UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CONSTRUCTION LABORERS PENSION TRUST OF GREATER ST. LOUIS, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. AUTOLIV, INC., et al., Defendants.	Civil Action No. 1:13-cv-02546-JPO CLASS ACTION MEMORANDUM OF LAW IN SUPPORT OF LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF DISTRIBUTION OF SETTLEMENT PROCEEDS

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SECONDARY AUTHORITY

Pursuant to Rules 23(b)(3) and 23(e) of the Federal Rules of Civil Procedure, Lead Plaintiffs, Electrical Workers Pension Fund Local 103 IBEW, Monroe County Employees' Retirement System, and Construction Laborers Pension Trust of Greater St. Louis ("Lead Plaintiffs"),[1] respectfully move this Court for an order approving the proposed settlement of the above-captioned class action (the "Action") and approving the proposed Plan of Distribution, each of which this Court preliminarily approved by its Order Preliminarily Approving Settlement and Providing for Notice on August 20, 2014 (the "Preliminary Approval Order") (Dkt. No. 57).

I. PRELIMINARY STATEMENT

This Action was commenced by the filing of a complaint alleging that Defendants violated the federal securities laws by failing to disclose that Autoliv was engaged in an illegal antitrust conspiracy to suppress and eliminate competition in the automotive safety industry, and by misrepresenting the competition the Company faced, its pricing, the legality and propriety of its business practices, and the true source of Autoliv's financial results. Dkt. No. 1. After more than a year of focused and diligent litigation efforts, on August 14, 2014, the Settling Parties signed the Stipulation resolving Lead Plaintiffs' and the Class' claims for twenty-two million five hundred thousand dollars ($22,500,000). Under the terms of the proposed Settlement, the Net Settlement Fund will be allocated to all eligible Class Members[2] allegedly impacted by Defendants' alleged

[1] All capitalized terms not defined herein have the same meanings set forth in the Stipulation and Agreement of Settlement dated August 14, 2014 (the "Stipulation"), filed with the Court on August 15, 2014. Dkt. No. 56-1.

[2] The Preliminary Approval Order certified the following Class, for settlement purposes: "[A]ll Persons who purchased Autoliv, Inc. ("Autoliv" or the "Company") common stock during the period from October 26, 2010, through and including July 21, 2011 ("Class Period"). Excluded from the Class are the Defendants, the officers and directors of Autoliv during the Class Period, members of their immediate families, and their legal representatives, heirs, successors or assigns, and any entity in which any Defendant has or had a controlling interest. Also excluded from the Class are those Persons who timely and validly exclude themselves therefrom."

violations of the federal securities laws and who file a valid Proof of Claim form.

Lead Counsel respectfully submit that the Settlement is an excellent recovery for the Class under the circumstances presented. As set forth in detail in the accompanying Joint Declaration of Robert M. Rothman and Ira A. Schochet in Support of (1) Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Distribution of Settlement Proceeds, and (2) Lead Counsel's Motion for an Award of Attorneys' Fees and Expenses, dated September 19, 2014 (the "Joint Declaration" or "Joint Decl."),[3] Lead Plaintiffs faced the significant risk that the Defendants could ultimately be successful in showing, among other things, that (i) they did not make any actionable misstatements or omissions; (ii) they did not possess the requisite scienter; and (iii) the Class' damages were caused by non-actionable, intervening factors. The significance of these risks was heightened by the prospect of years of protracted litigation through costly fact and expert discovery, contested motions, a trial, and the likely ensuing post-trial appeals. The Settlement avoids these and other risks while providing a substantial and immediate monetary benefit to the Class.

The Settlement was reached only after a comprehensive investigation by Lead Plaintiffs and Lead Counsel, detailed analyses of the facts and potential defenses, and extensive arm's-length negotiations by experienced counsel, which involved the assistance of an experienced mediator and former Federal Judge, Layn R. Phillips ("Judge Phillips"). Lead Counsel, working closely with Lead Plaintiffs, negotiated the Settlement with a thorough understanding of the strengths and weaknesses of their claims. This understanding was based on Lead Counsel's vigorous prosecution of the

[3] The Joint Declaration is an integral part of this submission and the Court is respectfully referred to it for a detailed description of, *inter alia*, a summary of the allegations and claims, the procedural history of the Action, the investigation and discovery to date, the events that led to the Settlement, and the risks and uncertainties of continued litigation.

Action, which included, *inter alia*: (i) conducting an extensive, world-wide investigation into Defendants' conduct, including, among other things, review and analysis of Autoliv's filings with the U.S. Securities and Exchange Commission ("SEC"), press releases, other public statements issued by Defendants, media and news reports about the Company, publicly-available trading data relating to the price and volume of Autoliv's securities, material relating to legal actions and regulatory investigations against Autoliv, both in the United States and abroad, and interviews with numerous confidential witnesses around the world; (ii) discussions with professional consultants in the fields of the automotive industry, damages, and financial analysis; (iii) drafting a detailed amended complaint; (iv) opposing two separate motions to dismiss filed by Defendants; (v) reviewing confidential Autoliv internal documents provided by Defendants; (vi) researching the law pertinent to the claims asserted and potential defenses thereto; (vii) drafting and exchanging detailed written mediation submissions with supporting evidence in connection with the mediation session; (viii) vigorously negotiating the Settlement through numerous subsequent conversations with the mediator; and (ix) interviewing a current Autoliv executive with extensive knowledge of Defendants' conduct and the facts underlying this Action. *See, e.g.*, Joint Decl., ¶7.

In light of Lead Counsel's informed assessment of the strengths and weaknesses of the claims and defenses asserted and the considerable risks and delays associated with continued litigation and trial, Lead Plaintiffs and Lead Counsel believe that the Settlement is fair, reasonable, and adequate and provides a substantial result for the Class. Accordingly, Lead Plaintiffs respectfully request that the Court grant final approval of the Settlement. In addition, the Plan of Distribution, which was developed with the assistance of Lead Plaintiffs' damages consultant, is a fair and reasonable method for distributing the Net Settlement Fund to Class Members and should also be approved by the Court.

II. NOTICE TO THE CLASS SATISFIED RULE 23 AND DUE PROCESS

On August 20, 2014, the Court entered its Preliminary Approval Order (Dkt. No. 57), which directed that a hearing be held on October 24, 2014 to determine the fairness, reasonableness, and adequacy of the Settlement. The Notice provided to the Class satisfied the requirements of Rule 23(c)(2)(B), which requires "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 Notice also satisfied Rule 23(e)(1), which requires that notice must be provided in a "reasonable manner" – *i.e.*, it must "'fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings.'" *Wal-Mart Stores, Inc. v. VISA U.S.A. Inc.*, 396 F.3d 96, 114 (2d Cir. 2005) (quoting *Weinberger v. Kendrick*, 698 F.2d 61, 70 (2d Cir. 1982)); *City of Providence v. Aéropostale, Inc.*, No. 11 Civ. 7132 (CM) (GWG), 2014 WL 1883494, at *2 (S.D.N.Y. May 9, 2014) ("*City of Providence*").

Pursuant to the Preliminary Approval Order, the Notice was mailed to all known potential Class Members beginning on August 28, 2014, and the Summary Notice was published in *Investor's Business Daily* and transmitted over the *PR Newswire* on September 10, 2014. *See* Declaration of Stephanie A. Thurin Regarding Notice Dissemination and Publication ("Mailing Decl."), ¶¶7-11. The Notice contains a detailed description of the nature and procedural history of the Action, as well as the material terms of the Settlement, including, *inter alia*: (i) the total recovery under the Settlement; (ii) the manner in which the Net Settlement Fund will be allocated among eligible Class Members; (iii) a description of the claims that will be released in the Settlement; (iv) the attorneys' fee and expense request; (v) right and mechanism to opt out or be excluded from the Class; and (vi) the right and mechanism to object to the Settlement, the Plan of Distribution, or the request for

attorneys' fees and expenses.

III. ARGUMENT

A. Certification of the Class Is Appropriate

Before reaching the merits of the proposed Settlement, the Court must first ensure that the Class, as defined by the parties, is certifiable under the standards of Rules 23(a) and (b) for purposes of the proposed Settlement. *Bourlas v. Davis Law Assocs.*, 237 F.R.D. 345, 349 (E.D.N.Y. 2006); *Denney v. Deutsche Bank AG*, 443 F.3d 253, 270 (2d Cir. 2006) ("Before certification is proper for any purpose - settlement, litigation, or otherwise - a court must ensure that the requirements of Rule 23(a) and (b) have been met."); *Lizondro-Garcia v. Kefi LLC*, No. 12 Civ. 1906 (HBP), 2014 WL 2217904, at *2 (S.D.N.Y. May 29, 2014) (same). In deciding certification, courts must take a liberal rather than restrictive approach in determining whether plaintiffs satisfy these requirements and may exercise broad discretion in weighing the propriety of a putative class. *Cohen v. J.P. Morgan Chase & Co.*, 262 F.R.D. 153, 158 (E.D.N.Y. 2009); *Marisol A. by Forbes v. Giuliani*, 126 F.3d 372, 377 (2d Cir. 1997) ("'Rule 23 is given liberal rather than restrictive construction, and courts are to adopt a standard of flexibility'" in deciding whether to grant certification.).[4] "Doubts concerning the propriety of class certification should be resolved in favor of class certification." *Lizondro-Garcia*, 2014 WL 2217904, at *3.

Under the terms of the Stipulation, the parties have agreed to certification of the Class. The Second Circuit has explicitly noted its preference for class certification in securities cases. *In re Prudential Sec. Inc. Ltd. P'ships Litig.*, 163 F.R.D. 200, 206 (S.D.N.Y. 1995). Notwithstanding, to obtain class certification, plaintiffs must establish the Rule 23(a) requirements of numerosity, commonality, typicality, and adequacy of representation and demonstrate that the action may be

[4] Unless otherwise noted, all emphasis is added and citations are omitted.

maintained under one of the three subsections of Rule 23(b). *See In re Dreyfus Aggressive Growth Mut. Fund Litig.*, No. 98 Civ. 4318 (HB), 2000 WL 1357509, at *2 (S.D.N.Y. Sept. 20, 2000). Nothing has changed to alter the Court's preliminary certification of the Class and the requirements of Federal Rule of Civil Procedure 23(a) and (b)(3) have been satisfied in that:

- the proposed Class is so numerous that joinder of all members is impracticable as Autoliv common stock was actively traded on the New York Stock Exchange and there were over 85 million shares of Autoliv common stock outstanding during the Class Period. Moreover, notice was mailed to more than 23,590 Class Members in connection with the Settlement;

- based on Lead Plaintiffs' allegations that Defendants made uniform misrepresentations and omitted material facts in Autoliv's public statements, which affected all Class Members, the claims of Lead Plaintiffs are typical of the claims of the proposed Class they seek to represent;

- Lead Plaintiffs do not have any interests antagonistic to, or in conflict with, the other members of the Class and they will fairly and adequately represent and protect the interests of the other members of the Class as they have retained counsel competent and experienced in class and securities litigation;

- there are questions of law or fact common to the Class which predominate over any questions solely affecting individual members of the Class, including: (i) whether the Defendants' actions violated the Securities Exchange Act of 1934; (ii) whether Autoliv's public documents and other statements contained false or misleading statements or omitted material facts; and (iii) to what extent the members of the Class have sustained damages and the proper measure of damages; and

- given that joinder of all Class Members is impracticable, certifying a Class is superior to all other available methods for the fair and efficient adjudication of this controversy. Prosecuting separate actions would create a risk of: (i) inconsistent or varying adjudications with respect to individual Class Members that would establish incompatible standards of conduct for Defendants; and (ii) adjudications with respect to individual Class Members that, as a practical matter, would be dispositive of the interests of other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.

See Amended Complaint for Violation of the Federal Securities Laws, ¶¶30-34 (Dkt. No. 18); Mailing Decl., ¶10. *See also*, *e.g.*, *In re Longtop Fin. Techs. Ltd. Sec. Litig.*, No. 11 Civ. 3658 (SAS), 2013 WL 3486990, at *1-*3 (S.D.N.Y. July 11, 2013) (performing Rule 23 analysis and

certifying securities fraud class action); *Silverstein v. AllianceBernstein L.P.*, No. 09-CV-5904 (JPO), 2013 WL 7122612, at *2-*4 (S.D.N.Y. Dec. 20, 2013); *In re Blech Sec. Litig.*, 187 F.R.D. 97, 102 (S.D.N.Y. 1999) (granting class certification and explaining "in an alleged securities fraud case, when a court is in doubt as to whether or not to certify a class action, the court should err in favor of allowing the class to go forward"). Accordingly, the Court should certify the Class and appoint Lead Plaintiffs as the Class Representatives.

B. The Settlement Is Fair, Reasonable, and Adequate

1. The Standard for Evaluating Class Action Settlements

Rule 23(e) requires review and approval by the Court for any class action settlement to be effective. A settlement should be approved if the Court finds it "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2); *In re Sony Corp. SXRD*, 448 Fed. App'x. 85, 86 (2d Cir. 2011); *Silverstein*, 2013 WL 7122612, at *4. This evaluation requires the court to consider "both the settlement's terms and the negotiating process leading to settlement." *Wal-Mart*, 396 F.3d at 116; *City of Providence*, 2014 WL 1883494, at *3. The decision to grant or deny approval of a settlement lies within the broad discretion of the trial court. Nevertheless, a general policy favoring settlement exists, especially with respect to class actions. *Wal-Mart*, 396 F.3d at 116 ("We are mindful of the 'strong judicial policy in favor of settlements, particularly in the class action context.'"); *see also Silverstein*, 2013 WL 7122612, at *4.

Recognizing that a settlement represents an exercise of judgment by the negotiating parties, the Second Circuit has cautioned that, while a court should not give "rubber stamp approval" to a proposed settlement, it must "stop short of the detailed and thorough investigation that it would undertake if it were actually trying the case." *Detroit v. Grinnell Corp.*, 495 F.2d 448, 462 (2d Cir. 1974); *City of Providence*, 2014 WL 1883494, at *3. "'Absent fraud or collusion, [courts] should be

hesitant to substitute [their] judgment for that of the parties who negotiated the settlement.'" *Silverstein*, 2013 WL 7122612, at *4.

In addition to a presumption of fairness that attaches to a settlement reached as a result of arm's-length negotiations, such as those here, the Second Circuit has identified nine factors that courts should consider in deciding whether to approve a proposed settlement of a class action:

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; [and] (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Grinnell, 495 F.2d at 463. "'[N]ot every factor must weigh in favor of settlement, rather the court should consider the totality of these factors in light of the particular circumstances.'" *City of Providence*, 2014 WL 1883494, at *4. Here, the Settlement easily satisfies the criteria for approval articulated by the Second Circuit.

2. The Settlement Is Procedurally Fair

A strong initial presumption of fairness attaches to a proposed settlement if it is reached by experienced counsel after arm's-length negotiations. *See Shapiro v. JPMorgan Chase & Co.*, No. 11 Civ. 8831(CM)(MHD), 2014 WL 1224666, at *7 (S.D.N.Y. Mar. 24, 2014); *In re Luxottica Grp. S.p.A. Sec. Litig.*, 233 F.R.D. 306, 315 (E.D.N.Y. 2006). A court may find the negotiating process is fair where, as here, "the settlement resulted from 'arm's-length negotiations and that plaintiffs' counsel have possessed the experience and ability . . . necessary to effective representation of the class's interests.'" *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001); *In re China Sunergy Sec. Litig.*, No. 07 Civ. 7895 (DAB), 2011 WL 1899715, at *3-*4 (S.D.N.Y. May 13, 2011) (court must pay close attention to the negotiating process, that they were at arm's length, and that class

counsel had the requisite experience and ability).

This initial presumption of fairness and adequacy readily applies here because the Settlement was reached by experienced, fully-informed counsel after intense and hard-fought negotiations and, ultimately, with the assistance of Judge Phillips. Joint Decl., ¶68.[5] The negotiations that produced this Settlement were substantial. From time to time throughout the litigation, the parties discussed whether it was possible to settle the Action and jointly retained the services of Judge Phillips. Prior to the mediation, Lead Counsel engaged in discussions with Defendants in order to obtain documents necessary to further evaluate their claims. These negotiations proved successful, resulting in a production by Defendants of documents relating to Lead Plaintiffs' claims. During the mediation process, counsel for Lead Plaintiffs and Defendants exchanged detailed mediation statements and replies. Following completion of the briefing, Judge Phillips sent each side a list of targeted questions probing the strengths and weaknesses of the parties' arguments, which were to be and were answered at the mediation. During the mediation, the parties participated in a joint session among all counsel during which Lead Counsel made an extensive presentation that set forth their view of the case, and responded to the issues raised in Defendants' mediation statements, and by Judge Phillips. Thereafter, in separate sessions, the parties addressed various issues, including liability, damages, and collectability. The negotiations went back-and-forth, with the strengths and

[5] *See In re Delphi Corp. Sec.*, 248 F.R.D. 483, 498 (E.D. Mich. 2008) (speaking of Judge Phillips, "the Court and the parties have had the added benefit of the insight and considerable talents of a former federal judge who is one of the most prominent and highly skilled mediators of complex actions, who acted as Special Master in the settlement negotiations"); *ATLAS v. Accredited Home Lenders Holding Co.*, No. 07-CV-00488-H (CAB), 2009 WL 3698393, at *3 (S.D. Cal. Nov. 4, 2009) ("The settlement negotiations were also fair. They were closely supervised by the Honorable Layn Phillips (Ret.) and conducted at arm's length by experienced and competent counsel."); *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, No. 02-CV-3400 (CM) (PED), 2010 WL 4537550, at *14 (S.D.N.Y. Nov. 8, 2010) (noting that the "presumption in favor of the negotiated settlement in this case is strengthened by the fact that settlement was reached in an extended mediation supervised by [an experienced mediator]").

weaknesses of their respective positions being thoroughly probed and debated. *Id*., ¶¶45-50.

The case did not settle following the full-day mediation, but the parties continued negotiations for another month through Judge Phillips, and ultimately reached an agreement-in-principle to settle the Action for $22.5 million in cash in response to a "mediator's recommendation." Lead Counsel discussed the recommendation with Lead Plaintiffs and after careful deliberation, Lead Plaintiffs accepted the recommendation. Lead Plaintiffs' agreement to the proposed Settlement was conditioned upon Defendants providing additional non-public documents regarding the facts and claims alleged, as well as an interview of an Autoliv executive with knowledge thereof. In July 2014, Defendants provided those documents and Lead Counsel interviewed the Autoliv executive for nearly a full day. Joint Decl., ¶54.

As discussed in detail in the Joint Declaration, Lead Counsel, equipped with knowledge from an extensive and careful investigation and evaluation of Lead Plaintiffs' claims, including a worldwide search and probing of confidential witnesses and consultations with relevant experts; opposing two motions to dismiss; the review of non-public documents produced by Autoliv; participating in a comprehensive mediation process; and the interview of a Vice President of Investor Relations and Business Activities/Mergers and Acquisitions for Autoliv were fully informed of both the merits and weaknesses of the case. Moreover, Lead Counsel have been litigating and trying complex securities class actions for decades and are intimately familiar with the challenges and barriers to achieving class action recoveries. Joint Decl., ¶¶142-143; Exs. 1-2. They believe that the Settlement is not just fair, reasonable, and adequate, but is an excellent result for Lead Plaintiffs and the Class under the circumstances. This opinion is entitled to "great weight." *City of Providence*, 2014 WL 1883494, at *5; *In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 125 (S.D.N.Y.), *aff'd*, 117 F.3d 721 (2d Cir. 1997). Thus, little doubt exists that this Settlement is

entitled to the presumption of procedural fairness dictated by Second Circuit law.

3. Application of the *Grinnell* Factors Supports Approval of the Settlement

a. The Complexity, Expense, and Likely Duration of the Litigation Support Final Approval of the Settlement

"This factor captures the probable costs, in both time and money, of continued litigation." *Shapiro*, 2014 WL 1224666, at *8. This securities fraud litigation, in addition to the issues that arise from such an action, also required delving into related charges of antitrust violations, with the myriad factual and legal complexities that flow from both such claims. It undoubtedly would have been litigated for years, in the absence of settlement. Indeed, district courts in this Circuit have "long recognized" that securities class actions are "'notably difficult and notoriously uncertain'" to litigate. *In re Bear Stearns Cos.*, 909 F. Supp. 2d 259, 266 (S.D.N.Y. 2012); *In re Sumitomo Copper Litig.*, 189 F.R.D. 274, 281 (S.D.N.Y. 1999).

Lead Plaintiffs' claims concern the Company's illegal anti-competitive activities, the falsity and materiality of the alleged statements, scienter, loss causation, and damages. *See generally* Joint Decl. It would be costly and time-consuming to pursue this litigation all the way through to trial, with no guarantee of success. Defendants and much of the relevant documents and witnesses are located outside the United States. Autoliv is based in Sweden and the underlying antitrust conspiracies to which Autoliv and Matsunaga pled guilty occurred in Japan, and evidence may have developed showing that such unlawful conduct occurred at other Autoliv subsidiaries around the world. Lead Plaintiffs would likely need to translate the vast majority of documents anticipated to be produced during discovery. In addition, it is likely that many of the depositions would need to take place overseas and require translation services. Lead Plaintiffs would also have to overcome data protection and Hague Convention issues, but may not have been able to do so prior to the close

of discovery (or at all). Much of the discovery, once produced (and translated), would itself be extraordinarily complex. Joint Decl., ¶75.

Formal expert discovery would be no less time-consuming and expensive. There would have been experts in the fields of the automotive industry, loss causation, price-impact, and damages. The parties would draft and respond to *Daubert* motions and summary judgment motions. Thereafter, the Court would need to conduct a trial on any issues that remained in the case. A trial would have been very complicated for jurors, given the tremendous amount and complexity of fact and expert discovery that would need to be presented. *Id.*, ¶78.

Even if the Class could obtain a judgment at trial, the additional delay through post-trial motions, and the appellate process could prevent the Class from obtaining any recovery for years. *See Strougo v. Bassini*, 258 F. Supp. 2d 254, 261 (S.D.N.Y. 2003) ("[E]ven if a shareholder or class member was willing to assume all the risks of pursuing the actions through further litigation . . . the passage of time would introduce yet more risks . . . and would, in light of the time value of money, make future recoveries less valuable than this current recovery.").[6] Thus, this Settlement will spare the litigants the significant delay, risk and expense of continued litigation, thus weighing strongly in favor of approval of the Settlement.

b. The Reaction of the Class to the Settlement Supports Final Approval of the Settlement

The reaction of the Class to the Settlement is a significant factor in assessing its fairness and

[6] For example, in *Lawrence E. Jaffe Pension Plan v. Household Int'l, Inc.*, No. 02-C-5893 (N.D. Ill.), on May 7, 2009, the jury returned a verdict in the class' favor on liability after seven years of hard-fought litigation. More than five years later, the parties are ***still*** litigating the judgment in the Seventh Circuit Court of Appeals. *See also Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012) (affirming judgment as a matter of law on the basis of loss causation following a jury verdict partially in plaintiffs' favor). *See also Robbins v. Koger Props., Inc.*, 116 F.3d 1441, 1449 (11th Cir. 1997) (reversing $81 million jury verdict and dismissing case with prejudice in securities action).

adequacy, and "'the absence of objectants may itself be taken as evidencing the fairness of a settlement.'" *PaineWebber*, 171 F.R.D. at 126; *Silverstein*, 2013 WL 7122612, at *5 ("'The fact that the vast majority of class members neither objected nor opted out is a strong indication of fairness.'"). At least one court in this District has repeatedly noted that the reaction of the class to a settlement "is considered perhaps 'the most significant factor to be weighed in considering its adequacy.'" *City of Providence*, 2014 WL 1883494, at *5. Here, a total of 23,595 copies of the Notice have been mailed to potential Class Members and nominees and the Summary Notice was published in *Investor's Business Daily* and issued over the *PR Newswire*. *See* Mailing Decl., ¶¶3-11. While the deadline set by the Court for Class Members to exclude themselves from the Class or object to the Settlement has not yet passed, to date, not a single request for exclusion or objection has been received. If any objections or requests for exclusion are received subsequent to filing this brief, Lead Plaintiffs will respond in their reply papers due October 17, 2014.

c. The Stage of the Proceedings and Discovery Completed Support Final Approval of the Settlement

In considering this factor, "'the question is whether the parties had adequate information about their claims such that their counsel can intelligently evaluate the merits of plaintiff's claims, the strengths of the defenses asserted by defendants, and the value of plaintiffs' causes of action for purposes of settlement.'" *Bear Stearns*, 909 F. Supp. 2d at 267. To satisfy this factor, parties need not have engaged in formal or extensive discovery. *See Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 363 (S.D.N.Y. 2002). In fact, in cases such as this one brought under the PSLRA, no formal discovery may proceed until the motion to dismiss is denied.

Here, as mentioned above and as detailed in the Joint Declaration, Lead Counsel conducted a careful and thorough investigation to formulate Lead Plaintiffs' theory of the case and develop sufficient information to draft a complaint that they believed would withstand Defendants' motions

to dismiss. As set forth in the Joint Declaration, the knowledge and insight gained by Lead Plaintiffs and Lead Counsel during their investigation, opposition to the motions to dismiss, consultation with experts, of discovery produced in connection with the Settlement, and thorough negotiation of the Settlement provided them with a comprehensive understanding of the key legal and factual issues in the litigation. Joint Decl., ¶¶7, 71. Thus, at the time the Settlement was reached, they had "'a clear view of the strengths and weaknesses of their case'" and of the range of possible outcomes at trial. *Teachers' Ret. Sys. of La. v. A.C.L.N., Ltd.*, No. 01-CV-11814 (MP), 2004 WL 1087261, at *3 (S.D.N.Y. May 14, 2004). *See also Silverstein*, 2013 WL 7122612, at *5. Accordingly, this factor supports approval of the Settlement.

d. The Reasonableness of the Settlement in Relation to the Risk of Establishing Liability Supports Approval of the Settlement

In assessing the Settlement, the Court should balance the benefits afforded to the Class, including the immediacy and certainty of a recovery, against the continuing risks of litigation. *See Grinnell*, 495 F.2d at 463; *City of Providence*, 2014 WL 1883494, at *7. Although Lead Plaintiffs and Lead Counsel believe that they had a reasonable likelihood of prevailing on the previously pending motions to dismiss, on a motion for class certification and at summary judgment and at trial, they also recognize that there were considerable risks involved in pursuing the litigation against Defendants that could have led to a substantially smaller recovery or no recovery at all. In particular, Defendants raised a number of arguments and defenses in their motions to dismiss which they would likely raise again at summary judgment and trial, involving, primarily, the ability of Lead Plaintiffs to establish that Defendants acted with scienter and whether there were actionable misstatements and omissions. *See generally* Joint Decl., ¶¶86-111.

(1) Challenges of Pleading and Proving Scienter

Although Autoliv pled guilty to two violations of Section 1 of the Sherman Act, Defendants disputed, in connection with the motions to dismiss and would continue to claim throughout the litigation, that the plea could not be used by Lead Plaintiffs to establish scienter in this case. They argued that under the antitrust laws, unlike the federal securities laws, a corporation can be held liable under the doctrine of *respondeat superior* if ***any*** of its employees or agents engage in price fixing while acting within the scope of his or her employment. Joint Decl., ¶88. For a Section 10(b) claim, however, there must be a strong inference that someone ***whose intent could be imputed to the corporation*** acted with the requisite scienter. The plea itself noted that the anti-competitive conduct occurred at the subsidiary level and did not suggest that senior management of Autoliv, or Defendants Carlson or Wallin, had knowledge of the illegal conduct. Defendants would argue that no one responsible for Autoliv's public statements had knowledge of antitrust conduct that gave rise to the violations and would vigorously challenge Lead Plaintiffs' efforts to impute the conduct of Matsunaga, an employee of the Japanese subsidiary, to Autoliv. *Id.*

Lead Plaintiffs argue, first, that Autoliv's guilty plea is a sworn admission that it knowingly and intentionally participated in deliberately illegal conduct through "high-level" employees of Autoliv Japan, including Matsunaga (among other employees of that subsidiary). Moreover, they contend that Matsunaga's undisputed knowledge of this deliberately unlawful conduct, through his guilty plea, is also imputable to the Company under the Second Circuit's corporate scienter doctrine.[7] Specifically, Lead Plaintiffs would seek to prove that Matsunaga was a sufficiently senior

[7] A corporation's scienter may be established by proving that someone whose intent could be imputed to the corporation acted with requisite scienter, regardless of whether the person with scienter made the corporation's actionable misstatement. *See, e.g.*, *Teamsters Local 445 Freight Div. Pension Fund v. Dynex Capital Inc.*, 531 F.3d 190, 195 (2d Cir. 2008) (holding that the scienter

officer to bind Autoliv, such that Autoliv's guilty plea was an admission of its own knowing misconduct. Lead Plaintiffs would point to the fact that Autoliv publicly represented that Matsunaga was a senior manager of Autoliv, who reported directly to Defendant Carlson, notwithstanding his position with a subsidiary (as part of Autoliv's matrix corporate structure) and acted as Autoliv's agent with respect to deals with Toyota that were tainted by anti-competitive conduct. Joint Decl., ¶89. *See Kyung Cho v. UCBH Holdings, Inc.*, 890 F. Supp. 2d 1190 (N.D. Cal. 2012) (imputing scienter based on the guilty plea of the Vice President of the defendant's subsidiary).

While Lead Plaintiffs are confident in their arguments on this issue, they recognize that their ability to use the guilty pleas by Autoliv and Matsunaga to establish or support an inference of scienter as to the Company is uncertain due to the absence of Second Circuit precedent directly on point, ambiguities regarding the contours and scope of the corporate scienter doctrine in the Second Circuit, and the existence of precedent from other circuit courts rejecting arguments similar to those raised by Lead Plaintiffs.[8] There is accordingly a material risk that the guilty pleas will not establish Autoliv's scienter. Joint Decl., ¶90.

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of a subsidiary's officer is imputable to the parent corporation to the extent the plaintiffs adequately plead that the subsidiary's officer possessed scienter).

[8] *Compare In re Moody's Corp. Sec. Litig.*, 599 F. Supp. 2d 493, 515-516 (S.D.N.Y. 2009) ("There is no formulaic method or seniority prerequisite for employee scienter to be imputed to the corporation, but scienter by management-level employees is generally sufficient to attribute scienter to corporate defendants.") *with Bd. of Trustees of Ft. Lauderdale Gen. Emps.' Ret. Sys. v. Mechel OAO*, 811 F. Supp. 2d 853, 881 (S.D.N.Y. 2011) ("[T]he inference of scienter is undermined by the absence of particularized facts demonstrating that any of the Individual Defendants, or other persons whose intent could be imputed to [defendant corporation], knew about the subsidiaries' alleged anti-competitive conduct . . . at the time of the misrepresentations."), *aff'd sub nom. Frederick v. Mechel OAO*, 475 Fed. App'x. 353 (2d Cir. 2012). *See also City of Roseville Emps.' Ret. Sys. v. Horizon Lines, Inc.*, 442 Fed. App'x. 672, 676-77 (3d Cir. 2011) (affirming dismissal on grounds that plaintiffs failed to plead strong inference that senior executives had made allegedly false statements with scienter, despite fact that "the price fixing conspiracy at Horizon was long-lasting and affected a substantial portion of Horizon's business").

If Lead Plaintiffs are unable to rely on Autoliv and Matsunaga's admissions to establish scienter, they would need to prove the individual Defendants' scienter through circumstantial evidence concerning: (i) "red flags" that should have alerted Defendants to the anti-competitive conduct, and thus the fact that their alleged misstatements were false or misleading; (ii) Defendants' involvement in Autoliv's Request for Quotation ("RFQ") bidding process; and (iii) Defendants' knowledge of Autoliv's "core operations." Joint Decl., ¶¶92-96. Lead Counsel retained an automotive industry expert to lend expertise to the identification and analysis of red flags that would have alerted Defendants to anti-competitive conduct, such that they knew or recklessly disregarded that such acts were at least partly responsible for certain of Autoliv's reported results. *Id.*, ¶56. Lead Plaintiffs also alleged that a computer database that compiled and organized all RFQs by customer, date, and vehicle model, was accessible Company-wide, including to Carlson. *Id.*, ¶94. Finally, Lead Plaintiffs were confident in their ability to establish the "core" nature of Autoliv's operations at the Japanese subsidiary given that (i) according to Autoliv, Japan was one of its most important markets; (ii) Autoliv participated in a criminal conspiracy in this important market for nearly five years; and (iii) Autoliv's unlawful conduct likely extended beyond the Japanese market. *Id.*, ¶96.

Defendants, however, contended in the motions to dismiss that the anomalies relating to Autoliv's key growth drivers – Light Vehicle Production ("LVP") and Safety Content Per Vehicle ("CPV") (*see* Joint Decl., ¶¶57-59, 92), have innocent explanations, such as higher Japanese market share, vehicle production recovery, new products, and exchange rates. They also maintain that the materials relating to the RFQ process, including the computer database accessible to Carlson and Wallin, contained no information that would have revealed, or put them on notice of, Autoliv's and Matsunaga's anti-competitive conduct. Finally, with respect to the core operations doctrine, based on various metrics, Defendants argued that Autoliv's Japanese subsidiary, where the underling

antitrust activity took place, was not a core operation of the Company as it was responsible for only a fraction of Autoliv's sales during the Class Period. Joint Decl., ¶96.

While Lead Plaintiffs were confident in their ability to overcome such arguments and plead and prove scienter through such circumstantial evidence, there were significant risks facing them. For instance, they recognized that their consulting expert's assumptions and analysis were based on publicly available information, such as that contained in Autoliv's SEC filings, and discovery could alter this analysis and lead to an uncertain "battle of the experts." *Id.*, ¶93. Similarly, Defendants maintain that they could show that the RFQ process would not have alerted the individual Defendants to anti-competitive conduct. *Id.*, ¶95. With respect to the application of the core operations doctrine, while full discovery could have uncovered contrary information, it was possible that the guilty plea could have reflected the full scope of the unlawful conduct at Autoliv – limited to the activities of the Japanese subsidiary. *Id.*, ¶96.

(2) Challenges of Pleading and Proving Actionable Misstatements or Omissions

Defendants attacked Lead Plaintiffs' allegations of false and misleading statements on a number of grounds: (i) that statements concerning financial results or competition were true, or on the whole true, and Defendants were under no obligation to disclose the Company's illegal activities; (ii) that statements regarding business practices, ethics, and legal compliance were inactionable puffery; and (iii) that many of the alleged statements were forward looking and protected by the PSLRA's safe harbor provisions. They also challenged Lead Plaintiffs' ability to connect the individual Defendants to alleged statements that were not signed by them or personally conveyed during conference calls. Joint Decl., ¶¶100-105.

Lead Plaintiffs respond that certain core statements were clearly false and misleading, as they attributed Autoliv's reported "record" financial results during the Class Period to benign and lawful

factors, rather than the Company's participation in an anti-competitive conspiracy. Once Autoliv "put[] the topic of the cause of its financial success at issue, then it [was] obligated to disclose information concerning the source of its success," *i.e.*, unlawful anti-competitive conduct. *Freudenberg v. E*Trade Fin. Corp.*, 712 F. Supp. 2d 171, 180 (S.D.N.Y. 2010). Defendants were also obligated to disclose Autoliv's unlawful conduct to avoid making their statements regarding competition (which contained no caveats or exceptions) materially false and misleading.[9] Joint Decl., ¶100. To rebut the "puffery" contentions, Lead Plaintiffs focus on United States Supreme Court authority that statements convey existing fact where they are "reasonably understood to rest on a factual basis that justifies them as accurate, the absence of which renders them misleading." *Virginia Bankshares, Inc. v. Sandberg*, 501 U.S. 1083, 1093 (1991). With respect to the safe harbor defense, Lead Plaintiffs argue that: (i) the statements that Defendants cite as "forward looking" are actually statements of historical or existing fact; (ii) the allegations establishing scienter also demonstrate that Defendants made the relevant statements with actual knowledge that they were false; and (iii) any purported cautionary language was not meaningful because it would have misled a reasonable investor into thinking that Autoliv was not engaging in anti-competitive conduct at least in Japan, when the opposite was true. Joint Decl., ¶102.

Lead Plaintiffs recognize, however, that Defendants had certain defenses that could have prevailed on the motions to dismiss, at summary judgment, or have resonated with the jury. For instance, Defendants may be able to show that Autoliv's financial results were not actually inflated,

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[9] *See In re Sotheby's Holdings, Inc.*, No. 00 CIV. 1041 (DLC), 2000 WL 1234601, at *4 (S.D.N.Y. Aug. 31, 2000) (statements about "'intense' competition" gave rise to duty to disclose anti-competitive agreement); *Menkes v. Stolt-Nielsen, S.A.*, No. 3:03CV409 (DJS), 2006 WL 1699603, at *11-*12 (D. Conn. June 19, 2006) ("defendants had a duty to disclose information regarding their anti-competitive conduct as a result of their own public statements . . . referencing competition in the marketplace").

or were not materially inflated, by its unlawful antitrust conspiracy. If this were to occur, this category of alleged misstatements would be deemed inactionable, reducing the damages recoverable by the Class. With respect to puffery, courts, including this Court, have dismissed Section 10(b) claims premised on statements similar to those here, and any attempt to distinguish the statements in this case may be unsuccessful. *See Peters v. Jinkosolar Holding Co.*, No. 11 Civ. 7133 (JPO), 2013 WL 754712 (S.D.N.Y. Feb. 27, 2013), *appeal dismissed* (Mar. 25, 2013). Lead Plaintiffs also understood that the characterization of purportedly forward-looking statements is subjective and they can be subject to more than one interpretation. If a statement were found to be forward looking, Lead Plaintiffs would have to proffer evidence showing that it was made with actual knowledge (mere reckless disregard would be insufficient) that it was false and misleading, with the concomitant risks discussed above. There is also a possibility that Defendants may put forth a compelling jury presentation showing how specific cautionary statements warned investors of Autoliv's anti-competitive conduct and risks arising therefrom. Joint Decl., ¶102.

With respect to whether statements that were not signed or spoken by an individual defendant could be attributed to them for purposes of a claim, Lead Plaintiffs would need to rely on the group pleading doctrine and implicit attribution of statements concerning Japanese and Toyota sales to Matsunaga. Lead Plaintiffs would argue that "most judges in this District have continued to conclude that group pleading is alive and well." *City of Pontiac Gen. Emps.' Ret. Sys. v. Lockheed Martin Corp.*, 875 F. Supp. 2d 359, 374 (S.D.N.Y. 2012). However, the absence of clear Second Circuit guidance on this issue created a risk that the doctrine could not be invoked here.

Although Lead Plaintiffs are optimistic about their ability to ultimately prove the claims asserted in the Action, the risks of the case being lost or its value diminished on a pre-trial motion or at trial, when weighed against the immediate benefits of settlement, reinforce Lead Plaintiffs'

judgment that the Settlement is in the best interests of the Class.

e. The Reasonableness of the Settlement in Relation to the Risk of Establishing Damages Supports Final Approval of the Settlement

Even if Lead Plaintiffs successfully established liability, they also faced substantial risk in proving loss causation and damages. Once liability is established, damages remain a "'complicated and uncertain process, typically involving conflicting expert opinion' about the difference between the purchase price and the [share]'s "true" value absent the alleged fraud." *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 459 (S.D.N.Y. 2004). Defendants undoubtedly would have continued to argue that any potential investment losses suffered by Lead Plaintiffs and the Class were actually caused by external, independent factors, and not caused by Defendants' alleged conduct. Joint Decl., ¶107. In particular, Defendants would argue, among other things, that Lead Plaintiffs could not prove that Defendants' misstatements or omissions concealed something from the market that, when disclosed, negatively affected the value of Autoliv stock. *Id.* Defendants would also dispute Lead Plaintiffs' calculation of artificial inflation and would challenge the methodology Lead Plaintiffs' consultant used to calculate damages. *Id.*, ¶111.

The Settling Parties' competing expert testimony on damages would inevitably reduce the trial of these issues to a risky "battle of the experts" and the "jury's verdict with respect to damages would thus depend on its reaction to the complex testimony of experts, a reaction that is inherently uncertain and unpredictable." *Flag Telecom*, 2010 WL 4537550, at *18.

f. The Risks of Maintaining the Class Action Through Trial Supports Final Approval of the Settlement

The parties had yet to commence class certification briefing, and it was certain that Defendants would vigorously oppose class certification by arguing, among other things, that the

fraud-on-the-market presumption of reliance was inapplicable here.[10] The Settlement avoids any uncertainty with respect to these issues.

g. The Ability of Defendants to Withstand a Greater Judgment

The Court may also consider the Defendants' ability to withstand a judgment greater than that secured by settlement. *Grinnell*, 495 F.2d at 463. Lead Counsel does not dispute that Autoliv has financial resources to pay a greater judgment if obtained; however, Carlson, Wallin, and Matsunaga likely could not. The fact that Autoliv might have been able to pay more money, however, does not render the Settlement unreasonable. *See In re Sony SXRD Rear Projection TV Class Action Litig.*, No. 06 Civ. 5173 (RPP), 2008 WL 1956267, at *8 (S.D.N.Y. May 1, 2008) ("a defendant is not required to 'empty its coffers' before a settlement can be found adequate"). *See also City of Providence*, 2014 WL 1883494, at *9 ("Courts, however, generally do not find the ability of a defendant to withstand a greater judgment to be an impediment to settlement when the other factors favor the settlement.").

h. The Amount of the Settlement Supports Final Approval

The last two substantive factors courts consider are the range of reasonableness of a settlement in light of (i) the best possible recovery, and (ii) litigation risks. *Grinnell*, 495 F.2d at 463. In analyzing these last two factors, the issue for the Court is not whether the Settlement represents the best possible recovery, but how the Settlement relates to the strengths and weaknesses of the case. A court "'consider[s] and weigh[s] the nature of the claim, the possible defenses, the situation of the parties, and the exercise of business judgment in determining whether the proposed

[10] *See Halliburton Co. v. Erica P. John Fund, Inc.*, 134 S. Ct. 2398 (2014) (providing defendants the opportunity at certification stage to refute the presumption of reliance by demonstrating lack of price impact caused by alleged misrepresentations).

settlement is reasonable.'" *Id*. at 462. Courts agree that the determination of a "reasonable" settlement "'is not susceptible of a mathematical equation yielding a particularized sum.'" *PaineWebber*, 171 F.R.D. at 130. Instead, "in any case there is a range of reasonableness with respect to a settlement." *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972).

The Settlement here provides a recovery well within the range of reasonableness in light of the best possible recovery and the attendant risks of litigation. According to analyses prepared by Lead Plaintiffs' damages consultant, using certain assumptions and modeling, the likely damages recoverable by the Class range from approximately $300 to $500 million. Joint Decl., ¶118. The $22.5 million Settlement represents a recovery of approximately 5% to 8% of estimated damages. This percentage is well within the range of reasonableness approved by courts. *See, e.g.*, *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2007) ($13.75 million settlement yielding 6% of potential damages after deducting fees and costs was "higher than the median percentage of investor losses recovered in recent shareholder class action settlements"); *In re Merrill Lynch & Co., Inc. Research Reports Sec. Litig.*, No. 02 MDL 1484 (JFK), 2007 WL 4526593, at *10 (S.D.N.Y. Feb. 1, 2007) (finding that a recovery representing 6.25% of damages was "at the higher end of the range of reasonableness of recovery in class actions securities litigations"). Moreover, the Settlement Amount of $16.25 million is well-above the $9.1 million median settlement amount of reported securities cases in 2013, and greater than the median reported settlement amounts since the passage of the PSLRA, which have ranged from $3.7 million in 1996 to $9.1 million in 2013 (with a peak of $12.3 million in 2012). *See* Dr. Renzo Comolli & Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2013 Full-Year Review*, at 28 (NERA Jan. 21, 2014). Joint Decl., Ex. 6. The recovery, therefore, particularly in view of the risks and uncertainties discussed herein, falls well within the range of possible approval and deserves the Court's approval.

Accordingly, Lead Counsel submit that this Court should find that the *Grinnell* factors, taken together, weigh in favor of settlement and that the Settlement should be approved.

IV. THE PLAN OF DISTRIBUTION IS FAIR AND ADEQUATE

The standard for approval of a plan of allocation and distribution of class action settlement proceeds is the same as the standard for approving the settlement as a whole: "'namely, it must be fair and adequate.'" *City of Providence*, 2014 WL 1883494, at *10. "'As a general rule, the adequacy of an allocation plan turns on . . . whether the proposed apportionment is fair and reasonable' under the particular circumstances of the case." *In re Visa Check/Mastermoney Antitrust Litig.*, 297 F. Supp. 2d 503, 518 (E.D.N.Y. 2003). A plan "need only have a reasonable, rational basis, particularly if recommended by 'experienced and competent' class counsel." *In re Am. Bank Note Holographics, Inc.*, 127 F. Supp. 2d 418, 429-30 (S.D.N.Y. 2001); *see also In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 344 (S.D.N.Y. 2005) (same).

The Plan of Distribution, which was fully described in the Notice, was prepared with the assistance of Lead Plaintiffs' damages consultant. It provides for the distribution of the Net Settlement Fund among Authorized Claimants on a *pro rata basis* based upon each Class Member's "Recognized Loss," as calculated by the formulas described in the Notice. These formulas are tied to the amount of alleged artificial inflation in the share prices, as quantified by Lead Plaintiffs' damages consultant. Accordingly, the proposed Plan of Distribution is designed to fairly and rationally allocate the proceeds of this Settlement among the Class. *See* Joint Decl., ¶¶122-124. Notably, no Class Member has objected to this straightforward Plan of Distribution. Accordingly, Lead Counsel respectfully request that this Court approve the Plan of Distribution.

V. CONCLUSION

For the foregoing reasons, Lead Plaintiffs respectfully request that the Court grant final approval of the proposed Settlement, approve the Plan of Distribution of the Net Settlement Fund, and enter the proposed Final Judgment and Order of Dismissal with Prejudice and proposed Order approving the Plan of Distribution of the Net Settlement Fund. Proposed orders will be submitted with Lead Plaintiffs' reply papers, after the deadline for objecting and seeking exclusion has passed.

DATED: September 19, 2014

Respectfully submitted,

ROBBINS GELLER RUDMAN
& DOWD LLP
SAMUEL H. RUDMAN
ROBERT M. ROTHMAN
ERIN W. BOARDMAN

s/ Robert M. Rothman
ROBERT M. ROTHMAN

58 South Service Road, Suite 200
Melville, NY 11747
Telephone: 631/367-7100
631/367-1173 (fax)
srudman@rgrdlaw.com
rrothman@rgrdlaw.com
eboardman@rgrdlaw.com

ROBBINS GELLER RUDMAN
& DOWD LLP
ELLEN GUSIKOFF STEWART
655 West Broadway, Suite 1900
San Diego, CA 92101-8498
Telephone: 619/231-1058
619/231-7423 (fax)
elleng@rgrdlaw.com

LABATON SUCHAROW LLP
JOEL H. BERNSTEIN
IRA A. SCHOCHET
NICOLE M. ZEISS
ERIC D. GOTTLIEB
140 Broadway, 34th Floor
New York, NY 10005
Telephone: 212/907-0700
212/818-0477 (fax)
jbernstein@labaton.com
ischochet@labaton.com
nzeiss@labaton.com
egottlieb@labaton.com

Lead Counsel for Lead Plaintiffs and the Class

VANOVERBEKE MICHAUD & TIMMONY, P.C.
THOMAS C. MICHAUD
79 Alfred Street
Detroit, MI 48201
Telephone: 313/578-1200
313/578-1201 (fax)
tmichaud@vmtlaw.com

Additional Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on September 19, 2014, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on September 19, 2014.

s/ Robert M. Rothman
ROBERT M. ROTHMAN

ROBBINS GELLER RUDMAN
& DOWD LLP
58 South Service Road, Suite 200
Melville, NY 11747
Telephone: 631/367-7100
631/367-1173 (fax)

E-mail: rrothman@rgrdlaw.com

Mailing Information for a Case 1:13-cv-02546-JPO

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Mario Alba , Jr**
  malba@rgrdlaw.com,e_file_ny@rgrdlaw.com,e_file_sd@rgrdlaw.com,drosenfeld@rgrdlaw.com
- **Joel H. Bernstein**
  jbernstein@labaton.com,rviczian@labaton.com,egottlieb@labaton.com,ElectronicCaseFiling@labaton.com,lmehringer@labaton.com,smundo@labaton.com,sauer@labaton.com
- **Ronald Joshua Bliss**
  ronald.bliss@bryancave.com,dortiz@bryancave.com
- **Erin Whitney Boardman**
  eboardman@rgrdlaw.com,e_file_sd@rgrdlaw.com
- **Eric David Gottlieb**
  egottlieb@labaton.com
- **Gary John Hacker**
  ghacker@skadden.com
- **Jay B. Kasner**
  jkasner@skadden.com
- **Christopher J. Keller**
  ckeller@labaton.com,drogers@labaton.com
- **Scott D. Musoff**
  smusoff@skadden.com,david.carney@skadden.com
- **Eric Rieder**
  erieder@bryancave.com,dortiz@bryancave.com
- **David Avi Rosenfeld**
  drosenfeld@rgrdlaw.com,e_file_ny@rgrdlaw.com,e_file_sd@rgrdlaw.com
- **Robert M. Rothman**
  rrothman@rgrdlaw.com,e_file_ny@rgrdlaw.com,e_file_sd@rgrdlaw.com
- **Samuel Howard Rudman**
  srudman@rgrdlaw.com,e_file_ny@rgrdlaw.com,mblasy@rgrdlaw.com,e_file_sd@rgrdlaw.com
- **Ira A. Schochet**
  ischochet@labaton.com,mrusso@labaton.com,electroniccasefiling@labaton.com
- **Ellen Anne Gusikoff Stewart**
  elleng@rgrdlaw.com
- **Nicole M. Zeiss**
  nzeiss@labaton.com,lmehringer@labaton.com,electroniccasefiling@labaton.com,cboria@labaton.com

Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

Thomas C. Michaud
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