

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 0:14-cv-61344-WPD

ANGELA SANCHEZ KNUTSON,

Plaintiff,

v.

FORD MOTOR COMPANY,

Defendant.

**DEFENDANT'S MEMORANDUM IN SUPPORT OF PLAINTIFFS' UNOPPOSED  
MOTION FOR CONDITIONAL CERTIFICATION OF NATIONAL SETTLEMENT  
CLASS, PRELIMINARY APPROVAL OF NATIONAL CLASS SETTLEMENT AND  
APPROVAL OF PROPOSED CLASS NOTICE**

Pursuant to Federal Rule of Civil Procedure 23(c)(2), (d), and (e), Ford Motor Company ("Ford" or "Defendant") respectfully submits this memorandum in support of Plaintiff's Unopposed Motion for Certification of National Settlement Class, Preliminary Approval of National Class Settlement and Approval of Proposed Class Notice ("Motion"). This memorandum and Plaintiff's unopposed Motion are being filed on Tuesday, October 11, 2016 because the Court was closed on Friday, October 7, 2016 due to inclement weather, and was closed on Monday, October 10, 2016 because of the Columbus Day holiday.

Ford has reviewed Plaintiffs' Motion and memorandum in support thereof, and while it does not necessarily agree with everything said therein, it agrees with the bottom-line conclusion that the proposed class action settlement reflects a reasonable compromise resolution of Plaintiffs' class claim and agrees that the Court should therefore authorize the formal settlement approval process to begin. Rather than recapitulate the Rule 23 and other arguments presented in

Plaintiffs' memorandum in support of the Motion, Ford here seeks to complement that filing by focusing on its perspective on the litigation and its proposed role in the settlement.

**I. THE PROPOSED SETTLEMENT REFLECTS A REASONABLE, ARM'S-LENGTH COMPROMISE THAT PROVIDES BENEFITS TO CLASS MEMBERS.**

All settlements are creatures of compromise, and this proposed settlement is no exception. Plaintiff brought this lawsuit believing that the exhaust system in model years 2011-2015 Ford Explorer vehicles contained defects that would allow exhaust odor to enter the passenger compartment under certain conditions. Plaintiff asserts various causes of action against Ford based on this allegation.

Although Ford acknowledges that some individuals may have noticed the smell of exhaust odor in their vehicle when driving under certain conditions, Ford believes it is incorrect to say that all these vehicles are "defective"; believes that it has fully adhered to its warranty obligations to repair or replace relevant components that malfunctioned due to defects in materials or workmanship during the applicable warranty coverage periods; and believes that vehicles that either experienced no malfunctions, experienced no malfunctions during the applicable warranty coverage period, or experienced malfunctions for reasons other than a defect in materials or workmanship (such as an accident), lack any entitlement to recovery under any legal theory.

However, Ford recognizes that entering into a nationwide class action settlement in this case would help it put the legal controversy with respect to exhaust odor behind it once and for all, avoid the inevitable burden and expense of additional litigation, and obviate the risk of an adverse judgment. Ford also recognizes that a class settlement containing benefits that accommodate the differing situations of different putative class members—as the proposed settlement clearly does—would promote Ford's continuing desire to satisfy or exceed all its

customers' expectations regarding their Ford vehicles. Balancing each of these factors, Ford decided it made sense to resolve this litigation through the class action settlement that is now being presented to this Court.

As Plaintiff confirms in her Motion, the proposed Settlement Agreement is the product of extensive arm's-length negotiations under mediator guidance among well-informed, sophisticated counsel who have demonstrated by their words and actions that they are fully prepared to aggressively litigate this case on behalf of their respective clients.

By this proposed settlement, Plaintiffs and members of the proposed settlement class are being offered multiple types of benefits relevant to their allegations:

- Reimbursement of up to \$125 or \$500 (depending on the type of repair made) of expenses paid for repairs to a Class Vehicle related to exhaust odor issues (and each Class Member may submit a claim for up to two such repairs, if applicable). All Class Members will at a minimum, regardless of the age of their Class Vehicles or occurrence of an Exhaust Odor Repair during the Bumper-to-Bumper Warranty Coverage Period of Ford's New Vehicle Limited Warranty, be eligible for a free or subsidized repair of Authorized Ford Dealer diagnosed Exhaust Odor problems until 60 days after the Effective Date of Settlement—a period that likely will run into Summer 2017. Eligibility for subsidized Exhaust Odor Repairs for some owners could continue into Summer 2019.
- Dissemination of information about the Exhaust Odor issue, and the substance and procedure of Ford's plans to correct dealer diagnosed Exhaust Odor problems, via Class Notice to all Settlement Class Members.
- Enhanced ability of Settlement Class Members who obtain Ford's most current Exhaust Odor repair service, but contend that it has not corrected the Exhaust Odor issue in their Class Vehicles, to pursue, without charge, a Lemon Law or warranty claim to the BBB AUTO LINE for mediation and arbitration that could potentially result in a buyback of the vehicle. Ford has agreed to waive certain defenses to those claims.

Ford believes that these offerings, taken together, provide real and meaningful benefits to the proposed settlement class members who have experienced, or are now experiencing, documented Exhaust Odor problems in their vehicles. Moreover, the fact that those Settlement Class Members who truly are experiencing difficult-to-correct Exhaust Odor problems (whether

a very small fraction of vehicle owners, as Ford believes, or a more substantial fraction of vehicle owners, as Plaintiff contends) will receive these benefits promptly after final approval of the proposed settlement constitutes from their perspective a vastly superior outcome compared to that likely to occur through continued litigation. Ford believes that continued putative class action litigation would likely lead to no recovery at all for owners of the vehicles at issue given the substantive and procedural weaknesses of this case and others like it pending in other courts. Yet even if Ford's judgment about the strength of Plaintiff's case is wrong, it is surely true that recovery for a nationwide class of vehicle owners would not occur until many more years of continued litigation in trial and appellate courts around the nation. Accordingly, the certainty and immediacy of the promised recovery through this proposed settlement constitutes a better outcome for Settlement Class members than would continued litigation.

## **II. THE PROPOSED CLASS NOTICE IS ADEQUATE AND SHOULD BE APPROVED**

Rule 23(e)(1) provides that when a class settlement is proposed, "[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal." The Manual for Complex Litigation (Fourth) § 21.633 says:

Once the judge is satisfied as to the certifiability of the class and the results of the initial inquiry into the fairness, reasonableness, and adequacy of the settlement, notice of a formal Rule 23(e) fairness hearing is given to the class members. For economy, the notice under Rule 23(c)(2) and the Rule 23(e) notice are sometimes combined. The fairness hearing notice should alert the class that the hearing will provide class members an opportunity to present their views on the proposed settlement and to hear arguments and evidence for and against the terms.

The notice of the fairness hearing should tell objectors to file written statements of their objections with the clerk of court by a specified date in advance of the hearing and to give notice if they intend to appear at the fairness hearing . . . .

In this case, the parties propose to disseminate a short form mailed Class Notice to the name and last known address of each potential member of the proposed settlement class. The

last known address for potential settlement class members will be checked and updated via the National Change of Address database. Thereafter, Ford will send a copy of the short form Class Notice by first-class mail to each Settlement Class Member so identified. Ford will use its best efforts to complete the mailing of the short form Class Notice to potential Settlement Class members within four months after the preliminary approval of the Proposed Settlement.

The mailed short form Class Notice describes, *inter alia*, the litigation, the consideration being provided to the Settlement Class Members, and the procedure by which Settlement Class Members may exclude themselves from the Settlement Class or object to the Settlement. It directs Settlement Class Members to a website containing a long-form version of the Class Notice and other relevant documents.

The parties believe that both the contents of the proposed Class Notice and the proposed method of disseminating the notice meet the requirements of Fed. R. Civ. P. 23(e). The proposed notice provides the Settlement Class Members with sufficient information to consider the terms of the settlement and decide whether to participate in it, or whether to object to it.

*In re Checking Account Overdraft Litig.*, 275 F.R.D. 654, 662 (S.D. Fla. 2011). The parties therefore request that authorization be given to disseminate notice to the Settlement Class in the manner set forth in the Settlement Agreement.

### **III. THE COURT SHOULD ADOPT THE PARTIES' PROPOSED SCHEDULE FOR CONSIDERING FINAL APPROVAL OF THE SETTLEMENT.**

The parties jointly propose to the Court a schedule for taking the steps necessary to allow the Court to decide whether to finally approve the proposed Settlement. This schedule is reasonably expeditious (especially given the administrative challenges of obtaining the names and addresses of a proposed settlement class of hundreds of thousands of individuals and entities from the motor vehicle registration databases from every state and territory in the nation), yet

gives all interested persons a full opportunity to learn about the proposed Settlement and to have their views considered. Assuming that the Court promptly issues an order preliminarily approving the proposed Settlement and launching the class notice and fairness process (a proposed order with schedule dates left blank is contained at Exhibit B of the Settlement Agreement, and an identical version with proposed dates included is also submitted with Plaintiffs' Motion), the general schedule that the parties propose for completing the fairness hearing steps are as follows:

- **Class Action Fairness Act Notice to Attorneys General.** In accordance with 28 U.S.C. § 1715, Ford intends to provide notice of this proposed Settlement to the Attorney General of the United States, and of all states and territories in which putative Settlement Class Members exist, on or before *October 21, 2016*.
- **Mailed Notice.** Defendant intends to complete dissemination of Class Notice on or before *February 10, 2017*.
- **Fairness Hearing.** The parties believe that the Fairness Hearing could appropriately occur on *May 3, 2017*.
- **Class Counsel's Motion for Final Approval/Fee and Expense/Service Award Application.** Class Counsel will submit a Motion for Final Approval of the proposed Settlement and for approval of their Fee and Expense Application and Application for a Service Award to the Named Plaintiff and Unnamed Plaintiffs approximately six weeks before the Fairness Hearing. Assuming a *May 3, 2017* Fairness Hearing, these could be due on *March 22, 2017*.
- **Requests for Exclusion.** The Settlement Agreement calls for Requests for Exclusion from the Settlement Class to be submitted to Ford by the date specified in the

Preliminary Approval Order approximately one month before the Fairness Hearing.

Assuming a *May 3, 2017* Fairness Hearing, these could be due on *April 5, 2017*.

- **Objections.** The Settlement Agreement calls for objections to the Settlement to be filed with the Court and served upon Class Counsel and Defendant's counsel such that they are received no less than one month prior to the Fairness Hearing.

Assuming again a *May 3, 2017* Fairness Hearing, these could be due on *April 5, 2017*.

- **List of Exclusions/Response to Objections.** The Settlement Agreement calls for Ford to report the names and addresses of all Settlement Class Members who have requested exclusion from the Settlement Class no less than seven days before the Fairness Hearing. The parties also intend to file any supplemental briefs responding to objections by this date. Assuming a *May 3, 2017* Fairness Hearing, these could be due on *April 26, 2017*.

The Parties respectfully request that the Court enter a Preliminary Approval Order substantially in the form attached to the proposed Settlement Agreement as Exhibit B and attached to Plaintiff's motion, setting forth this proposed schedule for the approval and implementation of the settlement.

#### **IV. FORD HAS PRESENTED A PLAN FOR COMPLIANCE WITH THE REQUIREMENTS OF THE CLASS ACTION FAIRNESS ACT.**

In addition to satisfying Rule 23's notice and other requirements following submission of the proposed Class Settlement, Ford is prepared to comply fully with the pre-approval requirements created by the Class Action Fairness Act, 28 U.S.C. § 1715. As set forth in the Settlement Agreement, Ford will dispatch by *October 21, 2016* a notice of the Settlement Agreement to the Attorney General of the United States and the attorneys general of each U.S.

state and territory in which a class member resides. Ford will include or reference: (1) a copy of the original and amended complaints, (2) a copy of the Court's Preliminary Approval Order (if entered at the time the notice is sent), (3) a copy of the Settlement Agreement and its exhibits, and (4) a reasonable estimate of the number of class members in each state or territory and their percentage representation in the Settlement Class.

**CONCLUSION**

For the reasons set forth above, Ford respectfully asks the Court to enter the Preliminary Approval Order submitted with Plaintiff's Motion.

Dated: October 11, 2016

Respectfully submitted,

**FORD MOTOR COMPANY**  
**By Counsel**

By: /s/ Frederick H.L. McClure

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