

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE: DEALER MANAGEMENT SYSTEMS
ANTITRUST LITIGATION

MDL No. 2817
Case No. 18-cv-00864

This Document Relates To:

Hon. Rebecca R. Pallmeyer

THE DEALERSHIP CLASS ACTION

**DECLARATION OF PEGGY J. WEDGWORTH IN SUPPORT OF DEALERSHIP
CLASS PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT WITH
DEFENDANT CDK GLOBAL, LLC**

I, Peggy J. Wedgworth, pursuant to 28 U.S.C. § 1746 declare as follows:

1. I am a senior partner at Milberg Coleman Bryson Grossman, PLLC (“Milberg”). During the pendency of this litigation, my firm has represented Dealership Class Plaintiffs (“Dealership Plaintiffs”) in the above-captioned matter as Dealership Interim Lead Class Counsel and MDL Co-Lead Counsel. *See* ECF Nos. 123 ¶ 1.A, 1484. My firm and I were preliminarily approved and appointed as Dealership Class Lead Counsel (“Lead Counsel”) to protect the interests of the CDK Settlement Class. *See* ECF No. 1531 ¶ 9.

2. I respectfully submit this Declaration in support of Dealership Class Plaintiffs’ Motion for Final Approval of Settlement with Defendant CDK Global, LLC (“CDK”).

3. I make this Declaration based on my personal knowledge and if called as a witness, I could and would competently testify as to the matters stated herein.

4. Dealership Plaintiffs’ settlement with CDK (“Settlement”) satisfies the standard for the Court’s approval pursuant to Rule 23(e) of the Federal Rules of Civil Procedure. In addition to

the provision of adequate notice, the CDK Settlement Class¹ satisfies the standards of Rule 23(e)(1), and the Settlement is fair, adequate and reasonable under Fed. R. Civ P. 23(e)(2) and the factors the Seventh Circuit has enumerated.

5. The Settlement provides immediate and substantial monetary relief to the CDK Settlement Class in the sum of \$100 million in cash. In addition, CDK is paying up to \$250,000 for notice and claims administration costs. In consideration, Dealership Plaintiffs, on behalf of themselves and the CDK Settlement Class, have agreed to release claims against CDK as specified in the Settlement Agreement. *See* ECF No. 1528-2 ¶¶ A.1(l), C. The Settlement also resolves CDK's claims against certain Dealership Plaintiffs. *Id.* ¶¶ A.1(b), C.²

6. Dealership Plaintiffs previously settled with Defendant The Reynolds and Reynolds Company ("Reynolds") for \$29.5 million plus up to \$250,000 in notice costs ("Reynolds Settlement"). The Court granted final approval of the Reynolds Settlement on January 23, 2019 (ECF No. 502). The Reynolds Settlement funds have been in an interest-bearing escrow account since that time, and the claims submission and distribution process includes both the CDK and Reynolds Settlement Classes and funds. The Reynolds Settlement and the CDK Settlement bring the total amount recovered by Dealership Plaintiffs to \$129.5 million, plus interest – an exceptional result for CDK and Reynolds Class Members when weighed against the substantial litigation risks in this case.

¹ "CDK Settlement Class" or "CDK Settlement Class Members" refer to "All persons and entities located in the United States engaged in the business of the retail sale of automobiles who purchased DMS from CDK and/or Reynolds ... during the period from September 1, 2013 through the date of the executed Agreement ..." *See* ECF No. 1531 ¶ 6.

² The Settlement does not affect, release, or alter any contractual obligations between any Dealership Plaintiffs and CDK, including any obligation for CDK to provide products or services to any CDK Settlement Class member, and any obligation for CDK Settlement Class Members to pay for those products or services. Additionally, the Settlement preserves any claims of the class members arising out of the cybersecurity incident reported in June 2024 involving CDK's DMS. ECF No. 1528-2 ¶¶ A.1(l), N.33.

7. Dealership Plaintiffs filed their Motion for Preliminary Approval (ECF No. 1528) on August 16, 2024. Following an August 22, 2024 hearing, the Court granted preliminary approval of the Settlement on August 23, 2024 (ECF No. 1531). The Court preliminarily found that the Settlement satisfied all the requirements of Fed. R. Civ. P. 23. *Id.* The Court's Preliminary Approval Order, *inter alia*, certified the CDK Settlement Class, appointed Dealership Class Lead Counsel, Settlement Class Counsel, Dealership Class Representatives and Epiq Class Action & Claims Solutions, Inc. ("Epiq") as Settlement Administrator, and approved the Notice Plan. *Id.* ¶¶ 1, 6, 8-14.

8. CDK transferred \$100.25 million to Epiq on or about September 20, 2024. One hundred million dollars is currently in an interest-bearing escrow account and \$250,000 is in a checking account from which Epiq is paid on a quarterly basis for notice and claims administration costs. *See* the Declaration of Cameron R. Azari, Esq. Regarding Implementation and Adequacy of Settlement Notice Plan and Notices ("Azari Decl.") ¶ 36, filed contemporaneously herewith.

9. Since the Settlement was preliminarily approved, Epiq has successfully implemented the Notice Program approved by the Court, including dissemination of electronic mail and/or mailed postcards ("Individual Notice") that reached approximately 98.4% of CDK Settlement Class using customer lists provided by CDK and Reynolds. Individual Notice was enhanced by a Media Plan implemented by Epiq. *See* Azari Decl. ¶¶ 8, 11-32. There have been over 7,300 unique visitor sessions to the settlement website and approximately 1,095 claims have been submitted online and through the mail. *Id.* ¶¶ 30, 35.

10. Lead Counsel provided additional notice (and assistance) to CDK (and Reynolds) Settlement Class Members beyond that required by the Court. I, and attorneys at my firm litigating this case, have operated and staffed a "settlement hotline" for four hours every weekday starting September 23, 2024 (when notice was sent out and claim forms became available) and will continue

to do so until the claims submission process concludes on January 9, 2025. To date, we have answered approximately 37 calls from CDK and Reynolds Settlement Class Members and responded to dozens of emails. Leonard Bellavia, a Plaintiffs' Steering Committee Member and Settlement Counsel (ECF Nos. 123 ¶ I.C; 1484; 1531 ¶ 10) discussed the Settlement in an interview with "Inside Automotive" on *CBT News* (<https://www.youtube.com/watch?v=GSXjI19mjeE>). On October 13-15, 2024, Mr. Bellavia and I attended the National Association of Dealer Counsel's fall conference in Nashville, Tennessee, a professional organization comprised of over 600 attorneys representing auto and other vehicle dealers. At that conference, I gave a presentation regarding the details of both the Settlement and process for filing Settlement claims.

11. As of the November 7, 2024 deadline (and to date), no CDK Settlement Class Member has objected to the Settlement, nor excluded itself from the CDK Settlement Class. *See* Azari Decl. ¶ 33. The lack of objections is persuasive evidence that the Settlement is deemed fair and reasonable by the CDK Settlement Class, especially because the Class consists of auto dealerships that are sophisticated businesses capable of analyzing the Settlement and objecting, if they believe warranted.

12. Milberg filed the first case in this matter on October 19, 2017, and Dealership Counsel³ have litigated extensively over seven years to develop facts, legal and economic theories, and models for class-wide damages. Discovery in this case has been considerable and far-reaching. Dealership Counsel negotiated discovery protocols and search terms and reviewed over 1.2 million documents. Dealership Counsel took or defended over one hundred depositions, including those of Defendants' then CEOs, employees and numerous expert witnesses, and subpoenaed at least thirty non-parties

³ "Dealership Counsel" includes Lead Counsel, Settlement Class Counsel (ECF No. 1531 ¶¶ 9, 10) and counsel submitting time and expenses in this case. *See* Declaration of Peggy J. Wedgworth in Support of Dealership Class Counsel's Motion for Attorneys' Fees, Reimbursement of Expenses, and Class Representative Service Awards ("Wedgworth Fee Decl."), filed contemporaneously herewith.

for data and information (taking several of their depositions) and reviewed thousands of third-party documents. Class Representatives produced over 81,000 documents and sixteen were deposed. There were multiple rounds of interrogatories and requests for production on both sides, as well as extensive motion practice, including discovery motions, summary judgment motions, a fully briefed and argued class certification motion and two separate rounds of *Daubert* challenges. Eight economic, security and industry experts (five defense experts and three plaintiff experts) testified in this case. Prior to the parties settling, Dealership Plaintiffs' motion for class certification, the parties' *Daubert* motions related to class certification, and CDK's motion pursuant to 28 U.S.C. § 1292 to certify for interlocutory appeal a portion of this Court's summary judgment decision, were pending. *See* Wedgworth Fee Decl. ¶ 18.

13. Dealership Counsel have spent tens of thousands of hours over seven years advancing Dealership Plaintiffs' claims and were well-informed of the facts and the benefits as well as the risks and consequences of the proposed Settlement with CDK. Dealership Counsel thoroughly evaluated the strengths and weaknesses of the parties' respective litigation positions in relation to the Settlement through investigation, discovery, research, motion practice and settlement discussions, as well as balanced the value of Dealership Plaintiffs' claims against the substantial risks and expense of continuing litigation and trial (which was scheduled for September 2024), and potential post-trial appeals.

14. The risk of loss or non-recovery associated with continued litigation and the scheduled trial weighs in favor of final approval. Risks are significantly heightened in antitrust cases and courts have routinely recognized that trials are risky and could end with no recovery for the class. In this case, trial risks included, *inter alia*, whether Dealership Plaintiffs could prove the alleged antitrust conspiracy, whether vendors were overcharged by Defendants (and, if so, by how much), and

whether (and the extent to which) vendors passed the overcharges onto Dealers. Whether a jury would have found Dealership Plaintiffs' evidence persuasive and, if so, awarded *more* than \$100 million, raised enormous risks obviated by the Settlement.

15. Additional risks of continuing this litigation (among many others) included which Dealer Class(es), if any, would have been certified, whether CDK's *Daubert* motion to exclude the classwide damages model proffered by Dealers' economist would have been granted (potentially resulting in the denial of class certification), and how CDK's argument that various class members were subject to a class action waiver requiring individual claims adjudications may have affected the case.

16. The Settlement preliminarily approved by this Court is the result of extensive, protracted arm's-length negotiations between the parties. On behalf of Dealership Plaintiffs, I, along with partners from my firm, personally conducted settlement negotiations with counsel for CDK in-person and telephonically over an extended period of time in the latter part of 2023 with no agreement reached. Settlement negotiations resumed following the class certification hearing held on July 2, 2024, and a settlement agreement in principle was reached on July 12, 2024.

17. The parties' counsel executed the proposed Settlement Agreement on August 15, 2024 (ECF No. 1528-2). Lead Counsel and CDK counsel, all highly experienced and capable attorneys, vigorously advocated their respective clients' positions throughout the settlement negotiations. There was no collusion among counsel for the parties at any time during these negotiations. To the contrary, the negotiations were contentious, hard-fought and fully informed. In engaging in these settlement discussions, Lead Counsel was focused on obtaining the greatest monetary benefit possible from CDK on behalf of the CDK Settlement Class, concluding the lawsuit and establishing a fair and final resolution for all involved.

18. Over my professional career, I have negotiated many settlements and prosecuted numerous antitrust class actions, serving in numerous leadership positions in those cases. In my opinion, the proposed Settlement with CDK is fair, reasonable, and adequate. The Settlement provides substantial and immediate monetary recovery to the Class, and avoids the delay, uncertainty and expense of continued litigation, including the trial that was scheduled for September 2024 and any appeals. I believe the Settlement is in the best interest of the CDK Settlement Class and strongly recommend that the Settlement be finally approved.

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

Executed in Birmingham, Alabama this 27th day of November 2024.

/s/ Peggy J. Wedgworth
Peggy J. Wedgworth