

**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

**DECLARATION OF JASON S. HARTLEY IN SUPPORT OF
DIRECT PURCHASER PLAINTIFFS' CLASS COUNSEL'S MOTION FOR AN
INTERIM AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES,
AND APPROVAL OF SERVICE AWARDS FOR CLASS REPRESENTATIVES**

I, Jason S. Hartley declare as follows:

1. I am a member of the law firm Stueve Siegel Hanson LLP and Settlement Co-Lead Class Counsel (along with Vincent J. Esades of Heins Mills & Olson, P.L.C.) for Direct Purchaser Plaintiffs ("DPPs" or "Plaintiffs") in the above-entitled action. K. Scott Wagner of Hale & Wagner, S.C. is Settlement Liaison Counsel for the DPPs. I respectfully submit this Declaration in support of Direct Purchaser Plaintiffs' Class Counsel's Motion for an Interim Award of Attorneys' Fees, Reimbursement of Expenses, and Approval of Service Awards for Class Representatives associated with DPPs' Settlements with Tong Yang Industry Co. Ltd., Taiwan Kai Yih Industrial Co. Ltd., and TYG Products, LP (collectively "Tong Yang Defendants") and Gordon Auto Body Parts Co., Ltd. ("Gordon").

I. HISTORY OF THE LITIGATION AND WORK CONDUCTED BY DIRECT PURCHASER PLAINTIFFS' COUNSEL

2. Through the course of this litigation, Class Counsel engaged in significant efforts in prosecuting this high-risk, international price-fixing case, including as summarized in the following.

A. COMPLAINTS AND DISPOSITIVE MOTIONS.

3. DPPs, through Class Counsel, researched and then prepared the initial Complaint for Damages and Injunctive Relief for Violation of the Sherman Act, initiating the case captioned *Fond Du Lac Bumper Exchange, Inc. v. Jui Li Enterprise Company, Ltd., et al.*, which was filed in the Eastern District of Wisconsin in September of 2009.

4. In January, 2010, DPPs prepared and filed the First Amended Class Action Complaint.

5. In August, 2011, DPPs prepared and filed the Second Amended Class Action Complaint in this Action, which is the operative complaint.

6. DPPs also responded to four separate motions to dismiss and for partial summary judgment filed by Defendants challenging all or part of the First Amended Complaint.

7. DPPs also responded to motions to stay pending resolution of Defendants' motions to dismiss and for partial summary judgment. The Court denied those motions.

8. DPPs then responded to Defendants' motions for reconsideration of the Court's November 30, 2010 Order denying Defendants' motions to dismiss and for summary judgment.

B. DOCUMENT DISCOVERY AND DISCOVERY DISPUTES

9. DPPs engaged in extensive discovery for more than four 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 the numerous discovery issues DPPs raised at 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).

10. 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.

11. 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.

12. DPPs propounded Interrogatories upon Defendants. DPPs met and conferred extensively with Defendants regarding their interrogatory responses and contested several of Defendants' interrogatory responses.

13. DPPs propounded requests for admission to API.

14. DPPs responded to four sets of Defendants' document requests and produced documents from the named plaintiffs to Defendants.

15. DPPs responded to Defendants' interrogatories, including responses to Defendants' onerous contention interrogatories.

C. DPPS' DOCUMENT REVIEW

16. After Defendants failed to timely produce documents in discovery, DPPs spent numerous hours assisting Defendants Tong Yang, Gordon, 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.

17. DPPs reviewed hundreds of thousands of documents that Defendants ultimately produced in discovery, consisting of millions of pages. 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.

18. DPPs trained and managed a team of document review attorneys, including bilingual, 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 Second Amended Complaint and translated key documents to use in depositions and to prepare for class certification and summary judgment.

D. DEPOSITION DISCOVERY

19. DPPs conducted or took part in every deposition in this litigation including Rule 30(b)(6) depositions of each of the Defendants and depositions of Defendants' executives and employees. Depositions taken in the litigation at the time of the Settlements 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 ZhaoLong 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 Tong Yang 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.

20. 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 selection of and the translation of Defendants' Chinese-language business records into English for use as exhibits at the depositions.

E. OTHER NOTEWORTHY PROCEDURAL EVENTS

21. In the course of litigation, DPPs engaged in other significant efforts in prosecuting their claims.

22. DPPs also engaged in extensive and contentious negotiations with Defendants in developing a Rule 26(f) report and ESI protocol. The parties ultimately agreed upon a Rule 26(f) report and ESI protocol which were filed with the Court on June 22, 2012. ECF No. 299.

23. DPPs and Defendants also negotiated and agreed upon a Translation Protocol which the Court entered on May 30, 2014. ECF Nos. 466 & 478.

24. DPPs and Defendants negotiated and agreed upon a Protective Order in the litigation which the Court entered on December 13, 2010. ECF No. 137.

25. DPPs have negotiated with Defendants regarding the authenticity and admissibility of documents.

F. ORAL ARGUMENT AND MONTHLY STATUS CONFERENCES

26. Since December, 2013 the Court has ordered nearly monthly Status Conferences. In preparation for these status conferences, DPPs met and conferred with Defendants and briefed outstanding discovery issues for the Court in Status Conference Statements. *See, e.g.*, ECF Nos. 458, 463, 473, 474, 484, 491, 502, 516, 518, 530, 557, & 592.

27. At the Status Conferences, DPPs raised and argued numerous discovery issues before the Court. The parties skirmished over the Defendants' conduct in discovery, the adequacy of Defendants' document productions, as well as deposition parameters, including the number and duration of depositions.

28. DPPs have also presented oral argument to the Court on numerous motions, including their motions to compel discovery from Defendants.

G. ECONOMIC ANALYSIS AND CLASS CERTIFICATION

29. 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 to develop a class certification report and regression analysis demonstrating class-wide antitrust impact and damages to DPP class members.

30. Dr. Lamb has 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.

31. DPPs also engaged in an extensive attorney proffer process with Defendants Tong Yang, 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 AND SETTLEMENTS

32. In August, 2014, all Defendants and DPPs engaged in mediation before Martin Quinn of JAMS in San Francisco, California.

33. Although the mediation was unsuccessful, DPPs and the Tong Yang Defendants 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 counsel for the Tong Yang Defendants and Gordon.

34. Following months of arm's-length settlement negotiations, in November 2014, the DPPs and the Tong Yang Defendants entered into a Memorandum of Understanding to settle the DPPs' claims against them. That same month, Gordon all but finalized a Memorandum of Understanding to settle the DPPs' claims against Gordon.

35. Unfortunately, issues soon arose regarding the payment of the settlement amounts. Again, DPPs, the Tong Yang Defendants, Gordon, and the mediator spent months working through these issues in an attempt to preserve the settlements. Over many months following the mediation, DPPs either emailed or teleconferenced with the mediator on numerous occasions.

36. DPPs and the Tong Yang Defendants ultimately modified their agreement and entered into a second Memorandum of Understanding which was signed on February 14, 2015.

After further discussions to finalize the settlement terms, DPPs and the Tong Yang Defendants executed a final Settlement Agreement on March 6, 2015.

37. Thereafter, and following further negotiations, 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, DPPs and Gordon executed a final Settlement Agreement on April 29, 2015.

38. Pursuant to DPPs' Settlement Agreement with the Tong Yang Defendants, the Tong Yang Defendants agreed to pay \$16 million in settlement of DPPs' claims. *See* ECF No. 607 at Ex. A ("Tong Yang Settlement Agreement").

39. Pursuant to the DPPs' Settlement Agreement with Gordon, Gordon agreed to pay \$9 million in settlement of DPPs' claims. *See* ECF No. 632 at Ex. A (Gordon Settlement Agreement).

40. Because under Taiwan law a withholding tax of 20% was required to be paid by the Tong Yang Defendants and Gordon before the settlement funds, which originate from Taiwan, could be deposited into a United States based escrow account, the Tong Yang Settlement will net \$12.8 million in a United States escrow account and the Gordon Settlement will net \$7.2 million in that same account. Accordingly, the total amount to be deposited in the Settlement Fund will be \$20 million. Class Counsel are investigating the possibility of receiving a refund on the amount withheld or a tax credit for Class Members.

41. Following execution of each of the Settlement Agreements, DPPs prepared and finalized motion papers in support of preliminary approval of the settlements and retained and worked with the Claims Administrator in developing a Notice Plan, issuing Notice, and other

administration-related matters. DPPs also worked with an escrow agent in establishing an interest-bearing escrow account in which to hold the Settlement Fund.

42. On April 24, 2015 and May 5, 2015 the Court preliminarily approved DPPs' Settlements with the Tong Yang Defendants and Gordon, respectively. Likewise, on May 5, 2015, the Court approved the joint Notice Plan. ECF Nos. 619, 641.

43. Pursuant to its preliminary approval orders, the Court also certified identical Settlement Classes as follows:

All persons and entities in the United States, and its territories and possessions, which purchased Aftermarket Automotive Sheet Metal Products directly from any of the Defendants between January 1, 2003 through the date notice is provided to the Class. Excluded from this definition are Defendants, 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.

44. Pursuant to the Notice that was disseminated to Class Members following the Court's orders preliminarily approving the settlements, after deducting taxes, costs, attorneys' fees, and expenses, and any amount attributable to opt-outs from the Class, the resulting Settlement Fund will be divided, *pro rata*, among all eligible Direct Purchaser Class Members with valid claims. This will be done according to a plan of allocation to be approved by this Court.

III. REQUESTS FOR ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND APPROVAL OF SERVICE AWARDS

45. For achieving this substantial benefit for the Class, Class Counsel respectfully seek a fee of one third of the \$20 million Settlement Fund (the fund amount *after* the withholding of Taiwan taxes) in the amount of \$6,600,000. As set forth in the accompanying memorandum in support of this Motion, this requested fee is fair and reasonable.

46. In total, DPPs and their team of attorneys have worked 35,681.92 professional hours in this matter from inception of the case through April 30, 2015. The resulting lodestar is \$14,823,636.34. Class Counsel have also incurred \$1,391,787.77 in expenses in the prosecution of this case. Class Counsel respectfully submit the Summary of All Firms' Fees and Expenses which is attached to this Declaration as **Exhibit 1** and the Summary of Expenses which is attached to this Declaration as **Exhibit 2**. Class counsel also submit the attached declarations of each firm requesting attorneys' fees and expenses in this case for the Court's review. Those declarations are attached hereto as **Exhibits 3-16**.

47. The hourly rates used by the attorneys and professional support staff in this case either are or were at the time the usual and customary hourly rates charged for their services in similar complex class actions with the exception that Class Counsel limited the hourly rates of attorneys doing document review to a maximum of \$350 an hour, which is lower than the customary hourly rate of many of the attorneys. As such, the requested fee is fair and reasonable and represents a negative multiplier of approximately .45 on the lodestar of \$14,823,636.34 despite the fact that counsel's litigation of the case and payment of significant litigation expenses on behalf of the class were done on a purely contingent basis with no guarantee of compensation or reimbursement.

48. Class Counsel, including Settlement Co-Lead Class Counsel, are experienced in prosecuting and leading complex cases, including antitrust class actions, and worked diligently and efficiently on behalf of the Class in prosecuting this action. Co-Lead Class Counsel managed the work and allocated the work among the two Co-Lead firms and other Direct Purchaser Plaintiff firms to avoid duplication of effort and to ensure the efficient litigation of this matter.

49. Class Counsel also seek reimbursement from the Settlement Fund of \$1,391,787.77 in litigation expenses which were incidental to the litigation and reasonably and actually incurred by Class Counsel in the prosecution of this litigation. These expenses incurred are reflected in the books and records maintained by Class Counsel and reflect an accurate record of expenses incurred. These expenses are also summarized in Exhibits 1 and 2 to this Declaration.

50. In particular, two significant components of these expenses were (1) the retention and consultation of Direct Purchaser Plaintiffs' expert antitrust economist, and (2) expenses incurred in the preparation and taking of depositions in Taiwan, including court reporter expenses, interpreter expenses, document translation expenses, and international travel expenses.

51. Class Counsel maintained strict control over the litigation expenses. Most litigation expenses were paid out of a litigation fund funded by Class Counsel and maintained and overseen by Stueve Siegel Hanson, LLP.

52. The litigation expenses incurred, totaling \$1,391,787.77 were necessary to the successful prosecution of this litigation and the ultimate Settlements with the Tong Yang Defendants and Gordon.

53. Through this Motion, Class Counsel also seek approval of service awards for the two named Class Representatives, Fond Du Lac Bumper Exchange, Inc., and Roberts Wholesale Body Parts, Inc. In particular, Class Counsel request approval of service awards for the two representatives in the amount of \$25,000 each from the Tong Yang Settlement and \$10,000 each from the Gordon Settlement from the Settlement Fund.

54. The Class Representatives courageously stepped forward notwithstanding the possibility that the Defendants could have retaliated by cutting off their product supply, which, if

such concerns materialized, would have had a crippling effect on Plaintiff Fond du Lac's business. In fact, it is my understanding that retaliation fears in this industry were a substantial reason more complaints were not filed around the country, as is otherwise typical in nationwide antitrust cases like this.

55. These two Class Representatives have shouldered a substantial burden during the several years of this litigation, including conferring with counsel regarding the litigation and the aftermarket sheet metal industry, responding to Defendants' requests for production of documents and interrogatories, and reviewing and approving the settlements. As the case continues, and discovery draws to a close, Roberts Wholesale has already prepared and presented a corporate representative for deposition pursuant to Defendants' Rule 30(b)(6) deposition notice and Fond du Lac Bumper will produce its corporate representative for deposition on June 23.

56. The Notice mailed to Class Members, pursuant to the Court's preliminary approval orders, advised the Class of the amount of attorneys' fees, reimbursement of litigation expenses, and requests for approval of service awards that Class Counsel would request at this time. This information was also made available on a website maintained by the Claims Administrator pursuant to the Court-approved Notice Plan. Although the deadline for Class Members to object to the requested fees, expenses, and service awards has not yet passed, to date, Plaintiffs are not aware of a single objection by any Class Member. Class Counsel submit that this lack of objections underscores the reasonableness and fairness of the requests.

Executed this 9th day of June 2015 at San Diego, California.

s/ Jason S. Hartley
Jason S. Hartley