

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. 09 MDL 2007-GW(PJWx)

Date March 22, 2012

Title *In Re: Aftermarket Automotive Lighting Products Antitrust Litigation*

Present: The Honorable GEORGE H. WU, UNITED STATES DISTRICT JUDGE

Javier Gonzalez

Pat Cuneo

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Jay L. Himes  
Arthur Bailey, Jr.  
Jason Hartley

Brian M. Hom - by telephone  
Charles Moore - by telephone

Bonny E. Sweeney - by telephone

**PROCEEDINGS: DIRECT PURCHASER PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES AND SERVICE PAYMENTS (filed 12/16/11);**

**DIRECT PURCHASER PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION OF SETTLEMENT PROCEEDS (filed 02/09/12);**

The tentative circulated and attached hereto, is adopted as the Court's final ruling. The above-entitled motions are **GRANTED**. Court signs Second Amended Rule 54(b) Final Judgment Order.

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Initials of Preparer JG

**In re Aftermarket Automotive Lighting Products Antitrust Litigation**, Case No. CV-09-2007  
Ruling on Motion for Reimbursement of Expenses from Settlement's Common Fund

**I. Background**

Previously, the Court approved this class action settlement, but refrained from ruling on Direct Purchaser Plaintiffs' ("DPPs") motion for reimbursement of expenses for two reasons. First, the Court found that the DPPs had not "provided the Court with sufficient documentation that counsel actually incurred the expenses sought."<sup>1</sup> See Docket No. 444 at 8. Second, the Court "recognize[d] that only a partial settlement of this litigation has been obtained, and the Court would be hesitant to have all expenses incurred by DPPs' counsel in litigating the case to this point taken out of a settlement fund that reflects settlements with only two of the defendants." *Id.* The final settlement approval hearing was on February 23, 2012. See generally Docket No. 444. On March 5, 2012, a hearing was held as to the expenses issue, and the Court ordered the DPPs to submit "invoices, payments, and an amended proposed order." Docket No. 448.

Accordingly, on March 16, 2012, DPPs submitted for *in camera* review exhaustive documentation of expenses, which, as discussed below, is sufficient to award reimbursement of actually incurred expenses to the DPPs in the amount sought. The DPPs also sought to isolate which expense related to the non-settling defendants, but argue that it is difficult if not impossible to separate which expenses were incurred on account of work performed in relation to the settling versus non-settling defendants. See Docket No. 446 at 7. Thus, the DPPs have submitted two proposed orders, one granting full reimbursement of expenses (now properly documented), and the other granting reimbursement of expenses but subtracting the amount the DPPs can identify as incurred during work relating to the non-settling defendants. See Docket No. 450. As discussed below, the Court would adopt the latter option, and would approve the reimbursement of expenses in the amount of \$756,792.62.<sup>2</sup>

**II. Proof of Expenses Actually Incurred**

Prior to March 16, 2012, the most detailed proof of expenses the DPPs had provided to the Court was a summary chart listing categories of expenses. See Docket No. 446 at 2-3. On March 16, 2012, however, the DPPs submitted for *in camera* review thousands of pages of

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<sup>1</sup> The Court noted at the final approval hearing, and notes again here, that no objections have been lodged as to the reimbursement of expenses from the common fund.

<sup>2</sup> The Court notes that there is no evidence of any dispute as to allocation of expenses reimbursement amongst counsel.

detailed expense records, divided by firm and then by type of expense.<sup>3</sup> The Court finds such documentation amply evidences the expenses actually incurred by counsel, and thus finds that such expenses are eligible for reimbursement out of the settlement's common fund. *See generally State of Fla. v. Dunne*, 915 F.2d 542 (9th Cir. 1990) (discussing counsel's right to reimbursement for reasonable expenses from common fund).

### **III. Deduction of Expenses Incurred In Relation to Non-Settling Defendants**

As to the amount of expenses that should be reimbursed, the Court has queried whether the DPPs merited full reimbursement of all expenses, given that counsel had only obtained a partial settlement. *See* Docket No. 444 at 8. The DPPs make a compelling argument that their expenses cannot be allocated as between settling and non-settling defendants. For instance, they argue, "the expert costs were not centered on any particular defendant and an allocation of that work among defendants is impossible. The same can be said for expenses associated with copies, filing fees, delivery expenses, and computer research[.]" *See* Pl.'s Second Supplemental Memorandum in Support of Motion for Reimbursement of Expenses at 2. A review of the expenses records indicates that counsel's difficulty in allocating expenses as between defendants is understandable.

Despite the difficulty of allocating expenses between defendants, counsel for the DPPs made a "good faith effort" to do so, and found that a total of \$70,127.99 could be attributed to work performed solely in relation to the non-settling defendants (mostly expenses such as travel and deposition costs). Thus, all expenses incurred total \$826,920.61<sup>4</sup>, and the incurred expenses minus those relating to the non-settling defendants total \$756,792.62. The Court would thus approve the reimbursement of \$756,792.62 from the settlement's common fund. *See* Docket No.

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<sup>3</sup>The Court has reviewed such documents and applauds the DPPs for their organization and comprehensiveness. Each of the twenty counsel seeking reimbursement submitted a declaration to the Court and included descriptions of expenses and records thereof. The largest category of expenses is the \$580,000 that was paid into a litigation fund, which "is the customary method by which significant expenses are managed in antitrust class actions." *See* Pl.'s Second Supplemental Memorandum in Support of Motion for Reimbursement of Expenses at 2. The declaration of counsel Michael P. Lehmann of the firm Hausfeld LLP, co-lead Class Counsel for the DPPs describes and documents contributions to and disbursements from this fund. Without summarizing every detail of the submitted documentation, especially given that such documents were submitted for *in camera* review, the Court notes that submissions by the various counsel include breakdowns of and receipts for the following types of expenses: contributions to the litigation fund, travel (such as transportation, meals and lodging costs), in-house and outside service photocopying, word processing, secretarial overtime, legal research, federal express, filing fees, telephone, fax, regular postage, messengers, expert fees, public document retrieval, court reporter service, deposition costs, hearing parking costs, electronic data storage, translations and interpreters, transcript fees, and (a small sum of) miscellaneous expenses.

<sup>4</sup>The DPPs made a small (\$8,645.65) downwards adjustment to the total amount sought, due to minor errors in the calculations performed for the Court's previous hearing on the matter. This correction indicates that the Court did well to seek proof of expenses, and that the Court can now have confidence in this revised figure, given the thorough documentation submitted for *in camera* review on March 16, 2012. *See* Pl.'s Second Supplemental Memorandum in Support of Motion for Reimbursement of Expenses at 2 n.2.

450, Proposed Order No. 2.

The Court notes, however, DPPs' argument that because antitrust liability is joint and several, this Court should approve the reimbursement of all expenses incurred, even those incurred while performing work relating to a non-settling defendant. The DPPs cite other district court orders awarding full reimbursement of expenses despite counsel having obtained only partial settlements, and emphasize that *every* class member will receive a distribution from the settlement. *See* Docket No. 446 at 4-8. Such arguments, while well-taken, still support the approval of reimbursement at the lower, \$756,792.62, level. The DPPs concede that this lower level already would effectuate reimbursement of many expenses incurred relating to the non-settling defendants, since allocation as between defendants is close to impossible. Thus in approving the lower figure, the Court is already reimbursing DPPs for some costs attributable to work performed related to the non-settling defendants. As to the amount that the DPPs have, pursuant to the Court's March 5, 2012 order, allocated purely to work performed related to the non-settling defendants, the Court would find that the common fund is not the appropriate source for such reimbursement, as those expenses (a small fraction of the overall expenses sought to be reimbursed) can more appropriately be sought later from the common funds of potential future settlements with the currently non-settling defendants.<sup>5</sup>

#### **IV. Conclusion**

The Court would approve the reimbursement of expenses in the amount of \$756,792.62, as set forth in the proposed order found as attachment number two to Docket No. 450.

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<sup>5</sup>The Court notes the DPPs objection to this reasoning, namely that because some of the non-settling defendants are domiciled in Taiwan, any eventual judgment against them might go unenforced, and thus expenses incurred relating to them would go un-reimbursed even though the expenses were incurred for the benefit of the entire class. *See* Docket No. 446 at 8. While this argument is well-founded, given the small amount of expenses allocated to work relating to the non-settling defendants, the Court finds that this "specter" raised by the DPPs is not sufficiently grave to award the reimbursement of expenses, from this settlement's common fund, that were incurred during work performed relating to defendants who are not participating in the settlement. *See id.*