL Proceeding. *See, e.g.*, No. 2:12-cv-00102, ECF No. 397 (Dec. 7, 2015); No. 14-cv-14451, ECF No. 127 (Dec. 28, 2016); *see also Packaged Ice*, 2011 WL 717519, at *5; *Sheick*, 2010 WL 4136958 at *15.

III. CERTIFICATION OF THE SETTLEMENT CLASS IS APPROPRIATE.

In its preliminary approval orders, the Court found that Rule 23 requirements were met and provisionally certified, for purposes of settlement only, Settlement Class relating to the parties and parts covered by the Settlement. (*See* Order). It is well-established that a class may be certified for purposes of settlement. *See, e.g.*, *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591 (1997); *Int'l Union*, 2006 WL 1984363, at *3, *18; *Cardizem*, 218 F.R.D. at 516-19; *Thacker v. Chesapeake Appalachia*, LLC, 259 F.R.D. 262, 266-70 (E.D. Ky. 2009). The Settlement meets

the requirements of Rule 23(a) as well as the requirements of Rule 23(b)(2) and 23(b)(3) for settlement purposes.

A. The TED Settlement Class Satisfies Rule 23(a).

The Truck and Equipment Dealer Settlement Class satisfies Rule 23(a). Certification of a class requires meeting the requirements of Rule 23(a) and one subsection of Rule 23(b). *See Automotive Parts Antitrust Litig.*, No. 2:12-cv-00102, ECF No. 397, at 11-12 (Dec. 7, 2015) (citing *In re Whirlpool Corp. Front-Loading Washer Prods. Liab. Litig.*, 722 F.3d 838, 850-51 (6th Cir. 2013)); *see also Griffin*, 2013 WL 6511860, at *5; *Int'l Union*, 2006 WL 1984363, at *19 (citing *Sprague v. General Motors Corp.*, 133 F.3d 388, 397 (6th Cir. 1998)). Certification is appropriate under Rule 23(a) if: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law and fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interest of the class. *Griffin*, 2013 WL 6511860, at *5; *Date*, 2013 WL 3945981, at *3.

1. The Settlement Class Is Numerous.

Class certification under Rule 23(a)(1) is appropriate where a class contains so many members that joinder of all would be "impracticable." Fed. R. Civ. P. 23(a)(1). There is no strict numerical test to satisfy the numerosity requirement, and the most important factor is whether joinder of all the parties would be impracticable. *Whirlpool*, 722 F.3d at 852 (noting that "substantial" number of class members satisfies numerosity). Numerosity is determined by the number and geographic location of class members. *Marsden v. Select Medical Corp.*, 246 F.R.D. 480, 484 (E.D. Pa. 2007).

The notice for this Settlement was mailed to approximately 47,230 representatives of TED entities, geographically dispersed throughout the United States. (Chiango Decl.; *see also*

n.1, *supra*) Joinder of all Settlement Class members would be impracticable, satisfying Rule 23(a)(1).

2. Common Questions of Law and Fact Exist.

Federal Rule of Civil Procedure 23(a)(2) requires that a proposed class action involve "questions of law or fact common to the class." "We start from the premise that there need be only one common question to certify a class," *Whirlpool*, 722 F.3d at 853, and "the resolution of [that common issue] will advance the litigation." *Sprague*, 133 F.3d at 397; *accord Exclusively Cats Veterinary Hosp. v. Anesthetic Vaporizer Servs., Inc.*, 2010 WL 5439737, at *3 (E.D. Mich. Dec. 27, 2010) ("[T]here need be only a single issue common to all members of the class") (citing *In re Am. Med. Sys., Inc.*, 75 F.3d 1069, 1080 (6th Cir. 1996)).

"[A]llegations concerning the existence, scope and efficacy of an alleged conspiracy present questions adequately common to class members to satisfy the commonality requirement." *In re Flat Glass Antitrust Litig.*, 191 F.R.D. 472, 478 (W.D. Pa. 1999) (citing 4 NEWBERG ON CLASS ACTIONS § 18.05-15 (3d ed. 1992)). Whether the Settling Defendant entered into illegal agreements to rig bids and artificially fix prices of Starters and Alternators presents questions common to all members of the Settlement Class. *Packaged Ice*, 2011 WL 717519 at *6 (holding that the commonality was satisfied by questions concerning "whether Defendants conspired to allocate territories and customers and whether their unlawful conduct caused Packaged Ice prices to be higher than they would have been absent such illegal behavior and whether the conduct caused injury to the Class Members"). "Indeed, consideration of the conspiracy issue would, of necessity focus on defendants' conduct, not the individual conduct of the putative class members." *Flat Glass*, 191 F.R.D. at 484.

Because there are common legal and factual questions related to potential liability, the commonality requirement of Rule 23(a)(2) is met for the Settlement Class.

3. TED Plaintiffs' Claims Are Typical of Those of the Settlement Class.

Rule 23(a)(3) requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). "If there is a strong similarity of legal theories, the requirement [of typicality] is met, even if there are factual distinctions among named and absent class members." *Griffin*, 2013 WL 6511860, at *6 (quoting *Int'l Union*, 2006 WL 1984363, at *19); *Date*, 2013 WL 3945981, at *3. "Typicality is met if the class members' claims are 'fairly encompassed by the named plaintiffs' claims.'" *Whirlpool*, 722 F.3d at 852 (quoting *Sprague*, 133 F.3d at 399).

The claims of the TED Plaintiffs arise from the same course of conduct as the claims of the members of the Settlement Class. Rule 23(a)(3)'s typicality requirement is satisfied for the Settlement Class.

4. TED Plaintiffs and Their Counsel Have Fairly and Adequately Represented the Interests of the Class Members.

Rule 23(a)(4) requires that the class representative fairly and adequately protect the interests of the class. "There are two criteria for determining adequacy of representation: (1) the proposed class representative must have common interests with the other class members; and (2) it must appear that the class representative will vigorously prosecute the interests of the class through qualified counsel." *Sheick*, 2010 WL 3070130, at *3 (quoting *Senter v. Gen. Motors Corp.*, 532 F.2d 511, 524-25 (6th Cir. 1976)). These requirements are met here.

The interests of TED Plaintiffs are the same as those of other Settlement Class members. These Plaintiffs are indirect purchasers of Starters and Alternators and new parts and/or vehicles containing Starters and Alternators, and they, like the other Settlement Class members, claim that they were injured as a result of the alleged conspiracy and seek to prove that the Settling Defendant violated antitrust and consumer protection laws. The named TED Plaintiffs have the

same interests as those of the members of the Settlement Class. TED Plaintiffs have retained qualified and experienced counsel to pursue this case. Counsel for TED Plaintiffs have vigorously pursued this litigation and will continue to represent the interests of TED Plaintiffs in this and other vehicle parts cases. Adequate representation under Rule 23(a)(4) is therefore satisfied.

B. TED Plaintiffs' Claims Satisfy the Prerequisites of Rule 23(b)(3) for Settlement Purposes.

In addition to satisfying Rule 23(a), plaintiffs must show that the class falls under at least one of the three subsections of Rule 23(b). *See Automotive Parts Antitrust Litig.*, No. 2:12-cv-00102, ECF No. 397 (Dec. 7, 2015). The Settlement Class qualifies under Rule 23(b)(3), which authorizes class certification if "questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and . . . a class action is superior to other available methods for the fair and efficient adjudication of the controversy." *Id.* (quoting *In re Scrap Metal Antitrust Litig.*, 527 F.3d 517, 535 (6th Cir. 2008)); *see also Hoving v. Lawyers Title Ins. Co.*, 256 F.R.D. 555, 566 (E.D. Mich. 2009).

1. Common Legal and Factual Questions Predominate.

The Rule 23(b)(3) requirement that common issues predominate insures that a proposed class is "sufficiently cohesive to warrant certification." *Amchem*, 521 U.S. at 623. The predominance requirement is met where "the issues in the class action that are subject to generalized proof, and thus applicable to the class as a whole . . . predominate over those issues that are subject only to individualized proof." *Beanie v. CenturyTel, Inc.*, 511 F.3d 554, 564 (6th Cir. 2007) (citation omitted).

Horizontal price-fixing cases are particularly well-suited for class certification because proof of the conspiracy presents a common, predominating question. *Scrap Metal*, 527 F.3d at

535; *Packaged Ice*, 2011 WL 717519, at *6; *In re Southeastern Milk Antitrust Litig.*, 2010 WL 3521747, at *5, 9-11 (E.D. Tenn. Sept. 7, 2010). Affirming class certification in *Scrap Metal*, the Sixth Circuit observed that the "district court found that the '*allegations* of price-fixing and market allocation . . . will not vary among class members' . . . Accordingly, the court found that the 'fact of damages' was a question common to the class even if the amount of damages sustained by each individual class member varied." 527 F.3d at 535 (emphasis in original).

Here, the same set of core operative facts and theory of liability apply to the Settlement. Whether the Settling Defendant entered into illegal agreements presents questions common to all Settlement Class. *See, e.g.*, *Packaged Ice*, 2011 WL 717519, at *6. If TED Plaintiffs and the other Settlement Class members brought individual actions, they would each be required to prove the same claims in order to establish liability. For settlement purposes, common issues predominate.

2. Class Action Settlements Are Superior to Other Methods of Adjudication.

Rule 23(b)(3) lists factors to be considered in determining the superiority of proceeding as a class action compared to individual methods of adjudication: (1) the interests of the members of the class in individually controlling the prosecution of separate actions; (2) the extent and nature of other pending litigation about the controversy by members of the class; (3) the desirability of concentrating the litigation in a particular forum; and (4) the difficulties likely to be encountered in management of the class action. Fed. R. Civ. P. 23(b)(3).

This antitrust multi-district litigation has been centralized in this Court, and no member of a Settlement Class requested exclusion from the Settlement. (*See* Chiango Decl. ¶ 15.) Thus, consideration of factors (1) - (3) demonstrates the superiority of this Settlement Class. The fourth Rule 23(b)(3) factor is not relevant in a settlement-only class because the potential

difficulties in managing a trial of the case is extinguished by the settlement. *Cardizem*, 218 F.R.D. at 517.

In addition, "[g]iven the complexities of antitrust litigation, it is not obvious that all members of the class could economically bring suits on their own." *In re Cardizem CD Antitrust Litig.*, 200 F.R.D. 297, 325 (E.D. Mich. 2007) (quoting *Paper Systems Inc. v. Mitsubishi Corp.*, 193 F.R.D. 601, 605 (ED. Wisc. 2000)). Certifying the Settlement Class will conserve judicial and private resources and will provide a single outcome that is binding on all Settlement Class members. *Cardizem*, 200 F.R.D. at 351. The alternative to this Settlement is a multiplicity of separate lawsuits or no recourse for many class members for whom the cost of pursuing individual litigation would be prohibitive. *See In re Flonase Antitrust Litig.*, 284 F.R.D. 207, 234 (E.D. Pa. 2012); *In re NASDAQ Market-Makers Antitrust Litig.*, 169 F.R.D. 493, 527 (S.D.N.Y 1996). Hence, the certification of the Settlement Class is superior to the alternatives in this litigation.

CONCLUSION

For the foregoing reasons, TED Plaintiffs respectfully request that the Court grant final approval of the Settlement and certify the Settlement Class for purposes of settlement.

Dated: February 21, 2018

Respectfully submitted,

/s/ J. Manly Parks

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Class Counsel for Truck and Equipment Dealer Plaintiffs

CERTIFICATE OF SERVICE

I, J. Manly Parks, hereby certify that I caused a true and correct copy of Truck and Equipment Dealer Plaintiffs' Motion for Final Approval of Proposed Settlement with Mitsubishi Electric and for Certification of the Settlement Class to be served via email upon all registered counsel of record via the Court's CM/ECF system on February 21, 2018.

Dated: February 21, 2018

/s/ J. Manly Parks
J. Manly Parks

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

IN RE: AUTOMOTIVE PARTS ANTITRUST LITIGATION	Master File No. 12-md-02311 Hon. Marianne O. Battani
	Case No. 2:15-cv-00707-MOB-MKM
In re: Starters Cases In re: Alternators Cases	Case No. 2:15-cv-01107-MOB-MKM Case No. 2:15-cv-14096-MOB-MKM
THIS DOCUMENT RELATES TO: TRUCK AND EQUIPMENT DEALER CASES	

INDEX OF EXHIBITS
TO TRUCK AND EQUIPMENT DEALER PLAINTIFFS' MOTION FOR FINAL APPROVAL OF PROPOSED SETTLEMENT WITH MITSUBISHI ELECTRIC AND FOR CERTIFICATION OF THE SETTLEMENT CLASS

Exhibit	Description
A	Declaration of Erica Fruiterman
B	Declaration of Tina Chiango

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

IN RE: AUTOMOTIVE PARTS ANTITRUST LITIGATION	Master File No. 12-md-02311 Hon. Marianne O. Battani
In re: Starters Cases In re: Alternators Cases	Case No. 2:15-cv-00707-MOB-MKM Case No. 2:15-cv-01107-MOB-MKM Case No. 2:15-cv-14096-MOB-MKM
THIS DOCUMENT RELATES TO: TRUCK AND EQUIPMENT DEALER CASES	

DECLARATION OF ERICA FRUITERMAN IN SUPPORT OF TRUCK AND EQUIPMENT DEALER PLAINTIFFS' MOTION FOR FINAL APPROVAL OF PROPOSED SETTLEMENT WITH MITSUBISHI ELECTRIC AND FOR CERTIFICATION OF THE SETTLEMENT CLASS

I, Erica Fruiterman, pursuant to the provisions of 28 U.S.C. § 1746, hereby declare as follows:

1. I am an attorney with Duane Morris LLP and submit this declaration in support of the Truck and Equipment Dealers' Motion for Final Approval of Proposed Settlement with Mitsubishi Electric and for Certification of the Settlement Class. Duane Morris is serving as Class Counsel appointed by the Court to represent the putative litigation and provisionally certified settlement class of truck and equipment dealers in this multi-district litigation ("TED Plaintiffs").

2. The Settlement before the Court was the result of good faith, arm's length negotiations with experienced defense counsel. Before entering into substantive settlement negotiations, counsel for TED Plaintiffs had substantial information to help them assess the claims and defenses, the strengths and weaknesses of the TED Plaintiffs' claims, and the scope

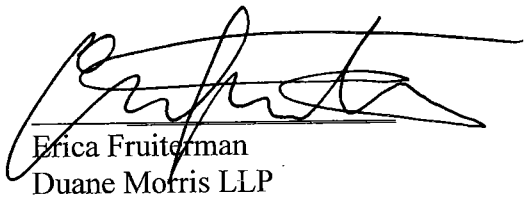
of the conduct at issue for the particular Defendants. This information was gathered from multiple sources including our own investigation, discovery in these cases, public information from the Department of Justice and other enforcement authorities, and certain cooperating Defendants in the MDL.

3. Counsel for TED Plaintiffs, including your Declarant, believe that the Settlement is fair, reasonable, and adequate given the merits of the claims and defenses, the risks associated with the litigation, and the certainty provided by settlements and early cooperation in these cases.

4. As of February 21, 2018, Counsel for TED Plaintiffs did not receive any objections or requests to be heard at the final fairness hearing.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 21st day of February, 2018, at Philadelphia, Pennsylvania.



Erica Fruiterman
Duane Morris LLP

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

IN RE: AUTOMOTIVE PARTS ANTITRUST LITIGATION	Master File No. 12-md-02311 Hon. Marianne O. Battani
In re: Starters Cases In re: Alternators Cases	Case No. 2:15-cv-00707-MOB-MKM Case No. 2:15-cv-01107-MOB-MKM Case No. 2:15-cv-14096-MOB-MKM
THIS DOCUMENT RELATES TO: TRUCK AND EQUIPMENT DEALER CASES	

DECLARATION OF TINA CHIANGO IN SUPPORT OF TRUCK AND EQUIPMENT DEALER PLAINTIFFS' MOTION FOR FINAL APPROVAL OF PROPOSED SETTLEMENT WITH MITSUBISHI ELECTRIC AND FOR CERTIFICATION OF THE SETTLEMENT CLASS

I, Tina Chiango, hereby declare and state as follows:

1. I am the Director of Claims Administration for RG/2 Claims Administration LLC ("RG/2 Claims"), whose address is 30 South 17th Street, Philadelphia, PA 19103. I am over the age of 18, have personal knowledge of the matters set forth herein, and if called upon to do so, could testify competently to them.

2. RG/2 Claims is a full service class action settlement administrator offering notice, claims processing, allocation, distribution, tax reporting, and class action settlement consulting services. RG/2 Claims' experience includes the provision of notice and administration services for settlements arising from antitrust, consumer fraud, civil rights, employment, negligent disclosure, and securities fraud allegations. Since 2000, RG/2 Claims has administered and distributed in excess of $850,000,000 in class action settlement proceeds.

3. As approved in the Court's Order dated October 25, 2017, RG/2 Claims was engaged by TED Plaintiffs' to assist in the notice plan in Starters and Alternators. Subsequent to this Order, RG/2 Claims has followed the approved notice plan as detailed below.

4. RG/2 Claims worked with a third party marketing firm and arranged for the Summary Notice to be emailed on November 20, 2017, to 56,425 C-Level Executives who work at Medium and Heavy duty truck dealerships, as well as Agricultural, Construction, Mining, Railroad, and other Commercial Vehicle/Equipment Dealers within the Included States.

5. RG/2 retrieved the mailing file used in the previous Bearings notices that were mailed on January 4, 2017 and July 20, 2017 containing 47,192 addresses. RG/2 Claims added 38 addresses from the online registration section of the website.

6. On November 20, 2017, RG/2 Claims arranged for the mailing via first class mail of Bearings Notices to the 47,230 addresses as described above.

7. The website, www.TruckDealerSettlement.com was updated to include a new link on the "Landing Page", advising visitors that a Starters and Alternators Notice was available. The webpage relating to the Starters and Alternators Settlements has included the following:

a. The "Homepage" contains a brief summary of the Settlement and advises potential Class Members of their rights under the Settlement;

b. The "Notice" page contains a pdf copy of the Court-Ordered Notice;

c. The "Court Documents" page contains the Settlement Agreement with Mitsubishi, as well as the Motion for Preliminary Approval and the Preliminary Approval Order. Also included is the Motion for Attorneys Fees, Reimbursement of Litigation Expenses and Service Awards. Additional documents are added as requested;

d. The "Register Me" page contains information advising potential class members to email RG/2 Claims with their contact information to be included on the mailing list for future Notices;

e. The "Contact" page contains the contact information of the Claims Administrator.

9. The Starters and Alternators Homepage also includes the information relating to the current Notice and the new deadlines for Objections and Opt-Outs. New documents were also added to the "Court Documents" section of the Starters and Alternators Homepage. Additionally, the website was updated to inform visitors of the exact time of the Final Approval Hearing that had been, and is, scheduled for February 28, 2018: 2:20 PM EST.

10. Also on November 20, 2017, the Summary Notice was printed in the national edition of the *Wall Street Journal* and in the *Automotive News*.

11. The Summary Notice was also printed in the November 2017 issue of *Work Truck.*

12. On November 21, 2017, RG/2 arranged for the release of the Summary Notice on PR Newswire.

13. On November 29, 2017, a banner ad was placed in the e-newsletter ("Insider") of the American Truck Dealers ("ATD"). This ad appeared in each weekly e-newsletter through the month of August and was linked to the case website.

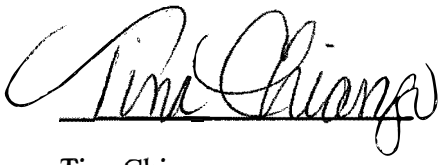
14. On November 30, 2017, a banner as was included in the National Trailer Dealers Association ("NTDA") e-newsletter. This banner ad was also linked to the case website.

15. The Notice advised Class Members their right to exclude themselves from the Settlement, provided that their request be postmarked by February 14, 2018. As of February 20, 2018, RG/2 Claims has not received any Requests for Exclusion from the Settlement.

16. The Notice also advised Class Members of their right to object to the Settlement, provided that their written objection be postmarked by February 14, 2018. As of February 20, 2018, RG/2 Claims has not received any objections to the Settlement.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA, AND PURSUANT TO 28 U.S.C. § 1746, THAT TO THE BEST OF MY KNOWLEDGE THE FOREGOING IS TRUE AND CORRECT.

Executed on February 20, 2018 at Philadelphia, Pennsylvania.



Tina Chiango