

1 STUEVE SIEGEL HANSON, LLP
2 JASON S. HARTLEY (192514)
3 550 West C Street, Suite 1750
4 San Diego, CA 92101
5 Telephone: (619)-400-5822
6 Fax: (619)-400-5832
7 hartley@stuevesiegel.com

8 LABATON SUCHAROW LLP
9 JAY L. HIMES, (*Pro Hac Vice*)
10 140 Broadway
11 New York, NY 10005
12 Telephone: (212)-907-0200
13 Facsimile: (212)-818-0477
14 JHimes@labaton.com

15 Co-Lead Counsel for Plaintiffs and the Class

16 [Additional counsel appear on signature page.]

17 **UNITED STATES DISTRICT COURT**
18 **CENTRAL DISTRICT OF CALIFORNIA**
19 **WESTERN DIVISION**

20 In re AFTERMARKET AUTOMOTIVE)
21 LIGHTING PRODUCTS ANTITRUST)
22 LITIGATION)

No. 2:09-ml-02007-GW(PJWx)

23 **MEMORANDUM IN SUPPORT**
24 **OF PLAINTIFFS' MOTION**
25 **FOR PRELIMINARY**
26 **APPROVAL OF THE**
27 **PROPOSED SETTLEMENT**
28 **WITH DEFENDANTS TYC**
BROTHER INDUSTRIAL CO.
LTD. AND GENERA
CORPORATION

Date: Jan. 6, 2014
Time: 8:30 a.m.
Courtroom: 10
Hon. George H. Wu

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5 *Cicero v. DirecTV, Inc.*,
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6 *DIRECTV, Inc.*,
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7 *Ellis v. Naval Air Rework Facility*,
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11 *In re Mercury Interactive Corp. Sec. Litig.*,
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12 *In re Skilled Healthcare Group, Inc. Sec. Litig.*,
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13 *In re Tableware Antitrust Litig.*,
484 F. Supp. 2d 1078 (N.D. Cal. 2007)..... 1

14 *In re Wash. Pub. Power Supply Sys. Sec. Litig.*,
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15 *Linney v. Cellular Alaska P'ship*,
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16 *Officers for Justice v. Civil Serv. Comm'n*,
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17 *Torrisi v. Tucson Elec. Power Co.*,
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18 *Util. Reform Project v. Bonneville Power Admin.*,
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19 *Woo v. Home Loan Group, L.P., No. 07-CV-202 H*,
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1 **STATUTES**

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6 Manual for Complex Litigation, §21.632, at 320-21 (4th ed. 2012)..... 8

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1 **I. INTRODUCTION**

2 Two and a half weeks before trial was to commence, Plaintiffs reached a
3 settlement with the last remaining Defendants, TYC Brother Industrial Co. Ltd.
4 and Genera Corp. (collectively, “TYC”), on the terms and conditions set forth in
5 the Settlement Agreement, attached as Exhibit A to the Declaration of Jason S.
6 Hartley (“Hartley Declaration”). As a result of the proposed settlement, TYC has
7 agreed to provide \$25 million for the benefit of Settlement Class Members,
8 consisting of \$23 million in cash and an additional \$2 million in product credits.
9 The proposed settlement is the product of counsel’s extensive litigation efforts,
10 arm’s length negotiations between highly experienced counsel for the Plaintiffs
11 and TYC, and a mediation conducted by Antonio Piazza.

12 In determining whether preliminary approval is warranted, the issue before
13 the Court is whether the proposed settlement is within the range of what might be
14 found to be fair, reasonable, and adequate, so that notice of the proposed settlement
15 should be given to Settlement Class Members, and a hearing scheduled to consider
16 final approval of the proposed settlement. *In re Am. Honda Motor Co.*, MDL No.
17 06-1737, 2009 WL 1204495, at *1 (C.D. Cal. Apr. 17, 2009). Where “the
18 proposed settlement appears to be the product of serious informed, non-collusive
19 negotiations . . . and falls within the range of possible approval, preliminary
20 approval should be granted.” *In re NASDAQ Mkt-Makers Antitrust Litig.*, No.
21 1023, 1997 U.S. Dist. LEXIS 20835, at *22 (S.D.N.Y. Dec. 31, 1997); *In re*
22 *Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007) (same).

23 Plaintiffs’ Co-Lead Counsel believe that the proposed settlement easily
24 meets the criteria for preliminary approval. It is not only within the range of what
25 might be approved as fair, reasonable, and adequate, but is a highly favorable
26 resolution of this antitrust action. In fact, the \$25,000,000 in settlement
27 consideration for Settlement Class Members represents 12.6% of TYC and
28 Genera’s sales to those Members. Plaintiffs’ Co-Lead Counsel believe that based

1 on all circumstances present here—including the risk of trial, expense, and
2 uncertainty in the potential need to enforce any judgment abroad; the relative
3 strengths and weaknesses of the claims and defenses asserted; the substantial
4 benefits achieved; the financial condition of TYC; and counsel’s past experience in
5 litigating similar antitrust actions—that the proposed settlement is a highly
6 favorable result for the Class. As a result, Plaintiffs request that the Court enter the
7 [Proposed] Order Granting Preliminary Approval of Proposed Settlement with
8 Defendants TYC Brother Industrial Co. Ltd. and Genera Corp.

9 **II. PROCEDURAL HISTORY**

10 An initial complaint was filed in the United States District Court for the
11 Central District of California on October 18, 2008, styled *Dynacorn v. Genera*
12 *Corp.*, No. 08-cv-1158. On October 20, 2008, Plaintiff filed a Motion for
13 Consolidation or Coordination and Transfer of Antitrust cases with the Joint Panel
14 on Multidistrict Litigation (“JPML”). On February 10, 2009, the JPML issued an
15 order transferring and consolidating the following three cases: *Sabry Lee v. Genera*
16 *Corp.*, No. 2:08-5758 (C.D. Cal.); *Dynacorn Autobody Parts, Inc. v. Genera Corp.*,
17 No. 8:08-1158 (C.D. Cal.); and *California Customs, Inc. v. Genera Corp.*, No.
18 3:08-1900 (S.D. Cal.).

19 On March 3, 2009, the Department of Justice (“DOJ”) filed a Motion to
20 Intervene. The Court granted the DOJ’s Motion and directed the DOJ to file a
21 Motion to Stay the Action, which the Court later granted. On March 16, 2009, the
22 Court issued an Order appointing Plaintiffs’ Interim Co-Lead Counsel – Jason
23 Hartley of Stueve Siegel Hanson LLP, Bonny E. Sweeney of Robbins Geller
24 Rudman & Dowd LLP, Michael P. Lehmann of Hausfeld LLP, and Jay L. Himes
25 of Labaton Sucharow LLP. Thereafter, Plaintiffs filed a Consolidated Class Action
26 Complaint.

1 The Court lifted the stay on document discovery in the fall of 2009. The
2 stay on deposition discovery was lifted the end of March 2010. On July 13, 2010,
3 Plaintiffs filed an amended Consolidated Class Action Complaint.

4 **Class Certification**

5 Plaintiffs filed their motion for class certification on September 27, 2010.
6 The parties subsequently stipulated to extend the deadlines for briefing on
7 Plaintiffs' class certification motion.

8 On May 16, 2011, Defendants filed their opposition to Plaintiffs' class
9 certification motion. On June 24, 2011, Sabry Lee filed a notice of non-opposition
10 to Plaintiffs' class certification motion. TYC moved to specially set the hearing on
11 Plaintiffs' class certification motion. The Court granted the motion, and ordered
12 the parties' experts to appear to provide testimony. On June 30, 2011, TYC filed a
13 request for leave to brief the impact of the Supreme Court's *Dukes v. Wal-Mart*
14 decision on Plaintiffs' class certification motion. The Court granted the request,
15 and a supplemental brief was filed by the non-settling Defendants on July 7, 2011.

16 On July 25, 2011, the Court heard oral argument and expert testimony on
17 Plaintiffs' class certification motion. On July 27, 2011, the Court entered an order
18 granting Plaintiffs' motion to certify the direct purchaser Class and appointing
19 Plaintiffs' Co-Lead Counsel as counsel for the Class.

20 **Depo and Sabry Lee Settlements**

21 During the briefing of Plaintiffs' class certification motion, Plaintiffs agreed
22 to proposed settlements with Defendants Depo Auto Parts Industrial Co. Ltd. and
23 Maxzone Vehicle Lighting Corp. (collectively "Depo"), and Sabry Lee (U.S.A.)
24 Inc. and Sabry Lee Limited (collectively, "Sabry Lee"). Depo and Sabry Lee
25 agreed to pay \$25 million and \$450,000, respectively, to the Class, as well as to
26 provide continued cooperation to the Plaintiffs in the prosecution of their claims
27 against the remaining Defendants. On August 29, 2011, Plaintiffs filed their
28 motion for preliminary approval of the Depo and Sabry Lee Settlements, which the

1 Court later granted. The Court granted final approval of the Depo and Sabry Lee
2 Settlements on February 23, 2012.

3 **Eagle Eyes and E-Lite Settlements**

4 After unsuccessful efforts to reach a settlement during negotiations between
5 counsel for Plaintiffs and for Eagle Eyes and E-Lite, the parties participated in a
6 Court-sponsored settlement conference conducted by Magistrate Judge Suzanne H.
7 Segal on April 30, 2013. That conference resulted in a settlement agreement that
8 required defendants Eagle Eyes and E-Lite to pay \$3,000,000 for the benefit of the
9 Class, along with cooperation to the Plaintiffs in the prosecution of their claims
10 against TYC and Genera, the last remaining defendants. On August 29, 2013
11 Plaintiffs' Motion for Preliminary Approval was granted. (Dkt. No. 713). The
12 hearing on final approval of the settlement is scheduled for January 6, 2013. There
13 were no objections to the settlement agreement from the Class.

14 **Criminal Proceedings**

15 In late 2008, the DOJ granted TYC and Genera amnesty from criminal
16 prosecution in exchange for their cooperation against their co-conspirators. Aided
17 by TYC and Genera, the DOJ proceeded to obtain corporate guilty pleas and fines
18 from each co-conspirator of TYC and Genera, along with an additional four
19 individual guilty pleas and one individual indictment of co-conspirator employees.
20 Criminal fines exceeded \$48,000,000 from all Defendants.

21 **Conclusion of Discovery and Preparation for Trial**

22 Depositions in this action resumed during the latter part of 2012 and
23 continued into this year. Plaintiffs sought additional documents from TYC's co-
24 conspirators in the case, Eagle Eyes, arising from the DOJ's criminal case against
25 it, applying first to the Northern District of California, and thereafter to this Court
26 to secure this discovery. On April 4, 2013, this Court ordered Eagle Eyes to
27 produce the remaining documents in dispute. Plaintiffs also served requests to
28 admit on the TYC defendants and Eagle Eyes, responses to which were served.

1 During the period since March 2013, Plaintiffs and Defendants TYC and
2 Genera submitted their experts' trial reports, and conducted expert depositions.
3 The parties twice prepared the joint pretrial documents and were ready for trial –
4 first in September 2013 and then when it was continued (only days before trial was
5 to commence) to December 2013.

6 **III. SETTLEMENT NEGOTIATIONS**

7 Although settlement was broached by Plaintiffs in August, 2009, settlement
8 discussions between the parties did not begin until March 2011. Settlement
9 negotiations between Plaintiffs and TYC continued through November 2013. For
10 virtually that entire period, the spread between the settlement numbers offered by
11 Plaintiffs and TYC was considerable. Hartley Decl. ¶ 2. There were several offers
12 and counteroffers exchanged between the parties before their first mediation
13 session in front of a neutral.

14 The parties engaged in several in-person, mediated efforts at settlement.
15 They participated in a JAMS mediation in Los Angeles before the Hon. Gary L.
16 Taylor (Ret.) on December 12, 2012. That mediation was very short lived as TYC
17 claimed it was not in a financial condition to pay a settlement amount that
18 Plaintiffs found satisfactory.

19 A second mediated settlement session did not take place for another nine
20 months. On August 20, 2013, the parties participated in the first of two settlement
21 conferences before Magistrate Judge Suzanne H. Segal. At the first settlement
22 conference, TYC continued to claim it lacked the resources to pay the settlement
23 amount required. Plaintiffs suggested alternative and creative means of funding a
24 settlement. TYC requested time to evaluate funding alternatives and the parties
25 ultimately appeared before Magistrate Judge Segal a second time on October 2,
26 2013. Again, however, TYC claimed it could not fund an adequate settlement.

27 Finally, Plaintiffs and TYC conducted a mediation on November 15, 2013
28 with Antonio Piazza in San Francisco. At that mediation, the parties reached an

1 agreement in principle. The terms of the agreement were memorialized in a “Term
2 Sheet” that was signed by the parties, and were later memorialized as the proposed
3 settlement that is the subject of Plaintiffs’ preliminary approval motion. Hartley
4 Decl. Ex. A. If approved, this TYC settlement with the last remaining defendants
5 would end this litigation.¹

6 **IV. SETTLEMENT TERMS**

7 The proposed settlement is on behalf of the Settlement Class that the Court
8 approved in granting Plaintiffs’ motion for class certification, except that the
9 entities that previously settled with and released their claims against TYC/Genera
10 and with respect to the purchases of which the Court granted summary judgment
11 (collectively “LKQ/Empire”) have been excluded. This exclusion is consistent
12 with the settlement agreements with LKQ/Empire, indeed, the Court, in its
13 summary judgment order raised the question of whether they could properly be
14 considered to be part of the class going forward in any trial against TYC/Genera.
15 Dkt. No. 713 at 10. The exclusion from the class of persons who have already
16 pursued individual relief is proper. *In re Lloyds’ Am. Trust Fund Litig.*, 2002 WL
17 31663577, at *3 (S.D.N.Y. Nov. 26, 2002).

18 Subject to this and a few other exclusions,² the Settlement Class consists of
19 all natural persons and nongovernmental entities that purchased Aftermarket
20 Automotive Lighting Products from any of the Defendants, in the United States
21 and its territories and possessions between July 29, 2001 and February 10, 2009.
22 Aftermarket Automotive Lighting Products (“AALPs”) are new automotive
23

24 ¹ This assumes final approval of the Eagle Eyes settlement, currently
scheduled to be heard January 6, 2013.

25 ² Also excluded from the Settlement Class are all parties named as Defendants
26 in the Action, and their parents, subsidiaries, and affiliates, all governmental
27 entities; any judicial officer presiding over the Action and the members of his/her
28 immediate family and judicial staff; any person or entity who purchased only parts
listed in Appendix A to the Amended Complaint, and any person or entity that
timely and validly opted out.

1 lighting products manufactured and sold by companies other than original
2 equipment manufacturers, which include headlamps and bulbs, parking, tail and
3 interior lights, spot lights, fog lights, and auxiliary lights; but excluding the
4 products in Appendix A to the Consolidated Amended Complaint.

5 TYC has agreed to pay \$23,000,000 in cash for the benefit of the Settlement
6 Class Members, which is to be deposited in an Escrow Account in accordance with
7 the TYC Settlement Agreement. Hartley Decl. Ex. A, ¶¶ 19 & 21. TYC has also
8 agreed to make \$2 million in product credit available for the benefit of the
9 Settlement Class Members, which can be used for any product purchase as good as
10 cash. This \$25 million in total benefit to the Class represents 12.6% of TYC's
11 sales to the Settlement Class Members. After deductions for fees and costs, the
12 remaining amount will be distributed to Class Members on a *pro rata* basis.

13 **V. THE PROPOSED SETTLEMENT SHOULD BE**
14 **PRELIMINARILY APPROVED**

15 As a matter of public policy, settlement is a strongly favored method for
16 resolving disputes. *See Util. Reform Project v. Bonneville Power Admin.*, 869 F.2d
17 437, 443 (9th Cir. 1989). This is especially true in complex class actions. *See*
18 *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982).

19 Rule 23(e) of the Federal Rules of Civil Procedure provides that before a
20 class action may be settled, dismissed, or compromised, notice must be given in
21 the manner directed by the court, and judicial approval must be obtained. Fed. R.
22 Civ. P. 23(e). At the final approval hearing, the Court will have before it more
23 extensive papers submitted in support of the proposed settlement and will be asked
24 to make a final determination whether the proposed settlement is fair, reasonable,
25 and adequate. At this time, Plaintiffs request only that the Court grant preliminary
26 approval of the proposed settlement in order to notify Settlement Class Members
27 of the terms of the proposed settlement, their opportunity to be heard, and their
28 option to object with respect to the proposed settlement.

1 The test for granting preliminary approval is whether the proposed
2 settlement is ““at least sufficiently fair, reasonable and adequate to justify notice to
3 those affected and an opportunity to be heard.”” *NASDAQ*, 1997 U.S. Dist. LEXIS
4 20835, at *24 (citations omitted). *See Manual for Complex Litigation*, §21.632, at
5 320-21 (4th ed. 2012).³ Plaintiffs are now requesting the Court to take the first
6 step in the process and grant preliminary approval of the proposed settlement.

7 The proposed settlement, which was extensively negotiated between the
8 parties, provides a total benefit to the Settlement Class in the amount of
9 \$25,000,000 (\$23,000,000 in cash paid in three annual installments and \$2 million
10 in product credits paid at the same time as the first installment), for *pro rata*
11 distribution to Settlement Class Members after payment of Notice, settlement
12 administration costs, Court-approved attorneys’ fees and expenses, and taxes. This
13 amount represents 12.6% of TYC’s sales to those Settlement Class Members,
14 which is more than twice the recovery level from the previously approved Depo
15 settlement of 5.6% in sales to eligible Class Members. Here, the proposed
16 settlement enjoys a presumption of fairness because it is the product of extensive
17 arm’s length negotiations conducted by experienced and capable counsel with a
18 firm understanding of the strengths and weaknesses of their respective clients’
19 positions.⁴

22 ³ Preliminary approval does not require the court to make a final
23 determination that the settlement is fair, reasonable, and adequate. Rather, that
24 decision is made at the final approval stage, after notice of the settlement has been
25 given to the class members and they have had an opportunity to voice their views
26 of the settlement. *See* 5 James Wm. Moore, *Moore’s Federal Practice* §
27 23.165[2], at 23-586 to 23-587 (3d ed. 2010) (“Moore”).

28 ⁴ *Linney v. Cellular Alaska P’ship*, No. C-96-3008 DU, 1997 WL 450064, at
*5 (N.D. Cal. July 18, 1997), *aff’d*, 151 F.3d 1234 (9th Cir. 1998) (“the fact that
the settlement agreement was reached in arm’s length negotiations, after relevant
discovery [has] taken place create[s] a presumption that the agreement is fair”);
Ellis v. Naval Air Rework Facility, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff’d*, 661
F.2d 939 (9th Cir. 1981).

1 The Ninth Circuit has provided factors that may be considered in evaluating
2 the fairness of a class action settlement:

3 Although Rule 23(e) is silent respecting the standard by
4 which a proposed settlement is to be evaluated, the
5 universally applied standard is whether the settlement is
6 fundamentally fair, adequate and reasonable. The district
7 court's ultimate determination will necessarily involve a
8 balancing of several factors which may include, among
9 others, some or all of the following: the strength of
10 plaintiffs' case; the risk, expense, complexity, and likely
duration of further litigation; the risk of maintaining class
action status throughout the trial; the amount offered in
settlement; the extent of discovery completed, and the
stage of the proceedings; the experience and views of
counsel; the presence of a governmental participant; and
the reaction of the class members to the proposed
settlement.

11 *Officers for Justice*, 688 F.2d at 625. *Accord Torrasi v. Tucson Elec. Power Co.*, 8
12 F.3d 1370, 1375 (9th Cir. 1993); *Woo v. Home Loan Group, L.P.*, No. 07-CV-202
13 H (POR), 2008 WL 3925854, at *3 (S.D. Cal. Aug. 25, 2008). ““The relative
14 degree of importance to be attached to any particular factor will depend upon . . .
15 the nature of the claim(s) advanced, the type(s) of relief sought, and the unique
16 facts and circumstances presented by each individual case.”” *Id.* at *3 (quoting
17 *Officers for Justice*, 688 F.2d at 625).

18 The factors considered by the Ninth Circuit in granting final approval of
19 class action settlements demonstrate that the proposed settlement is worthy of
20 preliminary approval.

21 **A. The Proposed Settlement is the Product of Extensive Negotiations**
22 **Between the Plaintiffs and TYC**

23 The negotiations between Plaintiffs and TYC were hard-fought and at all
24 times, arm's length. Hartley Decl. ¶ 7. These negotiations took place over an
25 extended period and included four separate mediation sessions, as well as
26 numerous other in-person meetings, telephone conference calls and email
27 communications. *Id.* During these negotiations, Plaintiffs' Co-Lead Counsel
28 zealously advanced Plaintiffs' positions and were fully prepared to continue to trial

1 rather than to accept a settlement that was not in the best interests of the Settlement
2 Class. *Id.*

3 **B. The Litigation is at an Advanced Stage and Discovery Has**
4 **Concluded**

5 This settlement was reached only 2.5 weeks before the December 3, 2013
6 trial was to start. Trial had already been continued from September, and was not
7 likely to move again. The parties had prepared, exchanged, and met and conferred
8 regarding a joint pretrial exhibit list, deposition designations, jury instructions, jury
9 verdict form, statement of the case and witness lists. They fully briefed several
10 motions in limine. Habeas orders were obtained for two incarcerated witnesses to
11 testify at trial. Only after Plaintiffs' Co-Lead Counsel conducted a thorough
12 investigation of the facts alleged; reviewed and analyzed more than a million pages
13 of documents produced by Defendants; and participated in 47 depositions,
14 including 19 taken in Taiwan was the proposed settlement reached. Hartley Decl.
15 ¶ 8. The parties also participated in settlement negotiations where the strengths
16 and weaknesses of their respective claims and defenses were debated. *Id.* Thus, at
17 the time of settlement, Plaintiffs' Co-Lead Counsel had a full understanding of the
18 strengths and weaknesses of the Settlement Class' claims, as well as the difficulties
19 they would have faced in obtaining a more favorable result through continued
20 litigation and trial. *Id.* See also Ruling on Plaintiffs' Motion for Class
21 Certification, Dkt. No. 309 at 13 (noting that Plaintiffs' Co-Lead Counsel's "work
22 in prosecuting this action has been effective and efficient.").

23 **C. The Proposed Settlement is Fair, Reasonable, Adequate, and in**
24 **the Best Interests of the Settlement Class**

25 Plaintiffs, through their counsel, have concluded that the proposed
26 settlement is clearly fair, reasonable, and adequate and in the best interests of the
27 Class after carefully considering and evaluating, *inter alia*: (i) the substantial and
28 certain benefits of the settlements; (ii) the relevant legal authorities and evidence
adduced to date to support the claims asserted; (iii) the likelihood of prevailing on

1 these claims; (iv) the risk, expense, and duration of continued litigation; (v) the
2 likely appeals and subsequent proceedings necessary if Plaintiffs did prevail
3 against TYC at trial; and (vi) the financial condition of TYC and ability to collect
4 in Taiwan on a significant judgment after trial. Plaintiffs' Co-Lead Counsel have
5 extensive experience in antitrust and other complex class action litigation and have
6 negotiated numerous other class action settlements throughout the country. *See*
7 Dkt. No. 24, Exs. 3-6 (firm resumes). It is well established that significant weight
8 should be attributed to the belief of experienced counsel that settlement is in the
9 best interests of the class. *See Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*,
10 221 F.R.D. 523, 528 (C.D. Cal. 2004) ("Great weight is accorded to the
11 recommendation of counsel, who are most closely acquainted with the facts of the
12 underlying litigation.") (citation omitted).⁵

13 **D. The Monetary Recovery Provided by the Proposed Settlement is a**
14 **Highly Favorable Result**

15 The \$25 million recovery represents approximately 12.6% of TYC' sales of
16 AALPs during the Class Period to Settlement Class Members. Plaintiffs' recovery
17 as a percentage of TYC's sales is more than twice as large as the 5.6% of sales
18 recovered from Depo, and 4.5 times larger than the 2.7% of sales recovered from
19 the smallest Defendant, Eagle Eyes. Moreover, this recovery is more favorable
20 than settlements approved in other price-fixing cases. *See, e.g., In re Linerboard*
21 *Antitrust Litig.*, 321 F. Supp. 2d 619, 627 (E.D. Pa. 2004) (granting final approval
22 to settlement where recovery was 1.62% of sales).

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25 ⁵ *See also In re First Capital Holdings Corp. Fin. Prods. Sec. Litig.*, No. 901,
26 1992 U.S. Dist. LEXIS 14337, at *12 (C.D. Cal. June 10, 1992) (finding belief of
27 counsel that the proposed settlement represented the most beneficial result for the
28 class a compelling factor in approving settlement); *In re Wash. Pub. Power Supply*
Sys. Sec. Litig., 720 F. Supp 1379, 1392 (D. Ariz. 1989), *aff'd sub nom. Class*
Plaintiffs v. Seattle, 955 F.2d 1268 (9th Cir. 1992).

1 These factors convinced Plaintiffs’ Co-Lead Counsel that settlement with the
2 TYC was in the best interests of the Settlement Class and that the amount of the
3 settlement is reasonable.

4 In short, while Plaintiffs’ Co-Lead Counsel believe that the claims asserted
5 against TYC have substantial merit, if the litigation continued, the Settlement Class
6 would bear the risks of establishing liability and damages, as well as collecting on
7 any favorable judgment after trial. As the Ninth Circuit explained, an evaluation of
8 the benefits of settlement must be tempered by recognizing that “the very essence
9 of a settlement is compromise, ‘a yielding of absolutes and an abandoning of
10 highest hopes.’” *Officers for Justice*, 688 F.2d at 624 (citation omitted).

11 While Plaintiffs’ Co-Lead Counsel believe that the proposed settlement
12 merits final approval, the Court need not make that determination at this time. The
13 Court is being asked to permit notice of the terms of the proposed settlement to be
14 sent to the Settlement Class and schedule a hearing, pursuant to Federal Rule of
15 Civil Procedure 23(e), to consider any views expressed by Class Members
16 regarding the fairness of the proposed settlement, and Plaintiffs’ Co-Lead
17 Counsel’s request for an award of fees and expenses. *Moore, supra*, §23.165[3], at
18 23-587 to 23-588.

19 **VI. PROPOSED NOTICE IS ADEQUATE**

20 Federal Rule of Civil Procedure 23(e)(1) provides that “[t]he Court must
21 direct notice in a reasonable manner to all class members who would be bound by
22 the proposal.” Plaintiffs propose providing individual, mailed Notice to Settlement
23 Class Members to the extent practicable.⁶ This direct mailing will be based on the
24 addresses developed in administering the Depo, Sabry Lee and Eagle Eyes
25 Settlements, where Class Members representing more than 87% of the relevant

26 _____
27 ⁶ The proposed mailed Notice and Claim Form are attached to the Keough
28 Declaration as Exhibit B and the proposed Summary Notice is attached as Exhibit C.

1 commerce responded by submitting claims and who thus shared in the earlier
2 settlements. Declaration of Jennifer M. Keough, Chief Operating Officer of the
3 Claims Administrator, Garden City Group (“Keough Decl.”), ¶ 12. The Notice
4 will also be posted on the internet and published. As a result of the prior Depo,
5 Sabry Lee and Eagle Eyes Settlements, and the Court’s Class Certification Order,
6 significant information regarding individual Class Member addresses has been
7 assembled. Keough Decl. ¶¶ 8, 13.

8 Plaintiffs believe that the content and proposed method of dissemination of
9 the Notice fulfills the requirements of Federal Rule of Civil Procedure 23(e) and
10 due process. *See generally Adams v. Southern Farm Bureau Life Ins. Co.*, 493
11 F.3d 1276, 1285-88 (11th Cir. 2007).

12 As the Notice states, Settlement Class Members who submitted a claim form
13 and received a payment in connection with the Depo and Sabry Lee or Eagle Eyes
14 Settlements, will not need to submit another claim form. Instead, the earlier claim
15 form will be used to determine each Settlement Class Member’s share of the TYC
16 Settlement.⁷ Settlement Class Members who did not submit a claim form in
17 connection with the prior Class Settlements, or who submitted a claim form in the
18 Depo/Sabry Lee Settlement, but did not receive a payment, and who wish to
19 participate in the proposed settlement must, however, submit a timely claim form.
20 Settlement Class Members who submit such claims in connection with this
21 Settlement are referred to in the Notice as “TYC Claimants.” The Claims
22 Administrator will review the claims of TYC Claimants, together with those of the
23 “Existing Claimants” from the Depo/Sabry Lee Settlements and those of the Eagle
24 Eyes Claimants from the Eagle Eyes Settlement. Those claims that the Claims
25 Administrator approves are referred to in the Notice, collectively, as “Authorized
26 Claimants.” All Authorized Claimants who are Settlement Class Members will be

27 _____
28 ⁷ This procedure will, as explained above, not apply to LKQ/Empire.

1 entitled to receive a share of the proposed settlement. Because the Court has
2 certified a Class, if the Court approves the proposed settlement, all Class Members
3 will be bound, regardless of whether or not the Class Members submit claim forms.
4 Keough Decl. Ex. A.

5 In addition, the Notice apprises Settlement Class Members of the material
6 terms of the proposed settlement, and outlines the procedures (and related
7 deadlines) for any Settlement Class Members who desire to object to the terms. *Id.*
8 ¶ 19 and Exs. A and B. The Notice will also inform Settlement Class Members of
9 the date and place of the Final Approval Hearing. *Id.* It will be disseminated
10 through a variety of channels, including direct U.S. mail, internet advertising and
11 banners, email, and traditional press releases and publication. *Id.* ¶¶ 21-24.

12 A dedicated website and toll-free phone number will also be established for
13 the benefit of the Class. *Id.* ¶¶ 25-26. Further, the Notice will advise the
14 Settlement Class Members that, in connection with the approval of the proposed
15 settlement, Plaintiffs' Co-Lead Counsel will ask the Court for attorneys' fees and
16 expenses. *Id.* at Exs. A and B. Plaintiffs' Co-Lead Counsel will not seek to collect
17 the entirety of these fees from the first installment; instead, attorneys' fees will be
18 collected in equal shares from each of the three TYC installment payments. Courts
19 regularly grant requests for attorneys' fees and expenses. *E.g., In re Skilled*
20 *Healthcare Group, Inc. Sec. Litig.*, No. CV 09-5416, 2011 WL 280991 (C.D. Cal.
21 Jan. 26, 2011); *Cicero v. DirecTV, Inc.*, No. CV 07-1182, 2010 WL 2991486 (C.D.
22 Cal. July 27, 2010).

23 The proposed plan of notice dissemination conforms to the highest standard
24 of individual notice to Settlement Class Members and is the best notice practicable
25 under the circumstance. Keough Decl. ¶ 14.

26 In connection with the Notice Plan, Plaintiffs have drafted a proposed Plan
27 of Administration and Distribution of the Settlement Fund. The TYC Settlement
28 will be paid in three installments. The first installment of \$11.5 million will be

1 paid into escrow on or before December 31, 2013, which is also the date by which
2 TYC will provide the security called for under the Settlement Agreement that
3 secures the future payments with a letter of credit from a financial institution.
4 Assuming final approval, the second installment of \$6.9 million will be paid no
5 later than December 31, 2014 and the third and final installment of \$4.6 million
6 will be paid no later than December 31, 2015. The entire product credit will be
7 distributed with the first installment. Plaintiffs propose to distribute the Settlement
8 Fund as the installments are received. The proposed Plan of Administration and
9 Distribution is attached to the Hartley Declaration as Exhibit B.

10 **VII. PROPOSED SCHEDULE OF EVENTS**

11 The Proposed Order Granting Preliminary Approval sets forth a procedure
12 and schedule for disseminating notice to the Settlement Class and final approval of
13 the proposed settlement. Plaintiffs' Co-Lead Counsel propose the following
14 schedule which complies with the time periods set forth by the Ninth Circuit in *In*
15 *re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988 (9th Cir. 2010):

16 (1) Within 10 days of the filing of this Motion for Preliminary Approval,
17 TYC shall cause notice of the proposed settlement to be provided to the Attorney
18 General of the United States, and the attorneys general of the states in which any
19 Settlement Class Member resides, in compliance with 28 U.S.C. § 1715(b);

20 (2) Notice shall be mailed and posted on the internet within 15 days
21 following the date of entry of the Order Granting Preliminary Approval ("Notice
22 Date");

23 (3) Claim forms and requests to object to the proposed settlement must be
24 postmarked **no later than** 45 days after the Notice Date (the "Objections
25 Deadline");

26 (4) Plaintiffs' Co-Lead Counsel's petition for attorneys' fees, costs, and
27 expenses must be filed at least 21 days before the Objections Deadline;
28

1 (5) The Final Approval Hearing shall be set at a time convenient for the
2 Court, but shall be at least 55 days after the Objections Deadline (in conformity
3 with the timing requirements of 28 U.S.C. § 1715(d)); and

4 (6) All documents in support of final approval shall be filed no later than
5 14 days prior to the Final Approval Hearing date.

6 **VIII. CONCLUSION**

7 For all the reasons set forth above, Plaintiffs respectfully request the Court to
8 preliminarily approve the proposed settlement.

9 Dated: December 16, 2013

Respectfully submitted,

10
11 By: s/ Jason S. Hartley

12 Jason S. Hartley
13 STUEVE SIEGEL HANSON LLP
14 550 West C Street, Suite 1750
15 San Diego, CA 92101
16 Telephone: (619) 400-5822
17 Facsimile: (619) 400-5832

18 LABATON SUCHAROW LLP
19 Jay L. Himes
20 Matthew J. Perez
21 140 Broadway
22 New York, New York 10005
23 Telephone: (212) 907-0700
24 Facsimile: (212) 818-0477

25 ROBBINS GELLER RUDMAN &
26 DOWD, LLP
27 Bonny E. Sweeney
28 655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: (619) 231-105
Facsimile: (619) 231-7423

HAUSFELD LLP
Michael P. Lehmann
Arthur Bailey Jr.
44 Montgomery Street, Suite 3400
San Francisco, CA 94104
Telephone: (415) 633-1908
Facsimile: (415) 358-4980

*Co-Lead Counsel for Plaintiffs and
the Class*