

**UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF FLORIDA  
Miami Division**

**MDL No. 2599  
Master File No.: 15-MD-02599-MORENO  
S.D. Fla. Case No.: 1:14-cv-24009-MORENO**

**IN RE: TAKATA AIRBAG PRODUCT  
LIABILITY LITIGATION**

**THIS DOCUMENT RELATES TO:**

**ECONOMIC LOSS TRACK CASES  
AGAINST FORD MOTOR COMPANY**

**PLAINTIFFS' MOTION FOR  
FINAL APPROVAL OF CLASS SETTLEMENT AND CERTIFICATION OF  
SETTLEMENT CLASS, AND APPLICATION FOR CLASS REPRESENTATIVE  
SERVICE AWARDS AND CLASS COUNSEL'S ATTORNEYS' FEES,  
AND INCORPORATED MEMORANDUM OF LAW**

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Class Counsel and Class Representatives respectfully move, under Rule 23 of the Federal Rules of Civil Procedure, for Final Approval of the Settlement with Ford Motor Company, certification of the Class defined in the Settlement, service awards for the named Class Representatives, and an award of attorneys' fees to Class Counsel.<sup>1</sup>

### **INTRODUCTION**

Subject to this Court's approval, Plaintiffs, on behalf of the Settlement Class, have agreed to resolve all consumer economic loss claims against Ford through a Settlement worth more than \$299.1 million. This is an outstanding result for the Class, after almost four years of intense, hard-fought litigation.

This action stems from allegations that Ford manufactured and deceptively sold approximately six million vehicles equipped with defective airbags supplied by Takata Corporation, and its subsidiary TK Holdings, Inc. (collectively "Takata"), the majority of which have yet to be replaced under the largest automotive recall in United States history. From the beginning, Plaintiffs' two primary objectives of this litigation have been: (1) to ameliorate the grave safety risk that Takata's defective airbags pose to Class Members; and (2) to compensate Class Members for the economic damages they suffered from purchasing defective vehicles that were not as safe or valuable as advertised. The Settlement achieves both objectives by providing Class Members with a wide array of relief.

A key component of the Settlement is the Outreach Program, the benefits of which are evident from the success of the ongoing programs for the six settlements this Court previously approved. The Outreach Program will utilize innovative, tailored outreach methods, well beyond those currently used by Ford, to maximize Class Members' recognition of the danger of not replacing Takata airbag inflators in their vehicles and motivate them to bring their vehicles to dealerships for the Recall Remedy. These outreach methods will include direct contact via mail, telephone, social media, e-mail, texting, and door-to-door canvassing, as well as multi-media campaigns using radio, television, print, and the internet. Almost one million Recall Remedies have been performed since the outreach programs for the six prior settlements commenced, substantially reducing the hazard posed by defective Takata inflators, and the Settlement Special

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<sup>1</sup> The Settlement Agreement has been filed with the Court. (ECF No. 2909-1.) Capitalized terms not defined herein shall have the same definitions and meanings ascribed to them in the Settlement.

Administrator continues to refine the programs through a data-driven process to maximize their effectiveness.

The Settlement also directly compensates Class Members, through both cash payments and substantial Customer Support and Rental Car Programs. Class Members can receive cash payments by either submitting a straightforward claim for reimbursement of reasonable expenses they incurred in connection with having the Recall Remedy performed on their vehicles, or simply by registering for payments of up to \$500 through distributions made from residual funds remaining in the Fund at the end of each program year. To further incentivize Class Members who still possess Subject Vehicles to have their dangerous airbag inflators replaced, such Class Members must obtain the Recall Remedy to become eligible for a cash payment. Class Members will also receive the benefit of the Customer Support Program, which provides prospective coverage for repairs and adjustments of current and replacement inflators, including the expense of parts and labor, for an extended period of time. In addition, through the Rental Car Program, Ford will provide a free rental or loaner vehicle to any Class Member who requests one, even just for the day when the Recall Remedy is being performed on the vehicle. This program represents a substantial departure from Ford's pre-Settlement practice and a significant benefit to the Class.

Although this Settlement is similar in structure to the six prior settlements the Court approved—a fact that strongly supports, if not conclusively establishes, the fairness, adequacy, and reasonableness of this Settlement—the litigation against Ford proceeded on a unique path. Unlike the other six automaker defendants who reached settlements more than a year ago, Ford refused to meaningfully engage in the multi-party negotiations that began in 2016, and instead battled Plaintiffs on every front, from procedural pleading issues, to personal jurisdiction, to the substantive merits of Plaintiffs' claims. Only after exhaustive discovery, several rounds of amended complaints, and contentious motion practice did Ford express any interest in negotiating a settlement, forcing Plaintiffs through an additional year of litigation.

In the face of numerous litigation obstacles and legal risks, Class Members will receive immediate and substantial relief through a negotiated resolution that simultaneously targets the extraordinary public safety hazard posed by Takata's defective airbags. When factoring in the value of the Customer Support Program, as reasonably estimated by an automotive and warranty

valuation expert, the total value of the Settlement is approximately \$535,920,000. By any measure, this is an outstanding result for the Class.

Because the Settlement is fair, adequate, and reasonable under Fed. R. Civ. P. 23(e) and prevailing jurisprudence, and the Class satisfies the requirements of Fed. R. Civ. P. 23(a) and 23(b)(3), Class Counsel request that the Court grant final approval of the Settlement and certify the Settlement Class. In addition, Class Counsel request that the Court approve service awards to the Class Representatives, whose willingness to represent the Class and active participation in the Action have made this result possible. Finally, Class Counsel respectfully request that the Court award attorneys' fees in accordance with prevailing Eleventh Circuit precedent and customary fees in similar cases, to compensate Class Counsel for their work in achieving this excellent result for the benefit of the Class and for the extensive work Class Counsel must continue to perform over the unique four-year lifespan of the Settlement.

In accordance with the Settlement Agreement, a proposed Final Order and Final Judgment encompassing these requests and reciting material terms of the Settlement are being submitted as exhibits to this motion.

### **BACKGROUND**

#### **A. Factual Background.**

The Court is well familiar with the facts giving rise to Plaintiffs' claims and Ford's defenses. Plaintiffs summarize such facts below to the extent pertinent to the issues raised in this motion.

For more than fifteen years, numerous automotive companies, including BMW, Ford, Honda, Mazda, Nissan, Subaru, and Toyota (the "Automotive Defendants"), manufactured and sold to the unsuspecting public a staggering number of vehicles equipped with defective airbags supplied by Takata. Instead of functioning as safety devices, Takata's defective airbags have an unreasonably dangerous propensity to deploy aggressively or rupture, spraying metal shrapnel toward vehicle occupants. The common defect in Takata's airbags is tied to the inherent instability of the phase-stabilized ammonium-nitrate propellant used in Takata's airbag inflators, which are metal canisters that are supposed to release gas to inflate airbag cushions in the milliseconds following a crash.

This common defect, which affected at least 50 million airbags nationwide, has given rise to the single largest automotive recall in United States history and a terrible public safety crisis.

Even though nationwide recalls have been underway for more than four years, more than 23 million airbags have yet to be removed from vehicles and replaced with safe airbags, according to the most recent data published by the National Highway Safety Transportation Administration (“NHTSA”).<sup>2</sup>

Following numerous field ruptures of Takata’s inflators that seriously injured or killed vehicle occupants, the Automotive Defendants began to recall vehicles equipped with such inflators. Honda initiated several narrow recalls from 2008 through 2012, claiming that the field ruptures resulted from limited manufacturing defects. As field ruptures continued to occur, however, the recalls expanded significantly. From April 11, 2013, through May 15, 2015, the Automotive Defendants initiated and expanded recalls ultimately covering millions of vehicles. On May 18, 2015, Takata entered into a Consent Order with NHTSA that required it to file Defect Information Reports, triggering recalls of almost 34 million inflators. Given the unprecedented size of the recalls and a shortage of replacement inflators, NHTSA also entered a Coordinated Remedy Order to prioritize which vehicles should be repaired first. Takata’s Consent Order has been amended several times, expanding the recall to all inflators with non-desiccated phase-stabilized ammonium-nitrate propellant, which includes at least 50 million inflators, and setting a December 31, 2019 deadline for Takata to demonstrate the safety of its desiccated inflators, at which time NHTSA may require Takata to recall those inflators as well.

Plaintiffs alleged that, prior to the recalls, neither Takata nor the Automotive Defendants disclosed the common defect in Takata’s inflators to Class Members. Instead, they represented that their products were safe. Plaintiffs alleged that they suffered several forms of economic damages as a result of purchasing defective airbags and vehicles that were inaccurately represented to be safe. Plaintiffs, for example, alleged that they overpaid for their vehicles with defective airbags and did not receive the benefit of their bargain, because the vehicles and airbags were of a lesser standard and quality than represented. In addition, Plaintiffs suffered damages in the form of out-of-pocket expenses, including lost wages from taking time off work to bring their vehicles to dealerships for the Recall Remedy, paying for rental cars and alternative transportation, and hiring child care while the Recall Remedy was being performed.

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<sup>2</sup> See NHTSA Takata Airbags Spotlight, <https://www.nhtsa.gov/recall-spotlight/takata-air-bags#takata-air-bags-completion-rates> (last visited November 2, 2018) (reporting that “[r]oughly 37 million vehicles equipped with 50 million defective Takata airbags are under recall” and approximately 26.2 million airbags have been replaced to date).

Beyond suffering these economic damages, millions of Class Members remain exposed to the unreasonable risk of serious injury or death posed by defective Takata inflators that have not been removed from their vehicles. Although supply shortages are partly responsible for low recall-completion rates, NHTSA has highlighted a lack of effective outreach programs from automotive companies as well.

**B. Procedural History.**

The following discussion recounts some of the major procedural events in this litigation. On October 27, 2014, eighteen plaintiffs filed a class action complaint in *Craig Dunn, et al. v. Takata Corp., et al.*, No. 1:14-cv-24009 (S.D. Fla.), asserting economic loss claims against several Automotive Defendants and Takata. Close to one hundred similar lawsuits were eventually filed around the country. The Judicial Panel on Multidistrict Litigation subsequently consolidated the *Dunn* action for pretrial proceedings with additional class and individual actions alleging similar or identical claims before this Court in *In re Takata Airbag Products Liability Litigation*, No. 1:15-md-02599-FAM (S.D. Fla.) (ECF No. 1).

On March 17, 2015, the Court entered an Order Appointing Plaintiffs' Counsel and Setting Schedule, which designated Peter Prieto of Podhurst Orseck, P.A. as Chair Lead Counsel, David Boies of Boies Schiller and Flexner, LLP, and Todd A. Smith of Power Rogers & Smith, PC, as Co-Lead Counsel in the Economic Loss track; Curtis Miner of Colson Hicks Eidson as Lead Counsel for the Personal Injury track; and Roland Tellis of Baron & Budd P.C., James Cecchi of Carella Byrne Cecchi Olstein P.C., and Elizabeth Cabraser of Lieff, Cabraser, Heimann & Bernstein, LLP as Plaintiffs' Steering Committee members.

Per this Court's Order, Plaintiffs filed an Amended Consolidated Class Action Complaint on April 30, 2015. On June 15, 2015, Plaintiffs filed a Second Amended Consolidated Class Action Complaint ("SACCAC").

On July 17, 2015, Defendants Toyota, Ford, Subaru, and Nissan filed a Joint Motion to Stay Based on the Primary Jurisdiction of the National Highway Traffic Safety Administration. The Court denied this motion on September 22, 2015. (ECF No. 737.) Takata and the seven Automotive Defendants also filed separate Motions to Dismiss Plaintiffs' SACCAC, which the Court granted in part and denied in part. (ECF Nos. 871; 1099; 1101; 1202; 1208; 1256; 1417.)

Extensive discovery has taken place in this case. Pursuant to the Court's initial case management order, discovery began almost immediately after creation of the MDL, in the spring



of 2015. Over the past three-plus years, the Defendants have produced more than 10 million pages of documents through discovery. Plaintiffs' counsel have dedicated a team of more than 40 attorneys to the laborious work of reviewing these documents, many of which are in Japanese, necessitating expensive and time-consuming translation, at great expense, which Plaintiffs' counsel have borne. The Defendants have deposed more than 110 class representatives, including 29 Plaintiffs with claims against Ford, and Plaintiffs have deposed at least 61 Defendant witnesses, including 14 Ford witnesses. Plaintiffs also have retained and engaged in substantial consultation with multiple experts on liability and damages issues in an effort to prepare the case for trial.

Meanwhile, the U.S. Department of Justice pursued a separate investigation of Takata. On January 13, 2017, Takata Corporation signed a criminal plea agreement in which it admitted, among other things, that it

knowingly devised and participated in a scheme to obtain money and enrich Takata by, among other things, inducing the victim OEMs to purchase airbag systems from Takata that contained faulty, inferior, nonperforming, non-conforming, or dangerous PSAN inflators by deceiving the OEMs through the submission of false and fraudulent reports and other information that concealed the true and accurate test results for the inflators which the OEMs would not have otherwise purchased as they were.

*U.S. v. Takata Corp.*, No. 2:16-cr-20810 GCS EAS, ECF No. 23 at 47 (E.D. Mich. Feb. 27, 2017). On the same day, an indictment of three Takata employees on related charges was unsealed. Takata entered a guilty plea to one count of wire fraud before U.S. District Judge George Caram Steeh, as part of a settlement with the U.S. Department of Justice. *See id.* at 2.

On June 25, 2017, TK Holdings Inc. and certain of its subsidiaries and affiliates each commenced a voluntary case under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware. On June 26, 2017, TK Holdings Inc. filed its Notice of Bankruptcy Filing and Imposition of Automatic Stay Pursuant to Section 262(a) of the Bankruptcy Code. (ECF No. 1857.) Following the confirmation of Takata's bankruptcy plan, Takata was dismissed as a Defendant in this litigation.

On July 14, 2017, Plaintiffs filed a Third Amended Consolidated Class Action Complaint ("TACCAC"). On July 26, 2017, the Court entered an Order dismissing certain amended and additional counts in the TACCAC and denied Plaintiffs' request to file the TACCAC under seal. (ECF No. 1919.) The Court also required Plaintiffs to file a revised TACCAC no later than

August 7, 2017. Pursuant to the Court's Order, Plaintiffs filed a revised TACCAC on August 7, 2017. On September 1, 2017, Ford filed a Partial Motion to Dismiss Plaintiffs' Revised TACCAC. (ECF No. 2014.)

On March 2, 2018, before the Court ruled on Ford's Partial Motion to Dismiss, Plaintiffs filed a Motion for Leave to File a Final Amended Complaint Against Ford Motor Company. (ECF No. 2445.) On April 26, 2018, the Court entered an Order granting Plaintiffs' Motion for Leave, requiring Plaintiffs to file a Final Amended Complaint against Ford no later than April 30, 2018, and denying Ford's Partial Motion to Dismiss as moot. (ECF No. 2647.) Pursuant to the Court's April 26, 2018 Order, Plaintiffs filed the Fourth Amended Consolidated Class Action Complaint ("FACCAC"), which is the operative complaint against Ford. (ECF No. 2670.) Ford filed a Motion to Dismiss Plaintiffs' FACCAC on June 25, 2018. (ECF No. 2887.) And Plaintiffs filed their Response in Opposition to Ford's Motion to Dismiss Plaintiffs' FACCAC on July 9, 2018. (ECF No. 2905.)

### **C. Settlement Negotiations.**

In parallel with the hard-fought litigation track, multi-party settlement negotiations between Plaintiffs' counsel and counsel for several Automotive Defendants, including Toyota, BMW, Mazda, Subaru, Honda, and Nissan, began in 2016. Ford was the only Automotive Defendant that did not meaningfully participate in these negotiations, which ultimately ended in an impasse in 2017. (Ex. A (Prieto Decl.), ¶ 19.) After reengaging in direct negotiations with several Automotive Defendants, Plaintiffs reached settlements with almost all of the initial Automotive Defendants in the spring and summer of 2017. (*Id.*, ¶ 20.) The only exception was Ford, which still did not express any interest in participating in settlement negotiations at that time. (*Id.*) This Court ultimately granted final approval to the first six Settlements, which all utilize a similar structure and have achieved their Effective Dates following the dismissal of appeals. (ECF Nos. 2162, 2164, 2166, 2168 2385, 2388.)

Settlement negotiations with Ford began in late February 2018, when Ford and Plaintiffs' counsel first discussed the possibility of settlement by phone. (Ex. A (Prieto Decl.), ¶ 21.) The parties then met in-person on March 15, 2018, in Dearborn, Michigan, for an initial discussion regarding the potential structure of a settlement. (*Id.*) After Plaintiffs sent Ford an initial proposal on March 19, 2018, the parties met in-person again, first on May 9, 2018, in Washington, D.C., and then from May 17-18, 2018, in Miami. (*Id.*) The parties reached a

tentative agreement as to the structure and general terms of the Settlement, excluding attorneys' fees, at the meeting in Miami on May 18, 2018, and after exchanging several drafts of a term sheet, reached an agreement as to the substantive benefits for the Class on June 7, 2018. (*Id.*) Only after agreeing on the substantive terms of the Settlement did the parties begin to negotiate attorneys' fees. (*Id.*) The parties again exchanged and discussed several proposals and counter-proposals and ultimately reached an agreement on a final term sheet on June 13, 2018. (*Id.*) The parties then spent the next several weeks drafting and negotiating the specific terms of the Settlement Agreement. (*Id.*)

Throughout the four-month negotiation process, both in-person and by phone, the parties discussed and considered their relative views of the law, facts, and potential relief for the proposed Class, and exchanged numerous counter-proposals for key issues and concepts in a potential settlement. (*Id.*) Based on the success and fairness of the prior six settlements reached in the MDL, Plaintiffs' counsel insisted on structuring this Settlement in a similar manner. (*Id.*) At all times, the lengthy settlement negotiations were adversarial, non-collusive, and at arm's length. (*Id.*)

#### **TERMS OF THE SETTLEMENT**

The terms of the Settlement are detailed in the Agreement, which has been filed with the Court. (ECF No. 2909-1.) The following is a summary of the material terms.

##### **A. The Settlement Class.**

The Class is an opt-out class under Rule 23(b)(3) of the Federal Rules of Civil Procedure. The Class in the Settlement is defined as:

(1) all persons or entities who or which owned and/or leased, on the date of the issuance of the Preliminary Approval Order, Subject Vehicles distributed for sale or lease in the United States or any of its territories or possessions; and (2) all persons or entities who or which formerly owned and/or leased Subject Vehicles distributed for sale or lease in the United States or any of its territories or possessions, and who or which sold or returned, pursuant to a lease, the Subject Vehicles after June 19, 2014, and through the date of the issuance of the Preliminary Approval Order. Excluded from this Class are: (a) Ford, its officers, directors, employees and outside counsel; its affiliates and affiliates' officers, directors and employees; its distributors and distributors' officers and directors; and Ford's Dealers and their officers, directors, and employees; (b) Settlement Class Counsel, Plaintiffs' counsel, and their employees; (c) judicial officers and their immediate family members and associated court staff assigned to this case, any of the cases listed in Exhibit 1, or the 11th Circuit Court of

Appeals; (d) Automotive Recyclers and their outside counsel and employees; and (e) persons or entities who or which timely and properly exclude themselves from the Class.

(ECF No. 2909-1, § II.A.9.)

“Subject Vehicles” are defined as Ford, Lincoln, and Mercury vehicles that “contain or contained Takata PSAN inflators in their driver or passenger front airbag that (i) have been recalled, or (ii) shall be recalled or contain a desiccant and that may be subject to future recall as referenced in the National Highway Traffic Safety Administration’s (“NHTSA”) Consent Orders dated May 18, 2015 and November 3, 2015, and amendments thereto.” (*Id.*, § II.A.49.) An exhibit to the Settlement lists the Subject Vehicles that precisely define the scope of the Class. (*Id.* at Ex. 9.)

Based on the number of recalled vehicles reported by Ford, Plaintiffs estimate that there are at least six million members of the Ford Class.

**B. Settlement Fund.**

The Settlement requires Ford to deposit a total of \$299.1 million, less a 20% credit for the Enhanced Rental Car/Loaner Program, into a non-reversionary Qualified Settlement Fund. Ford agreed to deposit approximately 12% of the full Settlement Amount within 30 days of this Court’s Preliminary Approval of the Settlement, to immediately fund the first year of the Outreach Program. The rest of the Settlement Fund payments will be made over a prescribed four-year schedule set forth in the Settlement. (*See id.*, § III.A.2.)

The Settlement Fund will be used to pay for: (a) the Outreach Program; (b) an Out-of-Pocket Claims Process to compensate Class Members for out-of-pocket expenses relating to the Takata Airbag Inflator Recall; (c) residual cash payments to Class Members who have not incurred reimbursable out-of-pocket expenses and who register for residual payments, to the extent that there are residual amounts remaining; (d) the Enhanced Rental Car/Loaner Program, which will provide rental or loaner vehicles to Class Members at no cost while the Recall Remedy is being performed or is delayed; (e) the Notice Program; (f) claims administration, including expenses associated with the Settlement Special Administrator; (g) Court-awarded Class Counsel’s fees and expenses; and (h) Court-awarded service awards to Class Representatives. (*See id.*, § III.A.3.)

### **C. Outreach Program.**

A vital feature of the Settlement is the requirement that Ford fund an intensive, innovative Outreach Program aimed at maximizing the removal of dangerous inflators from Class Members' vehicles. Even though the recall has been underway for several years, millions of Class Members remain exposed to the continuing unreasonable danger of rupturing inflators. The Outreach Program will utilize traditional and non-traditional media well beyond the methods currently used by Ford. The methods of outreach may include: (a) direct contact of Class Members via U.S. Mail, telephone, social media, e-mail, texting, and canvassing; (b) contact of Class Members by third parties (*e.g.*, independent repair shops); and (c) multi-media campaigns, such as through print, television, radio, and the internet. (*See id.*, § III.B.)

The budget for the entire Outreach Program is set at 33% of the Settlement Amount, but may be adjusted subject to agreement of the Parties. The Settlement Special Administrator will oversee and administer the Outreach Program, and will engage industry-leading consultants with specialized knowledge of different outreach methods to adjust the Outreach Program to maximize its effectiveness. In this way, the Outreach Program is designed to be flexible and nimble, geared to redirect resources to methods that prove most effective at motivating Class Members to bring their vehicles to dealerships for the Recall. The Settlement Special Administrator is also empowered to resolve disputes between the Parties about how best to design and implement the Outreach Program. (*See id.*, § III.B.)

Underscoring the public safety objective of the Settlement, Ford funded the first 12 months of the Outreach Program within 30 days of Preliminary Approval. (*Id.*)

### **D. Out-Of-Pocket Claims Process.**

Another critical feature of the Settlement is an Out-of-Pocket Claims Process, which will reimburse Class Members for reasonable out-of-pocket expenses incurred relating to the Takata Airbag Inflator Recalls. (*See id.*, § III.D.) There are two primary advantages to the Claims Process: first, it permits Class Members to recover for the reasonable expenses they actually incurred, without limiting recovery to certain pre-determined categories or amounts; and second, it furthers the public-safety goal of incentivizing Class Members who still own or lease Subject Vehicles to bring their vehicles to a dealership for the Recall Remedy, as having the Recall Remedy performed is a prerequisite to eligibility for such a payment. The Registration/Claim Form is straightforward, simple, and not burdensome. (*See id.* at Ex. 12.) It will be provided to

Class Members via the Settlement website, and Ford will request that Ford Dealers provide the Registration/Claim Form to Class Members when they bring their vehicles in for the Recall Remedy. (*See id.*, § III.D.)

The Settlement Special Administrator will oversee the Out-of-Pocket Claims Process, including the determination of types of reimbursable costs and the eligibility of claims for reimbursement. The Parties agreed to recommend several common types of recall-related expenses for reimbursement eligibility, all of which are identified on the Registration/Claim Form:

- (i) reasonable unreimbursed rental car and transportation expenses, after requesting and while awaiting the Recall Remedy from a Ford Dealer;
- (ii) reasonable towing charges to a Ford Dealer for completion of the Recall Remedy;
- (iii) reasonable childcare expenses necessarily incurred while the Recall Remedy is being performed on the Subject Vehicle by the Ford Dealer;
- (iv) reasonable unreimbursed out-of-pocket costs associated with repairing driver or passenger front airbags containing Takata PSAN inflators;
- (v) reasonable lost wages resulting from lost time from work directly associated with the drop off and/or pickup of a Subject Vehicle at a Ford Dealer for performance of the Recall Remedy; and
- (vi) reasonable fees incurred for storage of a Subject Vehicle after requesting and while awaiting a Recall Remedy part.

(*See id.*, § III.D.3.) In addition to these categories of expenses, the Settlement Special Administrator is empowered to approve and pay for other reimbursable claims that the Settlement Special Administrator deems to be a reasonable out-of-pocket expense, and Class Members are invited to submit claims for such expenses. (*Id.*, § III.D.2.)

As far as the timing of payments to Class Members, the first set of reimbursements to eligible Class Members who have completed and filed a Registration/Claim Form will be made on a rolling basis by the Settlement Special Administrator no later than 180 days after the Effective Date. Reimbursements for following years will be made on a rolling basis as claims are submitted and approved. (*Id.*)

For the reimbursements that occur in years one through three, reimbursements will be made on a first-in-first-out basis until the Settlement Fund is depleted for that year. If there are no more funds to reimburse eligible Class Members in that particular year, then those Class Members will be moved to subsequent years for reimbursement. For reimbursements to eligible

Class Members that are to occur in year four, the last year of the reimbursement process, out-of-pocket-expense payments will be made for the amounts approved by the Settlement Special Administrator, unless the approved reimbursements to eligible Class Members exceed the amount of the Settlement Fund remaining. If this event occurs, then reimbursements will be made on a pro rata basis until the available amount is exhausted. (*Id.*)

**E. Residual Distribution Payments.**

The settlement program offers Class Members an additional way to receive a cash payment. Rather than submit a claim for out-of-pocket expenses, Class Members have the option of registering for a Residual Distribution of up to \$250 from the Settlement Fund. Residual Distributions will be funded with the monies remaining in the fund at the end of each of the four settlement program years, after all payments are made for the Outreach Program and approved claims for out-of-pocket expenses. (*See id.*, § III.E.)

Class Members are eligible for a Residual Distribution if they just registered for a residual payment or if they submitted claims in that year, or prior program years, that were previously rejected. Subject to certain exceptions, funds remaining after payment of the maximum residual payment to all Class Members in any given year shall be rolled over into the following year's settlement program. The settlement program will last for at least four years. (*See id.*, § III.E.)

The Settlement is structured to maximize cash payments to Class Members. Any funds that remain at the end of the last settlement program year after the Residual Distribution, if any, is made, may be distributed, unless it is administratively unfeasible, on a per capita basis to Class Members who: (a) previously submitted claims that were paid; (b) previously submitted claims that were rejected and have not received any prior claims payments; or (c) registered for a residual payment only. Alternatively, the Parties may elect to fund additional Outreach Program activities with such remaining funds. The residual payment from this last Settlement program year is limited to \$250 per Class Member, as well. Thus, it is possible for a Class Member who simply registers for Residual Distribution payments to receive \$500 over the course of the Settlement—\$250 from the initial Residual Distribution at the end of the year the Class Member registers, and \$250 from the final Residual Distribution at the end of the settlement program. (*See id.*, § III.E.)



Finally, if there are any funds remaining in the Settlement Fund after all of the foregoing payments have been made through the last program year, those funds may be distributed to all Class Members on a per capita basis, unless it is administratively unfeasible. If the Settlement Special Administrator determines it to be administratively unfeasible (*e.g.*, because the cost of distributing the remaining funds would consume them), then those funds may be distributed *cy pres*, with the Court's approval. (*See id.*, § III.E.)

**F. Rental Car/Loaner Program.**

Another aspect of the Settlement relief—the Rental Car/Loaner Program—is designed to address any inconvenience or additional costs certain Class Members may face in getting the Recall Remedy performed on their vehicles due to supply shortages of replacement parts or the time needed to perform the Recall Remedy. Any Class Member who brings a recalled Subject Vehicle to a dealership for the Recall Remedy and requests a rental/loaner vehicle will be provided one for free, until the Recall Remedy is performed on the Subject Vehicle. Commencing no later than the issuance date of the Preliminary Approval Order, this additional benefit furthers public safety and reduces a potential impediment to Class Members having the Recall Remedy performed on their vehicle. (*See id.*, § III.C.)

In exchange for providing the Enhanced Rental Car/Loaner Program, Ford shall receive a credit of 20% of the Settlement Amount. One quarter of the credit shall be applied to each of the four annual payments that Ford must make into the Settlement Fund, such that the full credit is realized at the time of the Year Four Payment. (*See id.*, §§ III.B, III.C.) A leading valuation expert, Kirk Kleckner, whose work has been cited with approval by a number of courts, has determined within a reasonable degree of professional certainty that the value of the Rental Car Program exceeds the credit that Ford receives for implementing it. (*See Ex. C (Kleckner Report)*, ¶¶ 1, 7.)

The Settlement Special Administrator is charged with monitoring Ford's compliance with the Enhanced Rental Car/Loaner Program. Every six months, Ford must certify to the Settlement Special Administrator that it is complying with the program, and the Settlement Special Administrator is authorized to audit and confirm Ford's compliance. (*See id.*, § III.C.)

**G. Customer Support Program.**

In addition to the monetary elements of the Settlement, Ford has also agreed to provide Class Members with a Customer Support Program that provides prospective coverage for repairs



and adjustments (including parts and labor) necessary to correct any defects in the materials or workmanship of (1) Takata PSAN inflators contained in the driver or passenger front airbag modules of Subject Vehicles, or (2) replacement driver or passenger inflators installed pursuant to the Takata Airbag Recall in the Subject Vehicles. (ECF No. 2909-1, § III.G.) This benefit covers two important circumstances where Class Members are at risk of incurring additional expenses if their Subject Vehicle is recalled in the future, and where they had the Recall Remedy performed, but the new inflator is in any way defective or breaks.

Eligible Class Members may begin seeking the Customer Support Program benefits 30 days after the Court's issuance of the Final Order, a date chosen to give Ford sufficient lead time to coordinate with their dealers regarding how to implement this benefit. The Customer Support Program benefit will be automatically transferred and will remain with the Subject Vehicle regardless of ownership. It does not apply, however, if a replacement airbag inflator deploys normally. Nor does the Customer Support Program extend to inoperable vehicles and vehicles with a salvaged, rebuilt, or flood-damaged title. (*See id.*, § III.G.)

The duration of the Customer Support Program benefit for each Class Member depends on whether the Recall Remedy has already been performed and whether the Subject Vehicle contains a desiccated Takata PSAN inflator. The Settlement provides as follows:

- (i) If the Subject Vehicle has been recalled and the Recall Remedy has been completed as of the date of the issuance of the Court's Preliminary Approval Order, then the Customer Support Program will last for 10 years measured from the date the Recall Remedy was performed on the Subject Vehicle or 150,000 miles measured from the date the Subject Vehicle was originally sold or leased by a Ford Dealer ("Date of First Use"), whichever comes first. However, each eligible vehicle will receive coverage for at least 75,000 miles measured from the date the Recall Remedy was performed on the Subject Vehicle, or two years measured from the date of the issuance of the Court's Preliminary Approval Order, whichever is later.
- (ii) If the Subject Vehicle has been or will be recalled and the Recall Remedy has not been completed as of the date of the issuance of the Court's Preliminary Approval Order, then the Customer Support Program will last for (a) 10 years from the Date of First Use, or, if the Recall Remedy is subsequently performed on the Subject Vehicle, the date the Recall Remedy is performed, or (b) 150,000 miles measured from the Date of First Use, whichever comes first. However, each eligible vehicle will receive coverage for at least 75,000 miles measured from the date the Recall Remedy was performed on the Subject Vehicle, or two years measured from the date of

the issuance of the Court's Preliminary Approval Order (or from the date the Recall Remedy is subsequently performed, if it is), whichever is later.

- (iii) If the Subject Vehicle contains a desiccated Takata PSAN inflator in the driver or passenger front airbag as original equipment that has not been recalled as of the date of the issuance of the Court's Preliminary Approval Order, then the Customer Support Program will last for 10 years, measured from the Date of First Use, or 150,000 miles measured from the Date of First Use, whichever comes first. However, each eligible Subject Vehicle will receive no less than two years of coverage from the date of the issuance of the Court's Preliminary Approval Order.
- (iv) In the event desiccated Takata PSAN inflators in the driver or passenger front airbag modules in any of the Subject Vehicles are recalled in the future, then the Customer Support Program will last for 10 years measured from the date such future Recall Remedy is performed on the Subject Vehicle, or 150,000 miles measured from the Date of First Use, whichever comes first. However, each eligible vehicle will receive coverage for at least 75,000 miles or two years measured from the date the future Recall Remedy is performed on the Subject Vehicle, whichever is later.

(*Id.*, § III.G.)

Mr. Kleckner, the automotive and warranty valuation expert, has determined within a reasonable degree of professional certainty that the value to Class Members of the Customer Support Program is \$236,820,000. (Ex. C (Kleckner Decl.), ¶¶ 1, 6.)

#### **H. Release.**

Upon entry of final judgment, Class Members agree to give a broad release to the "Released Parties," defined essentially as Ford and all related entities and persons, of all claims "regarding the subject matter of the Actions,"

arising from, related to, connected with, or in any way involving the Claims or the Actions, the Subject Vehicles' driver or passenger front airbag modules containing desiccated or non-desiccated Takata PSAN inflators, and any and all claims involving the Takata Airbag Inflator Recalls that are, or could have been, alleged, asserted or described in the Complaint, Amended Consolidated Class Action Complaint, the Second Amended Consolidated Class Action Complaint, the Revised Third Amended Consolidated Class Action Complaint, the Fourth Amended Consolidated Class Action Complaint, the Actions or any amendments of the Actions.

(ECF No. 2909-1, § VII.B.) There are two important exceptions carved from the releases: for personal injury and physical property damage claims and for claims against certain "Excluded Parties."

First, the Settlement Agreement provides that “Plaintiffs and Class Members are *not* releasing and are expressly reserving all rights relating to claims for bodily injury, wrongful death or physical property damage (other than to the Subject Vehicle) arising from an incident involving a Subject Vehicle, including the deployment or non-deployment of a driver or passenger front airbag with a Takata PSAN inflator.” (*Id.*, § VII.D.)

Second, the Settlement Agreement also reserves and does not release claims against “Excluded Parties,” who are defined as Takata (and all related entities and persons) and all other automotive manufacturers and distributors (and all their related entities and persons), specifically including other, non-Ford Defendants in the Action. (*See id.*, § VII.E.)

### **I. Notice Program.**

The Settlement proposed, and the Court approved in its Preliminary Approval Order, a robust Notice Program designed to satisfy Rule 23 and constitutional due process. Notifying Class Members of the Settlement, in both English *and* Spanish, is being accomplished through a combination of the Direct Mail Notices, Publication Notice (in newspapers, magazines and/or other media outlets), Radio Notice, notice through the Settlement website ([www.AutoAirbagSettlement.com](http://www.AutoAirbagSettlement.com)), a Long Form Notice, and other forms of notice, such as banner notifications on the internet. (*See* Ex. B (Azari Decl.)) The details of each form of notice are set forth in the declaration of Cameron R. Azari, Esq., of Epiq Systems, Inc., the Settlement Notice Administrator, included as Exhibit 11 to the Settlement Agreements (ECF No. 2909-1 at Ex. 11), and in Mr. Azari’s more recent declaration submitted as an exhibit in support of this motion (Ex. B (Azari Decl.)).

The Settlement accomplished a reduction in administrative expenses by employing a single Settlement Notice Administrator to issue notice for all Settlements and utilizing a combined Settlement website to inform Class Members of the terms of the Settlement Agreement, their rights, dates and deadlines, and related information. The website includes, in .pdf format, relevant Settlement documents, including the Registration/Claim Form, both in English *and* Spanish. (Ex. B (Azari Decl.), ¶¶ 42-46.)

Class Members also received Direct Mail Notice by U.S. Mail. (*Id.*, ¶¶ 12-20.) The Direct Mail Notice informs potential Class Members of the various ways they can obtain the Long Form Notice (via the website, mail or a toll-free telephone number), and the general structure of the Settlement. (*Id.* at Ex. 2.) The Settlement Notice Administrator also re-mailed

Direct Mail Notices returned by the U.S. Postal Service with a forwarding address and, for returned mail without a forwarding address, researched better addresses and promptly re-mailed copies of the applicable notice to any better addresses. (*Id.*, ¶¶ 12-20.)

The Settlement Notice Administrator also established a toll-free telephone number that provides settlement-related information to Class Members using an Interactive Voice Response system, with an option to speak with live operators. (*Id.*, ¶ 47.)

The Long Form Notice, attached as Exhibit 6 to the Settlement Agreement, also follows a standardized form. (*Id.* at Ex. 3.) It advises Class Members of the general terms of the Settlement, including information on the definition of the Class, the relief to be provided, and what claims are to be released; notifies them of and explains their rights to opt out of or object to the Settlement; discloses the amounts of service awards and attorneys' fees and expenses that Settlement Class Counsel may request; and explains that such fees and expenses—as awarded by the Court—will be paid from the Settlement Fund. (*Id.*) The Long Form Notice also includes the Registration/Claim Form. (*Id.*) The Registration/Claim Form (attached as Exhibit 12 to the Settlement Agreement) informs the Class Member that the form must be fully completed and timely returned within the Claim Period to be eligible to obtain monetary relief pursuant to this Agreement. (ECF No. 2909-1 at Ex. 12.)

To comply with the Class Action Fairness Act, the Settlement Notice Administrator also sent to each appropriate State and Federal official the materials specified in 28 U.S.C. § 1715 and otherwise complied with its terms. (Ex. B (Azari Decl.), ¶ 11.)

#### **J. Settlement Administration.**

The Settlement Special Administrator is charged with administering all aspects of the Settlement, with the exception of the Notice Program, which the Settlement Notice Administrator shall handle, in coordination with the Settlement Special Administrator. The Court appointed Patrick A. Juneau, of Juneau David APLC, to serve as Settlement Special Administrator, the same position to which he was appointed for the six prior settlements, which likewise maximizes efficiency. His responsibilities will include (1) overseeing and administering the Outreach Program, (2) auditing and confirming Ford's compliance with the Enhanced Rental Car/Loaner Program, and (3) overseeing and administering the Out-of-Pocket Claims Process and Residual Distribution, a function which requires the exercise of discretion, to

determine the reasonableness and eligibility of Class Members' claims for out-of-pocket expenses and to deny any fraudulent claims. (ECF No. 2909-1, § IV.K.)

**K. Attorneys' Fees and Service Awards for Class Representatives.**

Class Counsel did not begin to negotiate attorneys' fees and expenses until after agreeing to the principal terms set forth in the Settlement Agreement. (ECF No. 2909-1, § VIII; Ex. A (Prieto Decl.), ¶ 21.) The Settlement Agreement provides that Settlement Class Counsel agree to limit their request to the Court for attorneys' fees and expenses to no more than 25% of the Settlement Amount, which equates to \$74,775,000. Likewise, Ford agrees not to oppose such a request. Attorneys' fees and expenses awarded to Class Counsel for work done on behalf of the Class will be paid from the Settlement Fund. (ECF No. 2909-1, § VIII.)

The Parties agreed that the Court's resolution of the issue of attorneys' fees and expenses shall have no bearing on the Settlement Agreement. In particular, an Order solely relating to attorneys' fees or expenses shall not operate to terminate or cancel the Settlement Agreement or affect or delay its Effective Date. (*Id.*)

Finally, Plaintiffs' counsel may petition the Court for service awards up to \$5,000 per Class Representative in order to compensate the Plaintiffs for their efforts on behalf of the Class. (*Id.*)

**L. Proposed Final Order and Final Judgment.**

To ensure that the Court retains jurisdiction to enforce and interpret the Settlement and that the ultimate resolution is consistent with the Parties' Agreement, the Settlement includes a proposed Final Order and Final Judgment as exhibits and specifies the minimum requirements of any Final Order and Final Judgment. (ECF No. 2909-1, § IX.B. & Ex. 4, 5.) Among other things, the Settlement calls for the proposed Final Order and Final Judgment to dismiss Plaintiffs' claims with prejudice, incorporate the Release set forth in the Agreement, issue a permanent injunction against Class Members instituting or prosecuting any claims released pursuant to the Settlement, address any issues relating to Telephone Consumer Protection Act and Outreach Program, and make the requisite findings to approve and implement the Settlement. (*Id.*) For the Court's convenience, updated versions of the proposed Final Order and

Final Judgment are being submitted as exhibits to this motion.<sup>3</sup>

**MEMORANDUM OF LAW**

**I. The Court Should Grant Final Approval To The Settlement.**

Rule 23(e) requires judicial approval for the settlement of claims brought on a class basis. Fed. R. Civ. P. 23(e). “[S]uch approval is committed to the sound discretion of the district court.” *In re U.S. Oil and Gas Litig.*, 967 F.2d 489, 493 (11th Cir. 1992). In exercising that discretion, courts are guided by the “strong judicial policy favoring settlement as well as by the realization that compromise is the essence of settlement.” *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984). The policy favoring settlement is especially applicable to class actions, where the inherent costs, delays, and risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain. *See, e.g., Ass’n for Disabled Americans, Inc. v. Amoco Oil Co.*, 211 F.R.D. 457, 466 (S.D. Fla. 2002) (“There is an overriding public interest in favor of settlement, particularly in class actions that have the well-deserved reputation as being most complex.”) (citing *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977)); *see also* 4 NEWBERG ON CLASS ACTIONS § 11.41 (4th ed. 2002) (citing cases).

The version of Rule 23(e) effective until December 1, 2018, provides five requirements that must be satisfied for a proposed class settlement to win final approval:

- (1) The court must direct notice in a reasonable manner to all class members who would be bound by the proposal.
- (2) If the proposal would bind class members, the court may approve it only after a hearing and on finding that it is fair, reasonable, and adequate.
- (3) The parties seeking approval must file a statement identifying any agreement made in connection with the proposal.
- (4) If the class action was previously certified under Rule 23(b)(3), the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so.
- (5) Any class member may object to the proposal if it requires court approval under the subdivision (e); the objection may be withdrawn only with the court’s approval.

*Saccoccio v. JP Morgan Chase Bank, N.A.*, 297 F.R.D. 683, 690 (S.D. Fla. 2014) (Moreno,

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<sup>3</sup> The only material changes made in the updated version of the proposed Final Order are the inclusion of a section addressing the application for Class Counsel’s attorneys’ fees and Class Representative Service Awards.

J.) (citing Fed. R. Civ. P. 23(e)).

Amendments to Rule 23 recently adopted by the Supreme Court, which will become effective on December 1, 2018, absent contrary Congressional action, address issues related to the approval of class settlements, including the provision of notice, the determination of whether a settlement is fair, reasonable, and adequate, and the withdrawal of objections. *See Proposed Amendments to the Fed. R. of Civ. P.*, 5, 23, 62, & 65.1, Slip Order at \*6-12 (U.S. Apr. 26, 2018).<sup>4</sup> The amendments, however, do not alter the general five approval requirements this Court outlined in *Saccoccio*, 297 F.R.D. at 690, and as explained below, neither displace nor contravene prevailing law in this Circuit.<sup>5</sup>

Here, all five requirements of Rule 23(e) are easily satisfied. The Parties have filed the Settlement Agreement, there are no additional agreements to disclose, a fairness hearing is scheduled for December 11, 2018, Class Members have until November 26, 2018, to object to or opt out of the Settlement, and as discussed below, notice to the Class was reasonable and the Settlement is fair, reasonable, and adequate. *Id.*<sup>6</sup>

**A. The Approved Notice Program Gave the Best Practicable Notice to Class Members and Satisfied Rule 23 and Due Process.**

“For a court to exercise jurisdiction over the claims of absent Class members, there must be minimal procedural due process protection.” *Perez v. Asurion Corp.*, 501 F. Supp. 2d 1360, 1377 (S.D. Fla. 2007). This requires that class members receive notice that is “the best practicable, ‘reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.’” *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985) (quoting *Mullane v. Central Hanover Bank &*

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<sup>4</sup> Available at [https://www.supremecourt.gov/orders/courtorders/frcv18\\_5924.pdf](https://www.supremecourt.gov/orders/courtorders/frcv18_5924.pdf).

<sup>5</sup> Although amendments to the Federal Rules generally apply to proceedings after the date they are effective in an action then pending, *see* Fed. R. Civ. P. 86(a)(2), courts may refuse to apply amendments to motions that were filed before their effective date. *See Colonial BancGroup Inc. v. PriceWaterhouseCoopers LLP*, No. 2:11-CV-746, 2016 WL 9687001, at \*1 (M.D. Ala. Jan. 22, 2016) (“[B]ecause this Motion was filed prior to [the effective date of the Amendments to the Federal Rules], the Amendments are not technically applicable to the Court's consideration of this Motion.”). Nonetheless, since the amendments to Rule 23 do not meaningfully impact the analysis or alter prevailing Eleventh Circuit law pertinent to this motion, Plaintiffs will address the amended version of Rule 23 as well.

<sup>6</sup> Any objections to the Settlement will be addressed in Plaintiffs' response, which is due on December 4, 2018. (ECF No. 2998, ¶ 36.)



*Trust Co.*, 339 U.S. 306, 314-15 (1950)). Such notice “should describe the action and the plaintiffs’ rights in it,” as well as provide each class member “with an opportunity to remove himself from the class by executing and returning an ‘opt out’ or ‘request for exclusion’ form to the court.” *Id.*

This minimal due process requirement is captured in Rule 23(c)(2)(B), the current version of which provides that class members in Rule 23(b)(3) actions must receive “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 amended version contains the same requirement but clarifies that it also applies to notice for classes to be certified for purposes of settlement under Rule 23(b)(3), and expressly permits notice by “United States mail, electronic means, or other appropriate means.” *See Proposed Amendments to the Fed. R. of Civ. P.*, 5, 23, 62, & 65.1, Slip Order at \*6-12. Since the Notice Program utilized both of the notice methods specifically sanctioned in the amended version of the rule, the amendments do not meaningfully affect the analysis here.

The Settlement’s Notice Program, as the Court properly determined in its Preliminary Approval Order

is reasonably calculated under the circumstances to apprise the Class of the pendency of the Action, class certification for settlement purposes only, the terms of the Settlement, their rights to opt-out of the Class and object to the Settlement, Settlement Class Counsel’s Fee Application, and the request for service awards for Plaintiffs. . . . The notices and Notice Program satisfy all applicable requirements of law, including, but not limited to, Rule 23 and the constitutional requirement of due process.

(ECF No. 2998, ¶ 11.) The Settlement’s Notice Program has been and continues to be implemented in accordance with the Court’s Order. (Ex. B (Azari Decl.), ¶¶ 12-56.)

As detailed in the declaration of the Notice Administrator, notices were mailed to 8,030,191 potential Class Members, as identified from vehicle information provided by Ford and data acquired from IHS Automotive, driven by Polk. (Ex. B (Azari Decl.), ¶¶ 12-20.) The Notice Administrator also utilized address updating services (both prior to mailing and on undeliverable pieces) and re-mailing protocols to maximize the number of Class Members reached by Direct Mail Notices. (*Id.*) In addition, notice was provided via widely circulated weekly publications, including *People*, *Sports Illustrated*, and *Parade*, and popular monthly publications, including *Better Homes & Gardens*, *Car and Driver*, *Motor Trend*, and *People en*



*Español.* (*Id.*, ¶ 24.) Notices also appeared in U.S. Territory newspapers throughout Puerto Rico (notices were published in Spanish in the two newspapers), American Samoa, Guam, Northern Mariana Islands, and the U.S. Virgin Islands. (*Id.*, ¶ 26.) Further, prominent internet banner advertisements (on desktop and mobile devices) ran on a variety of websites purchased through the Conversant Ad Network, Yahoo! Ad Network, and Pulpo Spanish Ad Network, and banner advertisements also ran on Facebook and Instagram. (*Id.*, ¶¶ 27-33.) Notice also was provided through 30-second radio spots aired nationwide on AM and FM stations covering a variety of music formats such as Country, Rock n' Roll, Oldies, Top 40, and R&B (including spots in Spanish where appropriate). (*Id.*, ¶¶ 22-23.) Additional 30-second ads ran on Pandora online radio alongside traditional banner ads. (*Id.*, ¶ 31.) Coverage was further enhanced by a neutral Informational Release, Sponsored Search Listings, a Case Website, which has hosted 4,196,293 visits to date, and a toll-free telephone line, which has handled 487,319 calls representing 3,120,943 minutes of use for all seven settlements as of November 2, 2018. (*Id.*, ¶¶ 34-47.)

Based on the Notice Administrator's estimates, the combined measured individual notice, broadcast media, print publication, and online banner notice effort will reach approximately 95% of all U.S. adults aged 18+ who owned or leased one of the Subject Vehicles. (*Id.*, ¶ 9.) On average, each person will have had approximately 3.6 opportunities for exposure to the notice. (*Id.*) The media notice effort alone will have reached 80.8% of all U.S. adults aged 18+ who owned or leased one of the Subject Vehicles. (*Id.*) The actual reach and frequency of the Notice Programs are consistent with other court-approved notice programs in settlements of similar magnitude and exceeded due process requirements. (*Id.*)

This far-reaching Notice Program provides the Court with personal jurisdiction over all members of the Class, because they have received the notice required for due process. *See Shutts*, 472 U.S. at 811-12; *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 148 F.3d 283, 306 (3d Cir. 1998) (“[T]he district court obtains personal jurisdiction over the absentee class members by providing proper notice of the impending class action and providing the absentees with the opportunity to be heard or the opportunity to exclude themselves from the class.”). As required, the Court-approved notice described “the substantive claims . . . [and] contained information reasonably necessary to make a decision to remain a class member and be bound by the final judgment.” *In re Nissan Motor Corp. Antitrust Litig.*, 552 F.2d 1088, 1104-05 (5th Cir. 1977). The Direct Mail Notice sent to Class Members, among other things, described the Class,

the release, and the amount and proposed distribution of the Settlement proceeds, and it informed Class Members of their right to opt-out and object, the procedures for doing so, and the time and place of the Fairness Hearing. (Ex. B (Azari Decl.), ¶¶ 12-20, Ex. 2.) The Notice also informed Class Members that a class judgment would bind them unless they opted out, that Class Counsel would be seeking attorneys' fees of up to 25% of the Settlement Amount, and that additional information could be obtained via the Class Website, where copies of the Agreement and Long-Form Notice were made and remain available for download. (*Id.*) The Long-Form Notice, furthermore, provided detailed information about the Settlement, in a logical question-and-answer format. (*Id.* at Ex. 3.)

In short, Class Members were provided with the best practicable notice “reasonably calculated, under [the] circumstances, to apprise them of the pendency of the action and afford them an opportunity to present their objections.” *Mullane*, 339 U.S. at 314.

**B. The Settlement is Fair, Reasonable, and Adequate.**

“The Court should approve a proposed class action settlement where it is ‘fair, adequate and reasonable and is not the product of collusion between the parties.’” *Saccoccio*, 297 F.R.D at 691 (quoting *Bennett*, 737 F.2d at 986). In general, a settlement is fair, reasonable, and adequate when “the interests of the class as a whole are better served if the litigation is resolved by the settlement rather than pursued.” *In re Lorazepam & Clorazepate Antitrust Litig.*, MDL No. 1290, 2003 WL 22037741, at \*2 (D.D.C. June 16, 2003) (quoting *Manual for Complex Litigation (Third)* § 30.42 (1995)). Importantly, the Court is “not called upon to determine whether the settlement reached by the parties is the best possible deal, nor whether class members will receive as much from a settlement as they might have recovered from victory at trial.” *In re Mexico Money Transfer Litig.*, 164 F. Supp. 2d 1002, 1014 (N.D. Ill. 2000) (citations omitted). Instead, “[i]n considering the settlement, the district court may rely upon the judgment of experienced counsel for the parties.” *Nelson v. Mead Johnson & Johnson Co.*, 484 F. App'x 429, 434 (11th Cir. 2012) (citing *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977)). “Absent fraud, collusion, or the like, the district court ‘should be hesitant to substitute its own judgment for that of counsel.’” *Id.* (quoting *Cotton*, 559 F.2d at 1330).

The amendments to Rule 23 highlight factors relevant to determining whether a proposed settlement is fair, reasonable, and adequate. *See Proposed Amendments to the Fed. R. of Civ. P.*, 5, 23, 62, & 65.1, Slip Order at \*6-12. The amended version of the pertinent

provision, Rule 23(e)(2), states:

If the proposal would bind class members, the court may approve it only after a hearing and only on finding that it is fair, reasonable, and adequate after considering whether:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm's length;
- (C) the relief provided for the class is adequate, taking into account:
  - (i) the costs, risks, and delay of trial and appeal;
  - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
  - (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
  - (iv) any agreement required to be identified under Rule 23(e)(3); and
- (D) the proposal treats class members equitably relative to each other.

*Id.* These revisions, acknowledging that “[c]ourts have generated lists of factors to shed light on [the fairness, adequacy, and reasonableness of a proposed settlement],” do “***not displace any factor***,” but instead seek “to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal.” *See* Fed. R. Civ. P. 23 advisory committee’s note to 2018 amendment (emphasis added).

Indeed, the “core concerns” emphasized in the amended rule, *id.*, are encompassed in the list of factors that prevailing Eleventh Circuit law instructs courts to consider: (1) the likelihood of success at trial; (2) the range of possible recovery; (3) the point on or below the range of possible recovery at which a settlement is fair, reasonable, and adequate; (4) the complexity, expense, and duration of litigation; (5) the substance and amount of opposition to the settlement; (6) the stage of proceedings at which the settlement was achieved; and (7) the existence of fraud or collusion among the parties in reaching the settlement. *Bennett*, 737 F.2d at 986; *accord Montoya v. PNC Bank, N.A.*, No. 14-cv-20474, 2016 WL 1529902, at \*8 (S.D. Fla. Apr. 13, 2016). Decisional law from this Circuit analyzing the fairness, adequacy, and reasonableness of class settlements, therefore, remains applicable under amended Rule 23(e)(2).

As explained below, an analysis of the factors emphasized in amended Rule 23(e)(2) and prevailing Eleventh Circuit law shows the Settlement to be fair, reasonable, and adequate.

**i. The Settlement is the product of adequate representation from the Class Representatives and Class Counsel and good-faith, informed, arm’s-length negotiations.**

The first two factors highlighted in amended Rule 23(e)(2)—adequate representation of the Class and arm’s-length negotiations—examine “the conduct of the litigation and of the negotiations leading up to the proposed settlement.” *See* Fed. R. Civ. P. 23 advisory committee’s note to 2018 amendment. Although the Court, in its Preliminary Approval Order, already found that the Class Representatives and Class Counsel adequately represent the Class, the focus at the final approval stage is on “the actual performance of counsel acting on behalf of the class.” *Id.* Pertinent information includes “[t]he conduct of negotiations,” as well as “the nature and amount of discovery in this or other cases, or the actual outcomes of other cases, [which] may indicate whether counsel negotiating on behalf of the class had an adequate information base.” *Id.* These first two factors thus overlap with the Eleventh Circuit’s instruction to consider the existence of “fraud or collusion in arriving at the settlement” and “the stage of proceedings at which the settlement was achieved.” *Bennett*, 737 F.2d at 982. Given the extensive, hard-fought litigation that preceded this Settlement, there is no doubt that these factors support final approval.

This Court is well aware of how hard and zealously the Parties and their counsel litigated for more than three years, prior to reaching the Settlement. (Ex. A (Prieto Decl.), ¶ 25.) Plaintiffs continue to litigate these cases against other Defendants, and the sharply contested nature of the proceedings in this case readily shows the lack of fraud or collusion behind the Settlement. *See, e.g., In re Sunbeam Sec. Litig.*, 176 F. Supp. 2d 1323, 1329 n.3 (S.D. Fla. 2001); *Ingram v. Coca-Cola Co.*, 200 F.R.D. 685, 693 (N.D. Ga. 2001) (court had “no doubt that this case has been adversarial, featuring a high level of contention between the parties”); *In re Motorsports Merch. Antitrust Litig.*, 112 F. Supp. 2d 1329, 1338 (N.D. Ga. 2000) (“This was not a quick settlement, and there is no suggestion of collusion.”); *Warren v. City of Tampa*, 693 F. Supp. 1051, 1055 (M.D. Fla. 1988) (record showed no evidence of collusion, but to the contrary showed “that the parties conducted discovery and negotiated the terms of settlement for an extended period of time”), *aff’d*, 893 F.2d 347 (11th Cir. 1989).

Class Counsel also negotiated the Settlement vigorously. (Ex. A (Prieto Decl.), ¶¶ 21, 26-28.) Plaintiffs were represented by experienced counsel at these arms-length negotiations. (*Id.*) The lawyers and law firms involved are among the most experienced in complex

commercial and class action litigation in the country. (*Id.*) During the extensive, adversarial negotiations, the Parties exchanged countless proposals while the litigation continued and intensified on a parallel track. (*Id.*) These negotiations were conducted in the absence of collusion. (*Id.*)

The negotiations, moreover, were informed by a well-developed factual record that enabled Class Counsel to make a reasoned judgment as to the Settlement. See *In re General Motors Corp. Pick-up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 813 (3d Cir. 1995) (considering “the degree of case development that class counsel have accomplished prior to settlement” to ensure that “counsel had an adequate appreciation of the merits of the case before negotiating”). While “[t]he law is clear that early settlements are to be encouraged, and accordingly, only some reasonable amount of discovery should be required to make these determinations,” *Ressler*, 822 F. Supp. at 1555, Plaintiffs reached the Settlement with the benefit of extensive discovery. (Ex. A (Prieto Decl.), ¶¶ 16, 30.) More than 10 million pages of documents have been produced thus far in discovery; at least 60 depositions of Defendant witnesses have been conducted; and Class Counsel have engaged in extensive discussions and meetings with experts and consultants. (*Id.*) This advanced discovery positioned Class Counsel to evaluate with confidence the strengths and weaknesses of Plaintiffs’ claims and prospects for success at class certification, summary judgment, and trial. See *Francisco v. Numismatic Guar. Corp. of Am.*, No. 06-61677-Civ, 2008 WL 649124, at \*5 (S.D. Fla. Jan. 31, 2008) (“Class Counsel had substantial information to adequately evaluate the merits of the case and weigh the benefits against further litigation.”). So too has the process of defending the depositions of over 110 Class Representatives, which has afforded Class Counsel insights into issues bearing on class certification and damages. (Ex. A (Prieto Decl.), ¶¶ 16, 30.)

This extensive discovery allowed Class Counsel to thoroughly evaluate the strengths and weaknesses of their claims against Ford. (Ex. A (Prieto Decl.), ¶ 30.) Before settling, Class Counsel had already developed ample information and performed extensive analyses from which “to determine the probability of their success on the merits, the possible range of recovery, and the likely expense and duration of the litigation.” *Mashburn v. Nat’l Healthcare, Inc.*, 684 F. Supp. 660, 669 (M.D. Ala. 1988).

**ii. The Settlement relief provided for the Class is far more than adequate.**

In evaluating the adequacy of relief provided for the Class, amended Rule 23(e)(2) instructs courts to account for “(i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3).” *See Proposed Amendments to the Fed. R. of Civ. P., 5, 23, 62, & 65.1*, Slip Order at \*6-12. Each of these factors favor final approval of this Settlement.

The costs, risks, and delay of trial and appeal, absent a Settlement in this action, are difficult to overstate. At a minimum, the Settlement will avert years of highly complex and expensive litigation. (Ex. A (Prieto Dec.), ¶¶ 29, 31-33.) This case involves millions of Class Members and massive alleged damages. The claims and defenses are complex; litigating them is and has been difficult and time consuming. (*Id.*, ¶¶ 31-33, 45-56.) The traditional means for handling claims like those at issue here would unduly tax the court system, require an immense expenditure of public and private resources, and ultimately would be impracticable. The Settlement is the best vehicle for Class Members to receive the relief to which they are entitled in a prompt and efficient manner. Ongoing litigation would involve substantial, expensive fact and expert discovery, lengthy additional pretrial proceedings in this Court and the appellate courts and, ultimately, a trial and appeal. Absent the Settlement, litigation against Ford would likely continue for at least two or three more years. *See United States v. Glens Falls Newspapers, Inc.*, 160 F.3d 853, 856 (2d Cir. 1998) (noting that “a principal function of a trial judge is to foster an atmosphere of open discussion among the parties’ attorneys and representatives so that litigation may be settled promptly and fairly so as to avoid the uncertainty, expense and delay inherent in a trial”); *In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297, 317, 325-26 & n.32 (N.D. Ga. 1993) (noting that “adjudication of the claims of two million claimants could last half a millennium”).

In contrast, the Settlement will provide immediate and substantial benefits to millions of consumers. As stated in *In re Shell Oil Refinery*, 155 F.R.D. 552 (E.D. La. 1993):

The Court should consider the vagaries of litigation and compare the significance of immediate recovery by way of the compromise to the mere possibility of relief in the future, after protracted and expensive litigation. In

this respect, “[i]t has been held proper to take the bird in the hand instead of a prospective flock in the bush.”

*Id.* at 560 (alterations in original) (quoting *Oppenlander v. Standard Oil Co.*, 64 F.R.D. 597, 624 (D. Colo. 1974)); *see also In re U.S. Oil & Gas Litig.*, 967 F.2d 489, 493 (11th Cir. 1992) (noting that complex litigation “can occupy a court’s docket for years on end, depleting the resources of the parties and taxpayers while rendering meaningful relief increasingly elusive”). Especially because the “demand for time on the existing judicial system must be evaluated in determining the reasonableness of the settlement,” *Ressler v. Jacobson*, 822 F. Supp. 1551, 1554 (M.D. Fla. 1992) (citation omitted), there can be no reasonable doubt as to the adequacy of the Settlement, which provides immediate, tangible, and significant benefits to the Class.

Beyond certain delay and additional costs, continued litigation would carry significant risks for Plaintiffs and the Class. While Plaintiffs and Class Counsel are quite confident in the strength of their case, they are also pragmatic and aware of the various defenses available to Ford, as well as the risks inherent in any litigation. (Ex. A (Prieto Decl.), ¶¶ 31-33, 45-56.) For example, Ford has claimed that it was deceived by Takata as to the safety of its inflators, and Takata pleaded guilty to a count of wire fraud based on providing allegedly misleading test results to certain automakers. (*Id.*) Ford has argued that these charges, which may portray it as a “victim,” are a “game changer” and ultimately absolve it of any liability, while Takata’s bankruptcy blocks Plaintiffs from recovering any substantial sums from it. (*Id.*) Ford has also challenged this Court’s personal jurisdiction over it for the claims of non-Florida Plaintiffs, as well as Plaintiffs’ damages theories. (*Id.*) Further, although Plaintiffs believe that they could prevail in a litigated class certification battle, Ford would assert numerous arguments against certification of all or parts of the Class, which presents risks. (*Id.*) And even if Plaintiffs were successful, Ford would inevitably seek interlocutory review of class certification rulings via Rule 23(f) in the Court of Appeals, delaying the progress towards trial for months, if not years.

Given the myriad risks attending these claims, the Settlement cannot be seen as anything but a fair compromise. *See, e.g., Bennett v. Behring Corp.*, 96 F.R.D. 343, 349-50 (S.D. Fla. 1982) (plaintiffs faced a “myriad of factual and legal problems” that led to “great uncertainty as to the fact and amount of damage,” which made it “unwise [for plaintiffs] to risk the substantial benefits which the settlement confers . . . to the vagaries of a trial”), *aff’d*, 737 F.2d 982 (11th Cir. 1984); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 248 (S.D. Ohio 1991) (citing the “very real potential that the [c]lass could come



away from a long expensive trial with nothing,” the court rejected the argument “that the Class should get more”).

The Settlement provides substantial relief to Class Members and addresses an extraordinary national public safety crisis without further delay and through methods that the prior six settlements have demonstrated are effective. The Settlement has a total value of \$535,920,000 including the estimated value of the Customer Support Program, according to a valuation presented in the declaration of a recognized automotive valuation expert, Kirk Kleckner, submitted as an exhibit to this motion. (Ex. C (Kleckner Decl.), ¶¶ 1, 6.) Yet even without this valuation, the \$299.1 million Settlement Amount represents roughly 56% of Class Members’ estimated damages recovery under a relatively conservative method of calculating damages that rests on the prices Ford paid for and marked up the defective Takata airbags. (Ex. A (Prieto Decl.), ¶ 34.) The additional value of the Customer Support Program only increases the range of recovery as a percentage of the possible damages that Class Members could recover if they were to prevail at trial, cementing a finding that the value of the Settlement is well within the range of reasonableness.

By any reasonable measure, this recovery is a significant achievement considering the obstacles that Plaintiffs faced and continue to confront in the litigation, including *Daubert* challenges to damage experts’ methodologies, class certification, interlocutory Rule 23(f) appeals of class certification, motions for summary judgment, trial, and post-trial appeals. Given the substantial benefits that the Settlement provides to Class Members and the extraordinary public safety crisis that the Settlement addresses, the Settlement is fair and represents a reasonable and adequate recovery for the Class. *See Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 542 (S.D. Fla. 1988), *aff’d*, 899 F.2d 21 (11th Cir. 1990) (holding that a court should be guided by the “important maxim[]” that “the fact that a proposed settlement amounts to only a fraction of the potential recovery does not mean the settlement is unfair or inadequate”); *Thompson v. Metrop. Life Ins. Co.*, 216 F.R.D. 55, 64 (S.D.N.Y. 2003) (holding that a settlement must be evaluated “in light of the attendant risks with litigation”); *Great Neck Capital Appreciation Inves. P’ship, L.P. v. PriceWaterHouseCoopers, L.L.P.*, 212 F.R.D. 400, 409-10 (E.D. Wis. 2002) (“The mere possibility that the class might receive more if the case were fully litigated is not a good reason for disapproving the settlement.”); *see also Bennett*, 737 F.2d at 986 (“[C]ompromise is the essence of settlement.”).



The effectiveness of the Settlement’s methods of distributing this relief to Class Members, moreover, cannot seriously be disputed. The process of submitting a claim for a cash payment, for example, is as simple as possible: claims can be submitted online or by mail; claim forms are straightforward and easy to understand; claims for a flat residual payment require nothing more than basic biographical information; and claims for specific out-of-pocket expenses simply require identification of the expenses and encourage Class Members to submit supportive documents if they are available. (ECF No. 2909-1 at Ex. 12.) As the Eleventh Circuit concluded in affirming the approval of a settlement with a similar claims process, “the use of a claims process is not inherently suspect,” and it is not “particularly difficult or burdensome” to require the completion of a straightforward form that can be submitted either online or by mail. *Poertner v. Gillette Co.*, 618 F. App’x 624, 628 (11th Cir. 2015). The use of a claims process here is further justified by the public safety benefit it provides—as Class Members who possess Subject Vehicles must obtain the Recall Remedy before submitting a claim, it further incentivizes Class Members to remove dangerous Takata inflators from their vehicles.

The Outreach Program likewise directly benefits Class Members by motivating and making it easier for them to obtain the Recall Remedy for their vehicles. As recounted in the Settlement Special Administrator’s recent Status Report, the outreach programs implemented in the prior six settlements are utilizing innovative “techniques and approaches not previously applied in the recall industry, with a focus on personalized targeted direct campaigns.” (ECF No. 3049 at 1.) These sophisticated, direct outreach efforts have unquestionably yielded a tangible and substantial safety benefit for Class Members, as “969,848 recall remedies have been completed since the transition of the Outreach Programs to the [Settlement Special Administrator] and Outreach Program Vendors.” (*Id.* at 7.)

In addition, the two other components of Settlement relief for Class Members—the Customer Support Program and the Rental Car Program—are automatically provided to the Class. Every Class Member who brings a recalled Subject Vehicle to a dealership for the Recall Remedy can receive a rental or loaner car. And every Subject Vehicle receives the coverage of the Customer Support Program.

The terms and timing of the requested attorneys’ fees further support the adequacy and fairness of the Settlement Relief, because, as explained in Section IV, *infra*, the requested fees

are reasonable, if not less than prevailing Eleventh Circuit law calls for. *See Poertner*, 618 F. App'x at 628 (affirming district court's determination that "the settlement's allocation of benefits was fair" because the court's award of fees was a reasonable percentage of the fund established for the benefit of the class). The amendments to Rule 23 acknowledge, in addition, that awards of attorneys' fees remain governed by Rule 23(h), which was not amended, and that "no rigid limits exist for such awards." *See* Fed. R. Civ. P. 23 advisory committee's note to 2018 amendment. The advisory committee also observed that "the relief actually delivered to the class can be a significant factor in determining the appropriate fee award." *Id.* This consideration only further supports the adequacy of the Settlement and reasonableness of the requested fees, because this Settlement does *not* contain a reversionary provision—*i.e.*, unclaimed or unused funds will *not* revert to Ford. Instead, **all** of the Settlement monies will be spent one way or another for the benefit of the Class; if there is any money left after paying Class Member claims, attorneys' fees and expenses, settlement administration costs, and for the Outreach Program, the funds will be redistributed in the form of additional cash payments to class members, or if that is not administratively feasible, to a Court-approved *cy pres* recipient.

The final factor identified in the amended version of Rule 23(e)(2)(C)—consideration of any agreement required to be identified under Rule 23(e)(3)—is inapplicable, because there are no other agreements to disclose, aside from the Settlement Agreement itself, which has been filed already. Thus, each of the factors highlighted by Eleventh Circuit law and the amended version of Rule 23(e)(2)(C) as bearing on the adequacy of Settlement's relief supports final approval.

**iii. The Settlement treats Class Members equitably relative to each other.**

The equitable treatment factor "calls attention to a concern that may apply to some class action settlements—inequitable treatment of some class members vis-a-vis others." *See* Fed. R. Civ. P. 23 advisory committee's note to 2018 amendment. "Matters of concern could include whether the apportionment of relief among class members takes appropriate account of differences among their claims, and whether the scope of the release may affect class members in different ways that bear on the apportionment of relief." *Id.*

This factor further supports final approval here, because all Class Members are treated equitably relative to each other. No set of Class Members is singled out for preferential or

disadvantageous treatment. The Customer Support Program, for example, is provided to all Class Members across the board. (ECF No. 2909-1, § III.G.) The Rental Car Program, likewise, is available to any Class Member who brings a recalled Subject Vehicle to a dealership for the Recall Remedy. (*Id.*, § III.C.) Similarly, as to claims for out-of-pocket expenses, the Settlement establishes broad guidelines and a simple procedure for eligible categories of expenses, and any Class Member who has incurred such expenses may submit a claim for reimbursement. (*Id.*, §§ III.D, III.E.) This process appropriately “account[s] for differences among [Class Members’] claims,” *id.*, tying the amounts of compensation provided to the different amounts of damages suffered. See *In re Pet Food Prod. Liab. Litig.*, 629 F.3d 333, 346 (3d Cir. 2010) (holding that providing different awards for various class members “do[es] not, without more, demonstrate conflicting or antagonistic interests within the class”); *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1146 (8th Cir. 1999) (“[A]lmost every settlement will involve different awards for various class members.”).

In sum, all the factors identified by the Eleventh Circuit and in amended Rule 23(e)(2) strongly support a finding that the Settlement is fair, reasonable, and adequate.

## **II. The Court Should Grant Final Certification Of The Settlement Class.**

For settlement purposes, Plaintiffs respectfully request that the Court certify the Class defined above and in the Agreement. “A class may be certified solely for purposes of settlement [if] a settlement is reached before a litigated determination of the class certification issue.” *Borcea v. Carnival Corp.*, 238 F.R.D. 664, 671 (S.D. Fla. 2006) (internal quotation marks omitted). “Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial.” *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

Class certification is appropriate where: “(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law and fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a). Certification of a class seeking monetary compensation also requires a showing that “questions of law and fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).

In its Preliminary Approval Order, this Court previously found the requirements of Rule 23(a) and 23(b)(3) to be satisfied for the Class defined in the Settlement Agreement. (ECF No. 2998, ¶¶ 3-6.) As the Class definition has not changed since preliminary approval, there is no reason for this Court to depart from its previous findings that certification of the Class is warranted.

In particular, as the Court previously recognized (ECF No. 2998, ¶ 6(a)), the numerosity requirement of Rule 23(a) is easily satisfied here, because the Class consists of millions of people throughout the United States, and joinder of all such persons is impracticable. *See* Fed. R. Civ. P. 23(a)(1); *Kilgo v. Bowman Trans.*, 789 F.2d 859, 878 (11th Cir. 1986) (numerosity satisfied where plaintiffs identified at least 31 class members “from a wide geographical area”). The commonality requirement is satisfied as well, because there are many questions of law and fact common to the Class that center on Ford’s conduct in manufacturing and selling vehicles equipped with defective Takata airbags while representing that those vehicles were safe, as alleged in the Fourth Amended Consolidated Class Action Complaint. *See In re Checking Account Overdraft Litig.*, 275 F.R.D. 666, 673-74 (S.D. Fla. 2011) (“[W]here a common scheme of deceptive conduct has been alleged, the commonality requirement should be satisfied.”) (internal quotation marks omitted).

For similar reasons, Plaintiffs’ claims are reasonably coextensive with those of the absent Class Members, such that Rule 23(a)(3)’s typicality requirement is satisfied. *See Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984) (typicality satisfied where claims “arise from the same event or pattern or practice and are based on the same legal theory”); *Murray v. Auslander*, 244 F.3d 807, 811 (11th Cir. 2001) (named plaintiffs are typical of the class where they “possess the same interest and suffer the same injury as the class members”). Plaintiffs, as owners or lessees of Subject Vehicles, are typical of absent Class Members because they were subjected to the same conduct by Ford, claim to have suffered the same economic injuries, and will all benefit from the relief provided by the Settlement.

Plaintiffs also satisfy the adequacy of representation requirement. Adequacy under Rule 23(a)(4) relates to: (1) whether the proposed class representatives have interests antagonistic to the class; and (2) whether the proposed class counsel has the competence to undertake the litigation. *Fabricant*, 202 F.R.D. at 314. The determinative factor “is the forthrightness and vigor with which the representative party can be expected to assert and defend the interests of

the members of the class.” *Lyons v. Georgia-Pacific Corp. Salaried Emp. Ret. Plan*, 221 F.3d 1235, 1253 (11th Cir. 2000) (internal quotation marks omitted). Plaintiffs’ interests are coextensive with, and not antagonistic to, the interests of the Class, because Plaintiffs and absent Class Members have an equally great interest in the relief offered by the Settlement, and absent Class Members have no diverging interests. Further, Plaintiffs are represented by qualified and competent counsel with extensive experience and expertise prosecuting complex class actions, including consumer actions similar to the instant case. Class Counsel have devoted substantial time and resources to vigorous litigation of the Action from inception through the date of the Settlement.

With respect to predominance, Rule 23(b)(3) requires that “[c]ommon issues of fact and law . . . ha[ve] a direct impact on every class member’s effort to establish liability that is more substantial than the impact of individualized issues in resolving the claim or claims of each class member.” *Sacred Heart Health Sys., Inc. v. Humana Military Healthcare Servs., Inc.*, 601 F.3d 1159, 1170 (11th Cir. 2010) (internal quotation marks omitted). The predominance requirement is satisfied because liability questions common to all Class Members substantially outweigh any possible issues that are individual to each Class Member. The salient evidence necessary to establish Plaintiffs’ claims is common to both the Class Representatives and all members of the Class—they would all seek to prove that Ford’s vehicles have a common defect and that Ford’s conduct was wrongful and deceptive. And the evidentiary presentation changes little if there are 100 class members or 6,000,000: in either instance, Plaintiffs would present the same evidence of Ford’s omissions, marketing, and promised warranties, and the same evidence of the Subject Vehicles’ alleged common defect. *Klay v. Humana, Inc.*, 382 F.3d 1241, 1255 (11th Cir. 2004) (“[I]f common issues truly predominate over individualized issues in a lawsuit, then ‘the addition or subtraction of any of the plaintiffs to or from the class [should not] have a substantial effect on the substance or quantity of evidence offered.’”) (quoting *Alabama v. Blue Bird Body Co.*, 573 F.2d 309, 322 (5th Cir. 1978)).

Furthermore, there can be no doubt that resolution of millions of claims in one action is far superior to individual lawsuits. *See Fed. R. Civ. P. 23(b)(3)*. “Forcing individual vehicle owners to litigate their cases, particularly where common issues predominate for the proposed class, is an inferior method of adjudication.” *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1176 (9th Cir. 2010).

Because all requirements of Rule 23 are satisfied, this Court should certify the Class defined in the Settlement.

### **III. Application For Class Representative Service Awards.**

“In instituting litigation, representative plaintiffs act as private attorneys general seeking a remedy for what appeared to be a public wrong.” *Saccoccio*, 297 F.R.D. at 695 (internal quotation marks omitted). Service awards “compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation.” *Allapattah Serv., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1218 (S.D. Fla. 2006). “[T]here is ample precedent for awarding incentive compensation to class representatives at the conclusion of a successful class action.” *David v. American Suzuki Motor Corp.*, No. 08–CV–22278, 2010 WL 1628362, at \*6 (S.D. Fla. Apr. 15, 2010). Courts have consistently found service awards to be an efficient and productive way to encourage members of a class to become class representatives. *See, e.g., Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001) (awarding class representatives \$300,000 each, explaining that “the magnitude of the relief the Class Representatives obtained on behalf of the class warrants a substantial incentive award”); *Spicer v. Chi. Bd. Options Exch., Inc.*, 844 F. Supp. 1226, 1267-68 (N.D. Ill. 1993) (collecting cases approving service awards ranging from \$5,000 to \$100,000, and awarding \$10,000 to each named plaintiff).

Factors for determining a service award include: (1) the actions the class representatives took to protect the interests of the class; (2) the degree to which the class benefited from those actions; and (3) the amount of time and effort the class representatives expended in pursuing the litigation. *See, e.g., Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998).

The above factors, as applied to this case, demonstrate the reasonableness of a service award of \$5,000 to each Class Representative. Each Class Representative took numerous actions and provided substantial assistance to Class Counsel by, among other things, locating and forwarding responsive documents and information, and engaging in conferences with Class Counsel, with many preparing and sitting for depositions as well. (Ex. A (Prieto Decl.), ¶¶ 38-42.) In so doing, the Class Representatives educated Class Counsel and helped Class Counsel form and advance the central theories of this case. (*Id.*) The Class Representatives not only devoted time and effort to this long-running litigation, but the end result of their efforts and those

of counsel was a substantial benefit to the Class. (*Id.*) It is only fair that these Class Representatives be compensated for their service. (*Id.*)

There are 27 Class Representatives for the Settlement. If each Class Representative is awarded \$5,000, the total allocated to service awards will be about \$135,000. This is less than .04% of the Settlement Amount of \$299.1 million, a ratio that is well within the range of reasonable service awards. *See, e.g., Enter. Energy Corp.*, 137 F.R.D. at 251 (approving service awards totaling \$300,000, or 0.56% of the \$56.6 million settlement fund). The requested service awards are therefore reasonable and should be approved. *See Muransky v. Godiva Chocolatier, Inc.*, 905 F.3d 1200, 1219 (11th Cir. 2018) (affirming service awards of \$10,000 to class representatives).

#### **IV. Class Counsel's Fee Application.**

As indicated in the Court-approved notice disseminated to the Class, and consistent with District and Eleventh Circuit precedent, Class Counsel respectfully request a fee of \$74,775,000, which represents 25% of the conservative \$299,100,000 Settlement Amount, and 13.95% of the \$535,920,000 full value of the Settlement, which is inclusive Mr. Kleckner's valuation of the Customer Support Program.<sup>7</sup> This fee request is squarely within, if not below, the guidelines set forth by the Eleventh Circuit in *Camden I Condominium Ass'n v. Dunkle*, 946 F.2d 768 (11th Cir. 1991), and its progeny. It also comports with fee awards regularly approved in successive settlements from multi-defendant class actions. For the reasons set forth below, the requested attorneys' fee award is appropriate, fair, and reasonable, and should be approved.

##### **A. The Law Awards Class Counsel Fees From The Common Fund Created By Their Efforts.**

As the Court is well aware, when a class settlement establishes a calculable monetary benefit for class members, attorneys' fees should be awarded to class counsel, under the longstanding common benefit doctrine, based on a percentage of the monetary benefit obtained. *Camden I*, 946 F.2d at 771; *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). Following from the premise that those who receive the benefit of a lawsuit without contributing to its costs are "unjustly enriched," the common benefit doctrine "allows a court to prevent this inequity by

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<sup>7</sup> The Eleventh Circuit has affirmed a district court's reliance on the value of a class settlement's enhanced warranty, as estimated by a valuation expert, to award class counsel attorneys' fees, recognizing that the enhanced warranty "is itself a significant tangible benefit." *Carter v. Forjas Taurus, S.A.*, No. 16-15277, 2017 WL 2813844, at \*5 (11th Cir. June 29, 2017).



assessing attorney's fees against the entire fund, thus spreading fees proportionately among those benefited by the suit." *Boeing*, 444 U.S. at 478; *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 392 (1970). The Supreme Court, the Eleventh Circuit, and courts in this District, therefore, have all held that "the law is well established that 'a litigant or lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole.'" *Cifuentes v. Regions Bank*, No. 11-cv-23455, 2014 WL 1153772, at \*7 (S.D. Fla. Mar. 20, 2014) (Moreno, J.) (quoting *Boeing*, 444 U.S. at 478); *see also Camden I*, 946 F.2d at 771 ("Attorneys in a class action in which a common fund is created are entitled to compensation for their services from the common fund, but the amount is subject to court approval.").

Appropriate awards of attorneys' fees in cases like this encourage redress for wrongs caused to entire classes of persons and deter future misconduct:

[C]ourts . . . have acknowledged the economic reality that in order to encourage 'private attorney general' class actions brought to enforce . . . laws on behalf of persons with small individual losses, ***a financial incentive is necessary to entice capable attorneys***, who otherwise could be paid regularly by hourly-rate clients, to devote their time to complex, ***time-consuming cases for which they may never be paid***.

*Mashburn v. Nat'l Healthcare, Inc.*, 684 F. Supp. 679, 687 (M.D. Ala. 1988) (emphasis added); *see also Deposit Guar. Nat'l Bank v. Roper*, 445 U.S. 326, 338-39 (1980). Given the risk, responsibility, and effort required, reasonable compensation in line with established precedent is necessary to ensure the availability of counsel for plaintiffs:

If the plaintiffs' bar is not adequately compensated for its risk, responsibility, and effort when it is successful, then effective representation for plaintiffs in these cases will disappear . . . . We as members of the judiciary must be ever watchful to avoid being isolated from the experience of those who are actively engaged in the practice of law. It is difficult to evaluate the effort it takes to successfully and ethically prosecute a large plaintiffs' class action suit. It is an experience in which few of us have participated. The dimensions of the undertaking are awesome.

*Muehler v. Land O'Lakes, Inc.*, 617 F. Supp. 1370, 1375-76 (D. Minn. 1985); *see also Gevaerts v. TD Bank*, No. 1:14-CV-20744-RLR, 2015 WL 6751061, at \*10 (S.D. Fla. Nov. 5, 2015) (holding that the common benefit doctrine serves the goal of "removing a potential financial obstacle to a plaintiff's pursuit of a claim on behalf of a class") (internal quotation marks omitted).



In the Eleventh Circuit, in particular, class counsel fee awards must be based on a percentage of the common fund generated through a class action settlement. In *Camden I*—the controlling authority in the Eleventh Circuit dealing with the issue of attorneys’ fees in common-fund class-action cases—the court held that “the percentage of the fund approach [as opposed to the lodestar approach] is the better reasoned in a common fund case. Henceforth in this circuit, attorneys’ fees awarded from a common fund shall be based upon a reasonable percentage of the fund established for the benefit of the class.” *Camden I*, 946 F.2d at 774.

When using the percentage-of-the-fund approach, furthermore, “courts compensate class counsel for their work in extracting non-cash relief from the defendant in a variety of ways. When the non-cash relief can be reliably valued, courts often include the value of this relief in the common fund and award class counsel a percentage of the total fund.” *In re: Checking Account Overdraft Litig.*, No. 1:09-MD-02036-JLK, 2013 WL 11319391, at \*13 (S.D. Fla. Aug. 5, 2013); *see Carter*, 2017 WL 2813844, at \*5 (holding that fee award was “a reasonable percentage of the settlement value” when considering the value of an “enhanced warranty, which is itself a significant tangible benefit”).

The well-established starting point or “benchmark” percentage for fee awards in the Eleventh Circuit is 25%, which then may be adjusted based on the circumstances of each case. *See Faught v. Am. Home Shield Corp.*, 668 F.3d 1233, 1243 (11th Cir. 2011) (affirming fee award above the “25% benchmark”); *Waters v. Int’l Precious Metals Corp.*, 190 F.3d 1291, 1294 (11th Cir. 1999) (directing district courts “to view [the 20% to 30%] range as a ‘benchmark,’ which ‘may be adjusted in accordance with the individual circumstances of each case’”) (quoting *Camden I*, 946 F.2d at 774-75 (observing that “[t]he majority of common fund fee awards fall between 20 percent to 30 percent of the fund”). Indeed, the Eleventh Circuit, less than a month ago, in a published opinion, reaffirmed that “25% of a common fund [is] a benchmark attorney’s fee award.” *Muransky v. Godiva Chocolatier, Inc.*, 905 F.3d 1200, 1217 (11th Cir. 2018).

Our fee request, whether calculated as 13.95% of the \$535,920,00 total value of the Settlement or 25% of the more conservative \$299.1 million Settlement Amount, falls squarely within the Eleventh Circuit’s benchmark, particularly given the circumstances of this litigation. *See Waters*, 190 F.3d at 1294 (approving fee award where the district court determined that the benchmark should be 30% and then adjusted the fee award higher based on the circumstances of the case); *Allapattah Servs., Inc.*, 454 F. Supp. 2d at 1203 (determining that “the 25%

‘benchmark’ should be considered *a floor for a fee award* in this case, and that the percentage should be adjusted upward” based on the circumstances of the case) (emphasis added).

**B. The *Johnson* Factors Support Class Counsel’s Requested Fee.**

In *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), the former Fifth Circuit identified the following twelve factors to consider in determining an appropriate fee award:

(1) the time and labor required; (2) the difficulty of the issues; (3) the skill required; (4) the preclusion of other employment by the attorney because he accepted the case; (5) the customary fee in the community; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

*Faught*, 668 F.3d at 1242-43 (citing *Johnson*, 488 F.2d at 717-19). Because a fee of 25% of a common fund is the established “benchmark,” however, courts in the Eleventh Circuit need not analyze the twelve *Johnson* factors unless “the requested fee exceeds 25%.” *Faught*, 668 F.3d at 1242. Class Counsel’s fee request is either well below the 25% benchmark if the total Settlement value of \$535,920,000 is considered, or just at the 25% benchmark if the more conservative \$299.1 million Settlement Amount is used, and thus this Court need not consider the twelve *Johnson* factors to approve the requested fee. *Id.* Nonetheless, as explained below, it is clear that all pertinent *Johnson* factors favor Class Counsel’s request.

**i. The requested fee comports with customary fees awarded in similar cases.**

The fee requested here easily falls within the range of fees typically awarded in similar cases, particularly in this District and Circuit. (*Id.*, ¶ 62.) As noted, scores of decisions have recognized, a fee award of 25% of a common fund is the benchmark in this District and Circuit. *See, e.g., In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d at 1366; *In re Sunbeam*, 176 F. Supp. 2d at 1333-34. Numerous decisions in this District, alone, have awarded attorneys’ fees far exceeding 25% as well, confirming the fairness and reasonableness of the fee requested here. *See In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d at 1366 (awarding fees of 30% of \$410 million); *Allapattah Servs., Inc.*, 454 F. Supp. 2d at 1210 (awarding fees equaling 31¼% of settlement of over \$1 billion including interest); *Love v. Blue Cross & Blue Shield Assoc.*, No. 03-cv-21296 (S.D. Fla. Apr. 20, 2008) (ECF No. 1286) (awarding 38% of \$130 million

settlement); *In re Managed Care Litig.*, No. 00-md-1334, 2003 WL 22850070 (S.D. Fla. Oct. 24, 2003) (awarding \$50 million in fees and costs in settlement involving \$100 million fund and non-monetary business practice changes).<sup>8</sup>

The requested fee is also consistent with the awards this Court previously approved for the six prior settlements in this MDL, ranging between 20% and 30%. *See, e.g., In re Takata Airbag Prod. Liab. Litig.*, No. 15-MD-02599, 2017 WL 5290875, at \*1 (S.D. Fla. Nov. 1, 2017) (30%); *In re Takata Airbag Prod. Liab. Litig.*, No. 15-MD-02599 (Feb. 28, 2018) (ECF No. 2386) (20%). Even under the conservative view of the requested fee as 25% of the \$299.1 million Settlement Amount, it effectively represents the average fee award approved in this MDL, an unquestionably reasonable result for the case that required the most litigation.

The requested fee also aligns with awards regularly approved in comparable multi-defendant class actions. Indeed, as the following examples demonstrate, courts regularly issue successive fee awards in multi-defendant class actions at percentages equal to or higher than the percentage requested by Class Counsel here.

- **Urethane MDL:** The court approved three successive awards of **33-1/3%** of settlements totaling almost \$1 billion. *See In re Urethane Antitrust Litig.*, No. 04-md-1616 (D. Kan. July 29, 2016) (ECF No. 3276); *In re Urethane Antitrust Litig.*, No. 04-md-1616 (D. Kan. Dec. 13, 2011) (ECF No. 2210); *In re Urethane Antitrust Litig.*, No. 04-md-1616 (D. Kan. July 22, 2009) (ECF No. 995).
- **CRT MDL:** The court approved successive fee awards of **30%** of nine separate settlements totaling more than \$200 million. *In re CRT Antitrust Litig.*, No. 07-cv-5944 (N.D. Cal. June 8, 2017) (ECF No. 5169); *In re CRT Antitrust Litig.*, No. 07-cv-5944, 2016 WL 183285 (N.D. Cal. Jan. 14, 2016).
- **TFT-LCD Flat Panel MDL:** The court approved a fee award of **28.5%** from each of ten settlements totaling \$1.08 billion. *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827 SI, 2013 WL 1365900, at \*8 (N.D. Cal. Apr. 3, 2013).
- **Municipal Derivatives MDL:** The court approved fees between **29%** and **33-1/3%** of successive settlements collectively exceeding \$200 million. *See In re Municipal Derivatives Antitrust Litig.*, No. 08-cv-2516 (S.D.N.Y. July 8, 2016) (ECF No. 2029); *In re Municipal Derivatives Antitrust Litig.*, No. 08-cv-2516 (S.D.N.Y. June 6, 2014) (ECF No. 1903); *In re Municipal Derivatives Antitrust*

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<sup>8</sup> *See In re Vitamins Antitrust Litig.*, No. MDL 1285, 2001 WL 34312839, at \*10 (D.D.C. July 16, 2001) (34.06% of approximately \$359 million settlement); *In re Lease Oil Antitrust Litig.*, 186 F.R.D. 403 (S.D. Tex. 1999) (35.1%)); *see also Gaskill v. Gordon*, 942 F. Supp. 382, 387-88 (N.D. Ill. 1996), *aff'd*, 160 F.3d 361 (7th Cir. 1998) (finding that 33% is the norm, but awarding 38% of the settlement fund).

*Litig.*, No. 08-cv-2516 (S.D.N.Y. Dec. 14, 2012) (ECF No. 1744).

- **Checking Account Overdraft MDL:** The Court approved successive fee awards of **30%** of more than ten settlements totaling over \$1 billion. *See, e.g., In re: Checking Account Overdraft Litig.*, No. 1:09-M D-02836-JLK, 2014 WL 11370115, at \*1 (S.D. Fla. Jan. 6, 2014); *In re: Checking Account Overdraft Litig.*, No. 1:09-MD-02036-JLK, 2013 WL 11319392, at \*1 (S.D. Fla. Aug. 5, 2013); *In re: Checking Account Overdraft Litig.*, No. 1:09-MD-02036-JLK, 2013 WL 11319244, at \*1 (S.D. Fla. Aug. 2, 2013); *In re Checking Account Overdraft Litig.*, No. 1:09-MD-02036-JLK, 2012 WL 4174502, at \*1 (S.D. Fla. Sept. 19, 2012); *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330 (S.D. Fla. 2011).

The awards in these cases are consistent with the results of empirical studies of attorneys' fee awards. These studies are discussed in detail in the declaration of a distinguished expert on attorneys' fees in class actions, Professor Brian Fitzpatrick, submitted in support of this motion. (Ex. D (Fitzpatrick Decl.), ¶¶ 20-26.) Mr. Fitzpatrick is a professor of law at Vanderbilt Law School and a visiting professor at Harvard Law School. (*Id.*, ¶ 1.) After graduating *summa cum laude* from the University of Notre Dame and first in his class at Harvard Law School, he served as a law clerk for Judge Diarmuid O'Scannlain on the Ninth Circuit and Justice Antonin Scalia on the United States Supreme Court. (*Id.*) Professor Fitzpatrick has published numerous articles on class actions and attorneys' fees, including: *An Empirical Look at Compensation in Consumer Class Actions*, 11 *New York University Journal of Law & Business* 767 (2015); *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 *Journal of Empirical Legal Studies* 811 (2010); *Do Class Action Lawyers Make Too Little?*, 158 *University of Pennsylvania Law Review* 2043 (2010); and *The End of Objector Blackmail?*, 62 *Vanderbilt Law Review* 1623 (2009). (*Id.* at App. 1.)

As explained in his declaration, Professor Fitzpatrick's own study of fees found that, in cases within the Eleventh Circuit, the average fee awarded was 28.1% and the median fee awarded was 30%. (Ex. D (Fitzpatrick Decl.), ¶ 20.) More than half of the fee awards within the Eleventh Circuit, then, utilized a fee percentage higher than the percentage requested here. (*See id.*) Professor Fitzpatrick observes that Class Counsel's fee request is "even more modest than the [study] suggests because the data from [his] empirical study was exclusive of class counsel's expenses," whereas Class Counsel's fee request here is inclusive of Class Counsel's substantial litigation expenses. (*Id.*) Based on the circumstances of this litigation and his extensive expertise, Professor Fitzpatrick concludes that "the fee award requested here is reasonable." (*Id.*,

¶ 32.)

Class Counsel's fee request, moreover, falls at the low end of the average in the private marketplace, where contingency fee arrangements often approach or equal 40% of any recovery. *See, e.g., Kirchoff v. Flynn*, 786 F.2d 320, 325 n.5 (7th Cir. 1986) (observing that "40 percent is the customary fee in tort litigation"); *In re Pub. Serv. Co. of New Mexico*, 1992 WL 278452, at \*7 (S.D. Cal. July 28, 1992) ("If this were a non-representative litigation, the customary fee arrangement would be contingent, on a percentage basis, and in the range of 30% to 40% of the recovery."); *see also In re Cont'l Illinois Sec. Litig.*, 962 F.2d 566, 572 (7th Cir. 1992) ("The object in awarding a reasonable attorneys' fee . . . is to simulate the market."). "In tort suits, an attorney might receive one-third of whatever amount the Plaintiff recovers. In those cases, therefore, the fee is directly proportional to the recovery." *Blum v. Stenson*, 465 U.S. 886, 904 (1984) (Brennan, J., concurring).

Class Counsel's requested fee, equivalent to 25% of the conservative \$299.1 million Settlement Amount or 13.95 % of the \$535,920,000 total value of the Settlement, inclusive of the estimated value of the Customer Support Program, comports easily with customary fees awarded in similar cases.<sup>9</sup>

**ii. The claims against Ford required substantial time and labor.**

The tremendous effort Class Counsel have brought to bear over the past four years prosecuting and settling the claims against Ford also strongly supports the reasonableness of

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<sup>9</sup> *See also James v. JPMorgan Chase Bank, N.A.*, No. 15-cv-2424-T-23JSS, 2017 WL 2472499, at \*2 (M.D. Fla. June 5, 2017) (30%); *Warren v. Cook Sales, Inc.*, No. 15-cv-0603, 2017 WL 325829, at \*9 (S.D. Ala. Jan. 23, 2017) (30%); *Comeens v. HM Operating, Inc.*, No. 14-cv-00521, 2016 WL 4398412, at \*4 (N.D. Ala. Aug. 18, 2016) (33½%); *Diakos v. HSS Sys., LLC*, No. 14-cv-61784, 2016 WL 3702698, at \*7 (S.D. Fla. Feb. 5, 2016) (Scola, J.) (33½%); *Duque v. 130 NE 40th St., LLC*, No. 14-cv-23965, 2016 WL 7442797, at \*3 (S.D. Fla. Jan. 27, 2016) (33%); *Camp v. City of Pelham*, No. 10-cv-01270, 2015 WL 12746716, at \*3 (N.D. Ala. Dec. 16, 2015) (41%); *Pierre-Val v. Buccaneers Ltd. P'ship*, No. 14-cv-01182, 2015 WL 12843849, at \*2 (M.D. Fla. Dec. 7, 2015) (32%); *Gevaerts v. TD Bank*, No. 14-cv-20744-RLR, 2015 WL 6751061, at \*14 (S.D. Fla. Nov. 5, 2015) (30%); *Vogenberger v. ATC Fitness Cape Coral, LLC*, No. 14-cv-436-FTM-29CM, 2015 WL 1883537, at \*4 (M.D. Fla. Apr. 24, 2015) (33%); *Amason v. Pantry, Inc.*, No. 09-cv-02117, 2014 WL 12600263, at \*3 (N.D. Ala. July 3, 2014) (30%); *Cifuentes v. Regions Bank*, No. 11-cv-23455-FAM, 2014 WL 1153772, at \*8 (S.D. Fla. Mar. 20, 2014) (Moreno, J.) (30%); *In re Friedman's, Inc. Sec. Litig.*, No. 03-cv-3475, 2009 WL 1456698 (N.D. Ga. May 22, 2009) (30%); *Francisco v. Numismatic Guar. Corp. of Am.*, No. 06-cv-61677-Martinez, 2008 WL 649124 (S.D. Fla. 2008) (30%); *Pinto v. Princess Cruise Lines, Ltd.*, 513 F. Supp. 2d 1334 (S.D. Fla. 2007) (30%).

Class Counsel's fee request. This effort has demanded the investment, on a contingency basis, of immense amounts of Class Counsel's time, labor, and resources. (Ex. A (Prieto Decl.), ¶ 45.) Over the past four years, to advance Plaintiffs' claims against Ford, Class Counsel have spent tens of thousands of hours prosecuting the case against Ford and have, among other things:

- Conducted an initial investigation of claims against Ford to develop the facts and legal theories that formed the basis of the allegations in the complaint and drafted and filed the complaint, amended complaint, second amended complaint, third amended complaint, and fourth amended complaint.
- Interviewed and reviewed complaints from hundreds of consumers and potential class members to gather information about Ford's conduct and its impact upon consumers.
- Prepared state-by-state legal assessments to determine which state common law doctrines and consumer protection statutes provided Plaintiffs with viable claims.
- Sought out witnesses and former employees of Ford and Takata across the globe, from the United States to England to Japan.
- Defended the complaints from three Rule 12(b) motions to dismiss filed by Ford, as well as scores of motions filed by other Defendants that raised issues relevant to Plaintiffs' claims against Ford.
- Researched and defended against Ford's extreme challenge to personal jurisdiction.
- Successfully moved for leave to file a fourth amended complaint, over Ford's objections.
- Drafted and served four sets of interrogatories and six sets of document requests on Ford, including a set of more than 100 written document requests seeking relevant and probative documents and information in its possession—with an eye toward class certification, summary judgment, and trial.
- Participated in countless meet-and-confer discussions with Ford's counsel to resolve various discovery disputes pertaining to Plaintiffs' requests, discovery protocols, and the production of witnesses for depositions.
- Established and staffed a large document review team consisting of more than 40 attorneys from 13 different law firms to review, sort, and code more than **10 million** pages of documents produced by Defendants; established uniform coding procedures for electronic review of the documents produced; maintained constant contact with team members to ensure that all counsel became aware of significant emerging evidence in real time; funded the hosting of this massive, multi-year document review project on an online platform by a vendor at great expense.
- Retained and worked closely with consultants and experts to analyze, among other things, ammonium nitrate and its explosive properties, the functionality and



risk of Takata inflators, Ford's validation procedures, Ford's relevant documents, and the measurement of Plaintiffs' damages.

- Deposed over 60 Defendant witnesses, including 14 Ford witnesses—the most of any Defendant in the MDL—each of which required weeks of preparation, a consequence of the sheer volume of documents produced, as well as the breadth of issues and timespan that had to be covered.
- Prepared responses to Defendants' interrogatories and requests for production of documents directed to more than 110 named Plaintiffs, including 29 Ford Class Representatives, and prepared for and defended depositions of 29 Ford Plaintiffs.
- Convened numerous in-person meetings to strategize and carefully review the development of Plaintiffs' case against Ford.
- Prepared and repeatedly updated timelines, lists of hot documents, and case summaries for the case against Ford.
- Held weekly or bi-weekly conference calls to coordinate the vast effort undertaken by at least twenty-six (26) law firms across the country to prosecute claims against Ford, oversee various tasks and projects, and maximize efficiency.
- Prepared for and attended numerous days of negotiations at various locations around the country in an attempt to settle the Action, and after reaching an agreement in principle, engaged in lengthy discussions over drafting the terms of the Settlement Agreement.

(*Id.*, ¶ 45.)

The substantial time Class Counsel devoted to Plaintiffs' claims against Ford was *not* duplicative of the work performed for, or compensated from, the prior six settlements. Even though Plaintiffs litigated their economic loss claims against Ford alongside the claims asserted against other automakers, the actual litigation against each automaker, and particularly Ford, proceeded on distinct and independent tracks. (*Id.*, ¶ 46.) Each Defendant, for example, identified *different* witnesses with relevant knowledge; produced *different* documents in response to Plaintiffs' discovery requests; disputed *different* aspects of Plaintiffs' discovery requests; and raised *different* arguments and defenses. (*Id.*)

All told, Class Counsel's steadfast and coordinated work paid great dividends for the Class. (*Id.*, ¶ 47.) Each of the above-described efforts was essential to achieving the Settlement currently before the Court. (*Id.*) Taken together, the time, expertise, effort, and resources Class Counsel devoted to prosecuting and settling the Action of nationwide importance justify the benchmark fee Class Counsel are now seeking. (*Id.*)



**iii. The issues involved were novel and difficult and required the exceptional skill of a highly talented group of attorneys.**

This Court, we believe, regularly witnessed the high quality of Class Counsel's legal work, which has conferred an exceptional benefit on the Class in the face of daunting litigation obstacles and highly sophisticated defense counsel. (*Id.*, ¶ 48.) As the Court is aware, it is a formidable and complicated challenge to successfully prosecute a case like this. (*Id.*) Moreover, the orderly and effective management of this massive MDL, with claims against one of the world's largest automotive companies asserted on behalf of millions of consumers, presented challenges that many law firms and lawyers simply would not be able to meet. (*Id.*)

Indeed, litigation of a case like this requires counsel highly trained in class action law and procedure as well as the specialized issues these cases present. (*Id.*, ¶ 49.) All of the lawyers representing Plaintiffs, and in particular those whom this Court appointed to represent Plaintiffs, possess these attributes, and their participation as Class Counsel added significant value to the representation of this large Class consisting of millions of individuals. (*Id.*) The record before this Court establishes that the Action involved a wide array of complex and novel challenges, which Class Counsel met at every juncture based on their collective, extensive experience in complex litigation and class actions. (*Id.*) Respectfully, the skill and diligence demonstrated by Class Counsel in this litigation supports the requested fee.

The quality of opposing counsel with whom Class Counsel sparred also bears on an assessment of the quality of representation. *See Walco*, 975 F. Supp. at 1472 (explaining that “[g]iven the quality of defense counsel from prominent national law firms, the Court is not confident that attorneys of lesser aptitude could have achieved similar results”); *accord Camden I*, 946 F.2d at 772 n.3; *Johnson*, 488 F.2d at 718. Ford was represented by some of the most able, sophisticated, and diligent attorneys in the country, and they fought hard at every turn to protect their client's interests. (Ex. A (Prieto Decl.), ¶ 50.) These were worthy, highly skilled adversaries.

**iv. The claims against Ford entailed considerable risk.**

This Settlement was far from a foregone conclusion, evidenced by the preceding years of intense litigation. Ford mounted vigorous defenses to Plaintiffs' claims, denying any and all liability in the Action, contesting even this Court's personal jurisdiction, unlike any of the other initial Defendants. (*Id.*, ¶ 51-60.) The success achieved under these circumstances thus represents a genuine milestone.

In weighing the “undesirability” factor, courts consider, among other things, the “expense and time involved in prosecuting [the] litigation on a contingent basis, with no guarantee or high likelihood of recovery.” *Waters v. Cook’s Pest Control, Inc.*, No. 2:07-CV-00394-LSC, 2012 WL 2923542, at \*18 (N.D. Ala. July 17, 2012). “[T]his factor recognizes that counsel should be rewarded for taking on a case from which other law firms shrunk.” *In re Sunbeam*, 176 F. Supp. 2d at 1336. “Undesirability” and relevant risks must be evaluated from the standpoint of plaintiffs’ counsel as of the time they commenced the suit—not retroactively, with the benefit of hindsight. *Lindy Bros. Builders, Inc. v. Am. Radiator & Std. Sanitary Corp.*, 540 F.2d 102, 112 (3d Cir. 1976); *Walco*, 975 F. Supp. at 1473.

Prosecuting the Action was risky from the outset, with numerous obstacles to overcome. (Ex. A (Prieto Decl.), ¶ 52.) As discussed earlier, Ford has raised jurisdictional challenges; it has contested liability by claiming, for example, that it was deceived by Takata; it has contested Plaintiffs’ damages theories; and it certainly would contest a motion for certification of a litigation class. (*Id.*, ¶¶ 53-55.) Each of these obstacles and risks, standing alone, could have impeded Plaintiffs’ successful prosecution of these claims at trial (and in any appeal). (*Id.*, ¶ 56.) Together, they overwhelmingly show that Plaintiffs’ claims against Ford were far from a “slam dunk” and that, in light of all the circumstances, the Settlement achieved an excellent class-wide result. (*Id.*)

**v. Class Counsel pursued this Action on a pure contingency basis, and were precluded from other employment as a result.**

Class Counsel prosecuted the Action entirely on a contingent fee basis. (*Id.*, ¶ 57.) Meeting the immense time and expense demands of the case limited the ability of Class Counsel to work on numerous other matters, all without any guarantee that such a substantial investment of time and effort would ever be reimbursed. (*Id.*, ¶¶ 57-60.) This significant risk of nonpayment or underpayment warrants the requested fee.

Numerous cases recognize that contingent-fee risk is an important factor in determining the fee award. “A contingency fee arrangement often justifies an increase in the award of attorney’s fees.” *In re Sunbeam*, 176 F. Supp. 2d at 1335 (quoting *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 548 (S.D. Fla. 1988), *aff’d*, 899 F.2d 21 (11th Cir. 1990)); *see also In re Cont. Ill. Sec. Litig.*, 962 F.2d 566 (7th Cir. 1992) (holding that when a common fund case has been prosecuted on a contingent basis, plaintiffs’ counsel must be compensated adequately for the risk of non-payment); *Ressler*, 149 F.R.D. at 656 (“Numerous cases recognize that the

attorney's contingent fee risk is an important factor in determining the fee award.”); *accord Walters v. Atlanta*, 652 F. Supp. 755, 759 (N.D. Ga. 1985), *modified*, 803 F.2d 1135 (11th Cir.); *York v. Ala. State Bd. of Educ.*, 631 F. Supp. 78, 86 (M.D. Ala. 1986).

Public policy concerns—especially ensuring the continued availability of experienced and capable counsel to represent classes of injured plaintiffs whose individual claims would defy vindication—further justifies the requested fee award. As courts in this District have observed:

Generally, the contingency retainment must be promoted to assure representation when a person could not otherwise afford the services of a lawyer. . . . *A contingency fee arrangement often justifies an increase in the award of attorney's fees.* This rule helps assure that the contingency fee arrangement endures. If this “bonus” methodology did not exist, very few lawyers could take on the representation of a class client given the investment of substantial time, effort, and money, *especially in light of the risks of recovering nothing.*

*Behrens*, 118 F.R.D. at 548 (emphasis added).

The progress of the Action to date readily demonstrates the inherent risk that Class Counsel faced in prosecuting these cases on a contingency fee basis. (Ex. A (Prieto Decl.), ¶ 59.) To mount the enormous and ongoing effort of conducting discovery in this Action and litigating before this Court for almost four years, Class Counsel have invested tens of millions of dollars in time, as well as millions of dollars in expenses, for the benefit of the Class in this Settlement. (*Id.*) Uncompensated expenditures of this magnitude can severely damage or even destroy some law firms. It cannot be disputed that the Action entailed substantial risk of nonpayment and resulting financial hardship for Class Counsel's practices. (*Id.*)

Furthermore, the time Class Counsel spent on the Action was time that could not be spent on other matters. (*Id.*, ¶ 60.) Indeed, Class Counsel repeatedly turned away work on other matters as a result. (*Id.*) This factor strongly militates in favor of the requested fee.

**vi. Class Counsel achieved an excellent result.**

As explained earlier, the Settlement represents an outstanding result for the Class. (*Id.*, ¶ 61.) With a total value of approximately \$535,920,000, the Settlement will achieve the two primary objectives of this litigation: it will accelerate the removal of dangerous, defective Takata airbag inflators from millions of Class Members' vehicles, through an innovative, flexible Outreach Program; and it will compensate Class Members for the economic damages they suffered, in a manner that reinforces the public safety benefits of the Settlement. (*Id.*, ¶ 61.) Instead of facing additional years of costly and uncertain litigation, millions of Class Members

will receive an immediate benefit. (*Id.*) The Settlement represents an exceptional achievement by any measure.

**vii. The remaining *Johnson* factors and additional considerations favor approving Class Counsel's fee request.**

The remaining *Johnson* factors likewise support granting Class Counsel's fee request. As noted, the burdens of this litigation have precluded Class Counsel's pursuit of other cases. (Ex. A (Prieto Decl.), ¶ 63.) The relatively small size of most of the firms representing Plaintiffs, and the major commitment involved in pursuing this representation, prevented Class Counsel firms from working on other matters and accepting other representations. (*Id.*) In fact, over the past three years, Class Counsel firms have repeatedly turned away work, or refused to become involved in other cases, because of the significant time and effort that this case and MDL demanded. (*Id.*) In addition, Class Counsel's fee request is firmly rooted in "the economics involved in prosecuting a class action." *See In re Sunbeam*, 176 F. Supp. 2d at 1333. Class Counsel have advanced millions of dollars in out-of-pocket costs and expenses, which the requested fee award will include and cover. Without adequate compensation and financial reward in the event of a successful outcome, cases such as this simply could not and would not be pursued, because it would not be possible to undertake the ever-present risk of an unsuccessful outcome and recovering nothing.

Finally, and unlike most settlements, Class Counsel's work in connection with the Settlement will *not* end at Final Approval. (Ex. A (Prieto Decl.), ¶ 65.) The Settlement will last for at least four years and will require substantial involvement of Class Counsel to oversee and adjust the Outreach Program and Out-of-Pocket Claims Process. *Id.* For example, to support and represent Class Members' interests in connection with the prior six settlements, Class Counsel have participated in scores of meetings and conference calls to address aspects of the Outreach Program and the Out-of-Pocket Claims Process. This process, which will last for at least the next four years, will demand an extraordinary amount of time, diligence, and effort on the part of Class Counsel. The requested fee award will cover this extensive and important work by Class Counsel over the next four years as well. *See Vogenberger v. ATC Fitness Cape Coral, LLC*, No. 14-cv-436, 2015 WL 1883537, at \*4 (M.D. Fla. Apr. 24, 2015) (weighing "the time and effort by Plaintiffs' counsel that still will be necessary to effectuate the settlement" as a factor to support 33% fee award); *Allapattah Servs., Inc.*, 454 F. Supp. 2d at 1216 (holding that class counsel's post-approval work "supports the application of a higher fee percentage award").

CONCLUSION

The Settlement, worth as much as \$535,920,000, constitutes an outstanding result by any measure. The Settlement easily satisfies the fairness and reasonableness standard embodied in Rule 23(e), as well as the class certification requirements of Rules 23(a) and (b)(3). Class Counsel's request for a \$5,000 service award for each appointed Class Representative comports with well-established precedent as well. Likewise, Class Counsel's fee request is reasonable under the circumstances of this case. The request satisfies the guidelines of *Johnson* and *Camden I*, given the outstanding result, the considerable risks of litigation, the extremely complicated nature of the factual and legal issues, and the time, effort, and skill required to litigate claims of this nature to a satisfactory conclusion.

For the foregoing reasons, Plaintiffs respectfully request that the Court enter an Order that:

1. Grants final approval to the Settlement;
2. Certifies the proposed Class defined in the Settlement pursuant to Rule 23(b)(3) and (e) for settlement purposes only, appoints as Class Counsel the attorneys and firms identified as Class Counsel in the Preliminary Approval Order, and appoints as Class Representatives the individuals identified as Class Representatives in the Preliminary Approval Order;
3. Approves \$5,000 service awards to each appointed Class Representative;
4. Awards Class Counsel attorneys' fees from the Settlement equivalent to 25% of the \$299.1 million Settlement Amount; and
5. Enters Final Judgment dismissing the Action with respect to Ford with prejudice, in accordance with the proposed Final Order and Final Judgment submitted as exhibits hereto.

Dated: November 2, 2018

Respectfully submitted,

**PODHURST ORSECK, P.A.**

*/s/ Peter Prieto*

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on November 2, 2018, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify the foregoing document is being served this day on all counsel of record via transmission of Notice of Electronic Filing generated by CM/ECF.

By: /s/ Peter Prieto  
Peter Prieto

**EXHIBIT A**

**UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF FLORIDA  
Miami Division**

**MDL No. 2599  
Master File No.: 15-MD-02599-MORENO  
S.D. Fla. Case No. 1:14-cv-24009-MORENO**

**IN RE: TAKATA AIRBAG PRODUCT  
LIABILITY LITIGATION**

**THIS DOCUMENT RELATES TO:**

**ECONOMIC LOSS TRACK CASES  
AGAINST FORD MOTOR COMPANY**

**DECLARATION OF PETER PRIETO  
IN SUPPORT OF PLAINTIFFS' OMNIBUS MOTION FOR  
FINAL APPROVAL OF CLASS SETTLEMENT AND CERTIFICATION OF  
SETTLEMENT CLASS, AND APPLICATION FOR CLASS REPRESENTATIVE  
SERVICE AWARDS AND CLASS COUNSEL'S ATTORNEYS' FEES**

PETER PRIETO declares as follows:

1. I am Chair Lead Counsel for Plaintiffs and the proposed Settlement Class in these coordinated proceedings against Ford Motor Company.<sup>1</sup> I respectfully submit this declaration in support of Plaintiffs' Motion for Final Approval of Class Settlement and Certification of Settlement Class, and Application for Class Representative Service Awards and Class Counsel's Attorneys' Fees. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration and could testify competently to them if called upon to do so.

2. After almost four years of hard-fought litigation and extensive discovery, and adversarial arm's-length negotiations that spanned several months, Plaintiffs and Ford executed a Settlement Agreement on July 16, 2018. The Settlement requires Ford to pay \$299,100,000 in

<sup>1</sup> Capitalized terms not defined herein shall have the same definitions and meanings ascribed to them in the Settlement.

cash, less applicable credits for providing a Rental Car and Loaner Program, into a non-reversionary Settlement Fund. This Settlement, according to Plaintiffs' valuation expert, has a total value of approximately \$535,920,000, when including the estimated value of the Settlement's Customer Support Program.

3. Plaintiffs maintain that the claims asserted in the Action are meritorious, that any motion for class certification would prove successful, and that Plaintiffs would prevail if this matter proceeded to trial. The Action involved sharply opposed positions on several fundamental legal and factual issues. The ultimate success of the litigation required Plaintiffs to prevail, in whole or in part, on all of these issues. Continued litigation, therefore, presents significant risks to attaining a successful judgment, as well as the time and expenses associated with proceeding to trial, the time and expenses associated with appellate review, and the countless uncertainties of litigation, particularly in the context of a large and complex multi-district litigation.

4. In light of the risks presented by continued litigation and taking into account the substantial benefits extended to the Class Members under the terms of the Settlement Agreement, the Settlement not only provides fair and adequate compensation to Class Members, it also represents a significant achievement benefitting the Settlement Class.

**A. Background of the Litigation.**

5. In late 2014, Plaintiffs, on behalf of themselves and all others similarly situated, sued several automotive companies, including BMW, Ford, Honda, Mazda, Nissan, Subaru, and Toyota (the "Automotive Defendants"), and airbag suppliers Takata Corporation and TK Holdings, Inc. ("Takata"). Plaintiffs, who owned or leased vehicles manufactured or sold by the Automotive Defendants, alleged that their vehicles were equipped with defective airbags

supplied by Takata. The airbags, Plaintiffs alleged, all share a common, uniform defect: the use of phase-stabilized ammonium nitrate, a notoriously volatile and unstable compound, as the propellant in their defectively designed inflators, which are metal canisters that are supposed to release gas to inflate an airbag cushion in the milliseconds following a crash. As a result of this common defect, Plaintiffs alleged that the inflators within Takata's airbags have an unreasonably dangerous propensity to rupture and shoot metal shrapnel toward vehicle occupants.

6. Following numerous field ruptures of Takata's inflators that seriously injured or killed vehicle occupants, the Automotive Defendants began to recall vehicles equipped with such inflators. Honda initiated several narrow recalls from 2008 through 2012, claiming that the field ruptures resulted from limited manufacturing defects. As field ruptures continued to occur, however, the recalls expanded significantly. From April 11, 2013, through May, 15, 2015, BMW, Ford, Honda, Mazda, Nissan, Subaru, and Toyota initiated and expanded recalls ultimately covering millions of vehicles.

7. On May 18, 2015, Takata entered into a Consent Order with NHTSA that required it to file Defect Information Reports, triggering recalls of almost 34 million inflators. Given the size of the recalls and a shortage of replacement inflators, NHTSA also entered a Coordinated Remedy Order to prioritize which vehicles should be repaired first. Takata's Consent Order has been amended several times, expanding the recall to all inflators with non-desiccated phase-stabilized ammonium-nitrate propellant, which includes at least 50 million inflators, and setting a December 31, 2019 deadline for Takata to demonstrate the safety of its desiccated inflators, at which time NHTSA may require Takata to recall those inflators as well.

8. Prior to the recalls, Plaintiffs alleged, neither Takata nor the Automotive Defendants disclosed this common defect to Class Members. Instead, they represented that their

products were safe. Plaintiffs alleged that they suffered several forms of economic damages as a result of purchasing defective airbags and vehicles that were inaccurately represented to be safe. Plaintiffs, for example, alleged that they overpaid for their vehicles with defective airbags and did not receive the benefit of their bargain, because the vehicles and airbags were of a lesser standard and quality than represented. In addition, Plaintiffs alleged that they suffered damages in the form of out-of-pocket expenses, including lost wages from taking time off work to bring their vehicles to dealerships for the recall, paying for rental cars and alternative transportation, and hiring child care while the recall remedy was being performed.

9. Moreover, millions of Class Members remain exposed to the unreasonable risk of serious injury or death posed by defective Takata inflators that have not been removed from their vehicles. Even though nationwide recalls have been underway for more than three years, tens of millions of recalled inflators in the United States have not yet been repaired. Although supply shortages are partly responsible for these low completion rates, NHTSA has also highlighted a lack of effective outreach programs from automotive companies.

**B. Course of Proceedings.**

10. On October 27, 2014, eighteen plaintiffs filed a class action complaint in *Craig Dunn, et al. v. Takata Corp., et al.*, No. 1:14-cv-24009 (S.D. Fla.) (the “Economic Loss Class Action Complaint”), asserting economic loss claims against several Automotive Defendants and Takata. Close to one-hundred similar lawsuits eventually were filed around the country. The Judicial Panel on Multidistrict Litigation subsequently consolidated the *Dunn* action for pretrial proceedings with additional class and individual actions alleging similar or identical claims before this Court as *In re Takata Airbag Products Liability Litigation*, No. 1:15-md-02599-FAM (S.D. Fla.) (MDL 2599).

11. On March 17, 2015, the Court entered an Order Appointing Plaintiffs' Counsel and Setting Schedule, which designated me as Chair Lead Counsel, David Boies of Boies Schiller and Flexner, LLP, and Todd A. Smith of Power Rogers & Smith, PC, as Co-Lead Counsel in the Economic Loss track; Curtis Miner of Colson Hicks Eidson as Lead Counsel for the Personal Injury track; and Roland Tellis of Baron & Budd P.C., James Cecchi of Carella Byrne Cecchi Olstein P.C., and Elizabeth Cabraser of Lieff, Cabraser, Heimann & Bernstein, LLP as Plaintiffs' Steering Committee members.

12. Per this Court's Order, Plaintiffs filed an Amended Consolidated Class Action Complaint on April 30, 2015. On June 15, 2015, Plaintiffs filed a Second Amended Consolidated Class Action Complaint ("SACCAC").

13. On July 17, 2015, Takata and the seven Automotive Defendants each filed Motions to Dismiss Plaintiffs' SACCAC. The Court has ruled on all the Motions to Dismiss, granting them in part and denying them in part. (ECF Nos. 737, 871, 975, 1099, 1101, 1202, 1208, 1256, 1417, 1766, 1767.)

14. On July 14, 2017, Plaintiffs filed a Third Amended Consolidated Class Action Complaint ("TACCAC"). On July 26, 2017, the Court entered an Order dismissing certain amended and additional counts in the TACCAC and directing Plaintiffs to file a revised TACCAC. (ECF No. 1919.) In compliance with the Court's Order, Plaintiffs filed a revised TACCAC on August 7, 2017. (ECF No. 1969.) On September 1, 2017, Ford filed a Partial Motion to Dismiss Plaintiffs' Revised TACCAC. (ECF No. 2014.)

15. On March 2, 2018, before the Court ruled on Ford's Partial Motion to Dismiss, Plaintiffs filed a Motion for Leave to File a Final Amended Complaint Against Ford Motor Company. (ECF No. 2445.) On April 26, 2018, the Court entered an Order granting Plaintiffs'



Motion for Leave, requiring Plaintiffs to file a Final Amended Complaint against Ford no later than April 30, 2018, and denying Ford's Partial Motion to Dismiss as moot. (ECF No. 2647.) Pursuant to the Court's April 26, 2018 Order, Plaintiffs filed the Fourth Amended Consolidated Class Action Complaint ("FACCAC"), which is the operative complaint against Ford. (ECF No. 2670.) Ford filed a Motion to Dismiss Plaintiffs' FACCAC on June 25, 2018. (ECF No. 2887.) Plaintiffs filed their Response in Opposition to Ford's Motion to Dismiss Plaintiffs' FACCAC on July 9, 2018. (ECF No. 2905).

16. The Parties have taken extensive discovery in this case. Pursuant to the Court's initial case management order, discovery began almost immediately after creation of the MDL, in the spring of 2015. Over the past three-plus years, the Defendants have produced more than 10 million pages of documents through discovery. Plaintiffs' counsel have dedicated a team of more than 40 attorneys to the laborious work of reviewing these documents, many of which are in Japanese, necessitating time-consuming translation, at great expense, which Plaintiffs have borne. The Defendants have deposed more than 110 class representatives, including 29 Plaintiffs with claims against Ford, and Plaintiffs have deposed at least 61 witnesses of the Defendants, including 14 Ford witnesses. Plaintiffs also have retained and consulted extensively with multiple experts on liability and damages issues in an effort to prepare the case for trial.

17. While Plaintiffs were litigating before this Court, the U.S. Department of Justice pursued a separate criminal investigation of Takata. On January 13, 2017, Defendant Takata Corporation signed a plea agreement in which it admitted, among other things, that it

knowingly devised and participated in a scheme to obtain money and enrich Takata by, among other things, inducing the victim OEMs to purchase airbag systems from Takata that contained faulty, inferior, nonperforming, non-conforming, or dangerous PSAN inflators by deceiving the OEMs through the submission of false and fraudulent reports and other information that concealed the true and accurate test results for the inflators which the OEMs would not have

otherwise purchased as they were.

*U.S. v. Takata Corp.*, No. 2:16-cr-20810 GCS EAS, Dkt. No. 23 at 47 (E.D. Mich. Feb. 27, 2017). On the same day, an indictment of three Takata employees on related charges was unsealed. Takata entered a guilty plea to one count of wire fraud before U.S. District Judge George Caram Steeh as part of a settlement with the U.S. Department of Justice. *See id.* at 2.

18. On June 25, 2017, Takata Corporation's United States subsidiary, Defendant TK Holdings, Inc., filed for bankruptcy under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. *In Re TK Holdings, Inc.*, No. 17-11375 (Bankr. D. Del.). Likewise, Takata Corporation filed for bankruptcy in Japan and filed a petition under 11 U.S.C. § 1501 to recognize the Japanese insolvency proceeding in the United States. (ECF No. 1857.) Following the confirmation of Takata's bankruptcy plan, Takata was dismissed as a Defendant in this litigation.

**C. Settlement Negotiations.**

19. In parallel with the hard-fought litigation track, multi-party settlement negotiations between Plaintiffs' counsel and counsel for several Automotive Defendants, including Toyota, BMW, Mazda, Subaru, Honda, and Nissan, began in 2016. Ford was the only Automotive Defendant that did not meaningfully participate in these negotiations, which ultimately ended in an impasse in 2017.

20. After reengaging in direct negotiations with several Automotive Defendants, Plaintiffs reached a settlement with almost all of the initial Automotive Defendants in the spring and summer of 2017. The only exception was Ford, which still did not express any interest in participating in settlement negotiations at that time.

21. Settlement negotiations with Ford began in late February 2018, when Ford and Plaintiffs' counsel first discussed the possibility of settlement by phone. The parties then met in-person on March 15, 2018 in Dearborn, Michigan, for an initial discussion regarding the potential structure of a settlement. After Plaintiffs sent Ford an initial proposal on March 19, 2018, the parties met in-person again, first on May 9, 2018, in Washington, D.C., and then from May 17-18, 2018, in Miami. The parties reached a tentative agreement as to the structure and general terms of the Settlement, excluding attorneys' fees, at the meeting in Miami on May 18, 2018, and after exchanging several drafts of a term sheet, reached an agreement as to the substantive benefits for the class on June 7, 2018. Only after agreeing on the substantive terms of the Settlement did the parties begin to negotiate attorneys' fees. The parties again exchanged and discussed several proposals and counter-proposals and ultimately reached an agreement on a final term sheet on June 13, 2018. The parties then spent the next several weeks drafting and negotiating the specific terms of the Settlement Agreement. Throughout the four-month negotiation process, both in-person and by phone, the parties discussed and considered their relative views of the law, facts, and potential relief for the proposed Class, and exchanged numerous counter-proposals for key issues and concepts in a potential settlement. Based on the success and fairness of the prior six settlements reached in the MDL, Plaintiffs' counsel insisted on structuring this Settlement in a similar manner. At all times, the lengthy settlement negotiations were adversarial, non-collusive, and at arm's length.

**D. Settlement Recovery.**

22. The Settlement requires Ford to deposit a total of \$299,100,000, less applicable credits for the Rental Car/Loaner Program, into a non-reversionary Qualified Settlement Fund.

23. In accordance with the Agreement, Ford deposited approximately 12% of the full Settlement Amount within 30 days of this Court's Preliminary Approval of the Settlement, to immediately fund the first year of the Outreach Program. If the Settlement is approved, the rest of the Settlement Fund payments will be made over a prescribed four-year schedule set forth in the Settlement.

24. The Settlement Fund will be used to pay for: (a) the Outreach Program; (b) an Out-of-Pocket Claims Process to compensate Class Members for out-of-pocket expenses relating to the Takata Airbag Inflator Recall; (c) residual cash payments to Class Members who have not incurred reimbursable out-of-pocket expenses and who register for residual payments, to the extent that there are residual amounts remaining; (d) the Rental Car/Loaner Program; (e) notice and related costs; (f) claims administration, including expenses associated with the Settlement Special Administrator; (g) Court-awarded Class Counsel's fees and expenses; and (h) Court-awarded service awards to Class Representatives.

**E. Considerations Supporting the Settlement.**

**i. There was No Fraud or Collusion.**

25. This Court is well aware of how hard and zealously the Parties and their counsel litigated prior to reaching the Settlement. Plaintiffs continue to litigate this matter against other Defendants, and the sharply contested nature of the proceedings in this case readily shows the lack of fraud or collusion behind the Settlement.

26. Class Counsel also negotiated the Settlement vigorously. Plaintiffs were represented by experienced counsel at these arms-length negotiations. And the settlement negotiations were informed, on both sides, by counsel experienced in the litigation, certification, trial, and settlement of nationwide class action cases. In particular, Class Counsel had the benefit of years of experience and a familiarity with the facts of this case as well as with other cases involving similar claims.

27. As I described above, Class Counsel conducted a thorough investigation and analysis of Plaintiffs' claims and engaged in extensive formal discovery with Ford. Class Counsel's thorough review of that extensive discovery, including millions of pages of documents and numerous depositions, enabled us to gain an understanding of the evidence related to key questions in the case, and prepared us for well-informed settlement negotiations. Thus, Class Counsel were well-positioned to evaluate the strengths and weaknesses of Plaintiffs' claims, as well as the appropriate basis upon which to settle them.

28. The settlement negotiations were, at all times, adversarial and conducted at arm's length.

**ii. The Settlement Will Avert Years of Highly Complex and Expensive Litigation.**

29. This case involves millions of Class Members, with potential damages exceeding hundreds of millions of dollars. The claims and defenses are complex; litigating them is and has been difficult and time consuming. Although the Action has been pending for roughly four years, recovery by any means other than settlement would require additional years of litigation in this Court and appellate courts. In contrast, the Settlement will provide immediate and substantial benefits to millions of consumers.

**iii. The Factual Record is Sufficiently Developed to Enable Plaintiffs and Class Counsel to Make a Reasoned Judgment Concerning the Settlement.**

30. There is no doubt that significant discovery occurred in this case prior to the Settlement. It afforded Class Counsel insight into the strengths and weaknesses of Plaintiffs' claims against Ford. Before settling, Class Counsel had developed ample information and performed extensive analyses from which to assess the probability of success on the merits, the possible range of recovery, and the likely expense and duration of the litigation.

**iv. Plaintiffs Would Have Faced Significant Obstacles to Obtaining Relief.**

31. Class Counsel are quite confident in the strengths of their case, but we are also pragmatic, as well as aware of the various defenses available to Ford and the risks inherent in any litigation. While Plaintiffs overcame the risk of dismissal on various theories advanced at the motion to dismiss stage, including legal challenges to personal jurisdiction and the common law and state statutory claims, the ultimate success of Plaintiffs' claims turned on these and other questions that were certain to arise in the context of motions for summary judgment and class certification, and at trial.

32. While Class Counsel believe we have a compelling case against Ford, we also are mindful that it advanced significant defenses that we would be required to overcome at summary judgment, at class certification, at trial, and eventually on appeal. This litigation involved several key risks, including: (1) overcoming Takata's guilty plea to wire fraud; (2) establishing that Ford had sufficient knowledge of the risks inherent in Takata's defective airbag inflators; and (3) developing a damages model to measure the economic losses suffered by millions of consumers. Class Counsel also appreciate that, absent a settlement, it would have taken years of additional litigation – and overcoming vigorous legal and factual defenses – to bring the Action to finality. Even then, the outcome would still be uncertain. Given the myriad risks attending

these claims, the Settlement cannot be seen as anything other than a fair and reasonable compromise.

33. Protracted litigation, as we all know, carries inherent risks and inevitable delay. Under the circumstances, Plaintiffs and Class Counsel determined that the Settlement clearly outweighs the risks of continued litigation.

**v. The Settlement Amount Is Reasonable Given the Range of Possible Recovery.**

34. The Settlement provides substantial value to the Class, and such value is well within the range of reasonableness. Even before considering the valuation opinion of Kirk Kleckner, a recognized expert in the field, of the Customer Support Program, the Settlement has a value of approximately \$299.1 million, which represents roughly 56% of Plaintiffs' and Class Members' estimated damages recovery under a conservative method of calculating damages based on the prices Ford paid for and marked up the defective Takata airbags, according to evidence produced in discovery. The additional value of the Customer Support Program further increases the range of recovery as a percentage of the possible damages that Plaintiffs and Class Members could recover if they were to prevail all the way through trial and on appeal.

35. More importantly, the non-reversionary aspect of the Settlement speaks volumes about its adequacy and reasonableness. The entirety of the Settlement Fund, less the necessary costs of settlement administration, attorneys' fees, expenses, and service awards, will be distributed for the benefit of Class Members, through the Outreach Programs, Out-of-Pocket Claims Process, and Residual Distribution. In other words, *none* of the Settlement Fund is being returned to Ford.

36. The Settlement also provides for, if necessary, a *cy pres* distribution for any funds that eventually cannot be distributed directly to Class Members in a cost-effective manner. With



Court approval, the funds will be distributed as *cy pres* relief to worthy charities, especially to charities geared toward combatting harms that injured Class Members.

**vi. The Opinions of Class Counsel, Class Representatives, and Absent Class Members Strongly Favor Approval of the Settlement.**

37. Class Counsel believe that the Settlement is extraordinary and clearly deserving of Final Approval.

**F. Service Awards.**

38. Pursuant to the Settlement, Class Counsel seek, and Ford does not oppose, Service Awards of \$5,000 per Class Representative. If the Court approves them, the Service Awards will be paid from the Settlement Fund and will be in addition to the relief the Class Representatives will be entitled to under the terms of the Settlement. These awards will compensate the representatives for their time and effort in the Action, and for the risk they undertook in prosecuting the case against Ford.

39. Courts have consistently found service awards to be an efficient and productive way to encourage members of a class to become class representatives and take on the responsibility of representing the entire class.

40. The factors for determining a service award include: (1) the actions the class representatives took to protect the interests of the class; (2) the degree to which the class benefited from those actions; and (3) the amount of time and effort the class representatives expended in pursuing the litigation.

41. The above factors, as applied to the Action, demonstrate the reasonableness of a service award of \$5,000 to each Class Representative. Among other things, each Class Representative took numerous actions and provided substantial assistance to Class Counsel by locating and forwarding responsive documents and information and by engaging in conferences

with Class Counsel, with many preparing and sitting for depositions as well. In so doing, the Class Representatives were integral to educating Class Counsel and helping Class Counsel form the central theory of this case. The Class Representatives not only devoted time and effort to this long-running litigation, but the end result of their efforts, and those of counsel, was a substantial benefit to the Class. It is only fair that these Class Representatives be compensated for their service.

42. If each Class Representative is awarded \$5,000, the total paid in service awards will represent less than .04% of the Settlement Amount and is well within the range of reasonable service awards.

**G. Class Counsel's Attorneys' Fees.**

43. Pursuant to the Settlement, Class Counsel are permitted to request that the Court award us attorneys' fees up to 25% of the Settlement Amount. Ford has agreed not to oppose such a request for attorneys' fees and expenses. The Parties negotiated and reached this agreement regarding attorneys' fees and expenses only after reaching agreement on all other material terms of the Settlement Agreement.

44. As indicated in the Court-approved Notice disseminated to the Class, and consistent with standard class action practice and procedure, Class Counsel request a fee amounting to 25 percent of the \$299.1 million Settlement Amount, which represents the common fund created through our hard work and efforts. That amount would include not only attorneys' fees but expenses as well.

**i. The Claims Against Ford Required Substantial Time and Labor.**

45. Prosecuting and settling the claims against Ford in the Action have demanded significant time, dedication, and labor, making this fee request reasonable. Plaintiffs' counsel

have devoted tens of thousands of hours prosecuting the case against Ford, and have, among other things:

- Conducted an initial investigation of claims against Ford to develop the facts and legal theories that formed the basis of the allegations in the complaint and drafted and filed the complaint, amended complaint, second amended complaint, third amended complaint, and fourth amended complaint.
- Interviewed and reviewed complaints of hundreds of consumers and potential class members to gather information about Ford's conduct and its impact upon consumers.
- Prepared state-by-state legal assessments to determine which state common law doctrines and consumer protection statutes provided Plaintiffs with viable claims.
- Sought out witnesses and former employees of Ford and Takata across the globe, from the United States to England to Japan.
- Defended the complaints from three Rule 12(b) motions to dismiss filed by Ford, as well as scores of motions filed by other Defendants that raised issues relevant to Plaintiffs' claims against Ford.
- Researched and defended against Ford's extreme challenge to personal jurisdiction.
- Successfully moved for leave to file a fourth amended complaint, over Ford's objections.
- Drafted and served four sets of interrogatories and six sets of document requests on Ford, including a set of more than 100 written document requests seeking relevant and probative documents and information in its possession—with an eye toward class certification, summary judgment, and trial.
- Participated in countless meet-and-confer discussions with Ford's counsel to resolve various discovery disputes pertaining to Plaintiffs' requests, discovery protocols, and the production of witnesses for depositions.
- Established and staffed a large document review team consisting of more than 40 attorneys from 13 different law firms to review, sort, and code more than 10 million pages of documents produced by Defendants; established uniform coding procedures for electronic review of the documents produced; maintained constant contact with team members to ensure that all counsel became aware of significant emerging evidence in real time; funded the hosting of this massive, multi-year document review project on an online platform by a vendor at great expense.
- Retained and worked closely with consultants and experts to analyze, among other things, ammonium nitrate and its explosive properties, the functionality and risk of Takata inflators, Ford's validation procedures, Ford's relevant documents, and the measurement of Plaintiffs' damages.

- Deposed over 60 Defendant witnesses, including 14 Ford witnesses—the most of any Defendant in the MDL—each of which required weeks of preparation, a consequence of the sheer volume of documents produced, as well as the breadth of issues and timespan that had to be covered.
- Prepared responses to Defendants’ interrogatories and requests for production of documents directed to more than 110 named Plaintiffs, including 29 Ford Class Representatives, and prepared for and defended depositions of 29 Ford Plaintiffs.
- Convened numerous in-person meetings to strategize and carefully review the development of the case against Ford.
- Prepared and repeatedly updated timelines, lists of hot documents, and case summaries for the case against Ford.
- Held weekly or bi-weekly conference calls to coordinate the vast effort undertaken by at least twenty-six (26) law firms across the country to prosecute claims against Ford, oversee various tasks and projects, and maximize efficiency.
- Prepared for and attended numerous days of negotiations at various locations around the country in an attempt to settle the Action, and after reaching an agreement in principle, engaged in lengthy discussions over drafting the terms of the Settlement Agreement.

46. Even though Plaintiffs litigated their economic loss claims against Ford alongside the claims asserted against other automakers, the actual litigation against each automaker, and particularly Ford, proceeded on distinct and independent tracks. Each Defendant, for example, identified different witnesses with relevant knowledge; produced different documents in response to Plaintiffs’ discovery requests; disputed different aspects of Plaintiffs’ discovery requests; and raised different arguments and defenses.

47. All told, Class Counsel’s steadfast and coordinated work paid great dividends for the Class. Each of the above-described efforts was essential to achieving the Settlement currently before the Court. Taken together, the time, expertise, and resources Class Counsel devoted to prosecuting and settling the Action of nationwide importance justify the fee we are now seeking.

**ii. The Issues Involved Were Novel and Difficult and Required the Exceptional Skill of a Highly Talented Group of Attorneys.**

48. The Court, we believe, regularly witnessed the high quality of our legal work, which has conferred a significant benefit on the Class in the face of daunting litigation obstacles and highly sophisticated defense counsel. As the Court is aware, it is a considerable challenge to successfully prosecute a case like this. Moreover, the orderly and effective management of this very large MDL, including claims against seven of the world's largest automotive companies, presented challenges that many law firms and lawyers simply would not be able to meet.

49. Indeed, litigation of a case like this requires counsel highly trained in class action law and procedure as well as the specialized issues these cases present. All of the lawyers representing Plaintiffs, and in particular those whom this Court appointed to represent Plaintiffs, possess these attributes, and their participation as Class Counsel added significant value to the representation of this especially large class consisting of millions of individuals. The record before the Court establishes that the Action involved a wide array of complex and novel challenges, which we met at every juncture based on our extensive experience in complex litigation and class action litigation.

50. In assessing the quality of representation by Class Counsel, the Court also should consider the quality of their opposing counsel. Ford was represented by some of the most able, sophisticated, and diligent attorneys in the country. These were worthy, highly competent adversaries who fought at every turn to protect their clients' interests.

**iii. The Claims Against Ford Entailed Considerable Risk.**

51. Ford mounted vigorous defenses to these claims, denying any and all liability in the Action. The time, work, and expense demands on us were daunting, and limited our ability

to work on numerous other matters. Our success under these circumstances represents a genuine milestone.

52. Prosecuting the Action was risky from the outset. While several risks existed, I will limit my discussion to three of the most serious risks.

53. First, Ford has steadfastly claimed that it was deceived by Takata as to the safety of its inflators, a defense they claim finds support in Takata's guilty plea to a count of wire fraud based on providing allegedly misleading testing results to certain OEMs.

54. Second, Ford has challenged Plaintiffs' damages theories. While Plaintiffs allege that they suffered economic losses at the time of purchase, because a vehicle with a defect is, by definition, worth less than a defect-free vehicle, Ford contends that Plaintiffs have not suffered compensable damages because most defective inflators eventually will be replaced free of charge through recalls.

55. Third, Ford would have vigorously opposed class certification. Though we believe that we could and would prevail in a litigated class certification battle, Ford would assert numerous arguments against certification of all or parts of the Class. Moreover, even if Plaintiffs were successful, Ford would inevitably seek interlocutory review of class certification rulings under Rule 23(f) in the Eleventh Circuit, delaying the progress towards trial for months, if not years.

56. Each of these risks, standing alone, could have impeded Plaintiffs' successful prosecution of these claims at trial (and in any appeal). Together, they show that Plaintiffs' claims against Ford were far from a "slam dunk" and that, in light of all the circumstances, the Settlement achieves an excellent class-wide result.

**iv. Class Counsel Assumed Substantial Risk to Pursue the Action on a Pure Contingency Basis and Were Precluded from Other Employment as a Result.**

57. Class Counsel prosecuted the Action entirely on a contingent fee basis. In undertaking to prosecute this complex action on that basis, we assumed a significant risk of nonpayment or underpayment. That risk also warrants the requested fee.

58. Public policy concerns—especially ensuring the continued availability of experienced and capable counsel to represent classes of injured plaintiffs whose individual claims would otherwise defy vindication—further justifies the requested fee award.

59. The progress of the Action to date readily shows the inherent risk that we faced in taking these cases on a contingency fee basis. To sustain the enormous and ongoing effort of litigating before this Court for almost four years, we have invested well tens of thousands of hours of time, as well as millions of dollars in expenses. Uncompensated expenditures of this magnitude can severely damage or even destroy some law firms. It cannot be disputed that the Action entailed a substantial risk of nonpayment and resulting financial hardship for our practices.

60. Furthermore, the time we spent on the Action was time that we could not spend on other matters. And Class Counsel repeatedly turned away work on other matters as a result. This factor militates in favor of our requested fee.

**v. Class Counsel Achieved an Excellent Result.**

61. The Settlement we achieved is outstanding. Instead of facing additional years of costly and uncertain litigation, tens of millions of Class Members will receive an immediate benefit from the Settlement with a total value of more than \$299.1 million. The Settlement achieves the two primary objectives of this litigation: accelerating the removal of dangerous,

defective Takata airbag inflators from millions of Class Members' vehicles, and compensating Class Members for the economic damages they suffered. The Settlement represents an exceptional achievement by any measure.

**vi. The Requested Fee Comports with Customary Fees Awarded in Similar Cases.**

62. The fee requested here is not out of the ordinary and matches the fee typically awarded in similar cases. As numerous decisions have recognized, a fee award of 30% of a common fund is well within the range of a customary fee in this District and in this Circuit, while a 25% fee award represents the "benchmark" percentage. Our fee request falls at the low end of the average negotiated in the private marketplace, where contingency fee arrangements often approach or equal 40 percent of any recovery.

**vii. Other Factors Also Favor Approving Class Counsels' Fee Request.**

63. Other factors likewise support granting our fee request. As noted, the burdens of this litigation have precluded our pursuit of other cases. The relatively small size of most of the firms representing Plaintiffs and the major commitment involved in accepting this representation, precluded our firms from working on other matters and accepting other representations. Over the past four years, my firm and I, as well as other Court-appointed firms, repeatedly turned away work or refused to become involved in other cases, because of the significant time and effort that this case and MDL required. In addition, our fee request is firmly rooted in the economics involved in prosecuting a class action. Without adequate compensation and financial reward, cases such as this simply could not be pursued.

64. Moreover, Class Counsel has advanced millions of dollars in out-of-pocket costs and expenses, which will be covered by the approved settlement.



65. Finally, unlike most settlements, Class Counsel's work in connection with this Settlement will not end at Final Approval. These Settlement will last for at least four years and will require substantial input from Class Counsel to oversee and adjust the Outreach Program and Out-of-Pocket Claims Processes. If the Settlement receives final approval and reaches its Effective Date, Class Counsel also will become significantly involved in the processing and adjudication of Class Member claims. This process, which may involve millions of claims over a four-year period, will demand an extraordinary amount of time, diligence, and effort on the part of Class Counsel. The requested fee award will cover this time-consuming work over the next four years as well.

I declare under penalty of perjury of the laws of Florida and the United States that the foregoing is true and correct, and that this declaration was executed in Miami, Florida on November 2, 2018.

/s/ Peter Prieto  
Peter Prieto

# **EXHIBIT B**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
Miami Division**

**IN RE: TAKATA AIRBAG PRODUCTS  
LIABILITY LITIGATION,**

**MDL NO. 2599  
Case No. 1:15-md-02599-FAM**

**DECLARATION OF CAMERON R. AZARI, ESQ., ON IMPLEMENTATION AND  
ADEQUACY OF CLASS NOTICE PROGRAM**

I, Cameron R. Azari, Esq., hereby declare and state as follows:

1. My name is Cameron R. Azari, Esq. I have personal knowledge of the matters set forth herein, and I believe them to be true and correct.

2. I am a nationally recognized expert in the field of legal notice and I have served as an expert in dozens of federal and state cases involving class action notice plans.

3. I am the Director of Legal Notice for Hilsoft Notifications (“Hilsoft”), a firm that specializes in designing, developing, analyzing and implementing large-scale, un-biased, legal notification plans. Hilsoft is a business unit of Epiq Class Action & Claims Solutions (“Epiq”).

4. This declaration describes the implementation of the Settlement Notice Plan (“Notice Plan” or “Plan”) designed by Hilsoft for the Settlement with Ford in *In re: Takata Airbag Products Liability Litigation*, Case No. 1:15-md-02599. In the “*Declaration of Cameron R. Azari, Esq. on Proposed Ford Settlement Class Notice Program*,” dated July 16, 2018, I detailed Hilsoft’s class action notice experience and attached Hilsoft’s *curriculum vitae*. I also provided

DECLARATION OF CAMERON R. AZARI, ESQ., ON IMPLEMENTATION AND ADEQUACY OF CLASS  
NOTICE PROGRAM

my educational and professional experience relating to class actions and my ability to render opinions on the overall adequacy of notice programs.

5. On September 5, 2018, the Court approved the Notice Plan as designed by Hilsoft and appointed Epiq to serve as the Settlement Notice Administrator in the *Order Preliminarily Approving Class Settlement and Certifying Settlement Class* (the “Order”). In the Order, the Court certified the following definition of the Settlement Class:

(1) all persons or entities who or which owned and/or leased, on the date of the issuance of the Preliminary Approval Order, Subject Vehicles distributed for sale or lease in the United States or any of its territories or possessions; and (2) all persons or entities who or which formerly owned and/or leased Subject Vehicles distributed for sale or lease in the United States or any of its territories or possessions, and who or which sold or returned, pursuant to a lease, the Subject Vehicles after June 19, 2014 and through the date of the issuance of the Preliminary Approval Order. Excluded from this Class are: (a) Ford, its officers, directors, employees and outside counsel; its affiliates and affiliates' officers, directors and employees; its distributors and distributors' officers and directors; and Ford's Dealers and their officers, directors, and employees; (b) Settlement Class Counsel, Plaintiffs' counsel, and their employees; (c) judicial officers and their immediate family members and associated court staff assigned to this case, any of the cases listed in Exhibit 1, or the 11th Circuit Court of Appeals; (d) Automotive Recyclers and their outside counsel and employees; and (e) persons or entities who or which timely and properly exclude themselves from the Class.

6. After the Court’s preliminary approval of the Settlement, we began to implement the Notice Program and this declaration details its successful implementation. This declaration will detail the notice activities undertaken and explain how and why the Notice Plan was comprehensive and well-suited to the Settlement Class. This declaration will also discuss the administration activity to date. The facts in this declaration are based on what I personally know, as well as information provided to me in the ordinary course of my business by my colleagues from Hilsoft and Epiq, who worked with us to implement the notification effort.

**NOTICE PLAN SUMMARY**

7. Federal Rule of Civil Procedure 23 directs that the best notice practicable under the circumstances must include “individual notice to all members who can be identified through reasonable effort.”<sup>1</sup> The notice program here satisfied this requirement by mailing individual notices all Class Members with identifiable mailing addresses. In order to reach any Class Members who did not receive individual notice and to reinforce the individual notice effort, a broad media campaign was also implemented.

8. Notices were mailed to 8,030,191 potential Class Members, as identified by Epiq from information provided by Ford and IHS Automotive, driven by Polk (“Polk”). Address updating (both prior to mailing and on undeliverable pieces) and re-mailing protocols met or exceeded those used in other class action settlements. In addition, notice was provided via the weekly publications *People*, *Sports Illustrated* and *Parade* and monthly publications *Better Homes & Gardens*, *Car and Driver*, *Motor Trend*, and *People en Español*. Notices also appeared in U.S. Territory newspapers throughout Puerto Rico (Notices were published in Spanish in the two newspapers), American Samoa, Guam, Northern Mariana Islands, and the U.S. Virgin Islands. Prominent internet banner advertisements (on desktop and mobile devices) ran on a variety of websites purchased through the *Conversant Ad Network*, *Yahoo! Ad Network*, and *Pulpo Spanish Ad Network* and banner advertisements also ran on *Facebook* and *Instagram*. Thirty-second radio spots aired nationwide on AM and FM stations covering a variety of music formats such as Country,

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<sup>1</sup> Fed. R. Civ. P. 23(c)(2)(B).

Rock n' Roll, Oldies, Top 40, and R&B (including spots in Spanish where appropriate). Thirty-second ads also ran on *Pandora* online radio alongside traditional banner ads. Coverage was further enhanced by a neutral Informational Release, Sponsored Search Listings, a Case Website and the toll-free telephone line.

9. The combined measured individual notice, broadcast media, print publication and online banner notice effort described below will reach approximately 95% of all U.S. adults aged 18+ who are current or former owners or lessees of one of the Ford Subject Vehicles. On average, each of these people reached will have approximately 3.6 opportunities for exposure to the Notice.<sup>2</sup> Based on our experience with the previous settlements in this litigation, we expect the individual notice effort to reach in excess of 90% of the identified Class. The media notice effort is estimated to reach 80.8% of all U.S. adults aged 18+ who own or leased one of the Ford Subject Vehicles. In my experience, the actual reach and frequency of the Notice Plan is consistent with other court-approved notice programs in settlements of similar magnitude, and met and exceeded due process requirements.

10. In my opinion, the Notice Plan as implemented to date reached the greatest practicable number of Class Members through the use of individual notice and paid and earned media. In my opinion, the Notice Plan was the best notice practicable under the circumstances of

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<sup>2</sup> "Net Reach" is defined as the percentage of a class exposed to a notice, net of any duplication among people who may have been exposed more than once. Average Frequency is the average number of times that each different person reached will have the opportunity for exposure to a media vehicle specifically containing a notice.

this case and far exceeds the requirements of due process, including its “desire to actually inform” requirement.<sup>3</sup>

### CAFA NOTICE

11. As described in the attached “*Declaration of Stephanie J. Fiereck, Esq. on Implementation of CAFA Notice*,” dated August 2, 2018 (“Fiereck Declaration”), Epiq sent a CAFA notice packet (or “CAFA Notice”), on behalf of Ford, as required by the federal Class Action Fairness Act of 2005 (CAFA), 28 U.S.C. § 1715, to 57 federal and state officials on July 26, 2018. The CAFA Notice was mailed by certified mail to 56 officials, including the Attorneys General of each of the 50 states, the District of Columbia and the United States Territory officials. The CAFA Notice was also sent by United Parcel Service (“UPS”) to the Attorney General of the United States. The Fiereck Declaration is included as **Exhibit 1**.

### NOTICE PLAN IMPLEMENTATION

#### *Individual Notice – Direct Mail*

12. Individual notice consisted of an 8.5” x 5” postcard (the “Direct Mail Notice”). A summary of the data acquisition and notice mailing process is as follows.

13. On August 24, 2018, Epiq received eleven (11) files from Ford containing 6,037,416 VINs for Ford Subject Vehicles (including Lincoln and Mercury). These files were securely transmitted to Polk on August 27, 2018.

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<sup>3</sup> “But when notice is a person’s due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected . . .” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950).

14. On September 13, 2018, pursuant to an agreement with Polk to purchase data containing identifying information and last known mailing addresses corresponding with the VIN numbers provided by Ford, Epiq received three (3) files from Polk containing 8,988,146 registration records from all U.S. States and Territories, except California, New Hampshire, and Pennsylvania (“Ford Data”).

15. On September 26, 2018, Epiq received two (2) files from Polk containing 1,064,935 registration records from California (“Ford CA Data”).

16. On October 18, 2018, Epiq received four (4) files from Polk containing 43,065 registration records from New Hampshire and 439,690 registration records from Pennsylvania (“Ford NH/PA Data”).

17. The Ford Data, Ford CA Data, and Ford NH/PA Data were combined, analyzed to remove duplicates where possible, and standardized in order to provide individual notice to virtually all Ford Settlement Class Members. From October 22, 2018 to October 26, 2018, Epiq mailed 8,030,191 Direct Mail Notices to Ford Settlement Class Members.

18. Prior to the mailing of the Direct Mail Notice, all mailing addresses provided were checked against the National Change of Address (“NCOA”) database maintained by the United States Postal Service (“USPS”).<sup>4</sup> Any addresses that were returned by the NCOA database as invalid were updated through a third-party address search service. In addition, the addresses were

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<sup>4</sup> The NCOA database contains records of all permanent change of address submissions received by the USPS for the last four years. The USPS makes this data available to mailing firms and lists submitted to it are automatically updated with any reported move based on a comparison with the person’s name and known address.



certified via the Coding Accuracy Support System (“CASS”) to ensure the quality of the zip code, and verified through Delivery Point Validation (“DPV”) to verify the accuracy of the addresses. This address updating process is standard for the industry and for the majority of promotional mailings that occur today. In total, 8,030,191 Direct Mail Notices were mailed.

19. Additionally, a Long Form Notice is mailed via USPS first class mail to all persons who requested one via the toll-free phone number. The Long Form Notice is available in both English and Spanish. As of November 2, 2018 a total of 2,889 Long Form Notices have been mailed as a result of requests via the toll-free phone number or by mail. The Long Form Notice is also available for download or printing at the website. A copy of the Direct Mail Notice is included as **Exhibit 2**. A copy of the Long Form Notice in English and Spanish are included as **Exhibit 3**.

20. The return address on the Notices is a post office box maintained by Epiq. For Direct Mail Notices returned as undeliverable, Epiq is undertaking additional public record research, using a third-party lookup service (“ALLFIND”, maintained by LexisNexis), to re-mail Direct Mail Notices to any new addresses that may be identified. Address updating and re-mailing for undeliverable Direct Mail Notices is ongoing and we will provide an update prior to the Final Approval Hearing.

#### ***Paid Media***

21. To guide the selection of measured media in reaching members of the Settlement, the Notice Plan had a primary target audience of: all adults 18 years and older in the United States who owned or leased one of the Subject Vehicles.

**Radio**

22. The Notice Plan includes 30-second radio units appearing over a two-week schedule on selected radio stations nationwide covering a variety of music formats such as Country, Rock n’ Roll, Oldies, Top 40, and R&B. The Radio Notice is also airing as 30-second spots on appropriate Spanish language stations in Spanish. Placements are substantially occurring between October 22, 2018 and November 11, 2018.

23. CDs of each recorded radio spot are available upon request. A detailed post-buy analysis of the radio activity will be provided in a supplemental declaration after implementation of the media plan is complete and prior to the Final Approval Hearing. Station statements showing the actual airtimes of the spots will be available upon request. A copy of the radio script (in English and Spanish) is included as **Exhibit 4**.

**National Consumer Publications**

24. The Notice Plan included a highly visible national print program. A 2/3 page notice appeared one time in the monthly magazines *Better Homes & Gardens*, *Car and Driver*, *Motor Trend*, and *People en Español*. A 2/3 page notice also appeared in the weekly magazines *People*, and *Sports Illustrated*. A 2/5 page notice appeared in the Sunday newspaper insert *Parade*, which appeared in more than 650 newspapers nationwide. These publications have an estimated combined circulation of 34.3 million, and a combined readership of 157.7 million. The dates each Notice is scheduled to appear or already appeared and the page numbers are listed below.

<b>Publication</b>	<b>Format</b>	<b>Circulation</b>	<b>On-Sale Date</b>	<b>Page No.</b>
<i>Better Homes &amp; Gardens</i>	Monthly	7,600,000	11/20/18	TBD
<i>Parade</i>	Weekly	18,000,000	10/14/18	16
<i>People</i>	Weekly	3,400,000	10/12/18	40

<i>People en Espanol</i>	11x a Year	540,000	11/3/18	78
<i>Sports Illustrated</i>	Weekly	2,700,000	10/18/18	57
<i>Car and Driver</i>	Monthly	1,160,000	10/23/18	71
<i>Motor Trend</i>	Monthly	968,000	10/26/18	93
<b>TOTAL</b>		<b>34,368,000</b>		

25. An example of the Notice as it appeared in the consumer publications is included as **Exhibit 5**. Tear sheets for each insertion are available upon request.

***U.S. Territory Newspapers***

26. A 1/2 page notice appeared one time in newspapers targeting the United States Territories. Combined these newspapers had a circulation of approximately 447,000. Specifically, the notice ran in the following six newspapers on the dates shown:

<b><i>Publication</i></b>	<b><i>Format</i></b>	<b><i>Distribution</i></b>	<b><i>On-Sale Date</i></b>	<b><i>Page No.</i></b>
<i>Virgin Islands Daily News</i>	Daily	U.S. Virgin Islands	10/22/18	TBD
<i>Saipan Tribune</i>	Weekly	Northern Mariana Islands	10/19/18	TBD
<i>Samoa News</i>	Weekly	American Samoa	10/22/18	TBD
<i>Pacific Daily News</i>	Weekly	Guam	10/22/18	TBD
<i>El Nuevo Dia</i>	Daily	Puerto Rico	10/22/18	22
<i>Primera Hora</i>	Daily	Puerto Rico	10/22/18	5

***Digital Banner Notice***

27. The Digital Banner Notice effort began on October 9, 2018 and will be substantially complete on November 12, 2018. As of the signing of this declaration, the Digital Banner Notice effort is running as scheduled.

28. Banner advertisements appeared on *Conversant Ad Network* and *Yahoo! Ad Network* in English and on the *Pulpo Ad Network* in Spanish. These banner advertisements appeared on a rotating schedule in either leaderboard or big box sizes.

29. Banner advertisements also were displayed on *Facebook*. *Facebook* is the most widely used social networking service in the world. When a user logs into their account they are presented with their homepage. Banners appeared in the right hand column next to the newsfeed.

30. Mobile banner advertisements appeared on *Conversant Ad Network*. These banner advertisements appeared nationwide on a rotating schedule in appropriate mobile sizes.

31. Traditional banner advertisements were also placed on *Pandora*. As a supplement to the traditional banners, the Radio Notice was also played during audio breaks on the station.

32. A summary of the Digital Banner Notice effort is as follows:

<i>Network/Property</i>	<i>Banner Size</i>	<i>Run Dates</i>	<i>Projected A18+ Impressions</i>
<i>Conversant Ad Network</i>	300x250; 728x90; 300x600	10/9-11/12	80,000,000
<i>Conversant Mobile Ad Network</i>	320x480; 300x250; 320x50	10/9-11/12	15,000,000
<i>Facebook</i>	254x133	10/9-11/12	110,000,000
<i>Pandora</i>	300x250; 500x500	10/22-11/4	5,858,586
<i>Pandora</i>	:30 Audio Spots	10/22-11/4	2,222,222
<i>Pulpo - Spanish Ad Network</i>	300x250; 728x90; 300x600	10/9-11/12	20,000,000
<i>Yahoo Ad Network</i>	300x250; 728x90; 300x600	10/9-11/12	60,000,000
<b><i>TOTAL</i></b>			<b>293,080,808</b>

33. Combined, approximately 293 million adult impressions will be generated over the life of the Program. Clicking on the Banner Notice brings readers to the Case Website where they can obtain detailed information about the case.

***Behaviorally Targeted Digital Media***

34. In addition to the traditional digital banner notice program outlined above, the Notice Program included a hyper-targeted banner campaign that began on November 1, 2018 and will continue to run through the month of December.

35. Banner Notices were first targeted using a “list activation” strategy through the *Conversant Ad Network*. This was accomplished by matching the actual names and physical/email addresses of known Class Members with current consumer profiles. This strategy ensured that specific individuals receiving direct notice were also provided reminder messaging online via banner ads.

36. Banner Notices were then targeted using household-level automotive data, also through *Conversant Ad Network*. This information included owners and lessees of specific vehicle makes, models, and years included in the Settlement to which Banner Notices were then served.

37. Finally, Banner Notices were purchased via *Facebook* and *Instagram* (mobile) targeted specifically to the profiles of individuals who have expressed an interest in or like pages related to the Subject Vehicles. A summary of these behaviorally targeted efforts is as follows.

<i>Network/Property</i>	<i>Targeting</i>	<i>Run Dates</i>	<i>Delivered Impressions</i>
<i>Conversant Ad Network</i>	List Activation	10/9-11/12	7,142,855
<i>Conversant Ad Network</i>	Automotive Data	10/9-11/12	8,500,000

<i>Facebook</i>	Ford	10/9-11/12	10,000,000
<i>Instagram - Mobile</i>	Ford	10/9-11/12	1,500,000
<b><i>TOTAL</i></b>			<b>27,142,855</b>

38. Combined, approximately 27.1 million behaviorally targeted adult impressions will be generated by these Banner Notices. Examples of the Banner Notices are included as **Exhibit 6**.

#### ***Internet Sponsored Search Listings***

39. To facilitate locating the case website, sponsored search listings are being acquired on the three most highly-visited internet search engines: *Google, Yahoo!* and *Bing*. When search engine visitors search on common keyword combinations, such as “Airbag Class Action,” “Takata Airbag Lawsuit,” and “Ford Airbag Settlement,” the sponsored search listing is displayed at the top of the page prior to the search results or in the upper right hand column.

40. As of November 2, 2018, the sponsored listings have been displayed 46,675 times, resulting in 13,633 clicks that displayed the case website. A complete list of the sponsored search keyword combinations is included as **Exhibit 7**. Examples of the sponsored search listing as displayed on each search engine are included as **Exhibit 8**.

#### ***Informational Release***

41. To build additional reach and extend exposures, a party-neutral Informational Release was issued on October 9, 2018 to approximately 5,000 general media (print and broadcast) outlets across North America and 5,400 online databases and websites. The Informational Release served a valuable function by providing additional notice exposures beyond that which was provided by the paid media. A copy of the Informational Release is included as **Exhibit 9**.

*Case Website, Toll-free Telephone Number, Postal Mailing Address and Email Address*

42. On May 18, 2017, a neutral, informational website in both English and Spanish was established for the Toyota, Subaru, Mazda and BMW Settlements. The website has an easy-to-remember domain name ([www.AutoAirbagSettlement.com](http://www.AutoAirbagSettlement.com)). The website was initially set up when the first four Settlements were filed and included very basic information. After the Court issued Preliminary Approval, the website was first expanded to include detailed information on each Settlement and later a fully functional online claim filing process. On October 8, 2018, the website was updated to add the Ford Settlement.

43. The website is configured with a homepage with basic information about the lawsuit and the settlements. Prominent buttons are shown that link to more detailed information on each settlement. Also on the homepage are prominent links that allow Class Members to easily begin filing a claim and to do a quick check to see if their vehicle VIN is included in the Settlements. A screenshot of the [AutoAirbagSettlement.com](http://AutoAirbagSettlement.com) homepage is included as **Exhibit 10**.

44. At each OEM-specific page, Class Members can review documents including the Long Form Notice, Settlement Agreement, Preliminary Approval Order, list of Subject Vehicles and many other relevant documents. Each OEM page includes a summary of all relevant dates and deadlines and answers to frequently asked questions. Visitors to each OEM page have the option to view the page in either English or Spanish. Class Members who wish to file a claim online can do so easily via a link on each OEM page (in addition to the link on the main homepage). Or, if they choose, Class Members are able to download and print a physical claim form for filing via mail. The Settlement website is constantly updated as needed and will remain open for as long as the Court directs.

45. The Settlement website address was displayed prominently on all notice documents. The Banner Notices linked directly to the case website.

46. For all seven OEMs, including Ford, as of November 2, 2018, there have been 4,196,392 visits, represented by 3,208,359 unique users to the case website and over 21,920,327 website pages presented. As of November 2, 2018, new users represented 13.8% of visitors to the case website.

47. On May 18, 2017, a toll-free phone number (1-888-735-5596) was established (in both English and Spanish) for the Toyota, Subaru, Mazda and BMW Settlements (with the Honda settlement added later). Callers hear a general introductory message and are then able to select options to hear additional information and/or request that a Long Form Notice be mailed to them or speak to a live operator. On October 8, 2018, the toll-free phone number was updated to add the Ford Settlement. This automated phone system is available 24 hours per day, 7 days per week. For all seven OEMs, including Ford, as of November 2, 2018, the toll-free number has handled 487,319 calls representing 3,120,943 minutes of use and live operators have handled 176,328 incoming calls representing 1,333,185 minutes of use. Live operators have also made 11,239 outbound calls representing 24,357 minutes of use.

48. A post office box and an email inbox have also been established for the Settlements, allowing Class Members to contact the claims administrator by mail and email with any specific requests or questions. As of November 2, 2018, 5,405 pieces of correspondence and 39,998 emails have been received.



### PLAIN LANGUAGE NOTICE DESIGN

49. The proposed Notices were designed to be “noticed,” reviewed, and—by presenting the information in plain language—understood by Class Members. The Notices contained substantial, yet easy-to-read, summaries of all of the key information about Class Members’ rights and options to encourage readership and comprehension.

50. The Direct Mail Notices featured a prominent headline specific to Ford that informed recipients that, “they may be entitled to a payment from a class action settlement,” in bold text. The Direct Mail Notice was clearly identified as a notice from the District Court, with the address side including the statement that it was an, “**Important Legal Notice from the United States District Court for the Southern District of Florida.**” These design elements alerted recipients and readers that the Notice was an important document authorized by a court and that the content affected them, thereby supplying reasons to read the Notice.

51. The Long Form Notice provided substantial information to Settlement Class Members. The Notice began with a summary section, which provided a concise overview of important information about the Settlement. A table of contents, categorized into logical sections, helped to organize the information, while a question and answer format made it easy to find answers to common questions by breaking the information into simple headings.

52. The Long Form Notice is available in English and Spanish at the website.

### CONCLUSION

53. In class action notice planning, execution, and analysis, we are guided by due process considerations under the United States Constitution, by federal and local rules and statutes, and further by case law pertaining to notice. This framework directs that the notice program be

designed to reach the greatest practicable number of potential class members and, in a settlement class action notice situation such as this, that the notice or notice program itself not limit knowledge of the availability of benefits—nor the ability to exercise other options—to class members in any way. All of these requirements were met in this case.

54. The Notice Program described above is providing the best notice practicable under the circumstances of this case, conforming to all aspects of Federal Rule of Civil Procedure 23, and comporting with the guidance for effective notice articulated in the Manual for Complex Litigation 4th. As reported above, the Notice Plan will effectively reach more than 95% of the Settlement Class Members.


55. Many courts have accepted and understood that a 75 or 80 percent reach is more than adequate. In 2010, the Federal Judicial Center issued a Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide. This Guide states that, “the lynchpin in an objective determination of the adequacy of a proposed notice effort is whether all the notice efforts together will reach a high percentage of the class. It is reasonable to reach between 70–95%.”<sup>5</sup> Here, with an extensive individual mailed notice effort to virtually all Ford Class Members and a comprehensive media program that will reach approximately 80.8% all U.S. Adults aged 18+ who own or lease one of the Ford Subject Vehicles, we have implemented a Notice Plan that is at the top end of that range.

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<sup>5</sup> FED. JUDICIAL CTR., JUDGES’ CLASS ACTION NOTICE AND CLAIMS PROCESS CHECKLIST AND PLAIN LANGUAGE GUIDE 3 (2010), available at [http://www.fjc.gov/public/pdf.nsf/lookup/NotCheck.pdf/\\$file/NotCheck.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/NotCheck.pdf/$file/NotCheck.pdf).

56. I will provide a supplemental declaration to the Court prior to the Final Approval Hearing confirming the completion of all media placements, providing information on re-mailing totals and updating the administration statistics.

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 2, 2018.

  
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Cameron R. Azari, Esq.

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# Exhibit 1

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
Miami Division**

**MDL No. 2599  
Master File No. 15-MD-02599-MORENO  
S.D. Fla. Case No. 1:14-cv-24009-MORENO**

**IN RE: TAKATA AIRBAG PRODUCTS  
LIABILITY LITIGATION**

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**THIS DOCUMENT RELATES TO:**

**ECONOMIC LOSS TRACK CASES  
AGAINST FORD MOTOR COMPANY**

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**DECLARATION OF STEPHANIE J. FIERECK, ESQ.  
ON IMPLEMENTATION OF CAFA NOTICE**

I, STEPHANIE J. FIERECK, ESQ., hereby declare and state as follows:

1. My name is Stephanie J. Fiereck, Esq. I am over the age of 21 and I have personal knowledge of the matters set forth herein, and I believe them to be true and correct.
2. I am the Legal Notice Manager for Epiq Legal Noticing, a firm that specializes in designing, developing, analyzing and implementing large-scale, un-biased, legal notification plans.
3. Epiq Legal Noticing is a division of Epiq Class Action & Claims Solutions, Inc. (“Epiq”), a firm with more than 20 years of experience in claims processing and settlement administration. Epiq’s class action case administration services include coordination of all notice requirements, design of direct-mail notices, establishment of fulfillment services, receipt and processing of opt-outs, coordination with the United States Postal Service, claims database management, claim adjudication, funds management and distribution services.
4. The facts in this Declaration are based on what I personally know, as well as information provided to me in the ordinary course of my business by my colleagues at Epiq.

**DECLARATION OF STEPHANIE J. FIERECK, ESQ.  
ON IMPLEMENTATION OF CAFA NOTICE**

**CAFA NOTICE IMPLEMENTATION**

5. At the direction of counsel for the Defendant Ford Motor Company, 57 officials, which included the Attorney General of the United States and the Attorneys General of each of the 50 states, the District of Columbia and the United States Territories were identified to receive the CAFA notice.

6. Epiq maintains a list of these state and federal officials with contact information for the purpose of providing CAFA notice. Prior to mailing, the names and addresses selected from Epiq's list were verified, then run through the Coding Accuracy Support System ("CASS") maintained by the United States Postal Service ("USPS").<sup>1</sup>

7. On July 26, 2018, Epiq sent 57 CAFA Notice Packages ("Notice"). The Notice was mailed by certified mail to 56 officials, including the Attorneys General of each of the 50 states, the District of Columbia and the United States Territories. The Notice was also sent by United Parcel Service ("UPS") to the Attorney General of the United States. The CAFA Notice Service List (USPS Certified Mail and UPS) is attached hereto as **Attachment 1**.

8. The materials sent to the Attorneys General included a cover letter with an exhibit which provided notice of the proposed settlement of the above-captioned case. The cover letter and exhibit are attached hereto as **Attachment 2**.

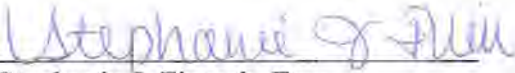
9. The cover letter was accompanied by a CD, which included the following:
- a. Class Action Complaint, *Dunn v. Takata Corp.*, Case No. 1:14-cv-24009 (S.D. Fla.);
  - b. Amended Consolidated Class Action Complaint (ECF No. 544);

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<sup>1</sup> CASS improves the accuracy of carrier route, 5-digit ZIP®, ZIP + 4® and delivery point codes that appear on mail pieces. The USPS makes this system available to mailing firms who want to improve the accuracy of postal codes, i.e., 5-digit ZIP®, ZIP + 4®, delivery point (DPCs), and carrier route codes that appear on mail pieces.

- c. Second Amended Consolidated Class Action Complaint (ECF No. 579);
- d. Third Amended Consolidated Class Action Complaint (ECF No. 1895);
- e. Revised Third Amended Consolidated Class Action Complaint (ECF No. 1969);
- f. Fourth Amended Consolidated Class Action Complaint (ECF No. 2670); and
- g. Plaintiffs' Unopposed Motion for Preliminary Approval of Ford Class Settlement, Preliminary Certification of Settlement Class, and Approval of Class Notice and Incorporated Memorandum of Law (ECF No. 2909), which includes as "Exhibit A" a complete copy of the proposed Settlement Agreement with all exhibits, including the proposed Class Notice documents, proposed Preliminary Approval Order, and proposed Final Approval Order.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 2, 2018.

  
Stephanie J. Fiereck, Esq.

# Attachment 1



## CAFA Notice Service List

## USPS Certified Mail

Company	FullName	Address1	Address2	City	State	Zip
Office of the Attorney General	Jahna Lindemuth	PO Box 110300		Juneau	AK	99811
Office of the Attorney General	Steve Marshall	501 Washington Ave		Montgomery	AL	36104
Office of the Attorney General	Leslie Carol Rutledge	323 Center St	Suite 200	Little Rock	AR	72201
Office of the Attorney General	Mark Brnovich	2005 N Central Ave		Phoenix	AZ	85004
Office of the Attorney General	CAFA Coordinator	Consumer Law Section	455 Golden Gate Ave Ste 11000	San Francisco	CA	94102
Office of the Attorney General	Cynthia Coffman	Ralph L Carr Colorado Judicial Center	1300 Broadway 10th Fl	Denver	CO	80203
Office of the Attorney General	George Jepsen	55 Elm St		Hartford	CT	06106
Office of the Attorney General	Karl A. Racine	441 4th St NW		Washington	DC	20001
Office of the Attorney General	Matt Denn	Carvel State Office Bldg	820 N French St	Wilmington	DE	19801
Office of the Attorney General	Pam Bondi	State of Florida	The Capitol PL-01	Tallahassee	FL	32399
Office of the Attorney General	Chris Carr	40 Capitol Square SW		Atlanta	GA	30334
Department of the Attorney General	Russell Suzuki	425 Queen St		Honolulu	HI	96813
Iowa Attorney General	Thomas J Miller	1305 E Walnut St		Des Moines	IA	50319
Office of the Attorney General	Lawrence G Wasden	700 W Jefferson St Ste 210	PO Box 83720	Boise	ID	83720
Office of the Attorney General	Lisa Madigan	100 W Randolph St		Chicago	IL	60601
Indiana Attorney General's Office	Curtis T Hill Jr	Indiana Government Center South	302 W Washington St 5th Fl	Indianapolis	IN	46204
Office of the Attorney General	Derek Schmidt	120 SW 10th Ave 2nd Fl		Topeka	KS	66612
Office of the Attorney General	Andy Beshear	Capitol Ste 118	700 Capitol Ave	Frankfort	KY	40601
Office of the Attorney General	Jeff Landry	1885 N Third St		Baton Rouge	LA	70802
Office of the Attorney General	Maura Healey	1 Ashburton Pl		Boston	MA	02108
Office of the Attorney General	Brian E. Frosh	200 St Paul Pl		Baltimore	MD	21202
Office of the Attorney General	Janet T Mills	6 State House Sta		Augusta	ME	04333
Department of Attorney General	Bill Schuette	PO Box 30212		Lansing	MI	48909
Office of the Attorney General	Lori Swanson	445 Minnesota St	Suite 1400	St Paul	MN	55101
Missouri Attorney General's Office	Josh Hawley	PO Box 899		Jefferson City	MO	65102
MS Attorney General's Office	Jim Hood	Walter Sillers Bldg	550 High St Ste 1200	Jackson	MS	39201
Office of the Attorney General	Tim Fox	Department of Justice	PO Box 201401	Helena	MT	59620
Attorney General's Office	Josh Stein	9001 Mail Service Ctr		Raleigh	NC	27699
Office of the Attorney General	Wayne Stenehjem	State Capitol	600 E Boulevard Ave Dept 125	Bismarck	ND	58505
Nebraska Attorney General	Doug Peterson	2115 State Capitol		Lincoln	NE	68509
Office of the Attorney General	Gordon MacDonald	NH Department of Justice	33 Capitol St	Concord	NH	03301
Office of the Attorney General	Gurbir S Grewal	8th Fl West Wing	25 Market St	Trenton	NJ	08625
Office of the Attorney General	Hector Balderas	408 Galisteo St	Villagra Bldg	Santa Fe	NM	87501
Office of the Attorney General	Adam Paul Laxalt	100 N Carson St		Carson City	NV	89701
Office of the Attorney General	Barbara Underwood	The Capitol		Albany	NY	12224
Office of the Attorney General	Mike DeWine	30 E Broad St 14th Fl		Columbus	OH	43215
Office of the Attorney General	Mike Hunter	313 NE 21st St		Oklahoma City	OK	73105
Office of the Attorney General	Ellen F Rosenblum	Oregon Department of Justice	1162 Court St NE	Salem	OR	97301
Office of the Attorney General	Josh Shapiro	16th Fl Strawberry Square		Harrisburg	PA	17120
Office of the Attorney General	Peter Kilmartin	150 S Main St		Providence	RI	02903
Office of the Attorney General	Alan Wilson	Rembert Dennis Office Bldg	1000 Assembly St Rm 519	Columbia	SC	29201
Office of the Attorney General	Marty J Jackley	1302 E Hwy 14 Ste 1		Pierre	SD	57501
Office of the Attorney General	Herbert H. Slatery III	PO Box 20207		Nashville	TN	37202
Office of the Attorney General	Ken Paxton	300 W 15th St		Austin	TX	78701
Office of the Attorney General	Sean D. Reyes	Utah State Capitol Complex	350 North State St Ste 230	Salt Lake City	UT	84114
Office of the Attorney General	Mark R. Herring	202 North Ninth Street		Richmond	VA	23219
Office of the Attorney General	TJ Donovan	109 State St		Montpelier	VT	05609
Office of the Attorney General	Bob Ferguson	800 Fifth Avenue	Suite 2000	Seattle	WA	98104
Office of the Attorney General	Brad D. Schimel	PO Box 7857		Madison	WI	53707
Office of the Attorney General	Patrick Morrissey	State Capitol Complex	Bldg 1 Room E 26	Charleston	WV	25305
Office of the Attorney General	Peter K Michael	2320 Capitol Avenue		Cheyenne	WY	82002
Department of Legal Affairs	Talauega Eleasalo V. Ale	Executive Office Building	3rd Floor	Pago Pago	AS	96799
Attorney General Office of Guam	Elizabeth Barrett-Anderson	ITC Building	590 S Marine Corps Dr Ste 901	Tamuning	GU	96913
Office of the Attorney General	Edward Manibusan	Administration Bldg	PO Box 10007	Saipan	MP	96950
PR Department of Justice	Wanda Vazquez Garced	Apartado 9020192		San Juan	PR	00902
Department of Justice	Claude Walker	34-38 Kronprindsens Gade	GERS Bldg 2nd Fl	St Thomas	VI	00802

**CAFA Notice Service List**

**UPS**

Company	FullName	Address1	Address2	City	State	Zip
US Department of Justice	Jeff Sessions	950 Pennsylvania Ave NW		Washington	DC	20530

# Attachment 2

McGuireWoods LLP  
201 North Tryon Street  
Suite 3000  
Charlotte, NC 28202-  
2146  
Phone: 704.343.2000  
Fax: 704.343.2300  
www.mcguirewoods.com

R. Kent Warren  
Direct: 704.343.2365

McGUIREWOODS

kwarren@mcguirewoods.com  
Fax: 704.805.5081

July 26, 2018

**VIA UPS OR USPS CERTIFIED MAIL**

Jeff Sessions  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

The Attorneys General identified  
in the attached Exhibit A

**Re: Notice of Proposed Class Settlement in In re Takata Airbag Product Liability Litigation, Case No. 15-MD-02599-MORENO (S.D. Fla.)**

Dear Mr. Sessions and Attorneys General:

Pursuant to 28 U.S.C. § 1715, enacted as a component of the Class Action Fairness Act of 2005 (“CAFA”), Defendant Ford Motor Company hereby provides your office with notice of proposed class settlement in the above-referenced matter pending in the United States District Court for the Southern District of Florida before Judge Federico A. Moreno.

Pursuant to 28 U.S.C. § 1715(b)(1), (3), and (4), please find copies of the following documents on the enclosed CD:

- Class Action Complaint, *Dunn v. Takata Corp.*, Case No. 1:14-cv-24009 (S.D. Fla.);
- Amended Consolidated Class Action Complaint (ECF No. 544);
- Second Amended Consolidated Class Action Complaint (ECF No. 579);
- Third Amended Consolidated Class Action Complaint (ECF No. 1895);
- Revised Third Amended Consolidated Class Action Complaint (ECF No. 1969);
- Fourth Amended Consolidated Class Action Complaint (ECF No. 2670); and

July 26, 2018

Page 2

- Plaintiffs' Unopposed Motion for Preliminary Approval of Ford Class Settlement, Preliminary Certification of Settlement Class, and Approval of Class Notice and Incorporated Memorandum of Law (ECF No. 2909), which includes as "Exhibit A" a complete copy of the proposed Settlement Agreement with all exhibits, including the proposed Class Notice documents, proposed Preliminary Approval Order, and proposed Final Approval Order.

Pursuant to 28 U.S.C. § 1715(b)(2), no judicial hearings are currently scheduled in the above-referenced matter.

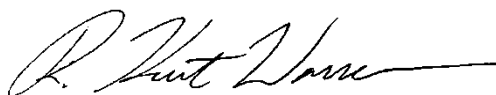
Pursuant to 28 U.S.C. § 1715(b)(5), (6), and (8), please be advised that there are no other settlements or agreements made contemporaneously between counsel and the parties, that the Court has yet to order any final judgment or notice of dismissal, and that there are no written judicial opinions relating to any of the above-referenced materials.

Pursuant to 28 U.S.C. § 1715(b)(7), it is not presently feasible to provide a complete list of class members residing in each state and territory potentially encompassed within the proposed settlement. Ford Motor Company reasonably estimates that there are more than 6 million putative settlement class members among the fifty states, the District of Columbia, and the territories of the United States (together, "the States"). Because the mailing list for Class Notice has not yet been obtained, Ford does not presently know the number of class members residing in the States or the proportionate share of the claims of such members to the entire settlement. Nevertheless, Ford reasonably believes that the number of class members, and the proportionate share of their claims, would be spread among the States roughly in proportion to the population of the States.

Should you have any questions regarding this matter, please do not hesitate to contact me directly.

Sincerely,

MCGUIREWOODS LLP



R. Kent Warren

Enclosures

Exhibit A  
103  
Distribution List

Company	FullName	Address1	Address2	City	State	Zip
Office of the Attorney General	Jahna Lindemuth	PO Box 110300		Juneau	AK	99811
Office of the Attorney General	Steve Marshall	501 Washington Ave		Montgomery	AL	36104
Office of the Attorney General	Leslie Carol Rutledge	323 Center St	Suite 200	Little Rock	AR	72201
Office of the Attorney General	Mark Brnovich	2005 N Central Ave		Phoenix	AZ	85004
Office of the Attorney General	CAFA Coordinator	Consumer Law Section	455 Golden Gate Ave Ste 11000	San Francisco	CA	94102
Office of the Attorney General	Cynthia Coffman	Ralph L Carr Colorado Judicial Center	1300 Broadway 10th Fl	Denver	CO	80203
Office of the Attorney General	George Jepsen	55 Elm St		Hartford	CT	06106
Office of the Attorney General	Karl A. Racine	441 4th St NW		Washington	DC	20001
Office of the Attorney General	Matt Denn	Carvel State Office Bldg	820 N French St	Wilmington	DE	19801
Office of the Attorney General	Pam Bondi	State of Florida	The Capitol PL-01	Tallahassee	FL	32399
Office of the Attorney General	Chris Carr	40 Capitol Square SW		Atlanta	GA	30334
Department of the Attorney General	Russell Suzuki	425 Queen St		Honolulu	HI	96813
Iowa Attorney General	Thomas J Miller	1305 E Walnut St		Des Moines	IA	50319
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Indiana Attorney General's Office	Curtis T Hill Jr	Indiana Government Center South	302 W Washington St 5th Fl	Indianapolis	IN	46204
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MS Attorney General's Office	Jim Hood	Waller Sillers Bldg	550 High St Ste 1200	Jackson	MS	39201
Office of the Attorney General	Tim Fox	Department of Justice	PO Box 201401	Helena	MT	59620
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Office of the Attorney General	Adam Paul Laxalt	100 N Carson St		Carson City	NV	89701
Office of the Attorney General	Barbara Underwood	The Capitol		Albany	NY	12224
Office of the Attorney General	Mike DeWine	30 E Broad St 14th Fl		Columbus	OH	43215
Office of the Attorney General	Mike Hunter	313 NE 21st St		Oklahoma City	OK	73105
Office of the Attorney General	Ellen F Rosenblum	Oregon Department of Justice	1162 Court St NE	Salem	OR	97301
Office of the Attorney General	Josh Shapiro	16th Fl Strawberry Square		Harrisburg	PA	17120
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Office of the Attorney General	Alan Wilson	Rembert Dennis Office Bldg	1000 Assembly St Rm 519	Columbia	SC	29201
Office of the Attorney General	Marty J Jackley	1302 E Hwy 14 Ste 1		Pierre	SD	57501
Office of the Attorney General	Herbert H. Slatery III	PO Box 20207		Nashville	TN	37202
Office of the Attorney General	Ken Paxton	300 W 15th St		Austin	TX	78701
Office of the Attorney General	Sean D. Reyes	Utah State Capitol Complex	350 North State St Ste 230	Salt Lake City	UT	84114
Office of the Attorney General	Mark R. Herring	202 North Ninth Street		Richmond	VA	23219
Office of the Attorney General	TJ Donovan	109 State St		Montpelier	VT	05609
Office of the Attorney General	Bob Ferguson	800 Fifth Avenue	Suite 2000	Seattle	WA	98104
Office of the Attorney General	Brad D. Schimel	PO Box 7857		Madison	WI	53707
Office of the Attorney General	Patrick Morrissey	State Capitol Complex	Bldg 1 Room E. 26	Charleston	WV	25305
Office of the Attorney General	Peter K Michael	2320 Capitol Avenue		Cheyenne	WY	82002
Department of Legal Affairs	Talauaga Eleasalo V. Ale	Executive Office Building	3rd Floor	Pago Pago	AS	96799
Attorney General Office of Guam	Elizabeth Barrett-Anderson	ITC Building	590 S Marine Corps Dr Ste 901	Tamuning	GU	96913
Office of the Attorney General	Edward Manibusan	Administration Bldg	PO Box 10007	Saipan	MP	96950
PR Department of Justice	Wanda Vazquez Garced	Apartado 9020192		San Juan	PR	00902
Department of Justice	Claude Walker	34-38 Kronprindsens Gade	GERS Bldg 2nd Fl	St Thomas	VI	00802

# Exhibit 2

Auto Airbag Settlement  
Settlement Notice Administrator  
PO Box 3207  
Portland, OR 97208-3207



**THIS IS NOT A VEHICLE RECALL NOTICE**

**Important Legal Notice from the United States District Court for the Southern District of Florida.**

**This is a notice of a class action settlement, not a notice of a vehicle recall.** If you have received a recall notice for your Ford, Lincoln, or Mercury vehicle and have not yet had your Takata airbags repaired, you should do so as soon as possible. However, your vehicle may not be recalled, or may be recalled for repair at a later date (refer to NHTSA website [safercar.gov](http://safercar.gov) for the list of recalled vehicles and recall service schedule). Please call the toll free number or access the website noted below if you have any questions. **When recalled Takata airbags deploy, they may spray metal debris toward vehicle occupants and may cause serious injury.**





Case 1:15-md-02599-FAM Document 3069-2 Entered on FL SD Docket 11/02/2018 Page 32 of 103

## Current and former owners and lessees of certain Ford, Lincoln, or Mercury vehicles with a Takata airbag may be entitled to a payment from a class action settlement.

*Si desea recibir esta notificación en español, llámenos o visite nuestra página web.*

A \$299.1 million Settlement has been reached in a class action lawsuit alleging that Ford Motor Company (“Ford”) manufactured and sold vehicles that contained allegedly defective airbags made by Takata Corporation and its affiliates (“Takata”). Ford denies the allegations in the lawsuit, and the Court has not decided who is right. The \$299.1 million Settlement Amount, less a 20% credit for the Enhanced Rental Car/Loaner Program, will be funded over time and will be used for all relief and associated costs, as further discussed in the Settlement Agreement. **The purpose of this notice is to inform you of the class action and the proposed settlement so that you may decide what to do.**

**Who’s Included? Ford’s records indicate that you may be a Class Member.** The Settlement offers potential payments and other benefits to current and former owners and lessees of certain Ford, Lincoln or Mercury vehicles that have or had Takata airbags, which are, may or will be subject to a Recall (“Subject Vehicles”). A complete list of Subject Vehicles currently included in the Settlement is posted on the [www.AutoAirbagSettlement.com](http://www.AutoAirbagSettlement.com) Settlement Website. This Settlement does not involve claims of personal injury.

**What Are the Settlement Terms?** The Settlement offers several benefits, including reimbursement of reasonable out-of-pocket expenses related to the Takata airbag recall, an Enhanced Rental Car/Loaner Program for owners or lessees of certain Subject Vehicles, an Outreach Program to maximize completion of the recall remedy, additional payments to Class Members from residual Settlement funds, if any remain, up to a maximum of \$500, and a Customer Support Program to help with repairs associated with replacement airbag inflators. For further details about the Settlement, including the relief, eligibility, and release of claims, you can review the Settlement Agreement at the website, [www.AutoAirbagSettlement.com](http://www.AutoAirbagSettlement.com).

**How Can I Get a Payment?** You must file a Claim to receive a payment during the first four years of the Settlement. Visit the website and file a Claim online or you can download one and file by mail. The deadline to file a Claim will depend on the recall or repair date of your Subject Vehicle and will be at least one year from the date the Settlement is finalized. All deadlines will be posted on the website when they are known.

**Your Other Options.** If you do not want to be legally bound by the Settlement, you must exclude yourself by **November 26, 2018**. If you do not exclude yourself, you will release any claims you may have against Ford and the Released Parties and be eligible to receive certain settlement benefits, as more fully described in the Settlement Agreement, available at the Settlement Website. You may object to the Settlement by **November 26, 2018**. You cannot both exclude yourself from, and object to, the Settlement. The Long Form Notice available on the website listed below explains how to exclude yourself or object. The Court will hold a hearing on **December 11, 2018** to consider whether to finally approve the Settlement and a request for attorneys’ fees of up to 25% of the Settlement Amount and awards of \$5,000 to each of the Class Representatives. You may appear at the hearing, either yourself or through an attorney hired by you, but you don’t have to. For more information, call or visit the website below.

# Exhibit 3

# **If You Currently or Previously Owned, Purchased, or Leased Certain Ford, Lincoln, or Mercury Vehicles, You Could Get a Cash Payment and Other Benefits from a Class Action Settlement.**

**THIS IS NOT A VEHICLE RECALL NOTICE. Your vehicle may not be recalled, or may be recalled at a later date. Please see [www.AirBagRecall.com](http://www.AirBagRecall.com) for further details about whether your vehicle is recalled and, if so, what you should do.**

*Para ver este aviso en español, visita [www.AutoAirbagSettlement.com](http://www.AutoAirbagSettlement.com)*

- There is a proposed settlement in a class action lawsuit against Takata Corporation, its affiliates, and those automotive companies to whom Takata supplied certain airbag products. The settlement resolves certain claims against Ford Motor Company (“Ford”) that were based on the inclusion of those Takata airbag products in certain Ford, Lincoln, and Mercury vehicles (“Ford vehicles”). Those people included in the settlement have legal rights, options and deadlines by which they must exercise them.
- You are included if you own or owned, or lease or leased certain Ford, Lincoln, or Mercury vehicles (which are listed in Question 3 below) as of certain dates specified below.
- The proposed settlement provides for several benefits, including, among other things, an Enhanced Rental Car/Loaner Program, Out-of-Pocket Claims Process, Customer Support Program, and Residual Distribution. There is also an Outreach Program which encourages Ford customers to participate in a recall of Takata airbag inflators.

**If you have received a separate recall notice for your Ford, Lincoln, or Mercury vehicle and have not yet had your airbags replaced, you should do so as soon as possible.**

Please read this Notice carefully. Your legal rights are affected, whether you act or do not act. You are encouraged to periodically check the website, [www.AutoAirbagSettlement.com](http://www.AutoAirbagSettlement.com), because it will be updated with additional information.

## **A. BASIC INFORMATION**

### **1. What is this Notice about?**

A Court authorized this Notice because you have a right to know about a proposed settlement of a class action lawsuit and about all of your options and associated deadlines before the Court decides whether to give final approval to the settlement. The name of the lawsuit is *In Re: Takata Airbag Product Liability Litigation*, No. 15-MD-2599-FAM. Takata and several automotive companies

have been named as defendants in the litigation, including Ford. This Notice explains the lawsuit, the proposed settlement, and your legal rights. You are NOT being sued. The Court still has to decide whether to finally approve the settlement. Payments and other benefits will be distributed only if the Court finally approves the settlement and, subject to the terms of the Settlement, the settlement approval is upheld after any appeals. Please be patient and check the website identified in this Notice regularly. Please do not contact Ford Dealers regarding the details of this settlement while it is pending before the Court.

*Your legal rights may be affected even if you do not act.  
Please read this Notice carefully.*

## YOUR RIGHTS AND CHOICES

<i><b>YOU MAY:</b></i>		<i><b>DATE/CLAIM PERIOD</b></i>
<b>FILE A REGISTRATION / CLAIM FORM(S)</b>	<p>This is the only way that you can receive cash payments for which you may be eligible from the Out-of-Pocket Claims Process or the Residual Distribution, if any funds remain, prior to the Final Claim/Registration Deadline.</p> <p>There are different deadlines to file a claim depending on your situation. The column to the right explains those deadlines.</p>	<p><i>(a) Class Members who, before September 5, 2018, sold or returned, pursuant to a lease, a Subject Vehicle will have one year from the Effective Date to submit a Registration/Claim Form.</i></p> <p><i>(b) Class Members who owned or leased a Subject Vehicle on September 5, 2018 shall have one year from the Effective Date or one year from the date of the performance of the Recall Remedy on their Subject Vehicle, whichever is later, to submit a Registration/Claim Form, but no Registration/Claim Forms may be submitted after the Final Registration/Claim Deadline.</i></p> <p><i>The Effective Date and Final Registration/Claim Deadline, when known, will be posted on the Settlement website.</i></p>

**QUESTIONS? CALL TOLL FREE 1-888-735-5596 OR VISIT WWW.AUTOAIRBAGSETTLEMENT.COM  
PLEASE CONTINUE TO CHECK THE WEBSITE AS IT WILL BE PERIODICALLY UPDATED  
PLEASE DO NOT CALL THE JUDGE OR THE CLERK OF COURT**

<p><b>OBTAIN OTHER SETTLEMENT BENEFITS</b></p>	<p>If you are a Class Member, you may also be eligible to participate in the Enhanced Rental Car/Loaner Program and/or receive benefits from the Customer Support Program.</p> <p>As part of the Enhanced Rental Car/Loaner Program, Ford shall provide a rental/loaner vehicle to Class Members while they are waiting for the Recall Remedy to be performed on their Subject Vehicles.</p> <p>Ford shall provide the Customer Support Program that will provide prospective coverage for repairs and adjustments for the Takata phase-stabilized ammonium nitrate or “PSAN” inflators and their replacements installed through the Recall Remedy.</p> <p>There is an Outreach Program that is designed to maximize completion of the Recall Remedy.</p>	
<p><b>OBJECT</b></p>	<p>Write to the Court about why you do not like the proposed settlement.</p>	<p><i>November 26, 2018</i></p>
<p><b>EXCLUDE YOURSELF</b></p>	<p>Ask to get out (opt out) of the proposed settlement. If you do this, you are not entitled to any of the settlement benefits, but you keep your right to sue Ford about the issues in your own lawsuit.</p>	<p><i>November 26, 2018</i></p>
<p><b>APPEAR IN THE LAWSUIT OR GO TO THE FAIRNESS HEARING</b></p>	<p>You are not required to enter an appearance in the lawsuit in order to participate in the proposed settlement, but you may enter an appearance on your own or through your own lawyer in addition to filing an objection if you do not opt out. You can also ask to speak in Court at the Fairness Hearing about the proposed settlement, if you have previously filed an objection and submitted a timely notice of intention to appear at the Fairness Hearing.</p>	<p><i>Appearance deadline is November 26, 2018</i></p> <p><i>The Court will hold the Fairness Hearing at 10:00am (ET) on December 11, 2018</i></p>
<p><b>DO NOTHING</b></p>	<p>You may not receive certain settlement benefits that you may otherwise be eligible for and you give up the right to sue Ford about the issues in the lawsuit.</p>	

**2. What is the lawsuit about?**

The lawsuit alleges that certain automotive companies, including Ford, manufactured, distributed, or sold certain vehicles containing allegedly defective Takata airbag inflators manufactured by Defendants Takata Corporation and TK Holdings, Inc. that allegedly could, upon deployment, rupture and expel debris or shrapnel into the occupant compartment and/or otherwise affect the airbag’s deployment, and that the plaintiffs sustained economic losses as a result thereof.

The lawsuit claims violations of various state consumer protection statutes, among other claims. You can read the Fourth Amended Consolidated Class Action Complaint by visiting [www.AutoAirbagSettlement.com](http://www.AutoAirbagSettlement.com). Ford denies that it has violated any law, and denies that it engaged in any wrongdoing with respect to the manufacture, distribution, or sale of the Subject

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Vehicles. The parties agreed to resolve these matters before these issues were decided by the Court.

**This settlement does not involve claims of personal injury or property damage to any property other than the Subject Vehicles.**

On October 27, 2014, Craig Dunn, Pam Koehler, Zulmarie Rivera, Tru Value Auto Malls, LLC, David M. Jorgensen, Anna Marie Brechtell Flattmann, Robert Redfearn, Jr., Tasha R. Severio, Kenneth G. Decie, Gregory McCarthy, Nicole Peaslee, Karen Switkowski, Anthony D. Dark, Lemon Auto Sales, Inc., Nathan Bordewich, Kathleen Wilkinson, Haydee Masisni, and Nancy Barnett filed a class action complaint in *Craig Dunn, et al. v. Takata Corp., et al.*, No. 1:14-cv-24009 (S.D. Fla.) (the “Economic Loss Class Action Complaint”), alleging, among other things, that certain automotive companies manufactured, distributed, or sold certain vehicles containing allegedly defective airbag inflators manufactured by Defendants Takata Corporation and TK Holdings, Inc. that allegedly could, upon deployment, rupture and expel debris or shrapnel into the occupant compartment and/or otherwise affect the airbag’s deployment, and that the plaintiffs sustained economic losses as a result thereof.

The Judicial Panel on Multidistrict Litigation subsequently consolidated the *Craig Dunn, et al.* action for pretrial proceedings with additional class and individual actions alleging similar or identical claims in *In re Takata Airbag Products Liability Litigation*, No. 1:15-md-02599-FAM (S.D. Fla.) (MDL 2599), pending before the Honorable Judge Federico A. Moreno in the United States District Court for the Southern District of Florida.

On March 17, 2015, the Court entered an Order Appointing Plaintiffs’ Counsel and Setting Schedule, which designated Peter Prieto of Podhurst Orseck, P.A. as Chair Lead Counsel, David Boies of Boies Schiller and Flexner, LLP, and Todd A. Smith of Power Rogers & Smith, PC, as Co-Lead Counsel in the Economic Loss track; Curtis Miner of Colson Hicks Eidson as Lead Counsel for the Personal Injury track; and Roland Tellis of Baron & Budd P.C., James Cecchi of Carella Byrne Cecchi Olstein P.C., and Elizabeth Cabraser of Lieff, Cabraser, Heimann & Bernstein, LLP as Plaintiffs’ Steering Committee members.

Plaintiffs filed an Amended Consolidated Class Action Complaint on April 30, 2015. On June 15, 2015, Plaintiffs (as defined below) filed a Second Amended Consolidated Class Action Complaint. On August 7, 2017, Plaintiffs filed a Revised Third Amended Class Action Complaint. On April 30, 2018, Plaintiffs filed a Fourth Amended Consolidated Class Action Complaint, which is the operative pleading for Plaintiffs’ Claims at this time.

A detailed description of the legal proceedings, including motions to dismiss, is set forth in the Settlement Agreement, which is on the settlement website [www.AutoAirbagSettlement.com](http://www.AutoAirbagSettlement.com).

On January 13, 2017, Defendant Takata Corporation signed a criminal plea agreement in which it admitted, among other things, that it “knowingly devised and participated in a scheme to obtain money and enrich Takata by, among other things, inducing the victim OEMs to purchase airbag systems from Takata that contained faulty, inferior, nonperforming, non-conforming, or dangerous PSAN inflators by deceiving the OEMs through the submission of false and fraudulent reports and other information that concealed the true and accurate test results for the inflators which the OEMs would not have otherwise purchased as they were.” On the same day, an indictment of three Takata employees on related charges was unsealed. Takata entered a guilty plea to one count of wire fraud before U.S. District Judge George Caram Steeh, as part of a settlement with the U.S. Department of Justice. *See U.S. v. Takata Corporation*, No. 2:16-cr-20810 GCS EAS, Dkt. No. 23 (E.D. Mich. Feb. 27, 2017).

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Written discovery and extensive document productions have taken place (more than a million documents have been produced), the Automotive Defendants have deposed more than 110 class representatives, and Plaintiffs have deposed at least 14 Takata witnesses and 47 witnesses from the Automotive Defendants.

### 3. What vehicles are included in the settlement?

The following Ford vehicles (called the “Subject Vehicles”) distributed for sale or lease in the United States, the District of Columbia, Puerto Rico or any other United States territories or possessions are included:

<u>Model Years</u>	<u>Make and Model</u>
2007-2010, 2015-2018	FORD EDGE
2006-2016	FORD FUSION
2005-2006	FORD GT
2005-2017	FORD MUSTANG
2004-2011	FORD RANGER
2015-2016	LINCOLN MKC
2007-2010, 2016-2018	LINCOLN MKX
2007-2016	LINCOLN MKZ
2006	LINCOLN ZEPHYR
2006-2011	MERCURY MILAN

### 4. Why is this a class action?

In a class action, people called “class representatives” sue on behalf of other people who have similar claims. All of these people together are the “Class” or “Class Members” if the Court approves this procedure. Once approved, the Court resolves the issues for all Class Members, except for those who exclude themselves from the Class.

### 5. Why is there a settlement?

Both sides in the lawsuit agreed to a settlement to avoid the cost and risk of further litigation, including a potential trial, and so that the Class Members can get benefits, in exchange for releasing Ford and the Released Parties from liability. The settlement does not mean that Ford broke any laws or did anything wrong, and the Court did not decide which side was right. This settlement has been preliminarily approved by the Court, which authorized the issuance of this Notice. The Class representatives/named plaintiffs and the lawyers representing them (called “Settlement Class Counsel”) believe that the settlement is in the best interests of all Class Members.

The essential terms of the settlement are summarized in this Notice. The Settlement Agreement along with all exhibits and addenda sets forth in greater detail the rights and obligations of the parties. If there is any conflict between this Notice and the Settlement Agreement, the Settlement Agreement governs.

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## B. WHO IS IN THE SETTLEMENT?

To see if you are affected or if you can get money or benefits, you first have to determine whether you are a Class Member.

### 6. How do I know if I am part of the settlement?

You are part of the settlement if you are:

- (1) a person or entity who or which owned and/or leased a Subject Vehicle distributed for sale or lease in the United States or any of its territories or possessions, as of September 5, 2018, or
- (2) a person or entity who or which formerly owned and/or leased a Subject Vehicle distributed for sale or lease in the United States or any of its territories or possessions, and who or which sold or returned, pursuant to a lease, a Subject Vehicle after June 19, 2014 and through September 5, 2018.

This is called the “Class.” Excluded from this Class are: (a) Ford, its officers, directors, and employees and outside counsel; its affiliates and affiliates’ officers, directors and employees; its distributors and distributors’ officers, directors and employees; and Ford’s Dealers and their officers and directors; (b) Settlement Class Counsel, Plaintiffs’ counsel and their employees; (c) judicial officers and their immediate family members and associated court staff assigned to this case, any of the cases listed on Exhibit 1 to the Settlement Agreement, or the 11th Circuit Court of Appeals; (d) Automotive Recyclers and their outside counsel and employees; and (e) persons or entities who or which timely and properly exclude themselves from the Class.

### 7. I’m still not sure if I’m included in the settlement.

If you are not sure whether you are included in the Class, you may call 1-888-735-5596. Please do not contact Ford Dealers regarding the details of this settlement while it is pending before the Court as the Court has ordered that all questions be directed to the Settlement Notice Administrator.

## C. THE SETTLEMENT BENEFITS—WHAT YOU GET AND HOW TO GET IT

### 8. What does the settlement provide?

If you are a Class Member, what you are eligible to receive depends on several factors. The settlement benefits are outlined generally below, and more information can be found on the settlement website. The Court still has to decide whether to finally approve the settlement.

**The proposed settlement benefits include, among other components, (i) Enhanced Rental/Car Loaner Program, (ii) Out-of-Pocket Claims Process, (iii) Customer Support Program, and (iv) Residual Distribution, if funds remain.**

We do not know when the Court will finally approve the settlement, if it does so, or whether there will be any appeals that would have to be resolved in favor of the settlement before certain benefits would be provided, so we do not know precisely when any benefits may be available. Please check [www.AutoAirbagSettlement.com](http://www.AutoAirbagSettlement.com) regularly for updates regarding the settlement.

*Please note that you may have to take action within certain deadlines to receive certain benefits, such as completing and submitting a Registration/Claim Form. If you do nothing, you may not*

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receive certain benefits from the settlement, and, as a Class Member, you will not be able to sue the Released Parties about the issues in the lawsuit.

**a. How will Ford fund the settlement and all of its components?**

As part of this settlement, Ford agrees to pay a total of \$299,100,000.00 less the 20% Enhanced Rental Car/Loaner Program Credit (explained in Question 8(b), below), into a Qualified Settlement Fund (“QSF”). The settlement amount is to be used to fund the settlement programs, excluding the Customer Service Program, and to make all other payments, including, but not limited to, notice, administrative, tax preparation, escrow fees and costs and other expenses related to the settlement. The settlement fund will also be used to pay attorneys’ fees and costs and incentive awards to class representatives, as awarded by the Court.

*Initial Payment:* Ford will make the first payment into the QSF not later than 30 calendar days after the Court issues the Preliminary Approval Order (the “Initial Payment”). The Initial Payment shall include:

- i. \$35,892,000 (12% of the total Settlement Amount), which is intended to be sufficient to pay for the first 12 months of the Outreach Program; and
- ii. \$522,000 which is intended to be sufficient to pay for the first 12 months of the Settlement Special Administrator’s costs and administrative costs.

*Second Payment:* Ford will pay into the QSF the amount sufficient to pay for notice costs, as directed by the Settlement Special Administrator, not later than twenty-one days after receipt of such direction from the Settlement Special Administrator.

*Third Payment:* Not later than 14 calendar days after the Court issues the Final Order and Final Judgment finally approving the settlement, Ford will deposit into the QSF the amount of attorneys’ fees and expenses awarded by the Court.

*Year One Payment:* Ford will deposit into the QSF, not later than 14 calendar days after the Effective Date, 30% of the amount remaining of the \$299,100,000, after subtracting the Initial Payment, the Second Payment, and the Third Payment, and further reduced by the applicable portion of the 20% Enhanced Rental Car/Loaner Program Credit.

*Year Two Payment:* Ford will deposit into the QSF, not later than one year after the Effective Date, 30% of the amount remaining of the \$299,100,000, after subtracting the Initial Payment, the Second Payment, and the Third Payment, and further reduced by the applicable portion of the 20% Enhanced Rental Car/Loaner Program Credit.

*Year Three Payment:* Ford will deposit into the QSF, not later than two years after the Effective Date, 20% of the amount remaining of the \$299,100,000, after subtracting the Initial Payment, the Second Payment, and the Third Payment, and further reduced by the applicable portion of the 20% Enhanced Rental Car/Loaner Program Credit.

*Year Four Payment:* Ford will deposit into the QSF, not later than three years after the Effective Date, the full amount remaining of the \$299,100,000, after subtracting the amounts above and further reduced by the applicable portion of the 20% Enhanced Rental Car/Loaner Program Credit.

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## **b. Enhanced Rental Car/ Loaner Program**

To address the inconvenience of waiting at a Ford dealership for Recall Repairs to be performed and to address the claimed anxiety, emotional distress or fear of driving a Subject Vehicle with an unrepaired recalled Takata inflator expressed by some owners and lessees, Ford will adopt and implement a policy to provide a loaner/rental car free of charge to owners and leases who request a vehicle, under the terms of the Enhanced Rental Car/Loaner Program.

Under the Enhanced Rental Car/Loaner Program, Ford will provide a rental/loaner vehicle to every owner or lessee who (i) brings a Subject Vehicle that has been recalled (*i.e.*, NHTSA has finally determined that the Subject Vehicle's inflators must be recalled) to a dealership for completion of the Recall Remedy and (ii) requests a rental/loaner vehicle while awaiting the Recall Remedy, while the Recall Remedy is in progress, or if there is a delay in performing the Recall Remedy on the recalled Subject Vehicle. The owner or lessee shall provide adequate proof of insurance, and if a rental car (as opposed to a loaner) is provided, the owner or lessee must meet the applicable rental car company's guidelines. The rental/loaner vehicle shall be made available until a Recall Remedy is performed on the Subject Vehicle, at which time the rental/loaner vehicle must be promptly returned to the provider of the rental/loaner vehicle in the same condition (excepting ordinary wear and tear) as received. Ford's obligation to pay rental costs or provide a loaner under this paragraph shall cease 7 days after notification that the Recall Remedy has been performed on the Subject Vehicle.

Ford will institute the Enhanced Rental Car/Loaner Program no later than September 5, 2018.

Ford shall receive a credit of 20% (\$59,820,000) of the overall Settlement Fund for providing the Enhanced Rental Car/Loaner Program. This credit shall be: (a) automatically applied at the beginning of the settlement program year for the Year One Payment, Year Two Payment, Year Three Payment and Year Four Payment; and (b) divided into four equal amounts for these yearly payments. Every six months, Ford shall certify to the Settlement Special Administrator that Ford is complying with the Enhanced Rental Car/Loaner Program. The Settlement Special Administrator shall have the right to audit and confirm such compliance.

## **c. Out-of-Pocket Claims Process**

If the settlement is finally approved, including resolving any appeals in favor of upholding the settlement, you can ask to be reimbursed for certain reasonable out-of-pocket expenses related to the Takata Airbag Inflator Recalls. To be eligible for reimbursement, you must submit a timely and fully completed Registration/Claim Form. The Registration/Claim Form is attached to this Notice and is also available on the settlement website [www.AutoAirbagSettlement.com](http://www.AutoAirbagSettlement.com). In no event shall a Class Member be entitled to more than one reimbursement payment per Recall Remedy performed on each Subject Vehicle they own(ed) or lease(d).

The Settlement Special Administrator will oversee the administration of the Out-of-Pocket Claims Process, including, but not limited to, the determination of types of reimbursable costs and the eligibility of claims for reimbursement. The types of eligible reimbursable costs are listed in the Registration/Claim Form, which also contains a statement that the Settlement Special Administrator may approve and pay for other reimbursable claims that the Settlement Special Administrator deems to be a reasonable out-of-pocket expense.

Reimbursable out-of-Pocket expenses: Ford and Plaintiffs, through their respective counsel, will make recommendations to the Settlement Special Administrator on what types of reasonable out-

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of-pocket expenses are reimbursable. Based on these recommendations, the Settlement Special Administrator shall consider those recommendations and develop a claim review protocol that will allow for reimbursement from the Settlement Fund to eligible Class Members for reasonable out-of-pocket expenses related to the Takata Airbag Inflator Recalls. The Parties agree that the following preliminary list of types of reasonable expenses may be reimbursed:

- (i) reasonable unreimbursed rental car and transportation expenses, after requesting and while awaiting the Recall Remedy from a Ford Dealer;
- (ii) reasonable towing charges to a Ford Dealer for completion of the Recall Remedy;
- (iii) reasonable childcare expenses necessarily incurred while the Recall Remedy is being performed on the Subject Vehicle by a Ford Dealer;
- (iv) reasonable unreimbursed out-of-pocket costs associated with repairing driver or passenger front airbags containing Takata PSAN inflators;
- (v) reasonable lost wages resulting from lost time from work directly associated with the drop off and/or pickup of a Subject Vehicle at a Ford Dealer for performance of the Recall Remedy; and
- (vi) reasonable fees incurred for storage of a Subject Vehicle after requesting and while awaiting a Recall Remedy part.

The Parties recognize that there may be additional categories of out-of-pocket expenses that may be reimbursed, as determined by the Settlement Special Administrator. The Settlement Special Administrator may not use any funds from the Out-of-Pocket Claims Process for payments to Class Members due to property damage, including vehicle damage, or personal injury allegedly from the deployment or non-deployment of a Takata airbag.

Timing for and review of out-of-pocket claims to be reimbursed: Pursuant to the Settlement Special Administrator's Claims Review Protocol, Class Members who have submitted timely and fully completed Registration/Claim Forms and: (a) are determined to be eligible to receive reimbursement for reasonable out-of-pocket expenses, shall be reimbursed for these reasonable out-of-pocket expenses; and (b) have been either determined not to be eligible to receive reimbursement for claimed out-of-pocket expenses or only registered for a residual payment, shall be placed into a group of Class Members that may be eligible to receive funds from the Residual Distribution, if any, subject to certain conditions.

The first set of reimbursements to eligible Class Members who have completed and filed a claim form shall be made on a rolling basis by the Settlement Special Administrator no later than 180 days after the Effective Date. Reimbursements for following years shall be made on a rolling basis as claims are submitted and approved.

For the reimbursements that occur in years one through three, reimbursements shall be made on a first-in-first-out basis until the Settlement Fund is depleted for that year. If there are no more funds to reimburse eligible Class Members in that particular year, then those Class Members will be moved to subsequent years for reimbursement.

For reimbursements to eligible Class Members that are to occur in year four and until the Final Registration/Claim Deadline, out-of-pocket payments shall be made for the amount approved by the Settlement Special Administrator, unless the approved reimbursements to eligible Class Members exceed the amount available. If this event occurs, then reimbursements shall be made on a *pro rata* basis until the available amount is exhausted.

Submitting more than one claim for out-of-pocket expenses: Class Members may submit one claim

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for out-of-pocket expenses attributable to each Recall Remedy performed on each Subject Vehicle they own(ed) or lease(d). For example, a Class Member with two Subject Vehicles may submit two claims, one for each vehicle, but the claims for the unreimbursed expenses can not be duplicative.

Finality of decision: The Settlement Special Administrator's decisions regarding claims for reimbursement of out-of-pocket expenses submitted by Class Members shall be final and not appealable.

#### **d. Residual Distribution**

The settlement program will be implemented over at least four years. Any funds that remain at the end of each of the first four settlement program years, after all Outreach Program and out-of-pocket expense payments for that year have been made, shall be distributed to each Class Member who (a) submitted claims in that year or prior program years that were previously rejected; or (b) sought to register for a residual payment only. Subject to certain exceptions discussed below, no Class Member eligible for a Residual Distribution payment shall receive a payment(s) totaling more than \$250 from the Residual Distribution for the first four settlement program years. Subject to certain exceptions discussed below, any funds remaining after payment of the maximum residual payment to all Class Members in any given year shall be rolled over into the following year's settlement program.

Unless it is administratively unfeasible, any funds that remain at the end of the last settlement program year after the Residual Distribution, if any, is made, shall be distributed on a *per capita* basis to Class Members who: (a) submitted claims in this or prior program years that were previously paid; (b) submitted claims in this or prior program years that were previously rejected and have not received any prior claims payments under this settlement program; or (c) sought to register for a residual payment only. No Class Member shall receive a payment of more than \$250 from this residual payment from this last settlement program year.

Any funds remaining in the Settlement Fund after making the payments described above shall be distributed to all Class Members on a *per capita* basis, unless it is administratively unfeasible, in which case such funds shall be distributed *cy pres*, subject to the agreement of the Parties, through their respective counsel, and Court approval.

Notwithstanding the above, after the Final Registration/Claim Deadline, the Parties and the Special Settlement Administrator may agree to spend any funds remaining in the Qualified Settlement Fund on continued Outreach Program activities rather than on a final Residual Distribution or *cy pres* payment as described above to fulfill the purposes of the Settlement Agreement.

Any Class Member who submits a claim that the Settlement Special Administrator determines is fraudulent shall not receive any payment from the Settlement Fund.

#### **e. Customer Support Program**

If the Court issues an order finally approving the settlement, as part of the compensation Ford is paying in exchange for a release of claims against it in the Action, Ford shall provide Class Members a Customer Support Program.

Customer Support Program benefits: The Customer Support Program will provide prospective coverage for repairs and adjustments (including parts and labor) needed to correct damaged and/or defective materials, if any, and defective workmanship, if any, of (i) the Takata PSAN inflators

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contained in the driver or passenger front airbag modules of Subject Vehicles or (ii) replacement driver or passenger inflators installed pursuant to the Takata Airbag Recall in the Subject Vehicles. This benefit will be automatically transferred and will remain with the Subject Vehicle regardless of ownership. The normal deployment of a replacement airbag inflator shall terminate this benefit as to a Subject Vehicle. To permit Ford to coordinate with Ford Dealers to provide benefits pursuant to the Customer Support Program under the Agreement, eligible Class Members may begin seeking such benefits no earlier than 30 days from the date of the Court's issuance of the Final Order. Nothing in the previous sentence shall affect the calculation of periods of time for which Ford will provide coverage under the Customer Support Program.

The terms "defective materials" and "defective workmanship" referenced above shall not include the use of PSAN as a propellant in inflators unless NHTSA finally determines that such inflators must be recalled. The Customer Support Program shall not give Class Members a right to demand that Ford recall such unrecalled inflators or a claim against Ford for breach of warranty for failure to recall inflators based on their use of PSAN as a propellant.

Customer Support Program timeline and duration: If the Subject Vehicle has been recalled and the Recall Remedy has been completed as of September 5, 2018, then the Customer Support Program will last for 10 years measured from the date the Recall Remedy was performed on the Subject Vehicle, or 150,000 miles measured from the date the Subject Vehicle was originally sold or leased by a Ford Dealer ("Date of First Use"), whichever comes first. However, each eligible vehicle will receive coverage for at least 75,000 miles measured from the date the Recall Remedy was performed on the Subject Vehicle or two years measured from September 5, 2018, whichever is later.

If the Subject Vehicle has been or will be recalled and the Recall Remedy has not been completed as of September 5, 2018, then the Customer Support Program will last for (a) 10 years from the Date of First Use or if the Recall Remedy is subsequently performed on the Subject Vehicle, the date the Recall Remedy is performed, or (b) 150,000 miles measured from the Date of First Use, whichever comes first. However, each eligible vehicle will receive coverage for at least 75,000 miles measured from the date the Recall Remedy was performed on the Subject Vehicle, or two years of coverage measured from September 5, 2018 (or from the date the Recall Remedy is subsequently performed on the applicable Subject Vehicle, if it is), whichever is later.

If the Subject Vehicle contains a desiccated Takata PSAN inflator in the driver or passenger front airbag modules as original equipment that has not been recalled as of the date of the issuance of the Court's Preliminary Approval Order, then the Customer Support Program will last for 10 years, measured from the Date of First Use, or 150,000 miles, measured from the Date of First Use, whichever comes first. However, each eligible Subject Vehicle will receive no less than two years of coverage from September 5, 2018.

In the event desiccated Takata PSAN inflators in the driver or passenger front airbag modules in any of the Subject Vehicles are recalled in the future, then the Customer Support Program will last for 10 years, measured from the date such future Recall Remedy is performed on the Subject Vehicle or 150,000 miles, measured from the Date of First Use, whichever comes first. However, each eligible vehicle will receive coverage for at least 75,000 miles or two years measured from the date the future Recall Remedy is performed on the Subject Vehicle, whichever is later.

Ineligible vehicles: Inoperable vehicles and vehicles with a salvaged, rebuilt or flood-damaged title are not eligible for the Customer Support Program.

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**f. When will I get paid for a submitted claim for reimbursement for out-of-pocket expenses or from the residual distribution?**

The Settlement Special Administrator will use its best efforts to pay your Claim in a timely manner. The first set of reimbursements to eligible Class Members who have completed and filed a Registration/Claim form shall be made on a rolling basis by the Settlement Special Administrator no later than 180 days after the Effective Date. Reimbursements for following years shall be made on a rolling basis as claims are submitted and approved in subsequent years.

For the reimbursements that occur in years one through three, reimbursements shall be made on a first-in-first-out basis until the Settlement Fund is depleted for that year. If there are no more funds to reimburse eligible Class Members in that particular year, then those Class Members will be moved to subsequent years for reimbursement.

For reimbursements to eligible Class Members that are to occur in year four and until the Final Registration/Claim Deadline, out-of-pocket payments shall be made for the amount approved by the Settlement Special Administrator, unless the approved reimbursements to eligible Class Members exceeds the amount available. If this event occurs, then reimbursements shall be made on a *pro rata* basis until the available amount is exhausted.

**Deadline to Submit Registration/Claim Form:** In order to receive reimbursement for a Claim, eligible Class Members must complete and submit the Registration/Claim Form during the Claim Period. Class Members who, before September 5, 2018, sold or returned, pursuant to a lease, a Subject Vehicle, will have one year from the Effective Date to submit a Registration/Claim Form. Class Members who owned or leased a Subject Vehicle on September 5, 2018 will have one year from the Effective Date or one year from the date of the performance of the Recall Remedy on their Subject Vehicle, whichever is later, to submit a Registration/Claim Form, but no Registration/Claim Forms may be submitted after the Final Registration/Claim Deadline.

**Obtaining, Completing and Submitting the Registration/Claim Form:** You can complete and submit a Registration/Claim Form online at [www.AutoAirbagSettlement.com](http://www.AutoAirbagSettlement.com). Alternatively, hard copy Registration/Claim Forms can be requested from the Settlement Special Administrator or from the Settlement Notice Administrator. You can also obtain a Registration/Claim Form from the settlement website, print it out, complete it, and timely mail it to the Settlement Notice Administrator at Auto Airbag Settlement, Settlement Notice Administrator, P.O. Box 3207, Portland, OR 97208-3207.

**g. Outreach Program**

The Settlement Special Administrator shall oversee and administer the Outreach Program with the goal of maximizing, to the extent practicable, completion of the Recall Remedy in Subject Vehicles for the Takata Airbag Inflator Recalls. The Parties will recommend various programs to the Settlement Special Administrator that are intended to effectuate these goals. In order to effectuate these goals, the Outreach Program shall be designed to significantly increase Recall Remedy completion rates via traditional and non-traditional outreach efforts, including by expanding those currently being used by Ford and conducted in connection with NHTSA's November 3, 2015 Coordinated Remedy Order and amendments thereto (the "Coordinated Remedy Order"). The budget for the Outreach Program is not to exceed 33% of the Settlement Amount, but the budget of the Outreach Program may be adjusted subject to the agreement of the Parties, through their respective counsel. The Parties, in consultation with the Special Settlement

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Administrator, will meet at least once a year to consider whether the above-referenced presumptive budget for the Outreach Program should be increased or decreased, and whether any money in the Qualified Settlement Fund should be set aside to finance the Outreach Program or the Out-of-Pocket Claims Process in future years. The Settlement Special Administrator shall engage certain consultants and staff, as agreed to by the Parties, through their respective counsel, to assist in the design, effectuation and implementation of the Outreach Program. The Settlement Special Administrator shall exercise his discretion to make reasonable efforts to confer with NHTSA, the Independent Monitor for Takata, and State Attorneys General, and consider compliance with the Coordinated Remedy Program before finalizing the Outreach Program. In addition, the Settlement Special Administrator and the Parties may confer directly with NHTSA, the Independent Monitor for Takata, and other parties, including State Attorneys General, to solicit input and seek collaboration in efforts to increase recall rates. Updates to the Outreach Program will be posted on the Settlement website.

The Outreach Program for the Takata Airbag Inflator Recalls may include, but is not limited to, the following agreed-upon components: (a) direct contact of Class Members via U.S. Mail, telephone, social media, e-mail, texting, and canvassing; (b) contact of Class Members by third parties (e.g., independent repair shops); and (c) multi-media campaigns, such as through print, television, radio, and the internet. The Outreach Program may also include towing Subject Vehicles to dealerships for completion of the Recall Remedy and the delivery of Subject Vehicles to Class Members following completion of the Recall Remedy, the completion of the Recall Remedy by Ford Dealers or other authorized entities at locations other than dealerships via mobile units capable of performing the Recall Remedy, incentives for Class Members to bring their Subject Vehicles to Ford Dealers for the completion of the Recall Remedy, incentives for dealers to perform the Recall Remedy, incentives for independent repair shops to refer Class Members to Ford Dealers to perform the Recall Remedy, and the use of data appending resources to identify Subject Vehicles that have not obtained the Recall Remedy.

The Settlement Special Administrator shall work in good faith with the consultants and the Parties, through their respective counsel, on the Outreach Program, including, but not limited to, the programs, timing, necessary outreach messages, amounts, and support. The Settlement Special Administrator shall correspond and coordinate the Outreach Program with Ford to ensure to the extent practicable that the outreach is consistent with Recall Remedy parts and service availability.

Once the Parties have provided their recommendations, the Settlement Special Administrator will then make a final, binding determination regarding the details and scope of the Outreach Program. The Settlement Special Administrator will periodically report to the Court and the Parties, through their respective counsel, the results of the implementation of the Outreach Program.

If the Effective Date does not occur during the first 12 months of the Outreach Program, the Parties, through their respective counsel, shall discuss continuing and funding the Outreach Program until the Effective Date. The Outreach Program is intended to be a program that will adjust and change its methods of outreach as is required to achieve its goal of maximizing completion of the Recall Remedy. It is not intended to be a static program with components that are fixed for the entire settlement period.

Ford may propose to continue the Outreach Program beyond 12 months following the Year Four Payment if it finds it necessary to maximize recall rates among the population of Subject Vehicles that will, or may be, recalled. If Settlement Class Counsel do not agree to continue the Outreach Program beyond 12 months following the Year Four Payment, the Parties may each submit a

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recommendation to the Settlement Special Administrator. The Settlement Special Administrator will then make a final, binding determination. If the Outreach Program is continued beyond 12 months following the Year Four Payment, a portion of Ford's Qualified Settlement Fund may be set aside to pay for Outreach Program costs for the extended period.

## 9. What am I giving up in exchange for the settlement benefits?

If the settlement becomes final, Class Members who do not exclude themselves from the Class will release Ford and the Released Parties from liability and will not be able to sue the Released Parties about the issues in the lawsuit. The Settlement Agreement at Section VII describes the released claims in necessary legal terminology, so read it carefully. For ease of reference, we also attach the full release section and the definition of Released Parties in Appendix A to this Notice. The Settlement Agreement is available at [www.AutoAirbagSettlement.com](http://www.AutoAirbagSettlement.com). You can talk to one of the lawyers listed in Question 13 below for free or you can, of course, talk to your own lawyer at your own expense if you have questions about the released claims or what they mean.

## D. EXCLUDING YOURSELF FROM THE SETTLEMENT

If you want to keep the right to sue or continue to sue Ford or the Released Parties over the legal issues in the lawsuit, then you must take steps to exclude yourself from this settlement. This is also known as "opting out" of the Class.

## 10. If I exclude myself, can I get anything from this settlement?

If you exclude yourself, you cannot receive settlement benefits. If you ask to be excluded, you cannot object to the settlement. But, if you timely and properly request exclusion, the settlement will not prevent you from suing, continuing to sue or remaining or becoming part of a different lawsuit against Ford or the Released Parties in the future about the issues in the lawsuit. If you exclude yourself, you will not be bound by anything that happens in this lawsuit and you may not object to the settlement.

## 11. If I do not exclude myself, can I sue later?

Unless you exclude yourself, you give up the right to sue the Released Parties for the claims resolved by this settlement. If the settlement is finally approved, you will be permanently enjoined and barred from initiating or continuing any lawsuit or other proceeding against the Released Parties about the issues in the lawsuit, as set forth in the full release attached in Appendix A to this Notice.

## 12. How do I get out of the settlement?

To exclude yourself from the settlement, you **must** mail a written request for exclusion to the Settlement Notice Administrator saying that you want to be excluded from the settlement in *In Re: Takata Airbag Products Liability Litigation (Economic Loss Actions)*, and mention the case number (1:15-md-2599-FAM).

**The letter must be signed by you or the entity seeking to be excluded from the Class and include the following information: (i) your full name, telephone number, and address; (ii) a statement affirming you are a member of the Class and providing your Subject Vehicle's Model, Model Year, and Vehicle Identification Number (VIN); (iii) an explicit and unambiguous statement**

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that you wish to be excluded from the Ford Settlement in the *In re Takata Airbag Products Liability Litigation*, 15-md-02599-FAM, and (iv) be individually and personally signed by you (and your counsel if you are represented by counsel). You can't ask to be excluded over the phone or at the settlement website. To be valid and timely, opt-out requests must be postmarked on or before **November 26, 2018**, the last day of the Opt-Out Period (the "Opt-Out Deadline"). You **must** mail your request for exclusion postmarked no later than **November 26, 2018** to:

Auto Airbag Settlement  
Settlement Notice Administrator  
P.O. Box 3207  
Portland, OR 97208-3207

The deadlines found in this Notice may be changed by the Court. Please check [www.AutoAirbagSettlement.com](http://www.AutoAirbagSettlement.com) regularly for updates regarding the settlement.

## E. THE LAWYERS REPRESENTING YOU

### 13. Do I have a lawyer in the case?

Yes. The Court has appointed lawyers to represent you and other Class Members. These lawyers are called "Settlement Class Counsel": Peter Prieto of Podhurst Orseck, P.A., is Chair Lead Counsel, and David Boies of Boies Schiller & Flexner, L.L.P. and Todd A. Smith of Power, Rogers & Smith, L.L.P. are Co-Lead Counsel for the economic damages track. Roland Tellis of Baron & Budd P.C., James Cecchi of Carella Byrne Cecchi Olstein P.C., and Elizabeth Cabraser of Lieff, Cabraser, Heimann & Bernstein, LLP are the Plaintiffs' Steering Committee members. If you want to be represented by another lawyer, you may hire one to appear in Court for you at your own expense. Their contact information is as follows:

<p>Peter Prieto PODHURST ORSECK, P.A. SunTrust International Center One S.E. 3<sup>rd</sup> Avenue, Suite 2700 Miami, Florida 33131 Tel: (305) 358-2800 Email: <a href="mailto:pprieto@podhurst.com">pprieto@podhurst.com</a> URL: <a href="http://www.podhurst.com">www.podhurst.com</a> Chair Lead Counsel</p>	<p>David Boies BOIES, SCHILLER &amp; FLEXNER, L.L.P. 575 Lexington Avenue New York, NY 10022 Tel: (305) 539-8400 Email: <a href="mailto:dboies@bsflp.com">dboies@bsflp.com</a> URL: <a href="http://www.bsflp.com">www.bsflp.com</a> Co-Lead Counsel for the Economic Loss Track</p>
<p>Todd A. Smith POWER, ROGERS AND SMITH, L.L.P. 70 West Madison St., Suite 5500 Chicago, IL 60602 Tel: (312) 313-0202 Email: <a href="mailto:tas@prslaw.com">tas@prslaw.com</a> URL: <a href="http://www.prslaw.com">www.prslaw.com</a> Co-Lead Counsel for the Economic Loss Track</p>	<p>Roland Tellis BARON &amp; BUDD 15910 Ventura Blvd. #1600 Encino, CA 91436 Tel: (818) 839-2333 Email: <a href="mailto:rtellis@baronbudd.com">rtellis@baronbudd.com</a> URL: <a href="http://www.baronbudd.com">www.baronbudd.com</a> Plaintiffs' Steering Committee</p>

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James E. Cecchi CARELLA, BYRNE, CECCHI, OLSTEIN, BRODY & AGNELLO, PC 5 Becker Farm Road Roseland, NJ 07068 Tel: (973) 994-1700 Email: jcecchi@carellabyrne.com URL: www.carellabyrne.com Plaintiffs' Steering Committee	Elizabeth J. Cabraser LIEFF CABRASER HEIMANN & BERNSTEIN, LLP 275 Battery Street, 29th Floor San Francisco, CA 94111 Tel: (415) 956-1000 Email: ecabraser@lchb.com URL: www.lchb.com Plaintiffs' Steering Committee
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#### **14. How will the lawyers be paid? What about awards to the named plaintiffs/class representatives?**

The Parties did not begin to negotiate Attorneys' Fees and Expenses until after agreeing to the principal terms set forth in this Settlement Agreement. Settlement Class Counsel agrees to file, and Ford agrees not to oppose, an application for an award of Attorneys' Fees and Expenses of not more than 25% of the Settlement Amount. The Court will determine the amount of Attorneys' Fees and Expenses to be awarded. This award, which shall be paid from the Settlement Fund, shall be the sole compensation paid by Ford for all plaintiffs' counsel in the Actions.

Any order or proceedings solely relating to the Attorneys' Fees and Expenses application, or any appeal from any order related thereto, or reversal or modification thereof, will not operate to terminate or cancel this Agreement, or affect or delay the Effective Date.

Settlement Class Counsel may petition the Court for incentive awards of up to \$5,000 per Plaintiff. The purpose of such awards shall be to compensate the Plaintiffs for efforts undertaken by them on behalf of the Class. Any incentive awards made by the Court shall be paid from the Settlement Fund within 30 days of the Effective Date.

Ford shall not be liable for, or obligated to pay, any attorneys' fees, expenses, costs, or disbursements, either directly or indirectly, in connection with the Actions or the Agreement, other than as set forth above.

### **F. OBJECTING TO THE SETTLEMENT**

You can tell the Court if you do not agree with the settlement or some part of it.

#### **15. How do I tell the Court if I do not like the settlement?**

If you are a Class Member, and you do not exclude yourself from the Class, you can object to the settlement if you do not like some part of it or all of it. You can give reasons why you think the Court should not approve it. To object, you must deliver to Settlement Class Counsel and to Ford's Counsel (see addresses below), and file with the Court, on or before a date ordered by the Court in the Preliminary Approval Order a written statement of your objections.

The written objection of any Class Member must include:

- a) a heading which refers to the *Takata* MDL and an indication that the objection is to the Ford Settlement;;
- b) the objector's full name, telephone number, and address (the objector's actual residential address must be included);

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- c) an explanation of the basis upon which the objector claims to be a Class Member, including the Vehicle Identification Number (“VIN”) of the objector’s Subject Vehicle(s);
- d) all grounds for the objection, accompanied by any legal support for the objection known to the objector or his or her counsel;
- e) the number of times the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector’s prior such objections that were issued by the trial and appellate courts in each listed case;
- f) if represented by counsel, the full name, telephone number, and address of all counsel, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or fee application;
- g) the number of times the objector’s counsel and/or counsel’s law firm have objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the counsel or the firm has made such objection, and a copy of any orders related to or ruling upon counsel’s or the firm’s prior such objections that were issued by the trial and appellate courts in each listed case;
- h) any and all agreements that relate to the objection or the process of objecting – whether written or verbal – between objector or objector’s counsel and any other person or entity;
- i) whether the objector intends to appear at the Fairness Hearing on his or her own behalf or through counsel;
- j) the identity of all counsel representing the objector who will appear at the Fairness Hearing;
- k) a list of all persons who will be called to testify at the Fairness Hearing in support of the objection; and
- l) the objector’s dated, handwritten signature (an electronic signature or the objector’s counsel’s signature is not sufficient).

Any documents supporting the objection must also be attached to the objection.

The objection must be received by Settlement Class Counsel and Ford’s Counsel no later than **November 26, 2018**. To have your objection considered by the Court, you also must file the objection with the Clerk of Court (identified below) so that it is received and filed no later than **November 26, 2018**.

Objections must be mailed to:

<u>Clerk of the Court</u> Wilkie D. Ferguson, Jr. U.S. Courthouse 400 North Miami Avenue Miami, FL 33128	<u>Settlement Class Counsel</u> Peter Prieto PODHURST ORSECK, P.A. SunTrust International Center One S.E. 3 <sup>rd</sup> Ave, Suite 2700 Miami, FL 33131	<u>Ford’s Counsel</u> Perry W. Miles IV McGuireWoods LLP Gateway Plaza 800 East Canal Street Richmond, VA 23219
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## 16. What is the difference between objecting and excluding?

Excluding yourself is telling the Court that you do not want to be part of the Class. If you exclude yourself, you have no basis to object because the settlement no longer affects you. Objecting is telling the Court that you do not like something about the settlement. You can object only if you stay in the Class.

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If you are a Class Member and you do nothing, you will remain a Class Member and all of the Court's orders will apply to you, you will be eligible for the settlement benefits described above as long as you satisfy the conditions for receiving each benefit, and you will not be able to sue the Released Parties over the issues in the lawsuit, as set forth in the full release attached in Exhibit A to this Notice.

## G. THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to grant final approval to the settlement, sometimes called the "Fairness Hearing." If you have filed an objection on time and attend the hearing, you may ask to speak (provided you have previously filed a timely notice of intention to appear), but you do not have to attend or speak.

### 17. When and where will the Court decide whether to grant final approval of the settlement?

The Court will hold a Fairness Hearing at **10:00am on December 11, 2018** at the Wilkie D. Ferguson, Jr. United States District Courthouse, Southern District of Florida, 400 North Miami Avenue, Miami, FL 33128. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will only listen to people who have met the requirement to speak at the hearing (*See* Question 19 below). After the hearing, the Court will decide whether to grant final approval of the settlement, and, if so, how much to pay the lawyers representing Class Members. We do not know how long these decisions will take.

### 18. Do I have to come to the hearing?

No. Settlement Class Counsel will answer any questions the Court may have. But you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it – but you can if you provide advance notice of your intention to appear (*See* Question 19 below). As long as you filed a written objection with all of the required information on time with the Court, the Court will consider it. You may also pay another lawyer to attend, but it is not required.

### 19. May I speak at the hearing?

You or your attorney may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intent to Appear in *In Re: Takata Airbag Products Liability Litigation (Economic Loss Actions)*, No. 1:15-md-2599-FAM" to Settlement Class Counsel and Ford's Counsel identified above (see Question 15) so that they receive it no later than **November 26, 2018**. You must also file such a Notice with the Clerk of Court so that it is received and filed no later than **November 26, 2018**. You must include your name, address, telephone number, the year, make and model and VIN number of your vehicle, and your signature. Anyone who has requested permission to speak must be present at the start of the Fairness Hearing at **10:00am on December 11, 2018**. You cannot speak at the hearing if you excluded yourself from the Class.

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## H. GETTING MORE INFORMATION

### 20. How do I get more information?

This Notice summarizes the proposed settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement and other information about the settlement and the Registration/Claim Forms, at [www.AutoAirbagSettlement.com](http://www.AutoAirbagSettlement.com). You can also call the toll-free number, 1-888-735-5596 or write the Settlement Notice Administrator at Auto Airbag Settlement, Settlement Notice Administrator, P.O. Box 3207, Portland, OR 97208-3207. You can also look at the documents filed in the lawsuit at the Court at the address provided above in response to Question 15.

### 21. When will the settlement be final?

The settlement will not be final unless and until the Court grants final approval of the settlement at or after the Fairness Hearing and after any appeals are resolved in favor of the settlement. Please be patient and check the website identified in this Notice regularly. Please do not contact Ford or Ford Dealers as the Court has ordered that all questions be directed to the Settlement Notice Administrator.

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**Appendix A**

**Section VII from the Settlement Agreement – Release and Waiver**

A. The Parties agree to the following release and waiver, which shall take effect upon entry of the Final Judgment.

B. In consideration for the relief provided above, Plaintiffs and each Class Member, on behalf of themselves and any other legal or natural persons and entities who or which may claim by, through or under them, including their executors, administrators, heirs, assigns, privies, predecessors and successors, agree to fully, finally and forever release, relinquish, acquit, discharge and hold harmless the Released Parties<sup>1</sup> from the Claims and any and all other claims, demands, suits, petitions, liabilities, causes of action, rights, losses and damages and relief of any kind or type regarding the subject matter of the Actions, including, but not limited to, compensatory, exemplary, statutory, punitive, restitutionary, expert or attorneys' fees and costs, whether past, present, or future, mature or not yet mature, known or unknown, suspected or unsuspected, contingent or non-contingent, derivative, vicarious or direct, asserted or un-asserted, and whether based on federal, state or local law, statute, ordinance, rule, regulation, code, contract, tort, fraud or misrepresentation, common law, violations of any state's or territory's deceptive, unlawful, or unfair business or trade practices, false, misleading or fraudulent advertising, consumer fraud or consumer protection statutes, or other laws, unjust enrichment, any breaches of express, implied or any other warranties, violations of any state's Lemon Laws, the Racketeer Influenced and Corrupt Organizations Act, or the Magnuson-Moss Warranty Act, or any other source, or any claims under the Trade Regulation Rule Concerning the Preservation of Consumers' Claims and Defenses 16. C.F.R. § 433.2, or any claim of any kind, in law or in equity, arising from, related to, connected with, or in any way involving the Claims or the Actions, the Subject Vehicles' driver or passenger front airbag modules containing desiccated or non-desiccated Takata PSAN inflators, and any and all claims involving the Takata Airbag Inflator Recalls that are, or could have been, alleged, asserted or described in the Complaint, Amended Consolidated Class Action Complaint, the Second Amended Consolidated Class Action Complaint, the Revised Third Amended Consolidated Class Action Complaint, the Fourth Amended Consolidated Class Action Complaint, the Actions or any amendments of the Actions.

C. If a Class Member who does not opt out commences, files, initiates, or institutes any new legal action or other proceeding against a Released Party for any claim released in this Settlement in any federal or state court, arbitral tribunal, or administrative or other forum, such legal action or proceeding shall be dismissed with prejudice at that Class Member's cost.

D. Notwithstanding the Release set forth in Section VII of this Agreement, Plaintiffs and Class Members are not releasing and are expressly reserving all rights relating to claims for bodily injury, wrongful death or physical property damage (other than to the Subject Vehicle) arising from an

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<sup>1</sup> Released Parties" or "Released Party" means Ford, and each of its past, present and future parents, predecessors, successors, spin-offs, assigns, holding companies, joint-ventures and joint-venturers, partnerships and partners, members, divisions, stockholders, bondholders, subsidiaries, related companies, affiliates, officers, directors, employees, associates, dealers, including the Ford Dealers, representatives, suppliers, vendors, advertisers, marketers, service providers, distributors and subdistributors, repairers, agents, attorneys, insurers, administrators and advisors. The Parties expressly acknowledge that each of the foregoing is included as a Released Party even though not identified by name herein. Notwithstanding the foregoing, "Released Parties" does not include the Excluded Parties.

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incident involving a Subject Vehicle, including the deployment or non-deployment of a driver or passenger front airbag with a Takata PSAN inflator.

E. Notwithstanding the Release set forth in Section VII of this Agreement, Plaintiffs and Class Members are not releasing and are expressly reserving all rights relating to claims against Excluded Parties.

F. The Final Order and Final Judgment will reflect these terms.

G. Plaintiffs and Class Members shall not now or hereafter institute, maintain, prosecute, assert, instigate, and/or cooperate in the institution, commencement, filing, or prosecution of any suit, action, claim and/or proceeding, whether legal, administrative or otherwise against the Released Parties, either directly or indirectly, on their own behalf, on behalf of a class or on behalf of any other person or entity with respect to the claims, causes of action or any other matters released through this Settlement.

H. In connection with this Agreement, Plaintiffs and Class Members acknowledge that they may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those that they now know or believe to be true concerning the subject matter of the Actions or the Release herein. Nevertheless, it is the intention of Settlement Class Counsel and Class Members in executing this Agreement fully, finally and forever to settle, release, discharge, acquit and hold harmless all such matters, and all existing and potential claims against the Released Parties relating thereto which exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in any action or proceeding) with respect to the Claims or the Actions, their underlying subject matter, and the Subject Vehicles, except as otherwise stated in this Agreement.

I. Plaintiffs expressly understand and acknowledge, and all Plaintiffs and Class Members will be deemed by the Final Order and Final Judgment to acknowledge and waive Section 1542 of the Civil Code of the State of California, which provides that:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Plaintiffs and Class Members expressly waive and relinquish any and all rights and benefits that they may have under, or that may be conferred upon them by, the provisions of Section 1542 of the California Civil Code, or any other law of any state or territory that is similar, comparable or equivalent to Section 1542, to the fullest extent they may lawfully waive such rights.

J. Plaintiffs represent and warrant that they are the sole and exclusive owners of all claims that they personally are releasing under this Agreement. Plaintiffs further acknowledge that they have not assigned, pledged, or in any manner whatsoever sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Claims or the Actions, including without limitation, any claim for benefits, proceeds or value under the Actions, and that Plaintiffs are not aware of anyone other than themselves claiming any interest,

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in whole or in part, in the Claims or the Actions or in any benefits, proceeds or values under the Actions. Class Members submitting a Registration/Claim Form shall represent and warrant therein that they are the sole and exclusive owners of all claims that they personally are releasing under the Settlement and that they have not assigned, pledged, or in any manner whatsoever sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Claims or the Actions, including without limitation, any claim for benefits, proceeds or value under the Actions, and that the Class Member(s) are not aware of anyone other than themselves claiming any interest, in whole or in part, in the Claims or the Actions or in any benefits, proceeds or values under the Actions.

K. Without in any way limiting its scope, and, except to the extent otherwise specified in the Agreement, this Release covers by example and without limitation, any and all claims for attorneys' fees, costs, expert fees, or consultant fees, interest, or litigation fees, costs or any other fees, costs, and/or disbursements incurred by any attorneys, Settlement Class Counsel, Plaintiffs or Class Members who claim to have assisted in conferring the benefits under this Settlement upon the Class.

L. Settlement Class Counsel and any other attorneys who receive attorneys' fees and costs from this Settlement acknowledge that they have conducted sufficient independent investigation and discovery to enter into this Settlement Agreement and, by executing this Settlement Agreement, state that they have not relied upon any statements or representations made by the Released Parties or any person or entity representing the Released Parties, other than as set forth in this Settlement Agreement.

M. Pending final approval of this Settlement via issuance by the Court of the Final Order and Final Judgment, the Parties agree that any and all outstanding pleadings, discovery, deadlines and other pretrial requirements are hereby stayed and suspended as to Ford. Upon the occurrence of final approval of this Settlement via issuance by the Court of the Final Order and Final Judgment, the Parties expressly waive any and all such pretrial requirements as to Ford.

N. Nothing in this Release shall preclude any action to enforce the terms of the Agreement, including participation in any of the processes detailed herein.

O. Plaintiffs and Settlement Class Counsel hereby agree and acknowledge that the provisions of this Release together constitute an essential and material term of the Agreement and shall be included in any Final Order and Final Judgment entered by the Court.

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**Si Usted es en la actualidad o fue previamente propietario, compró arrendó ciertos vehículos de la marca Ford, Lincoln o Mercury, podría obtener un pago en efectivo y otros beneficios de un Acuerdo en una demanda colectiva.**

**ESTE NO ES UN AVISO DE RETIRO DEL VEHÍCULO. Es posible que su vehículo no se retire o que se lo retire en una fecha posterior. Ingrese a [www.AirBagRecall.com](http://www.AirBagRecall.com) para conocer más detalles acerca de si su vehículo será retirado y, de ser así, qué deberá hacer.**

- Existe un acuerdo propuesto en relación con una demanda colectiva contra Takata Corporation, sus filiales y aquellas empresas automotrices a quienes Takata proporcionó determinados productos de airbag. El acuerdo resuelve ciertas demandas contra Ford Motor Company (“Ford”) que se fundaron en la inclusión de dichos productos de airbag Takata en ciertos vehículos de la marca Ford, Lincoln y Mercury (los “vehículos Ford”). Aquellas personas que estén incluidas en el acuerdo tienen derechos legales, opciones y plazos mediante los cuales deben ejercerlos.
- Está incluido si es o fue propietario o arrendatario actual o anterior de ciertos vehículos de la marca Ford, Lincoln o Mercury (que se mencionan en la Pregunta 3 más adelante) a partir de determinadas fechas que aparecen especificadas más adelante.
- Estos acuerdos propuestos otorgan varios beneficios, incluidos, entre otros, un Programa de alquiler de vehículo/préstamo de vehículo mejorado, un Proceso de reclamos de gastos de bolsillo, un Programa de servicio de atención al cliente y Distribución residual. Existe, además, un Programa de ayuda que alienta a los clientes de Ford a participar en el retiro de los infladores de airbag Takata.

**Si ha recibido un aviso de retiro para su vehículo de la marca Ford, Lincoln o Mercury por separado y sus airbags no se han reemplazado aún, debe hacerlo lo antes posible.**

Lea este Aviso detenidamente. Sus derechos legales se verán afectados, independientemente de que usted actúe o no. Se le recomienda que visite periódicamente el sitio web [www.AutoAirbagSettlement.com](http://www.AutoAirbagSettlement.com), debido a que este será actualizado con información adicional.

## **A. INFORMACIÓN BÁSICA**

### **1. ¿De qué se trata este Aviso?**

Un tribunal autorizó este Aviso porque usted tiene derecho a conocer sobre un acuerdo propuesto de una demanda colectiva y todas sus opciones y los plazos asociados antes de que el Tribunal

decida si otorga aprobación final al acuerdo. El nombre de la demanda es *In Re: Takata Airbag Product Liability Litigation*, n.º 15-MD-2599-FAM. Se ha designado a Takata y varias empresas automotrices como las demandadas en el litigio, incluida Ford. Este Aviso explica la demanda, el acuerdo propuesto y sus derechos legales. Usted NO está siendo demandado. El Tribunal aún debe decidir si aprueba el Acuerdo definitivamente. Los pagos y demás beneficios se distribuirán únicamente si el Tribunal aprueba definitivamente el Acuerdo y, según las condiciones de dicho Acuerdo, la aprobación de este será respetada después de cualquier apelación. Sea paciente y revise regularmente el sitio web que se identifica en este Aviso. No se comunique con los Concesionarios de Ford en lo que respecta a los detalles de este acuerdo mientras esté en trámite ante el Tribunal.

*Sus derechos legales podrían verse afectados aun cuando no actúe.  
Lea este Aviso detenidamente.*

## SUS DERECHOS Y OPCIONES

<b>USTED PUEDE:</b>		<b>FECHA/PERÍODO DE RECLAMO</b>
<p><b>PRESENTAR UN(OS) FORMULARIO(S) DE INSCRIPCIÓN/RECLAMO</b></p>	<p>Esta es la única forma en que usted puede recibir pagos en efectivo para los cuales puede ser elegible según el Proceso de reclamos de gastos de bolsillo o la Distribución residual, si quedasen algunos fondos, antes del Plazo final para la inscripción/el reclamo.</p> <p>Hay diferentes plazos para presentar un reclamo según su situación particular. En la columna de la derecha se explican dichos plazos.</p>	<p><i>(a) Los Miembros del grupo que antes del 5 de septiembre del 2018 hubiesen vendido o devuelto, de acuerdo con un contrato de arrendamiento, un Vehículo incluido tendrán un año a partir de la Fecha de entrada en vigencia para presentar un Formulario de inscripción/reclamo.</i></p> <p><i>(b) Los Miembros del grupo que poseían o arrendaron un Vehículo el 5 de septiembre del 2018 inclusive tendrán un año de plazo a partir de la Fecha de entrada en vigencia o un año a partir de la fecha del cumplimiento del Recurso de retiro en su Vehículo incluido, lo que ocurriese después, para presentar un Formulario de inscripción/reclamo; sin embargo, no se podrán presentar Formularios de inscripción/reclamo luego del Plazo final para la inscripción/dl reclamo.</i></p> <p><i>La Fecha de entrada en vigor y el Plazo final para la inscripción/el reclamo, cuando se conozcan, serán publicados en el sitio web del Acuerdo.</i></p>

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<p><b>OBTENER OTROS BENEFICIOS DEL ACUERDO</b></p>	<p>Si usted es Miembro del Grupo, también podrá ser elegible para participar en el Programa mejorado de alquiler de vehículos/vehículos prestados y recibir beneficios del Programa de servicio de atención al cliente.</p> <p>Como parte del Programa de alquiler de vehículos/el préstamo de vehículos mejorado, Ford proporcionará un vehículo de alquiler/prestado a los Miembros del grupo mientras estos esperan que se dé cumplimiento al Recurso de retiro en sus Vehículos incluidos.</p> <p>Ford ofrecerá el Programa de servicio de atención al cliente que brindará cobertura eventual para reparaciones y ajustes a los infladores de nitrato de amonio estabilizado de fase (phase-stabilized ammonium nitrate, “PSAN”) de Takata y sus reemplazos instalados mediante el Recurso de retiro.</p> <p>Existe un Programa de ayuda que está diseñado para optimizar la finalización del Recurso de retiro.</p>	
<p><b>OBJETAR</b></p>	<p>Escriba al Tribunal sobre el motivo por el cual no está conforme con el Acuerdo propuesto.</p>	<p><i>26 de noviembre de 2018</i></p>
<p><b>EXCLUIRSE</b></p>	<p>Solicite salir (excluirse) del Acuerdo propuesto. Si hace esto, no tendrá derecho a ninguno de los beneficios del acuerdo, pero conservará su derecho de demandar a Ford en relación con los asuntos de su propia demanda.</p>	<p><i>26 de noviembre de 2018</i></p>
<p><b>COMPARECER EN LA DEMANDA O ASISTIR A LA AUDIENCIA DE IMPARCIALIDAD</b></p>	<p>No se requiere que comparezca en la demanda para participar en el Acuerdo propuesto, pero puede comparecer por su propia cuenta o a través de su propio abogado, además de presentar una objeción si no se excluye. Si usted ha presentado previamente una objeción y un aviso oportuno para comparecer en la Audiencia de imparcialidad, también puede pedir para hablar sobre el Acuerdo propuesto en dicha audiencia.</p>	<p><i>El plazo para comparecer es el 26 de noviembre de 2018.</i></p> <p><i>El Tribunal celebrará la Audiencia de imparcialidad a las 10:00 a. m., hora del este (Eastern Time, ET), el 11 de diciembre del 2018.</i></p>
<p><b>NO HACER NADA</b></p>	<p>Podría no recibir determinados beneficios del acuerdo para los que, de una u otra manera, sería elegible y renunciar a su derecho de demandar a Ford en relación con los asuntos de la demanda.</p>	

**2. ¿De qué trata la demanda?**

La demanda alega que ciertas empresas automotrices, incluida Ford, fabricaron, distribuyeron o vendieron ciertos vehículos que contenían infladores de airbags Takata supuestamente defectuosos, fabricados por las Demandadas Takata Corporation y TK Holdings, Inc. y que, supuestamente, podrían romperse y expulsar restos o fragmentos de metal en el compartimiento

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del ocupante al desplegarse o, de otro modo, afectar el despliegue del airbag, y que los Demandantes sufrieron pérdidas económicas como consecuencia de ello.

La demanda presenta reclamos por violaciones a distintos estatutos estatales sobre la protección al consumidor, entre otros reclamos. Puede leer la Cuarta demanda colectiva consolidada enmendada al visitar el sitio web [www.AutoAirbagSettlement.com](http://www.AutoAirbagSettlement.com). Ford niega haber infringido ley alguna y niega haber cometido acto ilícito alguno con respecto a la fabricación, la distribución o la venta de los Vehículos incluidos. Las partes acordaron resolver estos asuntos antes de que estas cuestiones fueran decididas por el Tribunal.

**Este acuerdo no involucra los reclamos por lesiones personales o daños en la propiedad respecto de ninguna propiedad que no fuesen los Vehículos incluidos.**

El 27 de octubre de 2014, Craig Dunn, Pam Koehler, Zulmarie Rivera, Tru Value Auto Malls, LLC, David M. Jorgensen, Anna Marie Brechtell Flattmann, Robert Redfearn, Jr., Tasha R. Severio, Kenneth G. Decie, Gregory McCarthy, Nicole Peaslee, Karen Switkowski, Anthony D. Dark, Lemon Auto Sales, Inc., Nathan Bordewich, Kathleen Wilkinson, Haydee Masisni y Nancy Barnett presentaron una demanda colectiva en *Craig Dunn, et al. vs. Takata Corp., et al.*, n.º 1:14-cv-24009 (D.S. Fla.) (la “Denuncia en la demanda colectiva por pérdida económica”), en la que alegan, entre otras cosas, que ciertas empresas automotrices fabricaron, distribuyeron o vendieron ciertos vehículos que, supuestamente, contienen infladores de airbag defectuosos fabricados por las Demandadas Takata Corporation and TK Holdings, Inc. y que supuestamente, al desplegarse, podían romperse y expulsar deshechos o fragmentos de metal en el compartimento del ocupante o que, de otro modo, podrían afectar el despliegue del airbag y que, como consecuencia de ello, los demandantes sufrieron pérdidas económicas.

Posteriormente, el Panel Judicial sobre Litigios Multidistritales consolidó la demanda de *Craig Dunn, et al.* por procedimientos previos al juicio con demandas colectivas e individuales adicionales que alegaban reclamos similares o idénticos en *In Re Takata Airbag Products Liability Litigation*, n.º 1:15-md-02599-FAM (D.S. Fla.) (MDL 2599), en trámite ante el Honorable Juez Federico A. Moreno en el Tribunal de Distrito de los Estados Unidos para el distrito sur de Florida.

El 17 de marzo del 2015, el Tribunal dictó una Orden por la cual se fijaba el cronograma y se nombraba al abogado del Demandante, en la que se designaba a Peter Prieto de Podhurst Orseck, P.A. como Abogado director, a David Boies de Boies Schiller and Flexner, LLP, y a Todd A. Smith de Power Rogers & Smith, PC, como Abogados codirectores de la vía procesal de daños económicos; a Curtis Miner de Colson Hicks Eidson como Abogado principal de la vía procesal de daños personales y a Roland Tellis de Baron & Budd P.C., a James Cecchi de Carella Byrne Cecchi Olstein P.C. y a Elizabeth Cabraser de Lief, Cabraser, Heimann & Bernstein, LLP como miembros del Comité directivo de los Demandantes.

El 30 de abril del 2015, los Demandantes presentaron una Demanda colectiva consolidada enmendada. El 15 de junio de 2015, los Demandantes (tal como se define más adelante) presentaron una Segunda demanda colectiva consolidada enmendada. El 7 de agosto de 2017, los Demandantes presentaron una Tercera demanda colectiva enmendada revisada. El 30 de abril de 2018, los Demandantes presentaron una Cuarta demanda colectiva consolidada enmendada, que es el alegato operativo para los Reclamos de los Demandantes en esta oportunidad.

En el sitio web del Acuerdo, [www.AutoAirbagSettlement.com](http://www.AutoAirbagSettlement.com), encontrará una descripción detallada de los procedimientos legales, incluidas las mociones para desestimar, que se establecen en el Acuerdo.

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El 13 de enero del 2017, Takata Corporation, como parte Demandada, firmó un acuerdo sobre alegatos penales en el cual admitía, entre otras cosas, que “deliberadamente desarrolló y participó en un plan para obtener dinero y enriquecer a Takata al inducir, entre otras cosas, a los damnificados fabricantes de equipos originales (Original Equipment Manufacturers, OEM) a comprar sistemas de airbags de Takata que contenían infladores PSAN peligrosos, no adaptados, que no funcionaban, inferiores o defectuosos al engañar a los OEM mediante la presentación de informes fraudulentos y falsos, e información adicional que ocultaba los resultados reales y verdaderos de las pruebas a los infladores, los cuales en esa situación no hubiesen sido comprados por los OEM”. El mismo día, se hizo pública una alegación de tres empleados de Takata sobre los mismos cargos. Takata presentó una declaración en la que se declara culpable de la alegación de fraude electrónico ante el juez de Distrito de los Estados Unidos, George Caram Steeh, como parte de un acuerdo con el Departamento de Justicia de los Estados Unidos. *Ver U.S. v. Takata Corporation*, No. 2:16-cr-20810 GCS EAS, Dkt. No. 23 (E.D. Mich. 27 de febrero del 2017).

Se han presentado pruebas y documentación importantes por escrito (se ha generado más de un millón de documentos), las Demandadas del sector automotriz han hecho declarar a más de 110 Representantes del grupo y los Demandantes han hecho declarar al menos a 14 testigos de Takata y a 47 testigos de las Demandadas del sector automotriz.

### 3. ¿Qué vehículos se incluyen en el Acuerdo?

Se incluyen los vehículos de la marca Ford que se indican a continuación (denominados los “Vehículos incluidos”) distribuidos para la venta o el alquiler en los Estados Unidos, el distrito de Columbia, Puerto Rico o cualquier otro territorio o posesión de los Estados Unidos:

<u>Años del modelo</u>	<u>Marca y modelo</u>
del 2007 al 2010, del 2015 al 2018	FORD EDGE
del 2006 al 2016	FORD FUSION
2005 y 2006	FORD GT
del 2005 al 2017	FORD MUSTANG
del 2004 al 2011	FORD RANGER
2015 y 2016	LINCOLN MKC
del 2007 al 2010, del 2016 al 2018	LINCOLN MKX
del 2007 al 2016	LINCOLN MKZ
2006	LINCOLN ZEPHYR
del 2006 al 2011	MERCURY MILAN

### 4. ¿Por qué es esta una demanda colectiva?

En una demanda colectiva, una o más personas llamadas “Representantes del Grupo” demandan en nombre de otras personas que tienen reclamos similares. Todas estas personas juntas son el “Grupo” o los “Miembros del Grupo” si el Tribunal aprueba este procedimiento. Una vez aprobado, el Tribunal resuelve los problemas de todos los Miembros del Grupo que presentan la demanda colectiva, excepto para aquellos que se excluyan del Grupo.

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## 5. ¿Por qué existe una conciliación?

Ambas partes en la demanda aceptaron un acuerdo de conciliación para evitar el costo y el riesgo de continuar con el litigio, incluido un juicio posible y para que, de este modo, los Miembros del grupo puedan obtener los beneficios a cambio de eximir a Ford y a las Partes eximidas de la responsabilidad. El acuerdo no significa que Ford hubiese infringido ley alguna o que hubiese hecho algo incorrecto y el Tribunal aún no se expidió en lo que respecta a cuál de las partes está en lo correcto. Este Acuerdo ha sido aprobado preliminarmente por el Tribunal, el cual autorizó la emisión de este Aviso. Los Representantes del grupo/los demandantes nombrados y los abogados que los representan (denominados los “Abogados del grupo del acuerdo”) consideran que el acuerdo obra en el mejor interés de todos los Miembros del grupo.

En este Aviso se resumen los términos esenciales del Acuerdo. El Acuerdo de transacción junto con todos los anexos y suplementos establece en gran detalle los derechos y las obligaciones de las partes. Si surge un conflicto entre este Aviso y el Acuerdo de transacción, regirá este último.

## B. ¿QUIÉNES ESTÁN INCLUIDOS EN EL ACUERDO?

Para verificar si está afectado o si puede obtener dinero o beneficios, debe determinar primero si es un Miembro del Grupo.

## 6. ¿Cómo sé si formo parte del Acuerdo?

Usted forma parte del Acuerdo si es:

(1) una persona o una entidad que es o fue propietaria o arrendataria de Vehículos incluidos y que, al 5 de septiembre del 2018, se distribuyeron para la venta o el arrendamiento en los Estados Unidos o en cualquiera de sus territorios o posesiones o

(2) una persona o una entidad que es o fue propietaria o arrendataria de un Vehículo incluido que se distribuyó para la venta o el arrendamiento en los Estados Unidos o en cualquiera de sus territorios o posesiones y que lo vendió o bien devolvió el Vehículo incluido en virtud del arrendamiento con posterioridad al 19 de junio de 2014 y hasta el 5 de septiembre de 2018.

A esto se lo denomina el “Grupo”. Quedan excluidos de este Grupo: (a) Ford, sus ejecutivos, directores y empleados y abogados externos; sus filiales y los ejecutivos, los directores y los empleados de sus filiales; sus distribuidores y los ejecutivos, los directores y los empleados de los distribuidores; y los concesionarios de Ford al igual que los ejecutivos y los directores de los concesionarios de Ford; (b) los Abogados del Grupo del acuerdo, el Abogado de los demandantes y sus empleados; (c) los funcionarios judiciales y sus familiares inmediatos y el personal judicial asociado que se designara a este caso, cualquiera de los casos indicados en el Anexo 1 del Acuerdo o el Tribunal de Apelaciones del Circuito 11; (d) los recicladores automotrices y sus abogados externos y empleados; y (e) las personas o las entidades que, de manera oportuna y apropiada, se excluyesen del Grupo.

## 7. Aún no estoy seguro de estar incluido en el Acuerdo.

Si no está seguro de si está o no incluido en el Grupo, puede llamar al 1-888-735-5596. No se comunique con los concesionarios de Ford para solicitar detalles sobre este acuerdo mientras esté en trámite ante el Tribunal dado que el Tribunal ha ordenado que todas las preguntas se dirijan al Administrador de avisos del acuerdo.

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## C. LOS BENEFICIOS DEL ACUERDO - LO QUE USTED OBTENDRÁ Y CÓMO PUEDE OBTENERLO

### 8. ¿Qué es lo que se ofrece en el Acuerdo?

Si usted es un Miembro del Grupo, lo que usted puede tener derecho a recibir depende de varios factores. A continuación, se describen, de manera general, los beneficios del Acuerdo, pero puede encontrar más información en el sitio web del Acuerdo. El Tribunal aún debe decidir si aprueba el Acuerdo definitivamente.

**Entre los beneficios del acuerdo propuesto se incluyen, entre otros componentes, (i) un Programa de alquiler de vehículo/un préstamo de vehículo mejorado, (ii) un Proceso de reclamos de gastos de bolsillo, (iii) un Programa de servicio de atención al cliente y (iv) Distribución residual, si es que quedasen fondos.**

No sabemos cuándo el Tribunal aprobará definitivamente el Acuerdo, si es que lo hace, o si habrá alguna apelación que debería ser resuelta en favor del Acuerdo antes de que determinados beneficios puedan ser proporcionados; por lo tanto, no sabemos con precisión cuándo estarían disponibles los beneficios. Visite de forma regular el sitio web [www.AutoAirbagSettlement.com](http://www.AutoAirbagSettlement.com) para obtener más novedades sobre el Acuerdo.

*Tenga en cuenta que podría tener que llevar a cabo alguna acción dentro de determinados plazos para recibir determinados beneficios, tales como completar y enviar un Formulario de inscripción/reclamo. Y si no hace nada, podría dejar de recibir determinados beneficios del Acuerdo, además, como Miembro del Grupo, no podrá demandar a las Partes exentas sobre las cuestiones en esta demanda.*

### a. ¿Cómo financiará Ford el acuerdo y todos sus componentes?

Como parte de este Acuerdo, Ford se compromete a pagar un total de USD 299,100,000.00 menos el 20 % del Crédito del Programa de alquiler de vehículos/préstamo de vehículos mejorado (explicado en la pregunta 8(b) a continuación), en un Fondo del acuerdo calificado (Qualified Settlement Funds, "QSF"). El Monto del Acuerdo se utilizará para financiar los programas del Acuerdo, excepto el Programa de servicio de atención al cliente, y para realizar todos los otros pagos, lo cual incluye, entre otros, costos de depósito, administrativos, de aviso, declaración de impuestos y otros honorarios y gastos relacionados con el Acuerdo. El Fondo de acuerdo también se utilizará para pagar honorarios y gastos de abogados, al igual que pagos de incentivos a los Representantes del Grupo, según lo otorgó el Tribunal.

*Pago inicial:* Ford efectuará el primer pago en el QSF antes de los 30 días calendario después de que el Tribunal dicte una Orden de aprobación preliminar (el "Pago inicial"). El Pago inicial incluirá lo siguiente:

- i. USD 35,892,000 (12 % del total del Fondo de acuerdo), que tiene por finalidad ser suficiente para pagar los primeros doce (12) meses del Programa de ayuda y
- ii. USD 522,000, que tiene por finalidad ser suficiente para pagar los primeros doce (12) meses de los costos y los gastos administrativos del Administrador especial del acuerdo.

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Segundo pago: Ford pagará al QSF el monto suficiente para pagar los costos de notificación, según lo indique el Administrador especial del acuerdo, antes de los veintiún (21) días calendario después de haber recibido las indicaciones del Administrador especial del acuerdo.

Tercer pago: Antes de los catorce (14) días calendario después de que el Tribunal dicte la Sentencia final y la Sentencia definitiva por las que finalmente se aprueba el acuerdo, Ford depositará en el QSF el monto de los honorarios y los gastos de los abogados que adjudique el Tribunal.

Pago del primer año: Ford depositará en el QSF, antes de los catorce (14) días calendario luego de la Fecha de entrada en vigencia, el 30 % del monto restante de los USD 299,100,000, después de restar el Pago inicial, el Segundo pago y el Tercer pago, menos la parte correspondiente del Crédito del programa de alquiler/préstamo de automóviles mejorado del 20 %.

Pago del segundo año: Ford depositará en el QSF, antes del año luego de la Fecha de entrada en vigencia, el 30 % del monto restante de los USD 299,100,000, después de restar el Pago inicial, el Segundo pago y el Tercer pago, menos la parte correspondiente del Crédito del programa de alquiler/préstamo de automóviles mejorado del 20 %.

Pago del tercer año: Ford depositará en el QSF, antes de los dos años luego de la Fecha de entrada en vigencia, el 20 % del monto restante de los USD 299,100,000, después de restar el Pago inicial, el Segundo pago y el Tercer pago, menos la parte correspondiente del Crédito del programa de alquiler/préstamo de automóviles mejorado del 20 %.

Pago del cuarto año: Ford depositará en el QSF antes de los tres (3) años luego de la Fecha de entrada en vigencia, el monto total restante de los USD 299,100,000, luego de restar los montos antes indicados y menos la parte correspondiente del Crédito del programa de alquiler/préstamo de automóviles mejorado del 20 % antes establecido.

## **b. Programa de alquiler de vehículos/préstamo de vehículos mejorado**

Con el fin de abordar los inconvenientes ocasionados por la espera en un concesionario de Ford hasta que se realicen las Reparaciones de retiro y para compensar la ansiedad argumentada, el estrés emocional o el temor de conducir un Vehículo incluido con un inflador de Takata retirado y no reparado, según lo expresado por algunos de los propietarios o los arrendatarios, Ford adoptará e implementará una política para proporcionar un automóvil de alquiler/prestado sin cargo a los propietarios y los arrendatarios que solicitasen un vehículo, de acuerdo con los términos del Programa de arrendamiento de vehículos/préstamo de vehículos mejorado.

Según el Programa de alquiler de vehículos/préstamo de vehículos mejorado, Ford proporcionará un vehículo de alquiler/prestado a todos los propietarios o los arrendatarios que (i) trajesen un Vehículo incluido que se ha retirado (*es decir*, que NHTSA finalmente ha determinado que los infladores del Vehículo incluido deben retirarse) a un concesionario para completar el Recurso de retiro y (ii) solicitasen un vehículo de alquiler/prestado mientras esperan el Recurso de retiro, mientras el Recurso de retiro está en progreso o si se produjese un retraso en la realización del Recurso de retiro en el Vehículo incluido retirado. El propietario o el arrendatario deberá proporcionar el comprobante de seguro adecuado y, si se le proporcionase un vehículo de alquiler (en contraposición a uno prestado), el propietario o el arrendatario tendrá que cumplir con las directrices de la compañía de vehículos de alquiler. se pondrá a disposición un vehículo en alquiler/prestado hasta que pueda hacerse efectivo el Recurso de retiro en el Vehículo incluido y, en ese momento, deberá devolverse de inmediato al prestador del servicio el vehículo en

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alquiler/prestado en las mismas condiciones en las que se lo ha recibido (con excepción del desgaste natural). La obligación de Ford de pagar los costos de alquiler o proporcionar un automóvil prestado en virtud de este párrafo cesará 7 días después de la notificación en la que se informe que el Recurso de retiro se ha realizado para el Vehículo incluido.

Ford Establecerá el Programa de alquiler de vehículos/el préstamo de vehículos mejorado antes del 5 de septiembre de 2018.

Ford recibirá un crédito del 20 % (USD 59,820,000 millones) del total del Fondo de acuerdo para brindar el Programa de alquiler de vehículos/el préstamo de vehículos mejorado. Este crédito: (a) se aplicará automáticamente al comienzo del año del programa de la Conciliación para el Pago del primer año, el Pago del segundo año, el Pago del tercer año y el Pago del cuarto año; y (b) se dividirá en cuatro montos iguales para estos pagos anuales. Cada seis meses, Ford certificará al Administrador especial del acuerdo que está cumpliendo con el Programa de alquiler de vehículos/el préstamo de vehículos mejorado. El Administrador especial del Acuerdo tendrá derecho a auditar y confirmar dicho cumplimiento.

### **c. Proceso de reclamos de gastos de bolsillo**

Si finalmente se aprueba el Acuerdo, incluida la resolución de toda apelación a favor del cumplimiento del Acuerdo, usted podrá pedir que se le reembolse determinado monto razonable de gastos de bolsillo relacionados con los retiros del inflador de airbag Takata. A fin de ser elegible para recibir el reembolso, deberá presentar oportunamente el Formulario de inscripción/reclamo plenamente completado. Adjunto al Aviso encontrará el Formulario de inscripción/reclamo, que también se encuentra disponible en el sitio web del Acuerdo, [www.AutoAirbagSettlement.com](http://www.AutoAirbagSettlement.com). En ningún caso, un Miembro del Grupo tendrá derecho a más de un pago de reembolso por Recurso de retiro que se haga efectivo en cada Vehículo incluido que esta persona posea o tenga arrendado.

El Administrador especial del Acuerdo supervisará la administración del Proceso de reclamos de gastos de bolsillo, que incluye, entre otras, la determinación del tipo de costos reembolsables y la elegibilidad de reclamos de reembolso. El tipo de costos reembolsables elegibles se mencionan en el Formulario de inscripción/reclamo, el cual también incluye una declaración que el Administrador especial del Acuerdo podrá aprobar y pagar por otros reclamos reembolsables que considere gastos de bolsillo razonables.

*Gastos en efectivo reembolsables:* Ford y las Demandantes, a través de sus respectivos abogados, harán recomendaciones al Administrador especial del acuerdo en lo que se refiere a qué tipos de gastos razonables en efectivo son reembolsables. En función de estas recomendaciones, el Administrador especial del Acuerdo las considerará y desarrollará un protocolo de revisión de reclamos, el cual permitirá realizar el reembolso de los Fondos del Acuerdo a los Miembros del Grupo elegibles para los gastos de bolsillo razonables relacionados con los retiros de infladores de airbags Takata. Las Partes convienen que podrá reembolsarse la lista preliminar de gastos razonables que se indican a continuación:

- (i) los gastos razonables no reembolsados de transporte y alquiler de vehículos, después de haber solicitado y mientras se espera el Recurso de retiro de un concesionario de Ford;
- (ii) los cargos razonables de remolque a un concesionario de Ford para que finalice el Recurso de retiro;
- (iii) los gastos de guardería razonables en los que se incurriese de manera necesaria mientras un concesionario de Ford realiza el Recurso de retiro del vehículo incluido;

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- (iv) los costos en efectivo no reembolsados razonables asociados con la reparación de los airbags frontales del conductor o el acompañante que contienen infladores de nitrato de amonio de fase estabilizada (phase-stabilized ammonium nitrate, PSAN) de Takata;
- (v) la pérdida de los ingresos razonable como consecuencia de tiempo de trabajo perdido asociado de forma directa con la entrega o la recolección de un Vehículo incluido en un concesionario de Ford para cumplir con el Recurso de retiro y
- (vi) honorarios razonables incurridos por el almacenamiento de un Vehículo incluido luego de haber solicitado el repuesto del Recurso de retiro y mientras lo espera.

Las Partes reconocen que podría haber otras categorías de gastos de bolsillo que podrían ser reembolsadas, según lo ha determinado el Administrador especial del Acuerdo. El Administrador especial del acuerdo no podrá utilizar fondo alguno del Proceso de reclamo de los gastos de bolsillo para los pagos a los Miembros del grupo debido a los daños en el vehículo, los daños materiales o las lesiones personales que, supuestamente, son producto del despliegue o no despliegue de un airbag Takata.

Momento oportuno para los reclamos por gastos en efectivo que se reembolsarán y revisión de estos: Según el Protocolo de revisión de los reclamos del Administrador especial del acuerdo, los Miembros del grupo de demandantes que han presentado Formularios de inscripción/reclamo completados en forma total y de manera oportuna y: (a) son elegibles, según se determina, para recibir un reembolso por gastos razonables en efectivo, deben ser reembolsados por estos gastos; y (b) no son elegibles, según se ha determinado, para recibir un reembolso por gastos en efectivo reclamados o solo están registrados para un pago residual, deben ser incluidos en un grupo de Miembros del grupo de demandantes que pueden ser elegibles para recibir fondos de la Distribución residual, si es que hay alguna, sujeto a determinadas condiciones.

El primer lote de reembolsos para los Miembros del grupo elegibles que hubiesen completado y presentado un Formulario de reclamo se realizará en forma continua por el Administrador especial del acuerdo antes de los 180 días posteriores a la Fecha de entrada en vigor. Los reembolsos de los años siguientes se realizarán de forma continua a medida que los reclamos se presenten y se aprueben.

Los reembolsos que ocurran del primer al tercer año deberán realizarse a medida que entren y salgan hasta que el Fondo de acuerdo se agote por ese año. Si en ese año en particular no hubiese más fondos para reembolsar a los Miembros del Grupo elegibles, entonces estos Miembros del Grupo serán trasladados al año siguiente para recibir su reembolso.

Para los reembolsos de los Miembros del Grupo elegibles que ocurran en el cuarto año y hasta el Plazo final para la inscripción/el reclamo, los pagos de gastos de bolsillo deberán realizarse por el monto aprobado por el Administrador especial del Acuerdo, excepto que los reembolsos aprobados para Miembros del Grupo elegibles excedan el monto disponible. Si esto ocurriese, los reembolsos se realizarán en forma *prorrataada* hasta que se agotase el monto disponible.

Presentación de más de un reclamo para gastos en efectivo: Los Miembros del grupo de demandantes pueden presentar un reclamo para gastos en efectivo atribuibles a cada Reparación de la retirada realizada en cada Vehículo incluido que posean (poseían) o arrienden (arrendaban). Por ejemplo, un Miembro del grupo con dos Vehículos incluidos podrá presentar dos reclamos, uno por cada vehículo; sin embargo, los reclamos por los gastos no reembolsables no pueden duplicarse.

Irrevocabilidad de la decisión: las decisiones del Administrador especial de la Conciliación con respecto a los reclamos para el reembolso de gastos en efectivo presentados por los Miembros del

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grupo de demandantes son definitivas y no podrán apelarse.

#### **d. Distribución residual**

El programa del acuerdo se implementará en un período de al menos cuatro años. Todo fondo que quedase al final de cada uno de los primeros cuatro años del programa del Acuerdo, luego de haberse realizado todos los pagos del Programa de ayuda y de los gastos de bolsillo de ese año, será distribuido a cada Miembro del Grupo quién (a) haya presentado reclamos en ese año o años de programa previos que hayan sido rechazados anteriormente; o (b) busque registrarse únicamente por un pago residual. Sujeto a ciertas excepciones detalladas a continuación, ningún Miembro del Grupo elegible para recibir un pago de Distribución residual recibirá un pago total que supere los \$250 de la Distribución residual para los primeros cuatro años del programa del Acuerdo. Sujeto a ciertas excepciones detalladas a continuación, todo fondo restante que quedase luego de realizar el pago del pago máximo residual a todos los Miembros del Grupo en un determinado año deberá transferirse al programa del Acuerdo del año siguiente.

A menos que no sea factible en términos administrativos, los fondos que queden al final del último año del programa de la Conciliación luego de realizar la Distribución residual, si es que quedan, se distribuirán *per cápita* a los Miembros del grupo de demandantes que: (a) presentaron reclamos en este año del programa o en años anteriores que se pagaron previamente; (b) presentaron reclamos en este año del programa o en años anteriores que se rechazaron previamente y no han recibido ningún pago de reclamos anteriores conforme a este programa de la Conciliación; o (c) solicitaron registrarse únicamente para un pago residual. Ningún Miembro del Grupo recibirá un pago que supere los \$250 de este pago residual de este último año del programa del Acuerdo.

Todos los fondos que queden en el Fondo del acuerdo después de realizar los pagos descritos antes se distribuirán entre todos los Miembros del grupo *per cápita*, a menos que no fuese viable en términos administrativos, en cuyo caso estos fondos se distribuirán *de la manera más aproximada posible*, sujeto al acuerdo entre las Partes, a través de sus respectivos abogados y a la aprobación del Tribunal.

Sin perjuicio de lo que antecede, tras el Plazo de inscripción/reclamo final, las Partes y el Administrador especial del acuerdo podrán convenir gastar los fondos restantes del Fondo del acuerdo calificado en las actividades del Programa de ayuda, en lugar de efectuar un pago de Distribución residual o *de la manera más aproximada posible*, conforme lo descrito antes, para cumplir con los fines del Acuerdo de conciliación.

Todo Miembro del Grupo que presente un reclamo que el Administrador especial del Acuerdo considere que es fraudulento, no recibirá ningún pago del Fondo de acuerdo.

#### **e. Programa de servicio de atención al cliente**

Si el Tribunal dictase una Sentencia definitiva que aprueba el acuerdo, como parte de la compensación que Ford está pagando a cambio de una exención de los reclamos en su contra en la Demanda, Ford proporcionará a los Miembros del grupo un Programa de servicio de atención al cliente.

*Beneficios del Programa de asistencia al cliente:* el Programa de servicio de atención al cliente proporcionará la cobertura posible para las reparaciones y los ajustes (incluidos los repuestos y la mano de obra) necesarios a fin de corregir los materiales dañados o defectuosos, si los hubiera, y mano de obra defectuosa, si la hubiera; de (i) los infladores de Takata contenidos en los módulos de

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airbags frontales del conductor o el acompañante de los Vehículos incluidos o (ii) los infladores de reemplazo del conductor o el acompañante instalados de acuerdo con el Retiro de las airbags de Takata de los Vehículos incluidos. Este beneficio se transferirá automáticamente y permanecerá con el Vehículo incluido independientemente de la titularidad. El despliegue normal de un inflador de airbag de reemplazo pondrá fin a este beneficio de un Vehículo incluido. Para permitir que Ford coordinase con sus concesionarios de Ford la prestación de los beneficios en virtud del Programa de servicio de atención al cliente del Acuerdo, los Miembros del grupo elegibles podrán comenzar a solicitar dichos beneficios no antes de los 30 días a partir de la fecha en la que el Tribunal expida la Sentencia definitiva. Nada de lo dispuesto en la oración anterior afectará el cálculo de los períodos en los que Ford brindará cobertura en virtud del Programa de servicio de atención al cliente.

Los términos los “materiales defectuosos” y la “mano de obra defectuosa” mencionados antes no incluirán el uso de PSAN como propulsor en los infladores, a menos que NHTSA determinase de manera definitiva que tales infladores deben retirarse. El Programa de servicio de atención al Cliente no dará a los Miembros del grupo el derecho de demandar que Ford retire tales infladores no retirados o un reclamo contra Ford por incumplimiento de la garantía al no retirar los infladores en función de su uso de PSAN como propulsor.

*Cronograma y duración del Programa de servicio de atención al cliente:* si el Vehículo incluido se ha retirado y se ha completado el Recurso de retiro al 5 de septiembre de 2018, el Programa del servicio de atención al cliente durará 10 años contados a partir de la fecha en que se realizó el Recurso de retiro en el Vehículo incluido o 150,000 millas medidas a partir de la fecha en que el Vehículo incluido fue originalmente comprado o arrendado por una Concesionaria Ford (la “Fecha del primer uso”), lo que sucediese primero. Sin embargo, cada vehículo elegible recibirá cobertura por al menos 75,000 millas calculadas a partir de la fecha en que se realizó el Recurso de retiro en el Vehículo incluido o dos años contados a partir del 5 de septiembre del 2018, lo que ocurriese después.

Si el Vehículo incluido se ha retirado o se retirará y no se ha completado el Recurso de retiro al 5 de septiembre de 2018, el Programa del servicio de atención al cliente durará (a) 10 años a partir de la fecha del Primer uso o, si posteriormente se realizase el Recurso de retiro en el Vehículo incluido, la fecha en que se realiza el primer Recurso de retiro o (b) 150,000 millas medidas a partir de la Fecha del primer uso, lo que sucediese primero. Sin embargo, cada vehículo elegible recibirá cobertura por al menos 75,000 millas calculadas a partir de la fecha en la que se efectivizó el Recurso de retiro en el Vehículo incluido o dos años contados a partir del 5 de septiembre del 2018 (o desde la fecha en la que posteriormente se realice el Recurso de retiro en el Vehículo incluido correspondiente, si lo es), lo que ocurriese después.

Si el Vehículo incluido contuviese un inflador desecado PSAN Takata en los módulos de airbags frontales del conductor o del acompañante como parte del equipo original que no se ha retirado a la fecha del dictado de la Sentencia de aprobación preliminar del Tribunal, el Programa de servicio de atención al cliente tendrá una duración de diez (10) años, calculados a partir de la Fecha del primer uso o 150,000 millas calculadas desde la Fecha del primer uso, lo que ocurriese primero. Sin embargo, cada Vehículo incluido elegible recibirá no menos de dos (2) años de cobertura a partir del 5 de septiembre del 2018.

En el supuesto en que los infladores desecados PSAN Takata en los módulos de airbags frontales del conductor o del acompañante en cualquiera de los Vehículos incluidos se retirasen en un futuro, el Programa de servicio de atención al cliente se extenderá durante diez (10) años contados a partir de la fecha en que se realiza dicho Recurso de retiro futuro en el Vehículo incluido o 150,000 millas calculadas a partir de la Fecha del primer uso, lo que ocurriese primero. Sin embargo, cada

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vehículo elegible recibirá cobertura por al menos 75,000 millas o dos años que se calcularán a partir de la fecha futura del Recurso de retiro en el Vehículo incluido, lo que ocurriese después.

Vehículos no elegibles: los vehículos inoperables y los vehículos que se han restaurado, reconstruido o han sido dañados por inundaciones no son elegibles para el Programa de asistencia al cliente.

**f. ¿Cuándo me pagarán por el reclamo presentado para el reembolso de gastos de bolsillo o de Distribución residual?**

El Administrador especial del Acuerdo hará todo lo posible para pagar su reclamo oportunamente. El primer lote de reembolsos para los Miembros del grupo elegibles que hubiesen completado y presentado un Formulario de inscripción/reclamo será realizado en forma continua por el Administrador especial del Acuerdo antes de los 180 días posteriores a la Fecha de entrada en vigor. Los reembolsos de los años siguientes deberán realizarse de forma continua a medida que los reclamos se presenten y se aprueben en los años siguientes.

Los reembolsos que ocurran del primer al tercer año deberán realizarse a medida que entren y salgan hasta que el Fondo de acuerdo se agote por ese año. Si en ese año en particular no hubiese más fondos para reembolsar a los Miembros del Grupo elegibles, entonces estos Miembros del Grupo serán trasladados al año siguiente para recibir su reembolso.

Para que los reembolsos a los Miembros del grupo elegibles que ocurran en el cuarto año y hasta el Plazo final para la inscripción/el reclamo, los pagos de los gastos de bolsillo se realizarán por el monto que apruebe el Administrador especial del acuerdo, excepto que los reembolsos aprobados para los Miembros del grupo elegibles excediesen el monto disponible. Si esto ocurriese, los reembolsos se realizarán en forma *prorrataada* hasta que se agotase el monto disponible.

**Fecha límite para presentar un Formulario de inscripción/reclamo:** para recibir el reembolso por un Reclamo, los Miembros del grupo elegibles deben completar y presentar el Formulario de inscripción/reclamo durante el Período del reclamo. Los Miembros del grupo que, antes del 5 de septiembre del 2018, hubiesen vendido o devuelto, en virtud de un contrato de arrendamiento, un Vehículo incluido tendrán un año a partir de la Fecha de entrada en vigencia para presentar un Formulario de inscripción/reclamo. Los Miembros del grupo que poseían o arrendaron un Vehículo el 5 de septiembre del 2018 inclusive tendrán un año de plazo a partir de la Fecha de entrada en vigencia o un año a partir de la fecha del cumplimiento del Recurso de retiro en su Vehículo incluido, lo que ocurriese después, para presentar un Formulario de inscripción/reclamo; sin embargo, no se podrán presentar Formularios de inscripción/reclamo luego del Plazo final para la inscripción/el reclamo.

**Cómo obtener, completar y presentar el Formulario de inscripción/reclamo:** puede completar y presentar un Formulario de inscripción/reclamo en línea en [www.AutoAirbagSettlement.com](http://www.AutoAirbagSettlement.com). Por otra parte, puede solicitar una copia impresa del Formulario de inscripción/reclamo al Administrador especial del Acuerdo o al Administrador de avisos del Acuerdo. También puede obtener el Formulario de inscripción/reclamo del sitio web del Acuerdo, imprimirlo, completarlo y enviarlo de manera oportuna por correo al Administrador de avisos del acuerdo a Auto Airbag Settlement, Settlement Notice Administrator, P.O. Box 3207, Portland, OR 97208-3207.

**g. Programa de ayuda**

El Administrador especial del acuerdo supervisará y administrará el Programa de ayuda con el

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objetivo de maximizar, en la medida de lo posible, la finalización del Recurso de retiro en Vehículos incluidos para retiro de infladores de airbags Takata. Las Partes recomendarán al Administrador especial del acuerdo programas diferentes que pretenden hacer efectivo estos objetivos. Para poder materializar estos objetivos, el Programa de ayuda se diseñará para incrementar de manera significativa las tasas de finalización del Recurso de retiro a través de iniciativas de ayuda tradicionales y no tradicionales, incluso al extender las que Ford utiliza en la actualidad y las que lleva a cabo en relación con la Sentencia de reparación coordinada de la NHTSA de fecha 3 de noviembre del 2015 y sus enmiendas (la “Sentencia de reparación coordinada”). El presupuesto para el Programa de ayuda no debe superar el 33 % del Fondo del acuerdo, pero el presupuesto del Programa de ayuda podrá ajustarse sujeto a un acuerdo entre las Partes, a través de sus respectivos abogados. Las Partes, en consulta con el Administrador especial del acuerdo, se reunirán al menos una vez al año para considerar si el presupuesto especulativo citado antes para el Presupuesto correspondiente al Programa de ayuda debería incrementarse o reducirse y si también debería separarse un Fondo del Acuerdo calificado para financiar el Programa de ayuda o el Proceso de los reclamos de los gastos en efectivo en años futuros. El Administrador especial del Acuerdo contratará a determinados asesores y empleados, según se acuerde entre las Partes, por medio de sus respectivos abogados, para que ayuden con el diseño, la aplicación y la implementación del Programa de ayuda. El Administrador especial del acuerdo ejercerá su mejor criterio para hacer todo lo que esté razonablemente a su alcance con el fin de consultar a NHTSA, el Supervisor independiente de Takata y a los Procuradores generales del estado y analizar el cumplimiento del Programa de reparación coordinada antes de poner fin al Programa de ayuda. Además, el Administrador especial del acuerdo y las Partes pueden consultar de forma directa con NHTSA, el Supervisor independiente de Takata y las otras partes, incluidos los Procuradores generales del estado, para solicitar aportes y colaboración en lo que se refiere a los esfuerzos para aumentar las tasas de retiro. Las actualizaciones del Programa de ayuda serán publicadas en el sitio web del Acuerdo.

El Programa de difusión para las Retiradas del inflador de bolsas de aire de Takata puede incluir, entre otros, los siguientes componentes acordados: a) contacto directo de los Miembros del grupo por el servicio de correo de los EE. UU., por teléfono, a través de las redes sociales, por correo electrónico, por mensajes de texto y por campañas; b) contacto de los Miembros del grupo a través de terceros (p. ej., talleres de reparación independientes) y c) mediante campañas multimedia como, por ejemplo, a través de medios impresos, la televisión, la radio e Internet. El Programa de ayuda también puede incluir el remolque de los Vehículos incluidos al concesionario para completar el Recurso de retiro y la entrega de los Vehículos incluidos a los Miembros del grupo una vez finalizado el Recurso de retiro, la finalización del Recurso de retiro por parte los Concesionarios de Ford u otras entidades autorizadas en aquellos lugares que no sean concesionarias a través de unidades móviles capaces de llevar a cabo el Recurso de retiro, los incentivos para que los Miembros del grupo lleven sus Vehículos incluidos a los Concesionarios de Ford para que se cumpla con el Recurso de retiro, los incentivos para que los concesionarios realicen el Recurso de retiro, los incentivos para que los talleres de reparaciones independientes deriven a los Miembros del grupo a los Concesionarios de Ford para que se lleve adelante el Recurso de retiro y el uso del recurso que agregan los datos para identificar a los Vehículos incluidos que no han obtenido el Recurso de retiro.

El Administrador especial del acuerdo trabajará de buena fe con los consultores y las Partes, a través de sus respectivos abogados, en el Programa de ayuda, lo que incluye, entre otros, los programas, los plazos, los mensajes de ayuda necesarios, junto con los montos y el apoyo. El

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Administrador especial del acuerdo ajustará y coordinará el Programa de ayuda con Ford para garantizar, en la medida de lo posible, que la ayuda concuerde con la disponibilidad del servicio y los repuestos del Recurso de retiro.

Una vez que las Partes hayan proporcionado sus recomendaciones, el Administrador especial del Acuerdo tomará luego una determinación final y vinculante respecto de los detalles y el alcance del Programa de ayuda. El Administrador especial del Acuerdo informará periódicamente al Tribunal y a las Partes, a través de sus respectivos abogados, los resultados de la implementación del Programa de ayuda.

Si la Fecha de entrada en vigencia no ocurriese durante los primeros 12 meses del Programa de ayuda, las Partes, a través de sus respectivos abogados, analizarán la continuidad y la financiación del Programa de ayuda hasta la Fecha de entrada en vigencia. El Programa de ayuda tiene la finalidad de ser un programa que ajustará y cambiará sus métodos de ayuda según se requiere para alcanzar su objetivo de maximizar la finalización del Recurso de retiro. No tiene la finalidad de ser un programa estático con componentes que estén fijos durante el período completo del Acuerdo.

Ford podrá proponer continuar con el Programa de ayuda con posterioridad a los 12 meses siguientes al Pago en el cuarto año si considerase que es necesario aumentar al máximo las tasas de retiro entre la población de los Vehículos incluidos que se retirarán o podrán retirarse. Si los Abogados del grupo del acuerdo no están de acuerdo en continuar con el Programa de ayuda después de los 12 meses posteriores al Pago del cuarto año, las Partes podrán presentar, cada una, una recomendación al Administrador especial del acuerdo. Luego el Administrador especial del Acuerdo tomará una decisión definitiva y vinculante. Si se continuase con el Programa de ayuda después de transcurridos los 12 meses posteriores al Pago del cuarto año, podrá separarse una parte del Fondo del acuerdo calificado para pagar los costos del Programa de ayuda en el período extendido.

## **9. ¿A qué renuncio a cambio de recibir los beneficios del Acuerdo?**

Si el acuerdo se volviese definitivo, los Miembros del grupo que no se hubiesen excluido del Grupo eximirán a Ford y a las Partes eximidas de toda responsabilidad y ya no podrán demandar a las Partes eximidas respecto de las cuestiones de la demanda. En la Sección VII del Acuerdo se describen los reclamos eximidos utilizando la terminología legal necesaria, por lo tanto, léalo detenidamente. Para facilitar las referencias, también adjuntamos a este Aviso la sección de exención completa y la definición de las Partes eximidas en el Apéndice A. El Acuerdo puede consultarse en [www.AutoAirbagSettlement.com](http://www.AutoAirbagSettlement.com). Puede hablar sin costo alguno con los abogados enumerados en la pregunta 13 a continuación, o puede, por supuesto, por su cuenta y gasto, hablar con su propio abogado si tiene preguntas acerca de los reclamos eximidos o el significado de ellos.

## **D. EXCLUIRSE DEL ACUERDO**

Si desea conservar el derecho de demandar o seguir adelante con la demanda contra Ford o las Partes eximidas en relación con las cuestiones legales que se plantean en la demanda, debe tomar las medidas para excluirse de este acuerdo. A esto se lo conoce con el nombre de “excluirse” del Grupo.

## **10. Si me excluyo, ¿puedo obtener algo de esta conciliación?**

Si usted se excluye, no podrá recibir los beneficios del Acuerdo. Si solicita ser excluido, no podrá objetar el Acuerdo. Sin embargo, si solicitase la exclusión de manera oportuna y apropiada, el acuerdo no impedirá que en el futuro demande, siga demandando, siga siendo o se convierta en

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una parte de una demanda diferente contra Ford o las Partes eximidas en el futuro con respecto a las cuestiones de la demanda. Si se excluye, no estará obligado por nada de lo que suceda en esta demanda y no podría objetar el Acuerdo.

### 11. Si no me excluyo, ¿puedo presentar una demanda más adelante?

A menos que se excluya, usted renuncia al derecho de demandar a las Partes exentas por los reclamos que resuelve este Acuerdo. Si finalmente se aprueba el acuerdo, tendrá prohibido de manera permanente iniciar o continuar con una demanda u otro procedimiento contra las Partes eximidas con respecto a las cuestiones de esta demanda, conforme se establece en toda la sección de exención del **Apéndice A** que se adjunta en este Aviso.

### 12. ¿Cómo salgo del Acuerdo?

Para excluirse de la Conciliación, **debe** enviar por correo una solicitud de exclusión por escrito al Administrador del aviso de la Conciliación en la que informe que desea ser excluido de la Conciliación en *In Re: Takata Airbag Products Liability Litigation (Economic Loss Actions)*, y mencionar el número de caso (1:15-md-2599-FAM).

La carta **debe** estar firmada por usted o la entidad que busca ser excluida del Grupo y debe incluir la siguiente información: (i) su nombre completo, número de teléfono y dirección; (ii) una declaración que afirme que es miembro del Grupo y que proporcione el Modelo del vehículo incluido, el Año del modelo y el Número de identificación del vehículo (Vehicle Identification Number, VIN); (iii) una declaración explícita y no ambigua de que desea excluirse del Acuerdo de conciliación de Ford en *In re Takata Airbag Products Liability Litigation, 15-md-02599* y (iv) contar con su firma en forma individual y personal (y sus abogados, si está representado por abogados). No se puede solicitar ser excluido por teléfono o en el sitio web del Acuerdo. Para que tengan validez y sean oportunas, las solicitudes de exclusión deben tener fecha de franqueo postal del **26 de noviembre de 2018** o anterior, el último día del Periodo de exclusión (el “Plazo del período para excluirse”). **Debe** enviar su solicitud de exclusión por correo, con fecha de franqueo postal a más tardar el **26 de noviembre de 2018**, a:

Auto Airbag Settlement  
Settlement Notice Administrator  
P.O. Box 3207  
Portland, OR 97208-3207

Los plazos que se encuentran en este Aviso podrían ser cambiados por el Tribunal. Visite de forma regular el sitio web [www.AutoAirbagSettlement.com](http://www.AutoAirbagSettlement.com) para obtener más novedades en relación con el Acuerdo.

## E. LOS ABOGADOS QUE LO REPRESENTAN

### 13. ¿Tengo un abogado en este caso?

Sí. El Tribunal ha nombrado abogados para que lo representen a usted y a los demás Miembros del Grupo. Estos abogados se conocen como “Abogados de la demanda colectiva”: Peter Prieto de Podhurst Orseck, P.A., es el Abogado principal en jefe, y David Boies de Boies Schiller & Flexner, L.L.P. y Todd A. Smith de Power, Rogers & Smith, L.L.P. son los Abogados principales adjuntos para el seguimiento de daños económicos. Roland Tellis de Baron & Budd P.C., James Cecchi de

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Carella Byrne Cecchi Olstein P.C. y Elizabeth Cabraser de Loeff, Cabraser, Heimann & Bernstein, LLP son miembros del Comité Directivo de los Demandantes. Si desea ser representado por otro abogado, puede contratar uno por su cuenta y gasto propios para que comparezca por usted ante el Tribunal. Su información de contacto es la siguiente:

<p>Peter Prieto                  PODHURST ORSECK, P.A.                  SunTrust International Center                  One S.E. 3<sup>rd</sup> Avenue, Suite 2700                  Miami, Florida 33131                  Tel.: (305) 358-2800                  Correo electrónico: pprieto@podhurst.com                  URL: www.podhurst.com                  Abogado director</p>	<p>David Boies                  BOIES, SCHILLER &amp; FLEXNER, L.L.P.                  575 Lexington Avenue                  New York, NY 10022                  Tel.: (305) 539-8400                  Correo electrónico: dboies@bsflp.com                  URL: www.bsflp.com                  Abogado codirector de la vía procesal de daños económicos</p>
<p>Todd A. Smith                  POWER, ROGERS AND SMITH, L.L.P.                  70 West Madison St., Suite 5500                  Chicago, IL 60602                  Tel.: (312) 313-0202                  Correo electrónico: tas@prslaw.com                  URL: www.prslaw.com                  Abogado codirector de la vía procesal de daños económicos</p>	<p>Roland Tellis                  BARON &amp; BUDD                  15910 Ventura Blvd. #1600                  Encino, CA 91436                  Tel.: (818) 839-2333                  Correo electrónico: rtellis@baronbudd.com                  URL: www.baronbudd.com                  Comité Directivo de los Demandantes</p>
<p>James E. Cecchi                  CARELLA, BYRNE, CECCHI, OLSTEIN,                  BRODY &amp; AGNELLO, PC                  5 Becker Farm Road                  Roseland, NJ 07068                  Tel.: (973) 994-1700                  Correo electrónico: jcecchi@carellabyrne.com                  URL: www.carellabyrne.com                  Comité Directivo de los Demandantes</p>	<p>Elizabeth J. Cabraser                  LIEFF CABRASER HEIMANN &amp;                  BERNSTEIN, LLP                  275 Battery Street, 29th Floor                  San Francisco, CA 94111                  Tel.: (415) 956-1000                  Correo electrónico: ecabraser@lchb.com                  URL: www.lchb.com                  Comité Directivo de los Demandantes</p>

**14. ¿Cómo se les pagará a los abogados? ¿Qué sucederá con las compensaciones a los Demandantes/Representantes del grupo de demandantes nombrados?**

Las Partes no comenzaron a negociar los honorarios y gastos de los abogados hasta después de acordar los términos principales establecidos en este Acuerdo. Los Abogados del grupo del acuerdo se comprometen a presentar, y Ford se compromete a no oponerse, una solicitud para el otorgamiento de los honorarios y los gastos de los abogados de no más del 25 % del Monto del acuerdo. El Tribunal determinará el monto de los honorarios y los gastos de los abogados que se otorgará. Este fallo, que se pagará del Fondo de acuerdo, será la única compensación que pagará Ford para todos los abogados de los Demandantes en las Demandas.

Toda orden o proceso relacionado de manera exclusiva con la aplicación de los honorarios y los gastos de los abogados o con la apelación de una orden relacionada con ello o su revocación o modificación, no operará a los fines de rescindir o cancelar este Acuerdo ni afectar o retrasar la Fecha de entrada en vigencia.

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Los Abogados del Grupo del Acuerdo pueden solicitar al Tribunal compensaciones de incentivo de hasta \$5,000 por Demandante. El propósito de tales fallos será el de compensar a los Demandantes por los esfuerzos que han llevado a cabo en nombre del Grupo. Todo fallo de incentivo que formulase el Tribunal se pagará del Fondo del acuerdo dentro de los treinta días posteriores a la Fecha de entrada en vigencia.

Ford no será responsable, ni estará obligada a pagar honorario, gasto, costo o estipendio alguno de los abogados, de forma directa ni indirecta, en relación con las Demandas o el Acuerdo, excepto por lo establecido con anterioridad.

## F. CÓMO OBJETAR EL ACUERDO

Usted puede indicarle al Tribunal que no acepta el Acuerdo o alguna parte de este.

### 15. ¿Cómo le hago saber al Tribunal que no estoy conforme con la conciliación?

Si usted es un Miembro del Grupo y no se excluye de este Grupo, puede objetar al Acuerdo si alguna parte o la totalidad de este no le agradan. Puede indicar las razones por las que piensa que el Tribunal no debería aprobarla. Para objetar, debe entregarle al Abogado de la demanda colectiva y al Abogado de Ford (vea las direcciones más adelante) y presentar ante el Tribunal, en o antes de una fecha ordenada por el Tribunal en la Orden de aprobación preliminar, una declaración escrita de sus objeciones.

La objeción escrita de cualquier Miembro del Grupo debe incluir lo siguiente:

- a) un encabezado que haga referencia a *Takata* MDL y una indicación de que la objeción es para el Acuerdo con Ford;
- b) el nombre completo, el número de teléfono y la dirección del objetor (se debe incluir la dirección residencial real del objetor);
- c) una explicación de los fundamentos sobre los cuales quien presenta la objeción argumenta ser un Miembro del grupo, incluido el número de identificación del vehículo (“VIN”) del o de los Vehículos incluidos de la persona que presenta la objeción;
- d) todos los motivos de la objeción, acompañados de cualquier apoyo legal para la objeción conocida por el objetor o su abogado;
- e) la cantidad de veces en las que quien presenta la objeción ha objetado un acuerdo de conciliación en una demanda colectiva dentro de los cinco años inmediatamente anteriores a la fecha en la que esta persona presenta la objeción, el encabezado de cada caso en el que haya hecho dicha objeción y una copia de cualquier orden relacionada o del dictamen respecto de la persona que presenta la objeción antes de dichas objeciones que hubiesen sido expedidas por los tribunales de primera instancia y de apelación en cada caso enumerado;
- f) si está representado por un abogado, el nombre completo, el número de teléfono y la dirección de todos los abogados, incluido todo abogado anterior o actual que pudiese tener derecho a recibir una compensación por cualquier motivo relacionado con la objeción al Acuerdo o la aplicación de los honorarios;
- g) la cantidad de veces en las que el abogado o el bufete de abogados de la persona que presenta la objeción objetó un acuerdo en una demanda colectiva dentro de los cinco años anteriores a la fecha en la que esta persona presenta la objeción, el encabezado de cada caso en el que el abogado o el bufete de abogados hubiese hecho dicha objeción y una copia de toda orden relacionada o dictamen que se pronuncie respecto de tales objeciones

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previas del abogado o bufete de abogados que hubiesen expedido los tribunales de primera instancia y de apelación en cada caso enumerado;

- h) todos y cada uno de los acuerdos que se relacionasen con la objeción o el proceso de objeción, tanto escritos como verbales, entre quien objeta o sus abogados y cualquier otra persona o entidad;
- i) si el objetor tiene la intención de comparecer en la Audiencia de imparcialidad en representación de sí mismo o por medio de un abogado;
- j) la identidad de todos los abogados que representen al objetor que comparecerán en la Audiencia de imparcialidad;
- k) una lista de todas las personas a las que se llamará a testificar en la Audiencia de imparcialidad en apoyo a la objeción; y
- l) la firma fechada y manuscrita del objetor (una firma electrónica o la firma de los abogados del objetor no son suficientes).

También se debe adjuntar a la objeción todo documento que la apoye.

El Abogado del grupo del acuerdo y los Abogados de Ford deben recibir la objeción a más tardar del **26 de noviembre de 2018**. Para que su objeción sea considerada por el Tribunal, también debe presentar la objeción al Secretario del Tribunal (identificado a continuación) de modo que se la reciba y presente a más tardar el **26 de noviembre de 2018**.

Las objeciones deben enviarse por correo a:

<u>Secretario del Tribunal</u>	<u>Abogados del Grupo del Acuerdo</u>	<u>Abogado de Ford</u>
Wilkie D. Ferguson, Jr. U.S. Courthouse 400 North Miami Avenue Miami, FL 33128	Peter Prieto PODHURST ORSECK, P.A. SunTrust International Center One S.E. 3 <sup>rd</sup> Ave, Suite 2700 Miami, FL 33131	Perry W. Miles IV McGuireWoods LLP Gateway Plaza 800 East Canal Street Richmond, VA 23219

## 16. ¿Cuál es la diferencia entre presentar una objeción y excluirse?

Excluirse es informar al Tribunal que no desea formar parte del Grupo. Si se excluye, no tendrá ningún fundamento para plantear objeciones porque el Acuerdo ya no le afectará. Objetar es decirle al Tribunal que disiente de algo del Acuerdo. Solamente puede objetar si permanece en el Grupo.

Si es un Miembro del grupo y no hace nada, seguirá siendo Miembro del grupo y todas las resoluciones del Tribunal se le aplicarán, será elegible para recibir los beneficios del acuerdo descritos con anterioridad, en tanto cumpla con las condiciones para recibir cada beneficio y no podrá demandar a las Partes eximidas respecto de las cuestiones de la demanda, tal como se establece en la exención completa del Anexo A que se adjunta a este Aviso.

## G. AUDIENCIA DE IMPARCIALIDAD DEL TRIBUNAL

Para decidir si aprueba finalmente o no el Acuerdo, el Tribunal llevará a cabo una audiencia que, en ocasiones, se la conoce como “Audiencia de imparcialidad”. Si usted ha presentado su objeción a tiempo y asiste a la audiencia, se le podría pedir que hable (siempre y cuando haya presentado previamente y a tiempo un aviso de intención de comparecer); sin embargo, no está obligado ni a asistir ni a comparecer.

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### 17. ¿Cuándo y dónde decidirá el Tribunal si otorgará la aprobación definitiva del Acuerdo?

El Tribunal llevará a cabo una Audiencia de imparcialidad a las **10:00 a. m. el día 11 de diciembre de 2018** en el Tribunal de Distrito de los Estados Unidos para el distrito sur de Florida, sito en Wilkie D. Ferguson, Jr., 400 North Miami Avenue, Miami, FL 33128. En esta audiencia, el Tribunal considerará si la resolución es justa, razonable y adecuada. Si existen objeciones, el Tribunal las evaluará. El Tribunal escuchará solo a las personas que hubiesen reunido los requisitos para tener la palabra en la audiencia (*consulte la* Pregunta 19 a continuación). Después de la audiencia, el Tribunal decidirá si aprueba definitivamente el Acuerdo y, en caso de hacerlo, cuánto se pagará a los abogados que representan a los Miembros del Grupo. No sabemos cuánto demorarán estas decisiones.

### 18. ¿Debo asistir a la audiencia?

No. Los Abogados del grupo responderán a todas las preguntas que el Tribunal pudiese tener. Sin embargo, puede asistir por su propia cuenta y gasto. Si envía una objeción, no tiene que asistir al Tribunal para hablar sobre ella, pero puede hacerlo si proporciona un aviso por anticipado de su intención de comparecer (*consultar la* pregunta 19 a continuación). Siempre que haya presentado una objeción escrita de manera oportuna y con toda la documentación requerida ante el Tribunal, el Tribunal la considerará. Además, puede pagar a otro abogado para que asista, pero no es obligatorio.

### 19. ¿Puedo hablar en la audiencia?

Usted o su abogado pueden pedirle permiso al Tribunal para tomar la palabra en la Audiencia de imparcialidad. Para hacerlo, debe enviar una carta en la que diga que este es su “Aviso de intención de comparecer en *In Re: Takata Airbag Products Liability Litigation (Economic Loss Actions)*, n.º 1:15-md-2599-FAM” al Abogado de la demanda colectiva y al Abogado de Ford identificado antes (consulte la Pregunta 15) para que la reciban a más tardar el **26 de noviembre de 2018**. También debe presentar el Aviso ante el Secretario del Tribunal para que se reciba y registre a más tardar el **26 de noviembre de 2018**. Debe incluir su nombre, dirección, número de teléfono, el año, la marca, el modelo y el número VIN de su vehículo, y su firma. Toda persona que hubiese solicitado permiso para hablar debe estar presente al comienzo de la Audiencia de imparcialidad, a las **10:00 a. m., el día 11 de diciembre de 2018**. No puede tomar la palabra en la audiencia si se excluyó del Grupo.

## H. CÓMO OBTENER MÁS INFORMACIÓN

### 20. ¿Cómo puedo obtener más información?

Este aviso es un resumen de la conciliación propuesta. El Acuerdo contiene más detalles. Puede obtener una copia del Acuerdo y otra información sobre el Acuerdo y el Formulario de inscripción/reclamo en [www.AutoAirbagSettlement.com](http://www.AutoAirbagSettlement.com). También puede llamar a la línea gratuita, 1-888-735-5596, o escribir al Administrador de avisos del Acuerdo a Auto Airbag Settlement, Settlement Notice Administrator, P.O. Box 3207, Portland, OR 97208-3207. También puede revisar los documentos presentados en la demanda ante el Tribunal en la dirección proporcionada anteriormente en la respuesta a la pregunta 15.

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## **21. ¿Cuándo será definitivo el Acuerdo?**

El Acuerdo no será definitivo excepto y hasta que el Tribunal otorgue la aprobación definitiva de este en la Audiencia de imparcialidad o después de esta, y después de que todas las apelaciones sean resueltas a favor del Acuerdo. Sea paciente y revise regularmente el sitio web que se identifica en este Aviso. No se comunique con Ford o los concesionarios de Ford, dado que el Tribunal ha ordenado que todas las preguntas se dirijan al Administrador de avisos del acuerdo.

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**Apéndice A****Sección VII del Acuerdo - Exención y relevo**

A. Las Partes acuerdan la siguiente Exención y relevo, la cual deberá entrar en vigencia al momento en que se dicte la Sentencia final.

B. Considerando la compensación proporcionada anteriormente, los Demandantes y cada uno de los Miembros del Grupo, en representación propia y de cualquier otra persona legal o natural y entidades que pudieran presentar un reclamo por, a través o en virtud de ellos, incluidos sus albaceas, administradores, herederos, cesionarios, partes interesadas, predecesores y sucesores, aceptan eximir, ceder, absolver, exonerar y mantener indemnes de manera completa, final y definitiva a las Partes exentas<sup>1</sup> de todos y cada uno de los reclamos, las demandas, los juicios, las peticiones, las responsabilidades, las causas de acción, los derechos, las pérdidas y los daños, y ayuda de cualquier clase o tipo en relación con el objeto de las Demandas, lo que incluye, entre otros, los daños compensatorios, ejemplares, legales, punitivos, los honorarios y costos de peritos o de abogados, ya sean anteriores, presentes o futuros, vencidos o a vencer, conocidos o desconocidos, sospechosos o no sospechosos, eventuales o no eventuales, derivados o directos, alegados o no alegados, ya sea que estén basados en leyes, estatutos, ordenanzas, reglamentos, normas, códigos, contratos federales, estatales o locales, agravio, fraude o falsificación, derecho consuetudinario, prácticas comerciales o negocios desleales, injustos o engañosos, que violan leyes estatales o del territorio, publicidad fraudulenta, engañosa y falsa, fraude al consumidor y a estatutos de protección al consumidor o a otras leyes, enriquecimiento ilícito, incumplimiento de garantías expresas o implícitas o de cualquier otra garantía, violación a cualquier ley estatal, como la Ley del Limón, la Ley de Organizaciones Corruptas e Influenciadas por Actividades Ilegales (Racketeer Influenced and Corrupt Organizations, "RICO"), la Ley de Garantías Magnuson-Moss o de cualquier otro origen o cualquier reclamo conforme a la norma de regulación del comercio respecto de la Ley de Defensa del Consumidor 16. El título 433.2 del Código de Reglamentaciones Federales (Code of Federal Regulations, C.F.R.), o todo reclamo de cualquier clase, conforme a derecho o en virtud del sistema de Equity que surgiese, se relacionase o tuviese vinculación de algún modo con los Reclamos o las Demandas, los módulos de airbags frontales del conductor o del acompañante en el Vehículo incluido que contengan infladores desecados o no desecados PSAN de Takata y cada uno y todos los reclamos que involucren los Retiros de infladores de airbag Takata que son, o puedan haber sido expuestos, alegados o descritos en la Demanda, la Demanda colectiva consolidada enmendada, la Segunda demanda colectiva consolidada enmendada, la Tercera demanda colectiva consolidada enmendada revisada, las Demandas o cualquier enmienda de las Demandas.

C. Si un Miembro del Grupo que no se ha excluido comienza, presenta, inicia o entabla cualquier acción legal nueva u otro procedimiento en contra de una Parte exenta por cualquier reclamo eximido en este Acuerdo en cualquier tribunal federal o estatal, tribunal de arbitraje o

---

<sup>1</sup> Las "Partes eximidas" o la "Parte eximida" se refiere a Ford y a cada una de sus casas matrices, predecesores, sucesores, empresas derivadas, cesionarios, sociedades de participación, empresas conjuntas y partícipes en empresas conjuntas, sociedades y socios, miembros, divisiones, accionistas, titulares de bonos, subsidiarias, compañías relacionadas, filiales, ejecutivos, directores, empleados, asociados y concesionarios pasados, actuales o futuros, incluidos los concesionarios de Ford, sus representantes, proveedores, distribuidores, anunciantes, comercializadores, proveedores de servicios, distribuidores y subdistribuidores, reparadores, agentes, abogados, aseguradores, administradores y asesores. Las Partes reconocen expresamente que cada uno de los precedentes sea incluido como una Parte exenta aun cuando aquí no ha sido identificado con su nombre. Independientemente de lo establecido anteriormente, las "Partes exentas" no incluyen las Partes excluidas.

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administrativo u otra instancia, dicha acción legal o procedimiento deberá desestimarse con sobreseimiento a cargo del Miembro del Grupo.

D. Independientemente de la Exención establecida en la Sección VII de este Acuerdo, los Demandantes y los Miembros del Grupo no están eximidos y se reservan expresamente todos los derechos relacionados con reclamos por lesiones corporales, muerte por negligencia o daño físico a la propiedad (que no sea el Vehículo incluido) que surja de un accidente que involucre a un Vehículo incluido, lo que incluye el despliegue o no despliegue de los airbags frontales del conductor y del acompañante que contenían infladores PSAN de Takata.

E. Independientemente de la Exención establecida en la Sección VII de este Acuerdo, los Demandantes y los Miembros del Grupo no están eximidos y se reservan expresamente todos los derechos relacionados con reclamos contra las Partes excluidas.

F. La Orden definitiva y la Sentencia final también reflejarán estos términos.

G. Los Demandantes y los Miembros del Grupo no deberán, ahora y en lo sucesivo, entablar, mantener, enjuiciar, alegar y/o cooperar para que se entable, inicie, presente o enjuicie ninguna demanda, acción, reclamo y/o procedimiento, sea legal, administrativo o de otra índole contra las Partes exentas, ya sea directa o indirectamente, por propia representación, en representación de un grupo o en representación de cualquier otra persona o entidad con respecto a los reclamos, las causas de acción o cualquier otro asunto eximido a través de este Acuerdo.

H. En relación con este Acuerdo, los Demandantes y los Miembros del Grupo reconocen que pueden encontrar, en lo sucesivo, reclamos que actualmente son desconocidos o insospechados, o hechos además de o diferentes de aquellos conocidos en el presente o que se crea que son verdaderos en relación con el asunto de las Demandas o la Exención en el presente documento. No obstante, es la intención de los Abogados del Grupo del Acuerdo y de los Miembros del Grupo celebrar este Acuerdo de manera plena, final y definitiva para resolver, eximir, liberar y mantener indemnes de dichos asuntos, y de todos los reclamos existentes y potenciales contra las Partes exentas relacionados con ellas, que existan en lo sucesivo o puedan existir, o pudieran haber existido (independientemente de si fueron o no alegadas de manera previa o actual en cualquier demanda o procedimiento) con respecto a los reclamos o las Demandas, su objeto subyacente y los Vehículos incluidos, excepto que se exprese lo contrario en este Acuerdo.

I. Los Demandantes comprenden y reconocen expresamente, y por la Orden definitiva y la Sentencia final se considerará que todos los Demandantes y los Miembros del Grupo reconocen y relevan a la Sección 1542 del Código Civil del estado de California, que estipula lo siguiente:

UNA EXENCIÓN GENERAL NO SE EXTIENDE A LOS RECLAMOS CON RESPECTO A LOS CUALES EL ACREEDOR NO TENGA CONOCIMIENTO O SOSPECHA DE SU EXISTENCIA EN SU FAVOR EN EL MOMENTO EN QUE FIRMA LA EXENCIÓN Y QUE, DE HABER SIDO DE SU CONOCIMIENTO, HABRÍAN AFECTADO SUSTANCIALMENTE SU CONCILIACIÓN CON EL DEUDOR.

Los Demandantes y los Miembros del Grupo relevan y abandonan expresamente todos y cada uno de los derechos y beneficios que pudieran tener en virtud de las disposiciones de la Sección 1542 del Código Civil de California, o que pudieran conferírseles por estas, o cualquier otra ley de

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cualquier estado o territorio que sea similar, comparable o equivalente a la Sección 1542, en la medida máxima en que estos puedan renunciar legítimamente a dichos derechos.

J. Los Demandantes declaran y garantizan que son los únicos y exclusivos propietarios de todos los reclamos que personalmente están eximiendo en virtud de este Acuerdo. Los Demandantes reconocen además que no han asignado, pignorado, o de cualquier otra manera, vendido, transferido, asignado o gravado cualquier derecho, título, interés o reclamo que surja de las Demandas, o de cualquier manera se relacione con estas, incluido, entre otros, cualquier reclamo por beneficios, ingresos o valor en virtud de los reclamos o las Demandas, y que los Demandantes no tienen conocimiento de ninguna persona que no sean ellos mismos que estén reclamando algún interés, en totalidad o en parte, en los reclamos o las Demandas o en cualquier beneficio, ingreso o valor en virtud de las Demandas. Los Miembros del Grupo que presenten un Formulario de inscripción/reclamo deberán declarar y garantizar en ese respecto que estos son los únicos y exclusivos propietarios de todos los reclamos que personalmente están eximiendo en virtud del Acuerdo y que no han asignado, pignorado, o de cualquier otra manera, vendido, transferido, asignado o gravado cualquier derecho, título, interés o reclamo que surja de los reclamos o las Demandas, o de cualquier manera se relacione con estas, incluido, entre otros, cualquier reclamo por beneficios, ingresos o valor en virtud de las Demandas, y que los Miembros del Grupo no tienen conocimiento de ninguna persona que no sean ellos mismos que esté reclamando algún interés, en totalidad o en parte, en los reclamos o las Demandas o en cualquier beneficio, ingreso o valor en virtud de las Demandas.

K. Sin que de ninguna manera se limite su alcance y excepto en la medida especificada de alguna otra manera en el Acuerdo, esta Exención cubre, a modo de ejemplo y sin limitación, a todos y cada uno de los reclamos por los honorarios de los abogados, los costos, los honorarios de los peritos, los honorarios de los consultores, los intereses o los honorarios de litigio, los costos o todo otro tipo de honorario, costo o estipendio en los que hubiese incurrido cualquiera de los abogados, los Abogados del grupo del acuerdo, los Demandantes o los Miembros del grupo que reclaman haber asistido para que se confieran al Grupo los beneficios de este Acuerdo.

L. Los Abogados del grupo del acuerdo y todo otro abogado que recibiese el pago de los honorarios y los costos de este Acuerdo reconocen que han realizado la investigación independiente y los hallazgos necesarios para celebrar este Acuerdo y, al celebrar este Acuerdo, indican que no han confiado en ninguna declaración o presentación hecha por las Partes exentas o por cualquier persona o entidad que represente a las Partes exentas, además de las establecidas en este Acuerdo.

M. En espera de la aprobación final de este Acuerdo mediante la emisión de la Sentencia definitiva y Sentencia final del Tribunal, las Partes aceptan que cada uno y todos los alegatos pendientes, la producción de pruebas, los plazos y demás requisitos previos al juicio quedan suspendidos e interrumpidos por este documento en lo que respecta a Ford. Tras la aprobación final de este Acuerdo mediante la emisión de la Sentencia definitiva y Sentencia final del Tribunal, las Partes renuncian de forma expresa a cada uno y todos los requisitos previos al juicio en lo que respecta a Ford.

N. Nada en esta Exención excluirá cualquier acción para hacer cumplir los términos de este Acuerdo, incluida la participación en cualquiera de los procesos aquí detallados.

O. Los Demandantes y Abogados del Grupo del Acuerdo acuerdan y reconocen que las disposiciones de esta Exención en su conjunto constituyen un término esencial y sustancial del Acuerdo y deberán estar incluidas en cualquier Orden definitiva y Sentencia final dictada por el Tribunal.

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# Exhibit 4



*In re Takata Airbag Products Liability Litigation*  
30-Second Radio Notice Script

This is a Court-ordered notice. Current and former Ford, Lincoln, and Mercury owners or lessees can receive payments and other benefits from a legal settlement related to allegedly defective Takata airbags in their vehicles. To see if your vehicle is included and to file a claim, go to [AutoAirbagSettlement-dot-com](http://AutoAirbagSettlement-dot-com) or call 1-888-735-5596. That's [AutoAirbagSettlement-dot-com](http://AutoAirbagSettlement-dot-com) or 1-888-735-5596.



*In re Takata Airbag Products Liability Litigation*  
30-Second Radio Notice Script

Este es un aviso ordenado por el tribunal. Los actuales y antiguos propietarios o arrendatarios de vehículos Ford, Lincoln, y Mercury pueden recibir pagos y otros beneficios de un acuerdo legal relacionado con airbags Takata supuestamente defectuosos en sus vehículos. Para saber si su vehículo está incluido y para presentar una reclamación, consulte [AutoAirbagSettlement-punto-com](http://AutoAirbagSettlement-punto-com) o llame al 1-888-735-5596. Repetimos: [AutoAirbagSettlement-punto-com](http://AutoAirbagSettlement-punto-com) o llame al 1-888-735-5596.

# Exhibit 5

# NBA PREVIEW 2018-19

THE CELTICS Will Take the Next Step P. 49 | THE WARRIORS Will Threeppeat P. 66 | DAVID STERN Will Not Stop P. 106

# Sports Illustrated

OCTOBER 22-29, 2018  
DOUBLE ISSUE  
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- Miami
- Cleveland
- L.A.

## THE KING'S

# GAMBIT

**LEBRON'S** Latest  
(And Greatest) Challenge

BY BEN GOLLIVER  
P. 42





**If you are a current or former owner or lessee of certain Ford, Lincoln, and Mercury vehicles, you could get cash and other benefits from a class action settlement.**

*Si desea recibir esta notificación en español, llámenos o visite nuestra página web.*

A settlement has been reached in a class action lawsuit alleging that consumers sustained economic losses because they purchased or leased vehicles from Ford Motor Company containing allegedly defective airbags manufactured by Takata Corporation and its affiliates. The Settlement includes certain vehicles made by Ford (the "Subject Vehicles"). Ford denies any and all allegations of wrongdoing and the Court has not decided who is right.

**If you have already received a separate recall notice for your Ford vehicle and have not yet had your Takata airbag repaired, you should do so as soon as possible.** When recalled Takata airbags deploy, they may spray metal debris toward vehicle occupants and may cause serious injury. However, many Ford vehicles affected by this settlement have not been recalled. Please see [www.AirBagRecall.com](http://www.AirBagRecall.com) for further details about whether your vehicle is recalled and, if so, what you should do.

**Am I included in the proposed Settlement?** The Settlement includes the following persons and entities:

- Owners or lessees, as of September 5, 2018, of a Subject Vehicle that was distributed for sale or lease in the United States or any of its territories or possessions, and
- Former owners or lessees of a Subject Vehicle that was distributed for sale or lease in the United States or any of its territories or possessions, who, between June 19, 2014 and September 5, 2018, sold or returned pursuant to a lease, a Subject Vehicle that was recalled before September 5, 2018.

A full list of the Subject Vehicles can be found at [www.AutoAirbagSettlement.com](http://www.AutoAirbagSettlement.com). The Settlement does not involve claims of personal injury.

**What does the Settlement provide?** Ford has agreed to a Settlement with a value of approximately \$299.1 million, including a 20% credit for the Enhanced Rental Car/Loaner Program. The Settlement Funds will be used to pay for Settlement benefits and cover the costs of the Settlement over an approximately four-year period.

The Settlement offers several benefits for Class Members, including (1) payments for certain out-of-pocket expenses incurred related to a Takata airbag recall of a Subject Vehicle, (2) a Rental Car/Loaner Program while certain Subject Vehicles are awaiting repair, (3) an Outreach Program to maximize completion of the recall remedy, (4) additional cash payments to Class Members from residual settlement funds, if any remain, and (5) a Customer Support Program to help with repairs associated with affected Takata airbag inflators and their replacements. The Settlement website explains each of these benefits in detail.

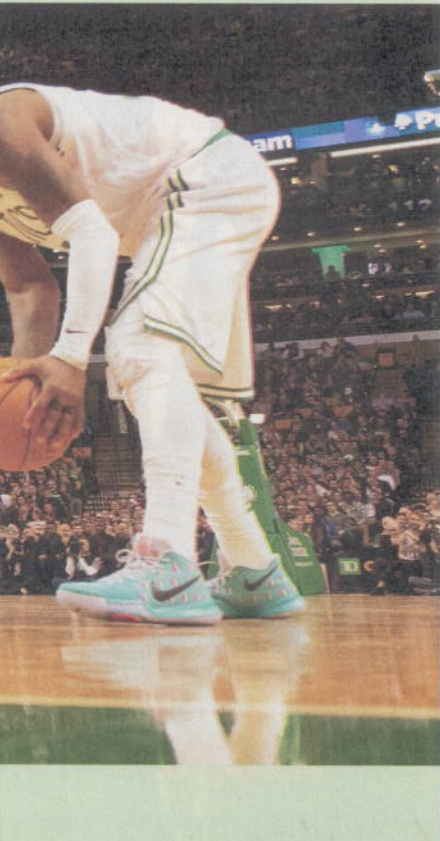
**How can I get a Payment?** You must file a claim to receive a payment during the first four years of the Settlement. If you still own or lease a Subject Vehicle, you must also bring it to an authorized dealership for the recall remedy, as directed by a recall notice, if you have not already done so. Visit the website and file a claim online or download one and file by mail. The deadline to file a claim will be at least one year from the date the Settlement is finalized and will be posted on the website when it's known.

**What are my other options?** If you do not want to be legally bound by the Settlement, you must exclude yourself by **November 26, 2018**. If you do not exclude yourself, you will release any claims you may have against Ford, in exchange for certain settlement benefits. The potential available benefits are more fully described in the Settlement, available at the settlement website. You may object to the Settlement by **November 26, 2018**. You cannot both exclude yourself from, and object to, the Settlement. The Long Form Notice for the Settlement available on the website listed below explains how to exclude yourself or object. The Court will hold a fairness hearing on **December 11, 2018** to consider whether to finally approve the Settlement and a request for attorneys' fees of up to 25% of the total Settlement Amount and incentive awards of \$5,000 for each of the Class Representatives. You may appear at the fairness hearing, either by yourself or through an attorney hired by you, but you don't have to. For more information, including the relief, eligibility and release of claims, in English or Spanish, call or visit the website below.

**1-888-735-5596 • [www.AutoAirbagSettlement.com](http://www.AutoAirbagSettlement.com)**



Players have a reverence for Irving's game that's hard to explain but impossible to dispute. One star told SI, "Nobody that's ever played that position can do what he does. HE PLAYS LIKE KOBE. He can score on bigger players. And he plays better when the stakes are higher."





# Exhibit 6

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103

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contamination. A better way is to have it tested by a professional for moisture and see what they recommend. Oftentimes you can have this service performed at the same place that performs a rapid oil change. Since the technician is already poking around under the hood, it's easy for them to take a sample and inspect all of your vehicle's fluids.

Brake fluid is as vital to stopping a vehicle as engine oil is to keeping it going, but it doesn't get as much attention as it deserves.

**Ford, Lincoln, and Mercury owners or lessees could get cash and other benefits from a class action settlement involving Takata airbags.**



For more information visit:

**AUTOAIRBAGSETTLEMENT.COM**



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## 2019 Ford F-150 Review

Overview **User Reviews** 1 Trims and Specs



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*Photo of 2018 model year shown*

## 2019 Ford F-150 Overview

The Ford F-Series pickup has become the best-selling automobile in the world – but Ford doesn't let the F-Series rest on its laurels. With three versatile body styles and bed lengths as well as seven models that range from farm truck to plush luxury to an off-road muscle car in the form of the Raptor, there is an F-150 for every job and budget. There are multiple engines to choose from, including a diesel, and drivers can choose either rear-wheel drive (RWD) or four-wheel drive (4WD). For 2019, there are minor changes for most of the range – however, the sporty Raptor model gets new high-tech Fox shock absorbers, a new Trail Control system, new Recaro sport seats, and new available colors including Ford Performance Blue, Velocity Blue, and Agate Black.

The F-150 recently added an available diesel engine into the mix, something that was previously only available in larger trucks. It's a 3.0-liter V-6 turbo unit that makes 250 horsepower and 440 pound-feet of torque. It's smooth and remarkably quiet for a diesel, although you can still tell what it is if you step hard on the gas. The diesel can tow up to 11,400 pounds. As of this writing, fuel economy numbers haven't been released.

For drivers that want gas-powered engines, there is a 3.3-liter V-6 base engine available that makes 290 hp and 265 lb-ft of torque driving through a 6-speed automatic. A 2.7-liter turbocharged V-6 makes 325 hp and 400 lb-ft driving through a 10-speed automatic. Despite its small size, the turbo V-6 offers V-8-like pulling power with a tow rating of up to 8,500 pounds and a payload of 2,500 pounds. The 3.5-liter twin-turbo V-6 is even better with 375 hp, 470 lb-ft of torque, and a 12,000-pound tow rating. The 5.0-liter V-8, meanwhile, makes 395 hp and 400 lb-ft of torque, also driving through the 10-speed automatic. The V-8 is also in the high-performance Raptor. In that model, it's tuned to 450 hp and 510 lb-ft of torque.

**Ford, Lincoln, and Mercury owners or lessees could get cash and other benefits from a class action settlement involving Takata airbags.**



**For more information visit:  
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Ford, Lincoln, and Mercury owners or lessees could get cash and other benefits from a class action settlement involving Takata airbags.

For more information visit:



[AUTOAIRBAGSETTLEMENT.COM](http://AUTOAIRBAGSETTLEMENT.COM)



## Sam Elliott reveals his big tearjerking moment in 'A Star Is Born' was unscripted

"This speaks of Bradley [as an] actor-director," Elliott said in recounting how they filmed the scene.

Spoilers ahead! »



20 people reacting



Clarkson moved to tears by gay couple on 'The Voice'



Mike Huckabee dismisses Taylor Swift fans



Philipps claims Franco assaulted her in new tell-all



'Better Call Saul' star previews tonight's finale



Claire Foy on playing another real-life heroine

### Latest Trailers



Entertainment Kevin Polowy

Timothée Chalamet felt disoriented, 'addled' after dropping 18



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Expertos Juntos

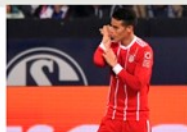
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- ☐ El profesor de Madre Alberta responsabiliza del atropello a la alumna de 14 años fallecida
- ☐ El taxista del atropello mortal en Madre Alberta sostiene que no circulaba a una velocidad excesiva

publicidad

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## El presidente de Ryanair compra

# Exhibit 7



**Takata Ford - Sponsored Search Keywords**

- Airbag Class Action
- Airbag Settlement
- Airbag Lawsuit
- Airbag Litigation
- Auto Airbag Class Action
- Auto Airbag Settlement
- Auto Airbag Lawsuit
- Auto Airbag Litigation
- Takata Airbag Class Action
- Takata Airbag Settlement
- Takata Airbag Lawsuit
- Takata Airbag Litigation
- Ford Airbag Class Action
- Ford Airbag Settlement
- Ford Airbag Lawsuit
- Ford Airbag Litigation
- Lincoln Airbag Class Action
- Lincoln Airbag Settlement
- Lincoln Airbag Lawsuit
- Lincoln Airbag Litigation
- Mercury Airbag Class Action
- Mercury Airbag Settlement
- Mercury Airbag Lawsuit
- Mercury Airbag Litigation

# Exhibit 8



auto airbag settlement

Case 1:15-md-02599-FAM Document 3069-2 Entered on FLSD Docket 11/02/2018 Page 95 of 103

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## Class Action Settlement | Defective Takata Airbags

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... Ford, Honda, Mazda, Nissan, Subaru, and Toyota, involving Takata **auto airbags**. ... Subject **Vehicle**  
Make: Please select the make of your Subject **Vehicle**:\*

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Please use this **Vehicle** Identification Number (VIN) Lookup tool to verify if ... in a class action **lawsuit**  
styled In Re: Takata **Airbag** Products Liability Litigation, ...

### Takata Settlement - Home

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... website for the proposed economic loss class action **settlements** with BMW, Ford, Honda, Mazda, Nissan, Subaru, and Toyota, involving Takata **auto airbags**.



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## Ford's Takata Airbag Settlement - Consumer Reports

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**Ford's** class-action **settlement** agreement over Takata **airbags** promises to give consumers some relief as the massive recalls—affecting 37 million vehicles and 50 million **airbags**—drag into the ...

## Ford agrees to \$299M Takata airbag settlement - autoblog.com

<https://www.autoblog.com/2018/07/16/ford-299m-takata-airbag-settlement>

**Ford** agreed to a so-called economic loss **settlement** of \$299.1 million covering at least 6 million U.S. vehicles with potentially faulty Takata **airbag** inflators.

## Takata Settlement - Home

[www.autoairbagsettlement.com](http://www.autoairbagsettlement.com)

The informational website for the proposed economic loss class action **settlements** with BMW, **Ford**, Honda, Mazda, Nissan, Subaru, and Toyota, involving Takata auto **airbags**

## Ford Will Pay \$300 Million to End Takata Airbag Nightmare ...

[fortune.com/2018/07/17/ford-takata-airbag-deaths-bankruptcy](http://fortune.com/2018/07/17/ford-takata-airbag-deaths-bankruptcy)

Watch video · **Ford** Motor has agreed to pay \$299.1 million to settle consumers' economic-loss claims connected to Takata **air-bag** recalls.. The **settlement**, filed ...

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# Exhibit 9

# Announcing a Class Action Settlement Involving Current or Former Owners or Lessees of Certain Ford, Lincoln, and Mercury Vehicles

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NEWS PROVIDED BY

**United States District Court, Southern District of Florida →**

07:59 ET

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MIAMI, Oct. 9, 2018 /PRNewswire/ -- A settlement has been reached in a class action lawsuit alleging that consumers sustained economic losses because they purchased or leased vehicles from Ford Motor Company containing allegedly defective airbags manufactured by Takata Corporation and its affiliates. The Settlement includes certain vehicles made by Ford (the "Subject Vehicles"). Ford denies any and all allegations of wrongdoing and the Court has not decided who is right.

**Owners or lessees of Subject Vehicles who have already received a separate "Parts Available" recall notice for their Ford vehicle and have not yet had their Takata airbag repaired should do so as soon as possible.** When recalled Takata airbags deploy, they may spray metal debris toward vehicle occupants and may cause serious injury. However, many Ford vehicles affected by this settlement have not been recalled. Please see [www.AirBagRecall.com](http://www.AirBagRecall.com) for further details about which vehicles have been recalled, and what owners or lessees of recalled vehicles should do.

The Settlement includes the following persons and entities:



- Case 1:15-md-02589-FAM Document 369-2 Entered on FLSD Docket 11/02/2018 Page 100  
of 103
- Owners or lessees, as of September 5, 2018, of a Subject Vehicle that was distributed for sale or lease in the United States or any of its territories or possessions, and
  - Former owners or lessees of a Subject Vehicle that was distributed for sale or lease in the United States or any of its territories or possessions, who, between June 19, 2014 and September 5, 2018, sold or returned pursuant to a lease, a Subject Vehicle that was recalled before September 5, 2018.

A full list of the Subject Vehicles can be found at [www.AutoAirbagSettlement.com](http://www.AutoAirbagSettlement.com). The Settlement does not involve claims of personal injury.

Ford has agreed to a Settlement with a value of approximately \$299.1 million, including a 20% credit for the Enhanced Rental Car/Loaner Program. The Settlement Funds will be used to pay for Settlement benefits and cover the costs of the Settlement over an approximately four-year period.

The Settlement offers several benefits for Class Members, including (1) payments for certain out-of-pocket expenses incurred related to a Takata airbag recall of a Subject Vehicle, (2) a Rental Car/Loaner Program while certain Subject Vehicles are awaiting repair, (3) an Outreach Program to maximize completion of the recall remedy, (4) additional cash payments to Class Members from residual settlement funds, if any remain, and (5) a Customer Support Program to help with repairs associated with affected Takata airbag inflators and their replacements. The Settlement website explains each of these benefits in detail.

Class Members must file a claim to receive a payment during the first four years of the Settlement. If a Class Member still owns or leases a Subject Vehicle, they must also bring it to an authorized dealership for the recall remedy, as directed by a recall notice, if they have not already done so. Class Members can visit [www.AutoAirbagSettlement.com](http://www.AutoAirbagSettlement.com) and file a claim online or download one and file by mail. The deadline to file a claim will be at least one year from the date the Settlement is finalized and will be posted on the website when it's known.

Class Members who do not want to be legally bound by the Settlement must exclude themselves by **November 26, 2018**. If Class Members do not exclude themselves, they will release any claims they may have against Ford, in exchange for certain settlement benefits. The potential available benefits are more fully described in the Settlement, available at the settlement website. Class Members may object to the Settlement by **November 26, 2018**. Class

Case 1:15-md-02599-FAM Document 3069-2 Entered on FLSD Docket 11/02/2018 Page 101  
of 103

Members cannot both exclude themselves from, and object to, the Settlement. The Long-term Notice for the Settlement available on [www.AutoAirbagSettlement.com](http://www.AutoAirbagSettlement.com) explains how Class Members can exclude themselves or object. The Court will hold a fairness hearing on **December 11, 2018** to consider whether to finally approve the Settlement and a request for attorneys' fees of up to 25% of the total Settlement Amount and incentive awards of \$5,000 for each of the Class Representatives. Class Members may appear at the fairness hearing, either by themselves or through an attorney they hire, but don't have to. For more information, including the relief, eligibility and release of claims, in English or Spanish, call 1-888-735-5596 or visit [www.AutoAirbagSettlement.com](http://www.AutoAirbagSettlement.com).

SOURCE United States District Court, Southern District of Florida

Related Links

<https://www.autoairbagsettlement.com>

# Exhibit 10

# In Re: Takata Airbag Products Liability Litigation

## BMW, Ford, Honda, Mazda, Nissan, Subaru, and Toyota Settlements

No. 15-MD-2599-FAM

### Welcome to the Official Informational Website for the Takata Settlement

This is the informational website for the proposed economic loss class action settlements with BMW, Honda, Mazda, Nissan, Subaru, and Toyota in a class action lawsuit styled *In Re: Takata Airbag Products Liability Litigation*, Master Case No. 1:15-MD-02599-FAM. The Court preliminarily approved the settlements with BMW, Mazda, Subaru, and Toyota on June 9, 2017 and issued preliminary approval orders that were docketed on June 12, 2017. The Court preliminarily approved the settlements with Honda and Nissan on September 19, 2017.

For more information, please select the appropriate Settlement below referencing the automobile manufacturer of your Subject Vehicle.

**Important Note:** Some vehicles included in the Settlement will be recalled at a later date and others may not require a recall. Your receipt of a Settlement Notice does not mean your vehicle is subject to a recall. Please refer to the National Highway Traffic Safety Administration's website, [www.safercar.gov](http://www.safercar.gov), for the latest information about Takata recalls and to determine if your vehicle is subject to a recall.

BMW Settlement

Ford Settlement

Honda Settlement

Mazda Settlement

Nissan Settlement

Subaru Settlement

Toyota Settlement

To submit a Registration/Claim Form online, please select the "Start a Registration/Claim Form" button. Please check this website or call the toll-free line, 1-888-735-5596, periodically for updates.

Start a Registration/Claim Form

Check Your VIN

**EXHIBIT C**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF FLORIDA  
Miami Division**

**MDL No. 2599  
Master File No.: 15-MD-02599-MORENO  
S.D. Fla. Case No. 1:14-cv-24009-MORENO**

**IN RE: TAKATA AIRBAG PRODUCT  
LIABILITY LITIGATION**

**THIS DOCUMENT RELATES TO:  
  
ECONOMIC LOSS TRACK CASES  
AGAINST FORD DEFENDANTS**

**DECLARATION OF KIRK D. KLECKNER REGARDING THE  
CUSTOMER SUPPORT PROGRAM AND ENHANCED RENTAL CAR/LOANER  
PROGRAM**

KIRK D. KLECKNER, of full age, declares as follows:

**1. Summary of Opinions**

a. This declaration pertains to the valuation of the Customer Support Program Warranty (CSP Warranty) and Enhanced Rental Car/Loaner Program (ERCL Program) in the Settlement Agreement<sup>1</sup> with Ford Motor Company including Ford, Lincoln and Mercury vehicles (Defendant).<sup>2</sup>

b. Based on the analyses explained below, I have determined within a reasonable degree of professional certainty:

i. the value of the settlement's CSP Warranty is \$236,820,000; and

<sup>1</sup> SETTLEMENT AGREEMENT Case 1:15-md-02599-FAM Document 2909-1 Entered on FLSD Docket 07/16/2018.

<sup>2</sup> I valued the CSP Warranty and Rental Car/Loaner Program class member benefits for the settlements of Defendants BMW, Mazda, Subaru, Toyota, Honda and Nissan (Previous Settlement Defendants) in this action. The Defendant and Previous Settlement Defendants together are referred to in this declaration as the Settlement Defendants.

ii. the value of the settlement's ERCL Program exceeds the 20% credit allocated for the program in the settlement.

## 2. Experience and Qualifications

a. I am a Certified Public Accountant in the United States with an MBA. I have an ABV accreditation in business valuation and intangible asset valuation from the American Institute of Certified Public Accountants (AICPA). I am an Accredited Senior Appraiser (ASA-BV) from the American Society of Appraisers. I have litigation-related experience in valuing economic losses and damages, and I have a Certified in Financial Forensics (CFF) accreditation from the AICPA.

b. My experience includes seven years as the Chief Financial Officer for a well-respected Top 50 United States automotive dealership group; 19 years with an accounting firm including roles as shareholder, Chief Operating Officer, and Director of Business Valuation and Litigation Support Services; and performing services for hundreds of companies in a wide array of industries, including but not limited to retail dealerships, property and casualty insurance, warranty insurance, and distribution.

c. As CFO of an automotive dealership group, I worked on service and warranty matters. My duties as CFO included establishing and overseeing extended service contractual relationships, and establishing and overseeing automotive dealer-owned reinsurance entities and structures for extended service warranty contracts and other insurance-related products.

d. My experience as an expert includes the following automotive warranty related class action settlement valuation determinations: 1) the Warranty Extension and other class member benefits provided for by the Volkswagen and Audi Warranty Extension class action settlement agreement (VW/Audi)<sup>3</sup>; 2) the Customer Support Program related class member benefits provided for by the Toyota-United States class action settlement agreement (Toyota-US)<sup>4</sup>; and 3) the Customer Support Program in the Toyota-Canadian class action settlement agreement (Toyota-Canadian)<sup>5</sup>.

e. My *curriculum vitae* is attached as Exhibit A.

## 3. Valuation Purpose, and Scope and Materials Considered

a. Plaintiff's Counsel asked me to independently:

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<sup>3</sup> The United States District Court District Of Massachusetts, In re Volkswagen and Audi Warranty Extension Litigation, Docket No. 1:07-md-01790

<sup>4</sup> Central District Of California, Southern Division, In Re: Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, And Products Liability Litigation, United States District Court, Case No. 8:10ML2151 JVS (FMOx)

<sup>5</sup> Canadian Toyota Unintended Acceleration Marketing, Sales Practices, And Products Liability Litigation Settlement Agreement (various courts)



i. Value the Class Member benefits made available from this class action litigation and settlement related to the CSP Warranty, and

ii. Determine whether the value of the Class Member benefits related to the ERCL Program made available to Class Members exceeds the credit of 20% of the overall Settlement Amount allocated to the ERCL Program.

b. In conducting my work and forming my opinions, I was provided and have considered, in addition to my substantial experience in this area, the materials identified in Exhibit B for the Settlement Defendants. I believe that the information made available to me, taken as a whole, provided sufficient data from which I could draw valid valuation conclusions.

c. My Valuation Primary Assumptions, Information Requested, Valuation Methodologies, Valuation Conclusions, and Certifications and Representations are profiled below.

#### **4. Valuation Primary Assumptions and Limiting Conditions**

a. My analyses, opinions, and conclusions are limited only by the Valuation Primary Assumptions and Limiting Conditions outlined in Exhibit C, which include, among others:

i. My calculations assume a Valuation Effective Date of November 1, 2018.

ii. Given the complexity of this valuation and time constraints of the project, I reserve the right to submit a revised valuation to correct any inadvertent errors or omissions.

#### **5. Information Requested**

a. To understand the nature of potential CSP Warranty claims and the monetary exposure, I asked the Settlement Defendants to:

i. Define the inflator's various repair and replacement procedures included in the CSP Warranty Program and provide the average per vehicle warranty claim amount for each procedure.

ii. Provide the estimated average per vehicle Takata recall remedy cost.

b. To determine the number of Subject Vehicles to receive benefits (Covered Vehicles) and to estimate the CSP Warranty values and the ERCL Program values, I asked the Settlement Defendants to provide:

i. The number of Subject Vehicles originally sold by model year and type, including the number of vehicles with original equipment Takata PSAN desiccated inflators.

ii. The number of current remedies performed with Non-Takata inflators.

iii. The estimated quarterly supply timeline of non-Takata replacement inflators for Subject Vehicles.

c. To determine the number of effective CSP Warranty coverage years for the Coverage Vehicles, I asked the Settlement Defendants to provide, by the model and model year, the new vehicle warranty coverage (e.g. 5-years/60,000 miles) for the inflator.

d. To assess the consumer value proposition of the Settlement Defendants' new vehicle warranty coverages in contrast to the CSP Warranty coverage and to assess the variability of such by vehicle 'in-service' year, I asked the Settlement Defendants to provide for pertinent model years:

i. Number of vehicles sold by model years in the U.S.

ii. U.S. new vehicle warranty costs paid by model year

e. Although some of the information requested was not available for all the Settlement Defendants, I believe that the information provided to me by the Settlement Defendants, taken as a whole and supplemented by my extensive knowledge of the industry, provided sufficient data from which I could draw valid valuation conclusions.

## **6. Customer Support Program Warranty (CSP Warranty) – Valuation Methodology and Valuation Conclusion**

a. To estimate the value of the CSP Warranty, I relied upon information provided by the Settlement Defendants. If particular information I requested was not available for a certain defendant, I made best efforts judgements based on my professional knowledge of the industry and data provided by the other Settlement Defendants.

b. To estimate the value of the CSP Warranty, my valuation approach was based on estimating the market price Class Members would pay to purchase a Hypothetical Extended Service Contract (Hypothetical ESC) that is equivalent to the financial protection resulting from the existence of the CSP Warranty.<sup>6 7</sup> This approach has been accepted by many courts and was

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<sup>6</sup> An extended service contract (ESC), sometimes called an extended warranty or plan, provides a warranty on certain vehicle parts beyond the coverage of the vehicle's original standard manufacturer warranty. Typical ESC levels of coverage vary from "power train only" up to full "bumper to bumper." The ESC is a contractual agreement between the vehicle owner and the ESC obligor (typically an independent insurance company or manufacturer affiliated insurance company). Consumers typically purchase an ESC from a dealer at the point of vehicle purchase.

<sup>7</sup> OPINION AND ORDER, JOSEPH A. O'KEEFE Plaintiff v. MERCEDES-BENZ USA, LLC Defendant, Civil Action No. 01-CV-2902, Civil Action No. 03-CV-1480, United States District Court, E.D. Pennsylvania, April 2, 2003, B, 2 – "We believe that the benefits to the class are most accurately measured by making an estimation of the Extended Coverage Program's market price. We realize that this figure is difficult to estimate because the Extended Coverage Program—or any similar warranty product—is not on the market. Yet, economists, actuaries, investors and businesspeople must estimate and value risk in all types of market transactions. A warranty is simply the ex ante

incorporated in my valuations—upon which the courts and parties relied—in the VW/Audi, Toyota-US and Toyota-Canadian class actions mentioned in Section 1 above. Thus, I employed methods and analyses of a type reasonably relied upon by courts and experts in my field in forming opinions or inferences on the subject. In developing the prices of the Hypothetical ESCs, my primary considerations included the following:

i. The CSP Warranty covered services are to repair or replace both the replacement inflators installed as part of a recall and non-recalled Takata PSAN Inflators. Based on Defendant-provided information, I estimated the average retail price to repair/replace the covered inflators for a Class Member.

ii. Based on ESC marketplace retail prices and the specific facts and circumstances of the CSP Warranty, I utilized the current retail cost to repair/replace the replacement inflator as a primary driver to estimate of the retail price of a one-year Hypothetical ESC that is equivalent to the CSP Warranty. To arrive at this reasonable estimate, I derived and considered the following data points:

1. Point of Service Sale (POSS) warranties have, in recent years, become available from some dealership service departments in the marketplace, and are priced at a certain percentage of the service invoice amount for three-year coverage. Dividing this retail price ratio for a three-year warranty provides a price ratio for a one-year warranty.

2. Information provided by the Settlement Defendants indicating ‘per year’ retail costs consumers would pay for repair work if not for the existence of applicable new vehicle warranties, as a percentage of vehicle retail prices.

3. Based on information from a third-party insurance company, I analyzed retail prices for ESCs as a percentage of the retail price for the underlying pre-owned vehicle. This percentage tended to be higher for purchases of older vehicles than for purchases of newer vehicle, while vehicle prices are lower for older vehicles than for newer vehicle purchases. With the two factors in the percentage moving inversely, the percentage increases significantly for older vehicles. It is also reasonable to assume that fewer older vehicles would be still in service compared to newer models, so the weighted average skews closer to the lower end of the range for the purpose of this valuation.

4. Based on Settlement Defendant-provided information, I analyzed the retail prices of manufacturer ESCs as a percentage of the retail prices of the underlying vehicles.

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market price of insuring against a foreseeable risk. Any other measure except the market price would over or underestimate the benefit to the class."

5. Using these four data points, I arrived at a reasonable estimate of the retail price of one-year coverage under a Hypothetical ESC that is equivalent to the CSP Warranty, and I used this estimate in my valuation calculations.

c. I considered coverage terms and limitations from the Customer Support Program in the Defendant's Settlement Agreement, including coverage year maximums and minimums, and mileage limitations:

i. "If the Subject Vehicle has been recalled and the Recall Remedy has been completed as of the date of the issuance of the Court's Preliminary Approval Order, then the Customer Support Program will last for 10 years measured from the date the Recall Remedy was performed on the Subject Vehicle or 150,000 miles measured from the date the Subject Vehicle was originally sold or leased ("Date of First Use"), whichever comes first. However, each eligible vehicle will receive coverage for at least 75,000 miles measured from the date the Recall Remedy was performed on the Subject Vehicle, or two years measured from the date of the issuance of the Court's Preliminary Approval Order, whichever is later."

ii. "If the Subject Vehicle has been or will be recalled and the Recall Remedy has not been completed as of the date of the issuance of the Court's Preliminary Approval Order, then the Customer Support Program will last for (a) 10 years from the Date of First Use, or, if the Recall Remedy is subsequently performed on the Subject Vehicle, the date the Recall Remedy is performed, or (b) 150,000 miles measured from the Date of First Use, whichever comes first. However, each eligible vehicle will receive coverage for at least 75,000 miles measured from the date the Recall Remedy was performed on the Subject Vehicle, or two years measured from the date of the issuance of the Court's Preliminary Approval Order (or from the date the Recall Remedy is subsequently performed, if it is), whichever is later."

iii. "If the Subject Vehicle contains a desiccated Takata PSAN inflator in the driver or passenger front airbag as original equipment that has not been recalled as of the date of the issuance of the Court's Preliminary Approval Order, then the Customer Support Program will last for 10 years, measured from the Date of First Use, or 150,000 miles measured from the Date of First Use, whichever comes first. However, each eligible Subject Vehicle will receive no less than two years of coverage from the date of the issuance of the Court's Preliminary Approval Order."

iv. "In the event desiccated Takata PSAN inflators in the driver or passenger front airbag modules in any of the Subject Vehicles are recalled in the future, then the Customer Support Program will last for 10 years measured from the date such future Recall Remedy is performed on the Subject Vehicle, or 150,000 miles measured from the Date of First Use, whichever comes first. However, each eligible vehicle will receive coverage for at least 75,000 miles or

two years measured from the date the future Recall Remedy is performed on the Subject Vehicle, whichever is later.”

v. “Inoperable vehicles and vehicles with a salvaged, rebuilt or flood-damaged title are not eligible for the Customer Support Program.”

d. My calculations to arrive at a Valuation Conclusion for the Customer Support Program Warranty included:

i. The number of Subject Vehicles originally sold, by model year, that could benefit from the settlement was provided by the Defendants, and adjusted for the declining number on the road over time by utilizing vehicle survivability data from the National Highway Traffic Safety Administration (NHTSA) to derive the number of Estimated Covered Vehicles.

ii. The number of CSP warranty coverage years for each model year, applying estimates for the time and mileage limits and minimum coverage years for each of the categories of Subject Vehicles outlined in the Settlement Agreement and restated in Section 6.c:

1. Vehicles with Remedy Completed
2. Vehicles with Remedy Not Completed
3. Vehicles with desiccated inflator as Original Equipment

iii. The estimated retail price for a Hypothetical ESC for each model year based on:

1. The current estimated retail price to repair or replace the replacement inflator.

2. The estimated retail price of a one-year zero-deductible extended service contract coverage, based on the estimate derived from the methodology outlined in Section 6.b.

iv. For each model year, I multiplied the resulting Total Coverage Years (after adjustments) by the Estimated Retail Price of a Hypothetical ESC to arrive at the Total Value of the CSP Warranty.

e. Exhibit D1 provides the CSP Warranty Valuation Summary and Conclusion, displaying the results from my underlying calculations:

i. Estimated Covered Vehicles: The estimated number of Covered Vehicles (B) that will benefit from the CSP Warranty was derived by considering NHTSA vehicle survivability data (see Section 6.d.i).

ii. Estimated Coverage Years: The Coverage Years (D) is calculated as the number of Estimated Covered Vehicles by model year (B) multiplied by the

number of Average Coverage Years that the ESC would cover for each model year (C) (see Section 6.d.ii).

iii. Estimated Value of Benefits: The Estimated Value of Benefits by Model Year (F) is calculated as the Coverage Years (D) multiplied by the Estimated Per Year Hypothetical ESC Market Price (E) (see Section 6.d.iii).

f. My Valuation Conclusion for the Customer Support Program Warranty (CSP Warranty) made available to Class Members for the Defendant is \$236,820,000.

## **7. Enhanced Rental Car/Loaner Program – Valuation Methodology and Conclusion.**

a. To determine whether the value of the Enhanced Rental Car/Loaner Program (ERCL Program) in the settlement exceeds the credit of 20% of the overall Settlement Amount, I relied upon information provided by the Defendant and I made reasonable judgements based on my professional knowledge of the industry.

b. The relevant terms of the ERCL Program outlined in the Settlement Agreement that I considered in my calculations are summarized as follows:

i. Unlike the Rental Car/Loaner Program for some of the Previous Settlement Defendants, the eligibility under the ERCL Program is not limited to Class Members with Priority Group 1 vehicles.

ii. Unlike the Rental Car/Loaner Program for some of the Previous Settlement Defendants where Class Members qualified for a rental car/loaner after a 30-day delay, under the ERCL Program the rental/loaner vehicle shall be made available immediately.

iii. Defendant's obligation to pay rental costs or provide a loaner shall remain in effect for seven days after notification that the Recall Remedy has been performed on the Subject Vehicle.

c. To estimate the value of the ERCL Program, my valuation approach was based on determining the total aggregate number of days that Class Members would potentially qualify for Rental Cars/Loaners due to the number of vehicles that have not received the Recall Remedy and the lack of availability of replacement parts and logistical considerations relating to scheduling of and performance of the repair/replacement work. This aggregate amount of the available benefit was then compared to the credit of 20% of the overall Settlement Amount for providing the ERCL Program.

d. My analysis to arrive at a Conclusion for the ERCL Program included the following:

i. I estimated the number of Covered Vehicles qualifying for the ERCL Program based on information provided by the Defendant.

1. The Defendant provided the number of non-desiccated and desiccated Subject Vehicles originally sold and the estimated number of replacements completed as of the Valuation Effective Date.

2. The number of Subject Vehicles originally sold was adjusted for the declining number on the road over time by utilizing vehicle survivability data from the National Highway Traffic Safety Administration (NHTSA) to derive the number of Estimated Covered Vehicles.

3. I applied either a 25% or an 80% probability that the desiccated vehicles will require a future remedy (PSDI-X x 25%, PSDI-5 x 80%). This probability considers the possible future recall of desiccated Subject Vehicles, the possible need for repair outside the context of a recall and the future decline of the number of vehicles on the road over time.

ii. I estimated the number of rental days per Covered Vehicle. To develop this estimate, my primary considerations included the following.

1. Based upon my experience in the industry and information provided by the Defendants about replacement part inventories and the timing of estimated future deliveries, I estimated the number of supply related remedy delay days.

2. Based upon my experience in the industry and interviews of service department personnel, I estimated the amount of time needed to complete the repair/replacement at the dealerships once the replacement part is available.

3. I analyzed the data collected and derived above and estimated the number of estimated rental days per Covered Vehicle.

iii. Based on the Defendant's representation that rental vehicle reimbursement rates will be at or above \$44 per day for the ERCL Program, I utilized an average per day retail rental rate of \$44.

iv. The Estimated Value of Benefit Made Available for the ERCL Program is calculated as the Estimated Number of Covered Vehicles multiplied by the Estimated Number of Rental Days multiplied by the estimated Average Per Day Retail Rental Rate.

v. I compared the Estimated Value of Benefit Made Available for the ERCL Program to the credit of 20% of the overall Settlement Amount for providing the Rental Car/Loaner Program.



e. I concluded that the Estimated Value of Benefit Made Available through the ERCL Program in the settlement exceeds the amount of the credit of 20% of the overall Settlement Amount.

**8. Certifications and Representations**

- a. The statements of fact in this declaration are true and correct.
- b. These are my personal, impartial, and unbiased professional analyses, opinions, and conclusions, all of which are stated to a reasonable degree of professional certainty.
- c. I do not have any bias, present interest, or prospective interest with respect to this matter, or any bias or personal interest with respect to the parties involved with this assignment.
- d. My engagement in this assignment and the compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or any direction in value, the amount of the value opinions, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this valuation.

I declare under penalty of perjury that the foregoing is true and correct. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment. Executed this 2<sup>nd</sup> day of November 2018, at Blaine, Minnesota.



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KIRK D. KLECKNER

## EXHIBIT A – Curriculum Vitae of Kirk D. Kleckner CPA MBA ABV ASA-BV CFF

Kirk is currently:

- President of ValuationUSA, LLC - a valuation and succession planning firm serving closely held businesses and their owners
- President of Automotive Development Group Capital and Consulting, LLC – dealership profitability consulting firm

Kirk's experience includes:

- Seven years as Chief Financial Officer for a well-respected Top 50 dealership group known for its world class customer experiences and business processes
- Nineteen years with an accounting firm including roles as shareholder, Chief Operating Officer, and Director of Business Valuation and Litigation Support Services
- Consulting work for hundreds of companies in an array of industries including but not limited to: retail dealership, casualty insurance, distribution, manufacturing, construction, insurance, reinsurance, service, non-profit, bank, retail, tool and die, technology, trucking and warehouse

Kirk is a CPA, MBA and has professional accreditations including:

- Accredited in Business Valuation (ABV) from the American Institute of Certified Public Accountants (AICPA)
- Accredited Senior Appraiser in Business Valuation (ASA-BV) of the American Society of Appraisers
- Certified in Financial Forensics, AICPA (CFF)

Kirk's expertise leverages both his professional and hands-on industry experience as a Chief Financial Officer for a \$500 million business. Kirk's expertise and experience includes buying, selling and integrating of businesses; managing businesses; succession planning, business and intangible asset valuation for strategic transactions; income, gift and estate tax; owner transactions and litigation purposes.

Kirk is a qualified expert witness with experience in complex business litigation, economic damages calculations, business valuation and intangible asset valuation. Kirk has testified as a valuation expert and served as a valuation consultant on several matters including class action cases resulting in damages exceeding \$100,000,000. Representative matters which Kirk provided expert testimony or expert opinions include: In re Volkswagen & Audi Warranty Extension Litigation (MDL 1790) and In re: Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation (No. 8:10ML2151 JVS).

## STATEMENT OF QUALIFICATIONS

### Academic and Professional Credentials

- **ABV** - Accredited in Business Valuation, AICPA,
- **ASA-BV** - Accredited Senior Appraiser-Business Valuation, American Society of Appraisers
- **CFF** - Certified in Financial Forensics, AICPA (granted exclusively to CPAs who demonstrate considerable expertise in forensic accounting through knowledge, skills, and experience in areas including: family law; valuations; financial statement misrepresentation; and economic damages calculations.



- **MBA** - Master of Business Administration, Concentration Finance, University of Minnesota
- **CPA** - Certified Public Accountant, State of Minnesota and Iowa
- Bachelor of Arts, Accounting and Business Administration, Wartburg College

## Positions and Experience

**President – ValuationUSA, LLC (2008)** – Professional services consulting firm specializing in the following areas:

- succession planning, owner wealth accumulation, preservation and transfer planning
- business and intangible asset valuation
- gift and estate tax
- strategic acquisition and divestiture transactions
- value enhancement
- expert opinions – litigation, economic loss / damage analysis and independent opinions / expert testimony

**President – Automotive Development Group Capital and Consulting, LLC (2009)** – Business specializing in helping dealership groups and their owners establish and sustain competitive advantages that lead to performance at extraordinary levels.

**Executive Vice President and Chief Financial Officer - Walser Automotive Group, Minneapolis, MN (2000–2007)** - Automobile dealership group with related leasing, collision repair, reinsurance and real estate operations (\$500 million of revenues, fourteen locations and 750 employees)

**Chief Operating Officer, Director of Valuation and Consulting Department, and Shareholder - Wilkerson, Guthmann + Johnson, Ltd., St. Paul, MN (1981 – 2000)** - Public accounting firm with 40 members and offices in St. Paul, Blaine and Minneapolis. *Industries Served:* Auto dealership, casualty insurance, manufacturing, construction, insurance, service, non-profit, bank, retail, trucking and warehouse.

## Professional Affiliations

*American Society of Appraisers*, a Member and an Accredited Senior Appraiser- Business Valuation (ASA-BV) - ASA is an organization of appraisal professionals. The ASA promotes the exchange of ideas and experiences among its members; maintains the Principles of Appraisal Practice and Code of Ethics for the guidance of its members; maintains universal recognition that members of the Society are objective, unbiased appraisers and consultants, and awards professional designations to qualified members.

*American Institute of Certified Public Accountants*, a Member and an Accredited in Business Valuation Member (ABV), Certified in Financial Forensics (CFF)

*Minnesota Society of Certified Public Accountants*, a Member

*Twin Cities Estate Planning Council*, a Member

## Select Presentations

- *Business Value: What Leads to a High-Performance Manufacturing Business?* 2016 Minnesota Manufacturing Executives, Minneapolis, MN

- *Eight Characteristics of High Value Dealerships*, 2014 Michigan Automotive Dealers Conference, Livonia, MI
- *Eminent Domain Asset Identification, Classification and Valuation*, Eminent Domain 2011: Essential Updates and Issues, Hennepin County Bar Association, Minneapolis, MN
- *Eight Characteristics of High Value Dealerships (And Why Dealers Should Care About Them)*, 2010 AICPA Auto Dealership Conference, Phoenix, AZ
- *AICPA / ASA Business Conference Review*, American Society of Appraisers, Minneapolis, MN
- *Fourteen Evolving Dealership Strategies*, Chicago Automobile Trade Association / Compli, Chicago; Dealer Driving Force Group, Charlotte, NC
- *Integrating Business Value Creation and Tax Planning*, 2010 Management & Business Advisers Conference, MN Society of CPAs, Minneapolis, MN
- *Tax Reduction Strategies for Today's Business Environment*, M&I Bank
- *What Leads to Dealership High Performance*, The New Dealership Era Symposium Sponsored by Compli and Wells Fargo, Bloomington, MN
- *Business and Real Estate Valuation Timely Opportunities*, Thrivent Financial Annual Meeting, Roseville, MN
- *Business Valuation for Attorneys*, Various
- *Understanding Financial Statements for Attorneys*, Various

#### Select Appraisal and Litigation Support Education

- ASA 2015 Advanced Business Valuation Conference, Las Vegas, NV
- How Probability Affects Discounts for Lack of Marketability, 2015
- ASA Annual Business Valuation Conference, 2015, 2014
- MNCPA Business Valuation Conference, 2015, 2013, 2009, 2008
- Price and Value: Discerning the Difference, 2015
- National 7 Hour USPAP for Business Valuation, 2014
- Michigan CPA Automobile Dealers Conference, 2014
- Buying and Selling a Privately-Owned Business, 2014
- The NEW Choice of Entity Decision, 2014
- The Best Income Tax, Estate Tax and Financial Planning Ideas of 2013
- Family Law Conference, 2013
- Valuing Early Stage Companies, 2013
- Special Topics in the Valuation of Intangible Assets, 2012
- Using Market Data to Support Real Estate Partnership Discounts, 2012
- Reasonable Compensation: Application and Analysis for Appraisal, Tax and Management Purposes, 2011
- AICPA National Business Valuation Conference, 2011, 2008
- Factors of Comparability: Considerations Affecting Market Royalty Rates and Intangible Property Valuations, 2011
- 20<sup>th</sup> Annual National Expert Witness Conference, 2011
- Pluris Discount for Lack of Marketability Study Results, 2010
- Business Valuations for SBA Loan Purposes: Important Developments and Perspectives, 2010
- The Exploration, Examination, and Dissection of Reasonable Compensation, 2010
- Valuation Issues in Estate and Gift Tax, 2010
- Advanced Issues in Fairness and Solvency Opinions, 2010
- Real Option Valuation, 2009
- Monte Carlo Simulation, 2009
- Reconciling the Lack of Marketability Discount Theories, 2009
- Reasonable Compensation, 2008
- National Business Valuation Conference (AICPA / ASA), 2008
- Cost of Capital, 2008
- ASA International Appraisal Conference 2008
- Illinois Business Valuation Conference, 2008
- Evaluating Risk Business Valuation Conference, 2008
- Reconciling the Lack of Marketability Discount Theories 2008
- ABV Examination Review Course, 2007
- ABV Examination Review Course and Exam
- Valuation of Family Limited Partnerships and Limited Liability Companies
- S Corporation Valuation Issues
- Employment Damages Workshop
- Tax Issues in Divorce
- Expert Witness in an Untested Litigation Area
- Uniform Standards of Appraisal Practice, Course and Exam
- Selection and Use of an Expert in Litigation
- Income Tax Planning for Estates and Trusts
- Family Limited Partnerships in Minnesota

**Publications Authored by the Witness Within the Preceding Ten Years**

- None

**Cases in Which the Witness Has Testified as An Expert at Trial or By Deposition Within the Preceding Four Years**

- Puklich v. Puklich, North Dakota South Central Judicial District, Dealership Damages, Owner Breach of Fiduciary Duty, Deposition – 10/2/2017, Trial – 11/27/2017.

**EXHIBIT B – Primary Materials Considered**

In addition to the information data described in Sections 5 above, I considered the following:

- The United States District Court for The Southern District of Florida In Re: Takata Airbag Products Liability Litigation settlement agreements with the Settlement Defendants
- Various interviews with extended service contract professionals' familiar with the U.S. markets.
- Results of research regarding U.S. inoperable vehicles and vehicles with salvaged, rebuilt or flood-damaged titles.
- Results of research regarding U.S. vehicle survivability, age and miles driven.
- *Vehicle Survivability and Travel Mileage Schedules*, January 2006. National Highway Traffic Safety Administration.
- *2016 Official Warranty Guide, JL Warranty*
- *New vehicle warranty terms and conditions for various manufacturers*
- Allstate vehicle service agreements
- C.N.A. National Warranty Corporation vehicle service agreements
- *C.N.A. Class Listings for Vehicle Service Contracts*
- Protective vehicle service agreements
- Various warranty insurance company state filings showing rate filings and rate manual guidelines
- Extended service contract information for various manufacturer programs
- NADA DATA Various Reports



**Exhibit C – Valuation Primary Significant Assumptions and Limiting Conditions**

- Information provided by the Defendants is accurate and responsive to the information request.
- My calculations assume a Valuation Effective Date of November 1, 2018; if the timing of the final approval date of the Settlement Agreement occurs as expected during December 2018 or the first quarter of 2019, my valuation conclusions will be materially accurate.
- While I believe my valuation conclusions are valid, I reserve the right to submit a revised valuation to correct any inadvertent errors or omissions, given the complexity of this valuation, number of Settlement Defendants involved, and time constraints of the project, including delays in providing information I requested.
- Not all information requested was available, however, I believe that the information made available to me by the Settlement Defendants, taken as a whole, provided sufficient data from which I could draw valid valuation conclusions.
- I assumed future recalls on currently unrecalled, non-desiccated Subject Vehicles would occur evenly over the next three years.
- I applied a 25% or 80% probability of the occurrence of a future recall of desiccated inflators depending on the type of inflator.

## Exhibit D1

### Ford CSP Warranty Valuation Summary and Conclusion

<u>Estimated Covered Vehicles</u>		<u>Estimated Coverage Years</u>		<u>Valuation Summary</u>	
Model Year	Number of Vehicles	Average Coverage Years by Model Year	Coverage Years	Estimated Per Year Hypothetical ESC Market Price	Estimated Value of Benefits By Model Year
(A)	(B)	(C)	(D) (B X C = D)	(E)	(F) (D X E = F)
2004	140,800	5.50	774,300	\$6.25	\$ 4,839,400
2005	190,100	5.50	1,045,400	\$6.25	\$ 6,533,800
2006	484,700	5.27	2,555,400	\$6.25	\$ 15,971,300
2007	853,900	5.18	4,420,600	\$6.25	\$ 27,628,800
2008	889,000	5.16	4,584,500	\$6.25	\$ 28,653,100
2009	502,700	5.14	2,585,100	\$6.25	\$ 16,156,900
2010	934,800	5.19	4,849,800	\$6.25	\$ 30,311,300
2011	301,900	5.31	1,601,900	\$6.25	\$ 10,011,900
2012	318,100	5.89	1,872,100	\$6.25	\$ 11,700,600
2013	340,500	6.08	2,071,800	\$6.25	\$ 12,948,800
2014	348,300	6.73	2,344,700	\$6.25	\$ 14,654,400
2015	513,400	6.58	3,378,000	\$6.25	\$ 21,112,500
2016	543,300	6.58	3,575,000	\$6.25	\$ 22,343,800
2017	224,000	6.58	1,474,000	\$6.25	\$ 9,212,500
2018	117,500	6.45	758,300	\$6.25	\$ 4,739,400
	<u>6,703,000</u>		<u>37,890,900</u>		<u>\$236,818,500</u>
<b>Valuation Conclusion</b>					<b>\$236,820,000</b>

## **EXHIBIT D**

**UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF FLORIDA  
Miami Division**

*In re: Takata Airbag Product Liability Litigation  
(Economic Loss Track Cases Against Ford Motor Company)*

*MDL No. 2599*

**DECLARATION OF BRIAN T. FITZPATRICK**

**I. Background and qualifications**

1. My name is Brian Fitzpatrick and I am a Visiting Professor at Harvard Law School. I am also a Professor of Law at Vanderbilt University in Nashville, Tennessee. I joined the Vanderbilt law faculty in 2007, after serving as the John M. Olin Fellow at New York University School of Law in 2005 and 2006. I graduated from the University of Notre Dame in 1997 and Harvard Law School in 2000. After law school, I served as a law clerk to The Honorable Diarmuid O'Scannlain on the United States Court of Appeals for the Ninth Circuit and to The Honorable Antonin Scalia on the United States Supreme Court. I also practiced law for several years in Washington, D.C., at Sidley Austin LLP. My C.V. is attached as Appendix 1.

2. My teaching and research have focused on class action litigation. I teach the Civil Procedure, Federal Courts, Complex Litigation, and Comparative Class Actions courses. In addition, I have published a number of articles on class action litigation in such journals as the University of Pennsylvania Law Review, the Journal of Empirical Legal Studies, the Vanderbilt Law Review, the NYU Journal of Law & Business, and the University of Arizona Law Review. My work has been cited by numerous courts, scholars, and media outlets such as the New York Times, USA Today, and Wall Street Journal. I have also been invited to speak at symposia and

other events about class action litigation, such as the ABA National Institute on Class Actions in 2011, 2015, 2016, and 2017, and the ABA Annual Meeting in 2012. Since 2010, I have also served on the Executive Committee of the Litigation Practice Group of the Federalist Society for Law & Public Policy Studies. In 2015, I was elected to the American Law Institute.

3. In December 2010, I published an article in the *Journal of Empirical Legal Studies* entitled *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 *J. Empirical L. Stud.* 811 (2010) (hereinafter “Empirical Study”). Unlike other studies of class actions, which have been limited to certain subject areas or have been based on samples of cases that were not intended to be representative of the whole (such as settlements approved in published opinions), my study sought to examine *every* class action settlement approved by a federal court over a two-year period, 2006-2007. *See id.* at 812-13. As such, not only is my study not biased toward particular settlements, but the number of settlements included in my study is several times the number of settlements per year that has been identified in any other empirical study of class action settlements: over this two-year period, I found 688 settlements, including 54 from the Eleventh Circuit alone. *See id.* at 817. This study has been relied upon by a number of scholars, testifying experts, and courts, including those in this district.<sup>1</sup> I will draw upon this study in this declaration.

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<sup>1</sup> *See, e.g., Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956, 958 (7th Cir. 2013) (relying on article to assess fees); *Rodman v. Safeway Inc.*, 2018 WL 4030558, at \*5 (N.D. Cal. Aug. 23, 2018) (same); *Little v. Washington Metro. Area Transit Auth.*, 2018 WL 1997257, at \*7 (D.D.C. Apr. 27, 2018) (same); *Hillson v. Kelly Servs. Inc.*, 2017 WL 3446596, at \*4 (E.D. Mich. Aug. 11, 2017) (same); *Good v. W. Virginia-Am. Water Co.*, 2017 WL 2884535, at \*23, \*27 (S.D.W. Va. July 6, 2017) (same); *McGreevy v. Life Alert Emergency Response, Inc.*, 258 F. Supp. 3d 380, 385 (S.D.N.Y. 2017) (same); *Brown v. Rita's Water Ice Franchise Co. LLC*, 2017 WL 1021025, at \*9 (E.D. Pa. Mar. 16, 2017) (same); *In re Credit Default Swaps Antitrust Litig.*, 2016 WL 1629349, at \*17 (S.D.N.Y. Apr. 24, 2016) (same); *Gehrich v. Chase Bank USA, N.A.*, 316 F.R.D. 215, 236 (N.D. Ill. 2016) (same); *Ramah Navajo Chapter v. Jewell*, 167 F. Supp. 3d 1217, 1246 (D.N.M. 2016) (same); *In re: Cathode Ray Tube (Crt) Antitrust Litig.*, 2016 WL

4. In addition to my empirical works, I have also published many papers on how law-and-economics theory affects attorneys and others in class action litigation. *See, e.g.*, Brian T. Fitzpatrick, *The End of Objector Blackmail?*, 62 Vand. L. Rev. 1623 (2009); Brian T. Fitzpatrick, *Do Class Action Lawyers Make Too Little*, 158 U. Pa. L. Rev. 2043 (2010) (hereinafter “Class Action Lawyers”). The culmination of these papers will be a book published next year by the University of Chicago Press entitled THE CONSERVATIVE CASE FOR CLASS ACTIONS, where I argue that the so-called “private attorney general” is superior to the public attorney general in the enforcement of the rules that free markets need in order to operate effectively.

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721680, at \*42 (N.D. Cal. Jan. 28, 2016) (same); *In re Pool Products Distribution Mkt. Antitrust Litig.*, 2015 WL 4528880, at \*19-20 (E.D. La. July 27, 2015) (same); *Craftwood Lumber Co. v. Interline Brands, Inc.*, 2015 WL 2147679, at \*2-4 (N.D. Ill. May 6, 2015) (same); *In re: Checking Account Overdraft Litig.*, 2015 WL 12642178, at \*15 (S.D.Fla. Apr. 2, 2015) (same); *Craftwood Lumber Co. v. Interline Brands, Inc.*, 2015 WL 1399367, at \*3-5 (N.D. Ill. Mar. 23, 2015) (same); *In re Capital One Tel. Consumer Prot. Act Litig.*, 2015 WL 605203, at \*12 (N.D. Ill. Feb. 12, 2015) (same); *In re Neurontin Marketing and Sales Practices Litig.*, 2014 WL 5810625, at \*3 (D. Mass. Nov. 10, 2014) (same); *Tennille v. W. Union Co.*, 2014 WL 5394624, at \*4 (D. Colo. Oct. 15, 2014) (same); *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 349-51 (S.D.N.Y. 2014) (same); *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, 991 F. Supp. 2d 437, 444-46 & n.8 (E.D.N.Y. 2014) (same); *In re Checking Account Overdraft Litigation*, 2014 WL 12557836, at \*15 (S.D.Fla. Apr. 1, 2014) (same); *In re: Checking Account Overdraft Litig.*, 2014 WL 11370115, at \*18 (S.D. Fla. Jan. 6, 2014) (same); *In re Federal National Mortgage Ass’n Secs., Deriv., and “ERISA” Litig.*, 4 F. Supp. 3d 94, 111-12 (D.D.C. 2013) (same); *In re Vioxx Products Liability Litig.*, 2013 WL 5295707, at \*3-4 (E.D. La. Sep. 18, 2013) (same); *In re: Checking Account Overdraft Litigation*, 2013 WL 11319392, at \*17 (S.D. Fla. Aug. 5, 2013) (same); *In re: Checking Account Overdraft Litig.*, 2013 WL 11320088, at \*16 (S.D. Fla. Aug. 2, 2013) (same); *In re: Checking Account Overdraft Litig.*, 2013 WL 11319242, at \*17 (S.D.Fla. Aug. 2, 2013) (same); *In re Black Farmers Discrimination Litig.*, 953 F. Supp. 2d 82, 98-99 (D.D.C. 2013) (same); *In re Southeastern Milk Antitrust Litig.*, 2013 WL 2155387, at \*2 (E.D. Tenn., May 17, 2013) (same); *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1081 (S.D. Tex. 2012) (same); *Pavlik v. FDIC*, 2011 WL 5184445, at \*4 (N.D. Ill. Nov. 1, 2011) (same); *In re Black Farmers Discrimination Litig.*, 856 F. Supp. 2d 1, 40 (D.D.C. 2011) (same); *In re AT & T Mobility Wireless Data Servs. Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1033 (N.D. Ill. 2011) (same); *In re MetLife Demutualization Litig.*, 689 F. Supp. 2d 297, 359 (E.D.N.Y. 2010) (same).

5. I have been asked by class counsel to opine on whether the attorneys' fees they have requested are reasonable in light of my studies and the other studies on class action fees. In order to formulate my opinion, I reviewed a number of documents provided to me by class counsel; I have attached a list of these documents (and noted how I refer to these documents herein) in Appendix 2. The request here is equal to 25% of the cash portion of the settlement, but because it is inclusive of expenses and because there are non-cash benefits in the settlement, the request is *below* the Eleventh Circuit's 25% benchmark and *well below* the average and median fee percentages actually awarded in the Eleventh Circuit. This is despite the fact that this is the best settlement yet in this MDL. For these and other reasons I will explain, it is my opinion that the request here is reasonable.

## II. Case background

6. The crisis giving rise to this litigation is well known: for many years, the seven defendant car manufacturers sold vehicles with defective airbags purchased from the eighth defendant, Takata. The airbags were defective because they were made with a propellant that was unstable—so unstable that the airbags sometimes *killed* drivers and passengers when they deployed. The defendant car companies recalled some of the offending vehicles beginning in 2008, but, after the full nature of the problem finally became known to the public in 2014, the federal government insisted that Takata and the car companies recall all the offending vehicles. That recall has now expanded to encompass some 60 million airbags. *See* <https://www.nhtsa.gov/recall-spotlight/takata-air-bags> (reporting that the total number of affected airbags is “around 65 to 70 million”). Yet, as of December 8, 2017, only about 20.5 million of



those airbags had been replaced. *See id.* Takata has now pled guilty to federal criminal charges and declared bankruptcy.

7. In 2014, putative classes of consumers filed lawsuits all over the country against the defendants seeking compensation for the economic harms they suffered by buying vehicles with a lethal airbag. These lawsuits were consolidated in this court under the federal multidistrict litigation statute along with numerous other lawsuits filed by passengers, drivers, and loved ones for physical injuries that resulted from the defective airbags, including, again, deaths.

8. The present lawsuit grew out of this consolidation. It is a nationwide class action on behalf of all current and past owners and lessees of the offending vehicles seeking redress for economic harm. The parties have been engaged in motions practice and discovery for many years, including numerous motions to dismiss, document review of over 10 million pages, and depositions of over 45 witnesses.

9. All of the automaker defendants save Ford settled their economic-harm liabilities over the past year. On November 1, 2017, this court certified settlement classes and granted final approval to settlements with Toyota, BMW, Mazda and Subaru; on February 28, 2018, this court did so for settlements with Nissan and Honda. Now, Ford has agreed to settle on similar terms. In particular, Ford will pay \$299.1 million.<sup>2</sup> *See* Settlement § III.A.2. From these funds, monies will be spent as follows: First, class members will receive cash payments equal to the out-of-pocket expenses (e.g., lost wages, child care, taxis, towing) they incurred in connection with going to the dealership and changing out their airbags. If they do not want to itemize their

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<sup>2</sup> Ford can receive credits equal to 20% of this amount if they adopt a free rental car program to make sure all class members have access to alternative transportation—at Ford's expense—while their air bags are replaced. *See* Settlement § III.C.3. Class counsel's expert has estimated that, if this program is adopted, its value to class members will be *more* than the 20% credit.

expenses (or their expenses are not approved by the claims administrator), class members can receive up to a flat \$250. *See* Settlement §§ III.D & III.E. Second, the fund will finance state-of-the-art outreach programs to get class members to dealerships so they actually change out their airbags. *See* Settlement § III.B. This is important relief because, as I noted, under the federal government's recall, not enough people have replaced their airbags. Third, the fund will pay for settlement administration and attorneys' fees and expenses. *See* Settlement § III.A.3. All of the settlement fund monies will be spent one way or another; if there is any money left after paying class member claims, attorneys' fees and expenses, settlement administration costs, and for the outreach programs, it will be redistributed in the form of additional cash payments to class members. *See* Settlement § III.E. In addition to these monies, the defendants have also agreed to extend the warranties on the new airbags class members will receive for several additional years and for tens of thousands of additional miles. *See* Settlement § III.G. The court granted preliminary approval to the settlement on September 5, 2018.

10. The class is now moving for final approval of the settlements and class counsel are moving for an award of fees and expenses equal to 25% of the cash-or-rental-car portion of the settlement fund—but equal to only 14% of the total benefits conferred by the settlements (i.e., when the value of the extended warranties is included). These percentages would be in the middle of the percentages this court awarded from the settlements against the other automaker defendants in this MDL. Yet, this class will recover more of its damages than any of the classes in the previous settlements despite the fact that the risks for the class here were greater. Moreover, the percentage requested here is well below the median in the Eleventh Circuit, which my empirical study put at 30% and a more recent study put at 33%. For these and other reasons, it is my opinion that the fee request here is reasonable.

III. Assessment of the reasonableness of the request for attorneys' fees

11. At one time, courts that awarded fees in class action cases did so using the familiar “lodestar” approach. See Brian T. Fitzpatrick, *Do Class Action Lawyers Make Too Little*, 158 U. Pa. L. Rev. 2043, 2051 (2010) (hereinafter “Class Action Lawyers”). Under this approach, courts awarded class counsel a fee equal to the number of hours they worked on the case (to the extent the hours were reasonable), multiplied by a reasonable hourly rate as well as by a discretionary multiplier that courts often based on the risk of non-recovery and other factors. See *id.* Over time, however, the lodestar approach fell out of favor in class actions. It did so largely for two reasons. First, courts came to dislike the lodestar method because it was difficult to calculate the lodestar; courts had to review voluminous time records and the like. Second—and more importantly—courts came to dislike the lodestar method because it did not align the interests of class counsel with the interests of the class; class counsel’s recovery did not depend on how much the class recovered, but, rather, on how many hours could be spent on the case. See *id.* at 2051-52. According to my empirical study, the lodestar method is now used to award fees in only a small percentage of class action cases, usually those involving fee-shifting statutes or those where the relief is predominantly injunctive in nature (and the value of the injunction cannot be reliably calculated). See Fitzpatrick, *Empirical Study, supra*, at 832 (finding the lodestar method used in only 12% of settlements). The other large-scale academic study of class action fees, authored over time by Geoff Miller and the late Ted Eisenberg, agrees with my findings. See Theodore Eisenberg & Geoffrey P. Miller, *Attorneys’ Fees and Expenses in Class Action Settlements: 1993-2008*, 7 J. Empirical L. Stud. 248, 267 (2010) (finding lodestar method used only 13.6% of the time before 2002 and less than 10% of the time thereafter) (hereinafter

“Eisenberg-Miller 2010”); Theodore Eisenberg et al., *Attorneys’ Fees in Class Action Settlements: 2009-2013*, 92 N.Y.U. L. Rev. 937, 945 (2017) (finding lodestar method used less than 7% of the time since 2009) (hereinafter “Eisenberg-Miller 2017”).

12. The more popular method of calculating attorneys’ fees today is known as the “percentage” method. Under this approach, courts select a percentage that they believe is fair to class counsel, multiply the settlement amount by that percentage, and then award class counsel the resulting product. The percentage approach became popular precisely because it corrected the deficiencies of the lodestar method: it is less cumbersome to calculate, and, more importantly, it aligns the interests of class counsel with the interests of the class because the more the class recovers, the more class counsel recovers. *See Fitzpatrick, Class Action Lawyers, supra*, at 2052.

13. In light of the well-recognized disadvantages of the lodestar method and the well-recognized advantages of the percentage method, it is my opinion that courts should generally use the percentage method whenever the value of the settlement can be reliably calculated and the lodestar method is not required by a fee-shifting statute. Only where the value of the settlement cannot be reliably calculated (and the percentage method is therefore not feasible) or a fee-shifting statute is applicable is it my opinion that courts should use the lodestar method. This is not just my opinion. It is the consensus opinion of class action scholars. *See American Law Institute, Principles of the Law of Aggregate Litigation* § 3.13(b) (2010) (“[A] percentage-of-the-fund approach should be the method utilized in most common-fund cases.”).

14. In this case, I believe a sufficient amount of the settlement can be reliably valued and therefore the percentage method should be used. Moreover, the percentage method has been mandated by the Eleventh Circuit. *See Camden Condominium Ass’n, Inc. v. Dunkle*, 946 F.2d

768, 774 (11th Cir. 1991) (“Henceforth in this circuit, attorneys’ fees awarded from a common fund shall be based upon a reasonable percentage of the fund . . .”). As such, I will assess the reasonableness of the fee requests here using the percentage method.

15. Under the percentage method, courts must 1) calculate the value of the benefits created by class counsel and then 2) select a percentage of that value to award to class counsel. When calculating the value of the benefits, in my opinion courts should include any cash compensation to class members, cash the defendant must pay to third parties, non-cash benefits that can be reliably valued, attorneys’ fees and expenses, and administrative costs paid by the defendant; although some of these things do not go directly to the class as compensation, they either facilitate compensation to the class or serve to deter defendants from future misconduct by making defendants pay more when they cause harm. *See, e.g., In re Heartland Payment Systems, Inc. Customer Data Sec. Breach Litigation*, 851 F.Supp.2d 1040, 1080 (S.D. Tex. 2012) (including these items in the denominator of the percentage method). When selecting what percentage to award class counsel, in my opinion courts should hypothesize what class members would have been willing to pay class counsel at the outset of the litigation in order to induce them to take the case, *see, e.g., Williams v. Rohm & Haas Pension Plan*, 658 F.3d 629, 636 (7th Cir. 2011) (“When attorney’s fees are deducted from class damages, the district court must try to assign fees that mimic a hypothetical *ex ante* bargain between the class and its attorneys.”), but that is not the Eleventh Circuit’s approach. In the Eleventh Circuit, courts start with 25% as the “‘bench mark’ percentage fee award” and then adjust it upward or downward “in accordance with the individual circumstances of each case.” *Camden I*, 946 F.2d at 775. Although “[t]he factors which will impact upon the appropriate percentage . . . in any particular case will undoubtedly vary,” the Eleventh Circuit has identified sixteen factors that it has said may be

“appropriate[]” or “pertinent” to consider. *Camden I*, 946 F.2d at 775. These factors include “[1] the time required to reach a settlement, [2] whether there are any substantial objections . . . , [3] any non-monetary benefits conferred upon the class . . . , and [4] the economics involved in prosecuting a class action,” *id.*, as well as the twelve factors from *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974): “[5] the time and labor required; [6] the novelty and difficulty of the questions involved; [7] the skill requisite to perform the legal service properly; [8] the preclusion of other employment by the attorney due to acceptance of the case; [9] the customary fee; [10] whether the fee is fixed or contingent; [11] time limitations imposed by the client or the circumstances; [12] the amount involved and the results obtained; [13] the experience, reputation, and ability of the attorneys; [14] the ‘undesirability’ of the case; [15] the nature and length of the professional relationship with the client; [and] [16] awards in similar cases.” *Camden I*, 946 F.2d at 772 n.3. In this declaration, I will follow the Eleventh Circuit’s approach and try to situate this case relative to others within the Eleventh Circuit’s factors in light of my and other studies.

16. Let me begin with the first step under the percentage method: calculating the value of the benefits created by class counsel. To fund the various payments and programs in the settlement, we know Ford will pay \$299.1 million in cash—unless it adopts a free rental car program, in which case its cash obligation will be reduced by 20%. But, as I noted above, the rental car program is *worth even more* to the class than those credits. Nonetheless, in order to be as conservative as possible, I will assume the value of the rental car program will be no more than the 20% credit. Moreover, Ford has also agreed to extend class members’ warranties on their new airbags. According to class counsel’s expert, the warranty extensions will be worth an

additional \$236.82 million to the class. Thus, the total benefits this settlement will confer on the class can be *conservatively* estimated at \$535.92 million.

17. Before I get to the next step under the percentage method—selecting the percentage—I want to emphasize why I believe it is reasonable to include in the above benefits the monies Ford will pay to fund the outreach programs to get class members into dealerships to replace their airbags. After all, Ford is already obligated to replace these airbags per order of the federal government—and, indeed, obligated to do so pursuant to a timetable imposed by the federal government, *see, e.g.*, NHTSA’s December 9, 2016 Third Amendment to the Coordinated Remedy Order at ¶ 35—wouldn’t Ford have to spend this money anyway to meet the federal government’s timetable? It turns out that the answer to this question is no. The federal government’s timetable does not require Ford to spend any particular amount of money to meet it; indeed, all the law specifically requires is that they mail a letter to vehicle owners, *see, e.g.*, 49 C.F.R. 577.7. This settlement, by contrast, will *require* nearly \$100 million to be spent on state-of-the-art outreach. Indeed, not only does the settlement agreement *require* this money to be spent, but it *requires* that this money go *above and beyond* the outreach efforts for the federal government’s timetable. *See* Settlement § B.1 (“[T]he Outreach Program shall be designed to significantly increase Recall Remedy completion rates via traditional and non-traditional outreach efforts, including by expanding those currently being used by Ford and conducted in connection with NHTSA’s November 3, 2015 Consolidated Remedy Order and amendments thereto . . .”).

18. Let me turn to the second step of the percentage method: selecting the percentage. Class counsel are seeking an award equal to 25% of the cash-or-rental-car value of the settlement, but only 14% of the settlement when the value of the extended warranties is included.



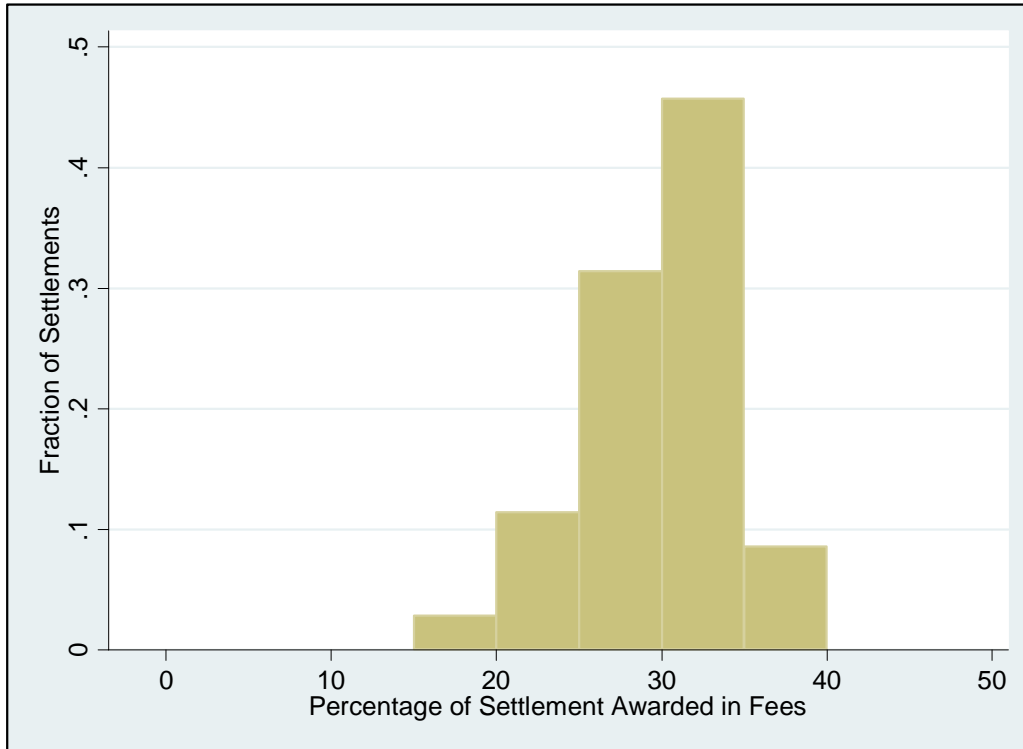
It should be noted that this request is *inclusive* of expenses; class counsel will *not* separately seek reimbursement for their out-of-pocket costs. Because fees are usually awarded *in addition* to expenses, that means class counsel are seeking fees *below* the Eleventh Circuit's 25% benchmark regardless of whether the value of the extended warranties is included. It is my opinion that a below-benchmark fee percentage is easily justified in this case.

19. Consider first the factors that go to fee awards in other cases: “[9] the customary fee” and “[16] awards in similar cases.” To begin with, the percentage requested here is in the middle of the fee percentages awarded by this court in the settlements against the other automaker defendants in this MDL. In particular, the court awarded fees of 30% of the cash-or-rental-car values of the settlements with BMW, Toyota, Mazda, and Subaru, and 20% of the settlements with Nissan and Honda. Yet, in my opinion, and as I explain in more detail below, this settlement is superior to any of the previous settlements because the class here is recovering a higher percentage of its damages than any of the previous classes despite the fact that the class faced even greater risks. Moreover, as I also explain in more detail below, it can create perverse incentives if courts award class counsel lower and lower fee percentages as they settle with defendants over time in multi-defendant litigation. Thus, the other fee awards in this MDL support the fee request here.

20. So do other fee awards in the Eleventh Circuit more broadly. Given that the request here is a below-benchmark request, it should not be surprising that it is lower than the typical Eleventh Circuit fee award and *much lower* when the extended warranties are included. According to my empirical study, there were 35 class action cases in 2006 and 2007 in which district courts in the Eleventh Circuit used the percentage method to award attorneys' fees. *See* Fitzpatrick, *Empirical Study, supra*, at 836. The average fee awarded in these cases was 28.1%

and the median fee awarded was 30%. *See id.* This can be seen clearly from Figure 1, which shows the distribution of all of the Eleventh Circuit percentage-method fee awards in my study. In particular, the figure shows what fraction of fee awards (y-axis) fell within each five-point range of fee percentages (x-axis). As the figure shows, more than eighty percent (i.e., .8) of all Eleventh Circuit fee awards have been 25% or more. Indeed, class counsel's fee request is even more modest than the Figure suggests because the data from my empirical study was exclusive of class counsel's expenses, *see Fitzpatrick, Empirical Study, supra*, at 833, yet class counsel have included expenses in their request. All of this means that the fee request here is below—and, indeed, *well below* when the extended warranties are included—the vast majority of Eleventh Circuit fee awards. The same is true if one looks nationwide instead of in the Eleventh Circuit alone. *See id.* at 836 (finding average fee awarded nationwide was 25.3% and the was 25.5%).

**Figure 1: Percentage-method fee awards in the Eleventh Circuit, 2006-2007**



21. The data in my study is not idiosyncratic. It is consistent with the data in the other large-scale empirical study by Professors Eisenberg and Miller. Indeed, their latest update—published last year—shows that, if anything, my data now *understates* the typical fee awards in the Eleventh Circuit. In particular, they found that the average award in the Eleventh Circuit *has increased to 30%* and the median *increased to 33%*. See Eisenberg-Miller 2017, *supra*, at 951; see also *id.* (finding mean and median awards in all federal courts of 27% and 29%, respectively). Thus, the Eleventh Circuit data supports the fee request here, too.

22. It should be noted that the nationwide data in my empirical study shows that settlement size had a statistically significant but inverse relationship with the fee percentages awarded by federal courts—*i.e.*, that some federal courts awarded lower percentages in cases where settlements were larger. See Fitzpatrick, *Empirical Study*, *supra*, at 838, 842-44. The

Eisenberg-Miller study shows the same thing. *See Eisenberg-Miller 2010, supra*, at 264; *Eisenberg-Miller 2017, supra*, at 947-48. This is notable because this settlement is on the larger side; only a handful of settlements every year are as big as this one. Even so, the request here is still below the mean and median fee percentages awarded in big settlements in my dataset if the extended warranties are included, as they should be, in the value of the settlement. *See, e.g.*, Fitzpatrick, *Empirical Study, supra*, at 839 (finding mean of 17.8% and median of 19.5% of fee awards in settlements between \$250 and \$500 million). (The Eisenberg-Miller study did not report separate fee-percentage averages and medians for very large settlements.). But even if the value of the extended warranties were excluded, it would not change my opinion that the fee request here is reasonable. The reasons are four-fold.

23. First, although some district courts in other circuits may be lowering fee percentages as settlement amounts increase, I have found no evidence that district courts in the Eleventh Circuit are doing so. In particular, when I separated the fee awards in other circuits from the 35 percentage-method fee awards in my dataset from district courts in the Eleventh Circuit, I found no statistically significant relationship between settlement size and fee percentage.<sup>3</sup>

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<sup>3</sup> It is possible that the reason there was no statistically significant relationship in the Eleventh Circuit between settlement size and fee percentage is because there were so few large settlements in the Eleventh Circuit in 2006 and 2007. Indeed, in my dataset there is only one settlement over \$100 million: the \$1 billion settlement in *Allapattah Servs. Inc. v. Exxon Corp.*, 454 F.Supp.2d 1185 (S.D.Fla. 2006), where the court awarded 31.33% in fees. On the other hand, after I collected my data, a district court in the Eleventh Circuit awarded fees in another large (\$445 million) class action settlement in my dataset. *See In re Healthsouth Corporation Securities Litigation*, No. CV-03-BE-1500-S (N.D.Ala., Feb. 12, 2008). This settlement was included in the portion of my empirical study that described settlements, but, because the fees had not yet been awarded at the time I collected my data, it was excluded from the portion of my study that described fee awards. *See Fitzpatrick, Empirical Study, supra*, at 831 (notes to Table 7). Although it is difficult to calculate the fee percentage actually awarded by the court in *Healthsouth*—because it depended on the number of claims filed by different classes of plaintiffs—some of the filings in the case suggest that the total fee award would have been around 18% of the settlement. *See In re Healthsouth Corporation Securities Litigation, supra* (awarding 17.5% and another 4% to attorneys for the

24. Second, the practice among other district courts to decrease fee percentages as settlement amounts increase has been criticized by many scholars and courts, and, in my opinion, courts in the Eleventh Circuit should not begin emulating this practice here. In particular, courts and commentators have worried that lowering percentages as settlement sizes increase will blunt the incentives of class counsel to fight for the largest settlement, and, indeed, might incentivize class counsel to settle cases earlier for smaller sums. *See, e.g., In re Cendant Corp. Litigation*, 264 F.3d 201, 284 n. 55 (3d Cir. 2001) (“Th[e] position [that the percentage of a recovery devoted to attorneys fees should decrease as the size of the overall settlement or recovery increases] . . . has been criticized by respected courts and commentators, who contend that such a fee scale often gives counsel an incentive to settle cases too early and too cheaply.” (alteration in original)). As a judge in this very District put it, “[w]hile some reported cases have advocated decreasing the percentage awarded as the gross class recovery increases, that approach is antithetical to the percentage of the recovery method adopted by the Eleventh Circuit . . . . By not rewarding Class Counsel for the additional work necessary to achieve a better outcome for the class, the sliding scale approach creates the perverse incentive for Class Counsel to settle too early for too little.” *Allapattah*, 454 F.Supp.2d at 1213. *See also In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1367 (S.D. Fla. 2011) (quoting *Allapattah*). Consider the following example: if courts award class action attorneys 30% of settlements if they are under \$100 million but only 20% of settlements if they are over \$100 million, then rational class action attorneys will prefer to settle cases for \$90 million (*i.e.*, a \$27 million fee award) rather than

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Stockholder Class and 10% to the attorneys for the Bondholder Class); Bondholder Lead Counsel’s Memorandum in Support of Application for An Award of Attorneys’ Fees and Litigation Expenses and Reimbursement of Costs to Class Representatives 5 n. 5 (Jan. 24, 2008). Even when this 18% data point is added to the 35 other Eleventh Circuit settlements, there was still no statistically significant relationship between settlement size and fee percentage.

\$125 million (*i.e.*, a \$25 million fee award). Such incentives are obviously perverse. Although it is true that class actions can decrease the per capita cost of representation, and that there are arguments that these economies of scale should be passed along to class members in the form of lower fee percentages, *see* Fitzpatrick, *Class Action Lawyers*, *supra*, at 2066, the amount of money for which a class action settles does not necessarily reflect the number of people in the action (and, therefore, the per capita cost of the representation). Moreover, even when larger settlements do reflect larger class sizes (and lower per capita costs of representation), it is difficult to justify decreasing fee percentages as settlements increase in cases where class members have only small amounts of money at stake, which is true here. As scholars have long recognized, in these so-called “small stakes cases,” the most important function of the class action device is not compensation of class members but deterrence of wrongdoing. *See id.* at 2069 (citing David Shapiro, *Class Actions: The Class as Party and Client*, 73 *Notre Dame L. Rev.* 913 (1998)). In order to deter wrongdoing, lawyers must be given incentives to invest their own time and money in class actions despite the risk of earning nothing if they are unsuccessful. Yet, these incentives are blunted for the very cases offering the greatest deterrence (*i.e.*, larger cases) when courts award lower fee percentages as settlements become larger. Although trading away deterrence for other ends may be justifiable in some cases, it is difficult to justify it in small-stakes cases like this one, where deterrence is the paramount consideration. *See id.* at 2069-74.

25. Third, lower average and median fee percentage numbers in large settlements do not mean, of course, that courts do not award higher fee percentages in such cases when the facts and circumstances justify it. Indeed, there are a number of examples from all across the country of fee awards at or above 25% in large settlements, including, as I noted, the fee awards in the

settlements with BMW, Toyota, Mazda and Subaru defendants in this very litigation as well as awards from other judges of this very court. *See, e.g., Allapattah Servs. Inc. v. Exxon Corp.*, 454 F.Supp.2d 1185, 1218 (S.D.Fla. 2006) (31.33% of \$1.075 billion); *In re Checking Account Overdraft Litigation*, 830 F.Supp.2d 1330, 1358 (S.D.Fla. 2011) (30% of \$410 million); *In re Vitamins Antitrust Litig.*, 2001 WL 34312839, at \*10 (D.D.C. July 16, 2001) (34% of \$365 million); *In re Linerboard Antitrust Litig.*, 2004 WL 1221350, at \*1 (E.D.Pa., June 2, 2004) (30% of \$202 million); *In re Combustion Inc.*, 968 F.Supp. 1116, 1142 (W.D.La. 1997) (36% of \$127 million); *Kurzwell v. Philip Morris Companies*, 1999 WL 1076105, at \*1 (S.D.N.Y., Nov. 30, 1999) (30% of \$123 million); *In re Ikon Office Solutions, Inc. Securities Litig.*, 194 F.R.D. 166, 197 (E.D.Pa. 2000) (30% of \$111 million).

26. Fourth, my opinion is not altered by the fact that this would be the third fee award in this MDL. It is true that later settlements are based to some extent on the same work that went into the earlier settlements. But the notion that class counsel should not be compensated as well in a later settlement because some of the work overlapped with an earlier settlement is, to put it simply, lodestar-method thinking. The premise is that class counsel should be compensated in proportion to the number of hours they work: if some of the hours overlap, then class counsel should not be paid for them again. For the same reason courts have rejected lodestar-method thinking in other situations, courts should reject it here as well: it creates terrible incentives for class counsel. For example, let's say that class counsel thought a court would award it 30% of the first settlement in a litigation but only 20% of the second settlement. Class counsel would then have the incentive to delay settlement with the first defendant until it could reach settlement with the second defendant so it could present settlement with both defendants as one transaction and seek 30% of the entire sum in fees. But unnecessarily delaying settlements is obviously not



in the best interest of class members (or even defendants). Moreover, even if class counsel would not delay a first settlement, this line of thinking still creates bad incentives: why would class counsel invest as much time in a case where all they can get is 20% when they can work on an entirely different litigation where they might be able to get 30%? In my opinion, courts should not impose fee rules that create arbitrary distortions in class counsel's incentives to reap the largest recovery for class members as quickly as they can. Thankfully, in my experience, courts typically do not follow this line of thinking and award the same fee percentages *in seriatim*. See, e.g., *In re Checking Account Overdraft Litigation*, MDL 1291 (S.D. Fla.) (awarding at least 30% in fees across more than 20 settlements over 4 years).

27. Consider next some of the factors that go to the results obtained by class counsel in light of the risks class counsel faced: “[4] the economics involved in prosecuting a class action,” “[6] the novelty and difficulty of the questions involved,” “[10] whether the fee is fixed or contingent,” “[12] the amount involved and the results obtained,” and “[14] the ‘undesirability’ of the case.” Here, the cash-or-rental-car portion of the settlement *alone* represents 56% of the damages suffered by the class. This is higher than in any other settlement in this MDL.

28. Yet, class counsel faced even more risk against Ford than it did the other automaker defendants. All of the automakers dispute that they knew anything about the defects in Takata's airbags and all of the automakers dispute how much class members have been injured by owning a car with defective airbags. The risks here were no different on these points. But unlike the other automakers, Ford also contends that this court does not even have personal jurisdiction over it vis-à-vis members of the class who did not buy their cars in Florida on account of the Supreme Court's recent decision in *Bristol-Myers Squibb Co. v. Superior Court of*

*California, San Francisco County*, 582 U.S. \_\_\_\_ (2017). How *Bristol-Myers* affects nationwide class actions like this one is very much an open question, and Ford’s motion to dismiss on this point was still pending when the parties reached this settlement. Thus, in my opinion, this case presented the greatest risks of all the actions against the automaker defendants. Indeed, even if the class had prevailed before this court on personal jurisdiction and all of the other matters mentioned above, Ford no doubt would have taken an appeal, introducing even more risk. Recovering 56% of damages in these circumstances is not only impressive for this MDL; it is impressive for any class action.<sup>4</sup> In my opinion, courts should award higher fee percentages when class counsel get better results; this gives them the incentive to extract the most they possibly can from defendants before settling. As such, these factors, too, weigh in favor of a below-benchmark fee request.

29. Consider next the factor “[3] any non-monetary benefits conferred upon the class.” Although some of the benefits class counsel conferred on the class here are non-monetary in nature—such as the extended warranty on the new airbags—class counsel’s expert has quantified the monetary value of these benefits and I have included them in the denominator of the percentage method. Thus, like most class action settlements, there are no unvalued settlement benefits here that should be considered as additional reason to boost class counsel’s fee percentage and this factor is inapplicable. See Fitzpatrick, *Empirical Study*, *supra*, at 824 (finding that only one quarter of class action settlements included injunctive relief). I will note, however, that, if the court chooses not to accept class counsel’s expert’s quantifications and

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<sup>4</sup> The best studies of class member recoveries come from securities fraud cases. See, e.g., *Recent Trends in Securities Class Action Litigation: 2014 Full-Year Review*, available at [http://www.nera.com/content/dam/nera/publications/2015/PUB\\_2014\\_Trends\\_0115.pdf](http://www.nera.com/content/dam/nera/publications/2015/PUB_2014_Trends_0115.pdf) at 9, 33 (finding that the median securities fraud class action between 1996 and 2015 settled for between 1.3% and 7.0% of a measure of investor losses, depending on the year).

instead chooses to base class counsel's fee percentage on only the cash-or-rental-car figure I cited above, it would then be appropriate to consider any benefits not included in the denominator of the percentage method as reason to *increase* class counsel's percentage of the benefits that are included.

30. Consider next the factors that go to the time it took to litigate and resolve these lawsuits: “[1] the time required to reach a settlement” and “[5] the time and labor required.” This case has transpired longer than the typical class action case does before it reaches final approval of any settlement. *See* Fitzpatrick, *Empirical Study, supra*, at 820 (finding average and median times to final settlement approval of around three years). And class counsel have not been idle during that time: they have thwarted numerous motions to dismiss, reviewed 10 million documents (many of which were in Japanese), deposed 45 witnesses, and spent countless hours with their own experts and in settlement negotiations. As such, these factors, too, weigh in favor of a below-benchmark fee request.

31. Consider finally the other *Camden* factors. One of these factors is inapplicable at least as of yet—“[2] whether there are any substantial objections”—because the deadline for objection as not yet passed,<sup>5</sup> but the other factors go to the skills of class counsel and their

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<sup>5</sup> Although there are not yet any objectors, the court in my opinion should be on guard against certain objectors who file objections for the purpose of taking an appeal to delay the effective date of the settlement in order to extract a side payment from class counsel while the appeal is pending. I chronicled this unfortunate practice in a law review article: Brian T. Fitzpatrick, *The End of Objector Blackmail?*, 62 Vand. L. Rev. 1623 (2009). The practice can be so lucrative that it has given rise to “professional objectors,” lawyers who travel from settlement to settlement to file objections with the purpose of delay and the hope of inducing class counsel into a side deal. *See id.* at 1637-38. One popular countermeasure that can be deployed against objector blackmail is the one used in this settlement agreement: a clause that enables class counsel to receive their fee awards as soon as they are approved by the court and without waiting for any appeals from the settlement to be resolved. *See id.* at 1641 (finding such clauses in over one-third of class action settlements). By eliminating the delay in the receipt of fee awards that is caused by an appeal, this provision mitigates the leverage blackmail-minded objectors have over class counsel, and, in doing so, mitigate the incentives that blackmail-minded objectors have to file appeals in the first place. *See id.* at 1641-42. By mitigating these incentives, this provision can hasten the effective date of the settlement, something that benefits

relationship with the plaintiffs: “[7] the skill requisite to perform the legal service properly,” “[8] the preclusion of other employment by the attorney due to acceptance of the case,” “[11] time limitations imposed by the client or the circumstances,” “[13] the experience, reputation, and ability of the attorneys,” and “[15] the nature and length of the professional relationship with the client.” Although I was not privy to the attorney-client relationships here, I can say that class counsel count among their number some of the most experienced and highly regarded lawyers in the United States. These are not mere benchmark lawyers. Yet, they are not even requesting a benchmark fee.

32. For all these reasons, I believe the fee award requested here is reasonable.
33. My compensation in this matter has been \$895 per hour.

Cambridge, MA

November 2, 2018



Brian T. Fitzpatrick

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not only class counsel, but also the class—which is all the more critical in this case because time is of the essence to replace the lethal airbags in class members’ vehicles. For these reasons, it is my opinion that this clause in the settlement agreement is both wise and appropriate.

## **Appendix 1**

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## ACADEMIC APPOINTMENTS

**HARVARD LAW SCHOOL**, *Visiting Professor*, Fall 2018

- Classes: Civil Procedure, Litigation Finance

**VANDERBILT UNIVERSITY LAW SCHOOL**, *Professor*, 2012 to present

- *FedEx Research Professor*, 2014-2015; *Associate Professor*, 2010-2012; *Assistant Professor*, 2007-2010
- Classes: Civil Procedure, Complex Litigation, Federal Courts, Comparative Class Actions
- Hall-Hartman Outstanding Professor Award, 2008-2009
- Vanderbilt's Association of American Law Schools Teacher of the Year, 2009

**FORDHAM LAW SCHOOL**, *Visiting Professor*, Fall 2010

- Classes: Civil Procedure

## EDUCATION

**HARVARD LAW SCHOOL**, J.D., *magna cum laude*, 2000

- Fay Diploma (for graduating first in the class)
- Sears Prize, 1999 (for highest grades in the second year)
- *Harvard Law Review*, Articles Committee, 1999-2000; Editor, 1998-1999
- *Harvard Journal of Law & Public Policy*, Senior Editor, 1999-2000; Editor, 1998-1999
- Research Assistant, David Shapiro, 1999; Steven Shavell, 1999

**UNIVERSITY OF NOTRE DAME**, B.S., Chemical Engineering, *summa cum laude*, 1997

- First runner-up to Valedictorian (GPA: 3.97/4.0)
- Steiner Prize, 1997 (for overall achievement in the College of Engineering)

## CLERKSHIPS

**HON. ANTONIN SCALIA**, Supreme Court of the United States, 2001-2002

**HON. DIARMUID O'SCANNLAIN**, U.S. Court of Appeals for the Ninth Circuit, 2000-2001

## EXPERIENCE

**NEW YORK UNIVERSITY SCHOOL OF LAW**, Feb. 2006 to June 2007  
*John M. Olin Fellow*

**HON. JOHN CORNYN**, United States Senate, July 2005 to Jan. 2006  
*Special Counsel for Supreme Court Nominations*

**SIDLEY AUSTIN LLP**, Washington, DC, 2002 to 2005  
*Litigation Associate*

## BOOKS

THE CONSERVATIVE CASE FOR CLASS ACTIONS (University of Chicago Press, forthcoming 2019)

## ACADEMIC ARTICLES

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*Scalia in the Casebooks*, 84 U. CHI. L. REV. 2231 (2017)

*The Ideological Consequences of Judicial Selection*, 70 VAND. L. REV. 1729 (2017)

*Judicial Selection and Ideology*, 42 OKLAHOMA CITY UNIV. L. REV. 53 (2017)

*Justice Scalia and Class Actions: A Loving Critique*, 92 NOTRE DAME L. REV. 1977 (2017)

*A Tribute to Justice Scalia: Why Bad Cases Make Bad Methodology*, 69 VAND. L. REV. 991 (2016)

*The Hidden Question in Fisher*, 10 NYU J. L. & LIBERTY 168 (2016)

*An Empirical Look at Compensation in Consumer Class Actions*, 11 NYU J. L. & BUS. 767 (2015)  
(with Robert Gilbert)

*The End of Class Actions?*, 57 ARIZ. L. REV. 161 (2015)

*The Constitutionality of Federal Jurisdiction-Stripping Legislation and the History of State Judicial Selection and Tenure*, 98 VA. L. REV. 839 (2012)

*Twombly and Iqbal Reconsidered*, 87 NOTRE DAME L. REV. 1621 (2012)

*An Empirical Study of Class Action Settlements and their Fee Awards*, 7 J. EMPIRICAL L. STUD. 811 (2010) (selected for the 2009 Conference on Empirical Legal Studies)

*Do Class Action Lawyers Make Too Little?*, 158 U. PA. L. REV. 2043 (2010)

*Originalism and Summary Judgment*, 71 OHIO ST. L.J. 919 (2010)

*The End of Objector Blackmail?*, 62 VAND. L. REV. 1623 (2009) (selected for the 2009 Stanford-Yale Junior Faculty Forum)

*The Politics of Merit Selection*, 74 MISSOURI L. REV. 675 (2009)



*Errors, Omissions, and the Tennessee Plan*, 39 U. MEMPHIS L. REV. 85 (2008)

*Election by Appointment: The Tennessee Plan Reconsidered*, 75 TENN. L. REV. 473 (2008)

*Can Michigan Universities Use Proxies for Race After the Ban on Racial Preferences?*, 13 MICH. J. RACE & LAW 277 (2007)

## BOOK CHAPTERS

*Do Class Actions Deter Wrongdoing?* in THE CLASS ACTION EFFECT (Catherine Piché, ed., Éditions Yvon Blais, Montreal, 2018)

*Judicial Selection in Illinois* in AN ILLINOIS CONSTITUTION FOR THE TWENTY-FIRST CENTURY (Joseph E. Tabor, ed., Illinois Policy Institute, 2017)

*Civil Procedure in the Roberts Court* in BUSINESS AND THE ROBERTS COURT (Jonathan Adler, ed., Oxford University Press, 2016)

*Is the Future of Affirmative Action Race Neutral?* in A NATION OF WIDENING OPPORTUNITIES: THE CIVIL RIGHTS ACT AT 50 (Ellen Katz & Samuel Bagenstos, eds., Michigan University Press, 2016)

## ACADEMIC PRESENTATIONS

*Empirical Research on Class Actions*, Civil Justice Research Initiative, University of California at Berkeley, Berkeley, California (Apr. 9, 2018)

*A Political Future for Class Actions in the United States?*, The Future of Class Actions Symposium, University of Auckland Law School, Auckland, New Zealand (Mar. 15, 2018)

*The Indian Class Actions: How Effective Will They Be?*, Eighth Annual Emerging Markets Finance Conference, Mumbai, India (Dec. 19, 2017)

*Hot Topics in Class Action and MDL Litigation*, University of Miami School of Law, Miami, Florida (Dec. 8, 2017) (panelist)

*Critical Issues in Complex Litigation*, Contemporary Issues in Complex Litigation, Northwestern Law School (Nov. 29, 2017) (panelist)

*The Conservative Case for Class Actions*, Consumer Class Action Symposium, National Consumer Law Center, Washington, DC (Nov. 19, 2017)

*The Conservative Case for Class Actions—A Monumental Debate*, ABA National Institute on Class Actions, Washington, DC (Oct. 26, 2017) (panelist)

*One-Way Fee Shifting after Summary Judgment*, 2017 Meeting of the Midwestern Law and Economics Association, Marquette Law School, Milwaukee, WI (Oct. 20, 2017)

*The Conservative Case for Class Actions*, Pepperdine Law School Malibu, CA (Oct. 17, 2017)

*One-Way Fee Shifting after Summary Judgment*, Vanderbilt Law Review Symposium on The Future of Discovery, Vanderbilt Law School, Nashville, TN (Oct. 13, 2017)

*The Constitution Revision Commission and Florida's Judiciary*, 2017 Annual Florida Bar Convention, Boca Raton, FL (June 22, 2017)

*Class Actions After Spokeo v. Robins: Supreme Court Jurisprudence, Article III Standing, and Practical Implications for the Bench and Practitioners*, Northern District of California Judicial Conference, Napa, CA (Apr. 29, 2017) (panelist)

*The Ironic History of Rule 23*, Conference on Secrecy, Institute for Law & Economic Policy, Naples, FL (Apr. 21, 2017)

*Justice Scalia and Class Actions: A Loving Critique*, University of Notre Dame Law School, South Bend, Indiana (Feb. 3, 2017)

*Should Third-Party Litigation Financing Be Permitted in Class Actions?*, Fifty Years of Class Actions—A Global Perspective, Tel Aviv University, Tel Aviv, Israel (Jan. 4, 2017)

*Hot Topics in Class Action and MDL Litigation*, University of Miami School of Law, Miami, Florida (Dec. 2, 2016) (panelist)

*The Ideological Consequences of Judicial Selection*, William J. Brennan Lecture, Oklahoma City University School of Law, Oklahoma, City, Oklahoma (Nov. 10, 2016)

*After Fifty Years, What's Class Action's Future*, ABA National Institute on Class Actions, Las Vegas, Nevada (Oct. 20, 2016) (panelist)

*Where Will Justice Scalia Rank Among the Most Influential Justices*, State University of New York at Stony Brook, Long Island, New York (Sep. 17, 2016)

*The Ironic History of Rule 23*, University of Washington Law School, Seattle, WA (July 14, 2016)

*A Respected Judiciary—Balancing Independence and Accountability*, 2016 Annual Florida Bar Convention, Orlando, FL (June 16, 2016) (panelist)

*What Will and Should Happen to Affirmative Action After Fisher v. Texas*, American Association of Law Schools Annual Meeting, New York, NY (January 7, 2016) (panelist)

*Litigation Funding: The Basics and Beyond*, NYU Center on Civil Justice, NYU Law School, New York, NY (Nov. 20, 2015) (panelist)

*Do Class Actions Offer Meaningful Compensation to Class Members, or Do They Simply Rip Off Consumers Twice?*, ABA National Institute on Class Actions, New Orleans, LA (Oct. 22, 2015) (panelist)

*Arbitration and the End of Class Actions?*, Quinnipiac-Yale Dispute Resolution Workshop, Yale Law School, New Haven, CT (Sep. 8, 2015) (panelist)

*The Next Steps for Discovery Reform: Requester Pays*, Lawyers for Civil Justice Membership Meeting, Washington, DC (May 5, 2015)

*Private Attorney General: Good or Bad?*, 17th Annual Federalist Society Faculty Conference, Washington, DC (Jan. 3, 2015)

*Liberty, Judicial Independence, and Judicial Power*, Liberty Fund Conference, Santa Fe, NM (Nov. 13-16, 2014) (participant)

*The Economics of Objecting for All the Right Reasons*, 14th Annual Consumer Class Action Symposium, Tampa, FL (Nov. 9, 2014)

*Compensation in Consumer Class Actions: Data and Reform*, Conference on The Future of Class Action Litigation: A View from the Consumer Class, NYU Law School, New York, NY (Nov. 7, 2014)

*The Future of Federal Class Actions: Can the Promise of Rule 23 Still Be Achieved?*, Northern District of California Judicial Conference, Napa, CA (Apr. 13, 2014) (panelist)

*The End of Class Actions?*, Conference on Business Litigation and Regulatory Agency Review in the Era of Roberts Court, Institute for Law & Economic Policy, Boca Raton, FL (Apr. 4, 2014)

*Should Third-Party Litigation Financing Come to Class Actions?*, University of Missouri School of Law, Columbia, MO (Mar. 7, 2014)

*Should Third-Party Litigation Financing Come to Class Actions?*, George Mason Law School, Arlington, VA (Mar. 6, 2014)

*Should Third-Party Litigation Financing Come to Class Actions?*, Roundtable for Third-Party Funding Scholars, Washington & Lee University School of Law, Lexington, VA (Nov. 7-8, 2013)

*Is the Future of Affirmative Action Race Neutral?*, Conference on A Nation of Widening Opportunities: The Civil Rights Act at 50, University of Michigan Law School, Ann Arbor, MI (Oct. 11, 2013)

*The Mass Tort Bankruptcy: A Pre-History*, The Public Life of the Private Law: A Conference in Honor of Richard A. Nagareda, Vanderbilt Law School, Nashville, TN (Sep. 28, 2013) (panelist)

*Rights & Obligations in Alternative Litigation Financing and Fee Awards in Securities Class Actions*, Conference on the Economics of Aggregate Litigation, Institute for Law & Economic Policy, Naples, FL (Apr. 12, 2013) (panelist)

*The End of Class Actions?*, Symposium on Class Action Reform, University of Michigan Law School, Ann Arbor, MI (Mar. 16, 2013)

*Toward a More Lawyer-Centric Class Action?*, Symposium on Lawyering for Groups, Stein Center for Law & Ethics, Fordham Law School, New York, NY (Nov. 30, 2012)

*The Problem: AT & T as It Is Unfolding*, Conference on *AT & T Mobility v. Concepcion*, Cardozo Law School, New York, NY (Apr. 26, 2012) (panelist)

*Standing under the Statements and Accounts Clause*, Conference on Representation without Accountability, Fordham Law School Corporate Law Center, New York, NY (Jan. 23, 2012)

*The End of Class Actions?*, Washington University Law School, St. Louis, MO (Dec. 9, 2011)

*Book Preview Roundtable: Accelerating Democracy: Matching Social Governance to Technological Change*, Searle Center on Law, Regulation, and Economic Growth, Northwestern University School of Law, Chicago, IL (Sep. 15-16, 2011) (participant)

*Is Summary Judgment Unconstitutional? Some Thoughts About Originalism*, Stanford Law School, Palo Alto, CA (Mar. 3, 2011)

*The Constitutionality of Federal Jurisdiction-Stripping Legislation and the History of State Judicial Selection and Tenure*, Northwestern Law School, Chicago, IL (Feb. 25, 2011)

*The New Politics of Iowa Judicial Retention Elections: Examining the 2010 Campaign and Vote*, University of Iowa Law School, Iowa City, IA (Feb. 3, 2011) (panelist)

*The Constitutionality of Federal Jurisdiction-Stripping Legislation and the History of State Judicial Selection and Tenure*, Washington University Law School, St. Louis, MO (Oct. 1, 2010)

*Twombly and Iqbal Reconsidered*, Symposium on Business Law and Regulation in the Roberts Court, Case Western Reserve Law School, Cleveland, OH (Sep. 17, 2010)

*Do Class Action Lawyers Make Too Little?*, Institute for Law & Economic Policy, Providenciales, Turks & Caicos (Apr. 23, 2010)

*Originalism and Summary Judgment*, Georgetown Law School, Washington, DC (Apr. 5, 2010)

*Theorizing Fee Awards in Class Action Litigation*, Washington University Law School, St. Louis, MO (Dec. 11, 2009)

*An Empirical Study of Class Action Settlements and their Fee Awards*, 2009 Conference on Empirical Legal Studies, University of Southern California Law School, Los Angeles, CA (Nov. 20, 2009)

*Originalism and Summary Judgment*, Symposium on Originalism and the Jury, Ohio State Law School, Columbus, OH (Nov. 17, 2009)

*An Empirical Study of Class Action Settlements and their Fee Awards*, 2009 Meeting of the Midwestern Law and Economics Association, University of Notre Dame Law School, South Bend, IN (Oct. 10, 2009)

*The End of Objector Blackmail?*, Stanford-Yale Junior Faculty Forum, Stanford Law School, Palo Alto, CA (May 29, 2009)

*An Empirical Study of Class Action Settlements and their Fee Awards*, University of Minnesota School of Law, Minneapolis, MN (Mar. 12, 2009)

*The Politics of Merit Selection*, Symposium on State Judicial Selection and Retention Systems, University of Missouri Law School, Columbia, MO (Feb. 27, 2009)

*The End of Objector Blackmail?*, Searle Center Research Symposium on the Empirical Studies of Civil Liability, Northwestern University School of Law, Chicago, IL (Oct. 9, 2008)

*Alternatives To Affirmative Action After The Michigan Civil Rights Initiative*, University of Michigan School of Law, Ann Arbor, MI (Apr. 3, 2007) (panelist)

## **OTHER PUBLICATIONS**

*9th Circuit Split: What's the math say?*, DAILY JOURNAL (Mar. 21, 2017)

*Former clerk on Justice Antonin Scalia and his impact on the Supreme Court*, THE CONVERSATION (Feb. 24, 2016)

*Lessons from Tennessee Supreme Court Retention Election*, THE TENNESSEAN (Aug. 20, 2014)

*Public Needs Voice in Judicial Process*, THE TENNESSEAN (June 28, 2013)

*Did the Supreme Court Just Kill the Class Action?*, THE QUARTERLY JOURNAL (April 2012)

*Let General Assembly Confirm Judicial Selections*, CHATTANOOGA TIMES FREE PRESS (Feb. 19, 2012)

*"Tennessee Plan" Needs Revisions*, THE TENNESSEAN (Feb. 3, 2012)

*How Does Your State Select Its Judges?*, INSIDE ALEC 9 (March 2011) (with Stephen Ware)

*On the Merits of Merit Selection*, THE ADVOCATE 67 (Winter 2010)

*Supreme Court Case Could End Class Action Suits*, SAN FRANCISCO CHRONICLE (Nov. 7, 2010)

*Kagan is an Intellect Capable of Serving Court*, THE TENNESSEAN (Jun. 13, 2010)

*Confirmation "Kabuki" Does No Justice*, POLITICO (July 20, 2009)

*Selection by Governor may be Best Judicial Option*, THE TENNESSEAN (Apr. 27, 2009)

*Verdict on Tennessee Plan May Require a Jury*, THE MEMPHIS COMMERCIAL APPEAL (Apr. 16, 2008)

*Tennessee's Plan to Appoint Judges Takes Power Away from the Public*, THE TENNESSEAN (Mar. 14, 2008)

*Process of Picking Judges Broken*, CHATTANOOGA TIMES FREE PRESS (Feb. 27, 2008)

*Disorder in the Court*, LOS ANGELES TIMES (Jul. 11, 2007)

*Scalia's Mistake*, NATIONAL LAW JOURNAL (Apr. 24, 2006)

*GM Backs Its Bottom Line*, DETROIT FREE PRESS (Mar. 19, 2003)

*Good for GM, Bad for Racial Fairness*, LOS ANGELES TIMES (Mar. 18, 2003)

*10 Percent Fraud*, WASHINGTON TIMES (Nov. 15, 2002)

## **OTHER PRESENTATIONS**

*Where Will Justice Scalia Rank Among the Most Influential Justices*, The Leo Bearman, Sr. American Inn of Court, Memphis, TN (Mar. 21, 2017)

*Bringing Justice Closer to the People: Examining Ideas for Restructuring the 9th Circuit*, Subcommittee on Courts, Intellectual Property, and the Internet, United States House of Representatives, Washington, D.C. (Mar. 16, 2017)

*Supreme Court Review 2016: Current Issues and Cases Update*, Nashville Bar Association, Nashville, TN (Sep. 15, 2016) (panelist)

*A Respected Judiciary—Balancing Independence and Accountability*, Florida Bar Annual Convention, Orlando, FL (June 16, 2016) (panelist)

*Future Amendments in the Pipeline: Rule 23*, Tennessee Bar Association, Nashville, TN (Dec. 2, 2015)

*The New Business of Law: Attorney Outsourcing, Legal Service Companies, and Commercial Litigation Funding*, Tennessee Bar Association, Nashville, TN (Nov. 12, 2014)

*Hedge Funds + Lawsuits = A Good Idea?*, Vanderbilt University Alumni Association, Washington, DC (Sep. 3, 2014)

*Judicial Selection in Historical and National Perspective*, Committee on the Judiciary, Kansas Senate (Jan. 16, 2013)

*The Practice that Never Sleeps: What's Happened to, and What's Next for, Class Actions*, ABA Annual Meeting, Chicago, IL (Aug. 3, 2012) (panelist)

*Life as a Supreme Court Law Clerk and Views on the Health Care Debate*, Exchange Club, Nashville, TN (Apr. 3, 2012)

*The Tennessee Judicial Selection Process—Shaping Our Future*, Tennessee Bar Association Leadership Law Retreat, Dickson, TN (Feb. 3, 2012) (panelist)

*Reexamining the Class Action Practice*, ABA National Institute on Class Actions, New York, NY (Oct. 14, 2011) (panelist)

*Judicial Selection in Kansas*, Committee on the Judiciary, Kansas House of Representatives (Feb. 16, 2011)

*Judicial Selection and the Tennessee Constitution*, Civil Practice and Procedure Subcommittee, Tennessee House of Representatives (Mar. 24, 2009)

*What Would Happen if the Judicial Selection and Evaluation Commissions Sunset?*, Civil Practice and Procedure Subcommittee, Tennessee House of Representatives (Feb. 24, 2009)

*Judicial Selection in Tennessee*, Chattanooga Bar Association, Chattanooga, TN (Feb. 27, 2008) (panelist)

*Ethical Implications of Tennessee's Judicial Selection Process*, Tennessee Bar Association, Nashville, TN (Dec. 12, 2007)

## **PROFESSIONAL ASSOCIATIONS**

Member, American Law Institute  
Referee, Journal of Law, Economics and Organization  
Referee, Journal of Empirical Legal Studies  
Reviewer, Oxford University Press  
Reviewer, Supreme Court Economic Review  
Member, American Bar Association  
Member, Tennessee Advisory Committee to the U.S. Commission on Civil Rights  
Board of Directors, Tennessee Stonewall Bar Association  
American Swiss Foundation Young Leaders' Conference, 2012  
Bar Admission, District of Columbia

## **COMMUNITY ACTIVITIES**

Board of Directors, Nashville Ballet, 2011-2017; Nashville Talking Library for the Blind, 2008-2009



## **Appendix 2**

Documents Reviewed:

- Plaintiffs' Preliminary Report per Court's Order Setting Status Hearing (document 15, filed 2/17/15)
- Plaintiffs' Status Report (document 510, filed 4/24/15)
- Plaintiffs' Status Report (document 581, filed 6/17/15)
- Order Denying in part Motions to Dismiss by Defendants Takata Corporation, TK Holdings, and Honda (document 871, filed 12/2/15)
- Plaintiffs' Status Report Preceding February 16, 2016 Status Conference (document 925, filed 2/10/16)
- Order Granting to Dismiss Count 104-106 (document 975, filed 3/11/16)
- Order Granting in Part Motion to Dismiss Automotive Recyclers Association's Claims and Denying Motion to Stay (document 979, filed 3/11/16)
- Order Granting Motion to Dismiss Automotive Recyclers Association's Claims and Denying Motion to Stay (document 977, filed 3/11/16)
- Plaintiffs' Status Report Preceding April 14, 2016 Status Conference (document 1012, filed 4/8/16)
- Order Granting in Part and Denying in Part Mazda Motor of America, Inc. d/b/a Mazda North American Operations' Motion to Dismiss (document 1099, filed 6/15/16)
- Order Granting in Part and Denying in Part Toyota Motor Sales U.S.A. Inc. and Toyota Motor Engineering & Manufacturing North America, Inc.'s Motion to Dismiss (document 1202, filed 9/21/16)
- Order Granting in part and Denying in part BMW of North America, LLC's and BMW Manufacturing Company, LLC's Motion to Dismiss (document 1256, filed 10/14/16)
- Plaintiffs' Status Report Preceding November 9, 2016 Hearing (document 1299, filed 11/4/16)
- Joint Report on Related Cases (document 1383, filed 2/14/17)

- Automotive Defendants' Status Report (document 1407, filed 2/23/17)
- Plaintiffs' Status Report Preceding February 28, 2017 Hearing (document 1414, filed 2/27/17)
- Order Granting in part and Denying in part Ford Motor Company's Motion to Dismiss (document 1417, filed 2/27/17)
- Takata Defendants' Status Report (document 1418, filed 2/27/17)
- Plaintiffs' Unopposed Omnibus Motion for Preliminary Approval of Class Settlements, Preliminary Certification of Settlement Classes and Approval of Class Notices and Incorporated Memorandum of Law (document 1724, filed 5/18/17), including the exhibits thereto
- Plaintiffs' Unopposed Motion for Preliminary Approval of Nissan Class Settlement, Preliminary Certification of Settlement Class, and Approval of Class Notice and Incorporated Memorandum of Law (document 1971, filed 8/8/17), including the exhibits thereto
- Plaintiffs' Unopposed Motion for Preliminary Approval of Honda Class Settlement, Preliminary Certification of Settlement Class, and Approval of Class Notice and Incorporated Memorandum of Law (document 2013, filed 9/1/17), including the exhibits thereto
- Defendant Ford Motor Company's Motion to Dismiss Plaintiffs' Fourth Amended Consolidated Class Action Complaint and Incorporated Memorandum of Law (document 1040, filed 6/25/18)
- Plaintiffs' Response in Opposition to Ford Motor Company's Motion to Dismiss Plaintiffs' Fourth Amended Consolidated Class Action Complaint (document 978, filed 7/9/18)
- Defendant Ford Motor Company's Reply in Support of its Motion to Dismiss Plaintiffs' Fourth Amended Consolidated Class Action Complaint (document 1051, filed 7/16/18)
- Plaintiffs' Unopposed Motion for Preliminary Approval of Ford Class Settlement, Preliminary Certification of Settlement Class, and Approval of Class Notice and Incorporated Memorandum of Law (document 2909, filed 7/16/18), including the exhibits thereto, such as the Settlement Agreement ("Settlement")

- Order Preliminarily Approving Class Settlement and Certifying Settlement Class (document 2998, filed 9/5/18)
- Report by the Settlement Special Administrator on the Implementation of the Outreach Programs Pursuant to the BMW, Honda, Mazda, Nissan Subaru, and Toyota Settlement Agreements (document 3049, filed 10/17/18)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
MDL No. 2599  
MASTER CASE NO. 1:15-md-02599-FAM  
S.D. Fla. Case No.: 14-cv-24009-MORENO**

**IN RE: TAKATA AIRBAG PRODUCTS  
LIABILITY LITIGATION,**

This Document Relates to:

ALL ECONOMIC LOSS ACTIONS  
AGAINST FORD MOTOR COMPANY

**[PROPOSED] FINAL ORDER APPROVING CLASS  
SETTLEMENT AND CERTIFYING SETTLEMENT CLASS**

**WHEREAS**, the Court, having considered the Settlement Agreement filed July 16, 2018 (the “Settlement Agreement”) between and among Class Representatives, through Settlement Class Counsel, and Defendant Ford Motor Company (“Ford”), the Court’s September 5, 2018 Order Granting Preliminary Approval of the Class Settlement, Directing Notice to the Class, and Scheduling Fairness Hearing (Dkt. No. 2998) (the “Preliminary Approval Order”), having held a Fairness Hearing on December 11, 2018, and having considered all of the submissions and arguments with respect to the Settlement Agreement, and otherwise being fully informed, and good cause appearing therefor (all capitalized terms as defined in the Settlement Agreement);

**IT IS HEREBY ORDERED AS FOLLOWS:**

1. This Final Order Approving Class Action Settlement incorporates the Settlement Agreement and its exhibits, and the Preliminary Approval Order. Unless otherwise provided herein, the terms defined in the Settlement Agreement and Preliminary Approval Order shall have the same meanings for purposes of this Final Order and accompanying Final Judgment.

2. The Court has personal jurisdiction over all parties in the Action, including all Class Members, and has subject matter jurisdiction over the Action, including jurisdiction to approve the Settlement Agreement, grant final certification of the Class, to settle and release all claims

released in the Settlement Agreement, and to dismiss the economic loss claims asserted against Ford in the Actions with prejudice and enter final judgment with respect to Ford in the Actions. Further, venue is proper in this Court.

#### **I. THE SETTLEMENT CLASS**

3. Based on the record before the Court, including all submissions in support of the settlement set forth in the Settlement Agreement, objections and responses thereto and all prior proceedings in the Action, as well as the Settlement Agreement itself and its related documents and exhibits, the Court hereby confirms the certification of the following nationwide Class (the “Class”) for settlement purposes only:

(1) all persons or entities who or which owned and/or leased, on the date of the issuance of the Preliminary Approval Order, Subject Vehicles distributed for sale or lease in the United States or any of its territories or possessions; and (2) all persons or entities who or which formerly owned and/or leased Subject Vehicles distributed for sale or lease in the United States or any of its territories or possessions, and who or which sold or returned, pursuant to a lease, the Subject Vehicles after June 19, 2014, and through the date of the issuance of the Preliminary Approval Order. Excluded from this Class are: (a) Ford, its officers, directors, employees and outside counsel; its affiliates and affiliates’ officers, directors and employees; its distributors and distributors’ officers and directors; and Ford’s Dealers and their officers, directors, and employees; (b) Settlement Class Counsel, Plaintiffs’ counsel, and their employees; (c) judicial officers and their immediate family members and associated court staff assigned to this case, any of the cases listed in Exhibit 1, or the 11th Circuit Court of Appeals; (d) Automotive Recyclers and their outside counsel and employees; and (e) persons or entities who or which timely and properly exclude themselves from the Class.

4. The Court finds that only those persons/entities/organizations listed on Appendix B to this Final Order Approving Class Action Settlement have timely and properly excluded

themselves from the Class and, therefore, are not bound by this Final Order Approving Class Action Settlement or the accompanying Final Judgment.

5. The Court confirms, for settlement purposes and conditioned upon the entry of the Final Order and Final Judgment and upon the occurrence of the Effective Date, that the Class meets all the applicable requirements of FED. R. CIV. P. 23(a) and (b)(3):

a. *Numerosity.* The Class, which is ascertainable, consists of millions of persons located throughout the United States and satisfies the numerosity requirement of FED. R. CIV. P. 23(a)(1). Joinder of these widely dispersed, numerous Class Members into one suit would be impracticable.

b. *Commonality.* There are some questions of law or fact common to the Class with regard to the alleged activities of Ford in this case. These issues are sufficient to establish commonality under FED. R. CIV. P. 23(a)(2).

c. *Typicality.* The claims of class representatives are typical of the claims of the Class Members they seek to represent for purposes of settlement.

d. *Adequate Representation.* Plaintiffs' interests do not conflict with those of absent members of the Class, and Plaintiffs' interests are co-extensive with those of absent Class Members. Additionally, this Court recognizes the experience of Settlement Class Counsel. Plaintiffs and their counsel have prosecuted this action vigorously on behalf of the Class. The Court finds that the requirement of adequate representation of the Class has been fully met under FED. R. CIV. P. 23(a)(4).

e. *Predominance of Common Issues.* For settlement purposes, the questions of law or fact common to the Class Members predominate over any questions affecting any individual Class Member.

f. *Superiority of the Class Action Mechanism.* The class action mechanism provides a superior procedural vehicle for resolution of this matter compared to other available alternatives. Class certification promotes efficiency and uniformity of judgment because the many



Class Members will not be forced to separately pursue claims or execute settlements in various courts around the country.

6. The designated class representatives are as follows: Nancy Barnett, Alicia Benton, Boyd Cantu, Jr., Matt Dean, Patricia Dumire, Joe Emanus, Madilyn Fox, Carolyn Gamble, Randall Hall, Brad Hays, Walter Heint, John Huebner, John Huff, Matthew Long, Juan Lugo, Jennifer Manfrin, Frank Mason, Richard McCormick, Joan Overmyer, Travis Poper, Mary Anne Pownall, William Reedy, Mark Schmidt, Krystal Shelby, Eugennie Sinclair, Tekeisha Washington, and Teresa Woodard. The Court finds that these Class Members have adequately represented the Class for purposes of entering into and implementing the Settlement Agreement. The Court appoints Peter Prieto of Podhurst Orseck, P.A. as Lead Settlement Class Counsel, and David Boies of Boies, Schiller & Flexner, L.L.P., Todd A. Smith of Power, Rogers and Smith, L.L.P., Roland Tellis of Baron & Budd, P.C., James E. Cecchi of Carella, Byrne, Cecchi, Olstein, Brody, & Agnello, PC, and Elizabeth J. Cabraser of Lieff Cabraser Heimann & Bernstein, LLP as Settlement Class Counsel.

7. In making all of the foregoing findings, the Court has exercised its discretion in certifying the Class.

## **II. NOTICE AND OUTREACH TO CLASS MEMBERS, AND QUALIFIED SETTLEMENT FUND**

8. The record shows and the Court finds that the Class Notice has been given to the Class in the manner approved by the Court in its Preliminary Approval Order. The Court finds that such Class Notice: (i) is reasonable and constitutes the best practicable notice to Class Members under the circumstances; (ii) constitutes notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action and the terms of the Settlement Agreement, their right to exclude themselves from the Class or to object to all or any part of the Settlement Agreement, their right to appear at the Fairness Hearing (either on their own or through counsel hired at their own expense) and the binding effect of the orders and Final Order

and Final Judgment in the Action, whether favorable or unfavorable, on all persons and entities who or which do not exclude themselves from the Class; (iii) constitutes due, adequate, and sufficient notice to all persons or entities entitled to receive notice; and (iv) fully satisfied the requirements of the United States Constitution (including the Due Process Clause), FED. R. CIV. P. 23 and any other applicable law as well as complying with the Federal Judicial Center's illustrative class action notices.

9. The Court further finds that Ford, through the Settlement Notice Administrator, provided notice of the settlement to the appropriate state and federal government officials pursuant to 28 U.S.C. § 1715. Furthermore, the Court has given the appropriate state and federal government officials the requisite ninety day time period to comment or object to the Settlement Agreement before entering its Final Order and Final Judgment.

10. The Parties' Settlement includes an Outreach Program by which a Settlement Special Administrator will take additional actions to notify vehicle owners about the Takata Airbag Inflator Recalls and to promptly remedy those issues. This Outreach Program includes, but is not limited to: (a) direct contact of Class Members via U.S. mail, landline and cellular telephone calls, social media, email and texting; (b) contact of Class Members by third parties (e.g., independent repair shops); and (c) multi-media campaigns, such as through print, television, radio, and internet. Because of the important public safety concerns involved with such a massive recall effort, the Court finds that it is in the public interest and that of the federal government to begin this Outreach Program as soon as practicable, if not already begun, and that calls and texts made under the Outreach Program are being made for emergency purposes as that phrase is used in 47 U.S.C. § 227(b)(1)(A). The Settlement Special Administrator and those working on his behalf shall serve as agents of the federal government for these purposes and shall be entitled to any rights and privileges afforded to government agents or contractors in carrying out their duties in this regard.

11. The Court finds that the Escrow Account is to be a "qualified settlement fund" as defined in Section 1.468B-1(c) of the Treasury Regulations in that it satisfies each of the following

requirements:

(a) The Escrow Account is to be established pursuant to an Order of this Court and is subject to the continuing jurisdiction of this Court;

(b) The Escrow Account is to be established to resolve or satisfy one or more claims that have resulted or may result from an event that has occurred and that has given rise to at least one claim asserting liabilities; and

(c) The assets of the Escrow Account are to be segregated from other assets of Defendants, the transferor of the payment to the Settlement Fund and controlled by an Escrow Agreement.

12. Under the “relation back” rule provided under Section 1.468B-1(j)(2)(i) of the Treasury Regulations, the Court finds that Ford may elect to treat the Escrow Account as coming into existence as a “qualified settlement fund” on the latter of the date the Escrow Account meets the requirements of Paragraphs 11(b) and 11(c) of this Order or January 1 of the calendar year in which all of the requirements of Paragraph 11 of this Order are met. If such a relation-back election is made, the assets held by the Settlement Fund on such date shall be treated as having been transferred to the Escrow Account on that date.

### **III. FINAL APPROVAL OF SETTLEMENT AGREEMENT**

13. The Court finds that the Settlement Agreement resulted from extensive arm’s-length good faith negotiations between Settlement Class Counsel and Ford, through experienced counsel.

14. Pursuant to FED. R. CIV. P. 23(e), the Court hereby finally approves in all respects the Settlement as set forth in the Settlement Agreement and finds that the Settlement Agreement, and all other parts of the settlement are, in all respects, fair, reasonable, and adequate, and in the best interest of the Class and are in full compliance with all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Class Action Fairness Act, and any other applicable law. The Court hereby declares that the Settlement Agreement is binding on all Class Members, except those identified on Appendix B,

and it is to be preclusive in the Action. The decisions of the Settlement Special Administrator relating to the review, processing, determination and payment of Claims submitted pursuant to the Settlement Agreement are final and not appealable.

15. The Court finds that the Settlement Agreement is fair, reasonable and adequate based on the following factors, among other things: (a) there is no fraud or collusion underlying the Settlement Agreement; (b) the complexity, expense, uncertainty and likely duration of litigation in the Action favor settlement on behalf of the Class; (c) the Settlement Agreement provides meaningful benefits to the Class; and (d) any and all other applicable factors that favor final approval.

16. The Parties are hereby directed to implement and consummate the Settlement according to the terms and provisions of the Settlement Agreement. In addition, the Parties are authorized to agree to and adopt such amendments and modifications to the Settlement Agreement as: (i) shall be consistent in all material respects with this Final Order Approving Class Action Settlement; and (ii) do not limit the rights of the Class.

17. The Court has considered all objections, timely and proper or otherwise, to the Settlement Agreement and denies and overrules them as without merit.

#### **IV. SETTLEMENT CLASS COUNSEL'S FEE APPLICATION AND INCENTIVE AWARDS TO CLASS REPRESENTATIVES**

18. Class Counsel has applied for a service award in the amount of \$5,000 for each Class Representative. Here, the Class Representatives clearly devoted considerable time and resources to this Action. Specifically, the Class Representatives maintained regular contact with Class Counsel, responded to written discovery requests, and many appeared for depositions. As such, Service Awards in the amount of \$5,000 for each appointed Class Representative are warranted. Accordingly, Class Counsel's application for Service Awards in the amount of \$5,000 for each named Class Representative is **Granted**.

19. Class Counsel has filed an application for attorneys' fees and expenses equal to twenty-five percent (25%) of the \$299,100,000 common fund created through their efforts in prosecuting and settling this Action, totaling **\$74,775,000**. This fee award would also amount to roughly 13.95% of the total Settlement value, based on the valuation of the Settlement's Customer Support Program presented by a warranty valuation expert, Kirk Kleckner.

20. As recognized by the United States Supreme Court, the law is well established that "a litigant or lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). And as the Eleventh Circuit made clear in *Camden I Condo. Ass'n v. Dunkle*, 946 F.2d 768 (11th Cir.1991), the law is equally well established in this jurisdiction that "[a]ttorneys' fees awarded from a common fund shall be based upon a reasonable percentage of the fund established for the benefit of the class." *Camden I*, 946 F.2d at 771.

21. As the Eleventh Circuit recently reaffirmed in *Muransky v. Godiva Chocolatier, Inc.*, 905 F.3d 1200 (11th Cir. 2018), "25% of a common fund [is] a benchmark attorney's fee award." *Id.* at 1217.

22. Per *Camden I*, the Court may also consider the following nonexclusive list of factors in determining the reasonableness of the attorneys' fees are as follows:

- (1) the time and labor required;
- (2) the novelty and difficulty of the questions;
- (3) the skill required to perform the legal services properly;
- (4) the preclusion of other employment;
- (5) the customary fee;
- (6) whether the fee is fixed or contingent;
- (7) the time limitations imposed by the client or the circumstances;
- (8) the amount involved and the results obtained;
- (9) the experience, reputation, and ability of the attorneys;
- (10) the "undesirability" of the case;
- (11) the nature and length of the professional relationship with the client;
- and (12) awards in similar cases.

946 F.2d at 772 n. 3.

23. In support of their request for attorneys' fees, Class Counsel has presented the Declaration of Professor Brian Fitzpatrick, a leading scholar on class actions, and the Declaration of Peter Prieto, Esq., the Court-appointed Chair Lead Counsel in this litigation. Both Declarations analyze each of the factors set forth in *Camden I*, and conclude that every applicable one of them supports the reasonableness of the instant fee request. This Court agrees. This Court independently has analyzed the *Camden I* factors against the unique facts of this case and concludes that each and every applicable one of them supports the reasonableness of the instant fee request.

24. Furthermore, two additional factors support the reasonableness of the requested fee. First, as highlighted in the Declarations, the requested fee actually amounts to less than the benchmark 25% of the common fund created through the settlement, due to the value of the Customer Support Program made available to all Class Members. *See Carter v. Forjas Taurus, S.A.*, No. 16-15277, 2017 WL 2813844, at \*5 (11th Cir. June 29, 2017) (holding that fee award was "a reasonable percentage of the settlement value" when considering the value of an "enhanced warranty, which is itself a significant tangible benefit").

25. Second, in addition to the time and labor already devoted to this case, Class Counsel will be required to expend considerable time and effort over the four-year lifespan of the settlement overseeing and adjusting the Outreach Program and Out-of-Pocket Claims Process for the benefit of Class Members. *See Allapattah Services, Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1216 (S.D. Fla. 2006) (holding that class counsel's post-approval work "supports the application of a higher fee percentage award").

26. Accordingly, the Court approves the application for attorneys' fees in the amount of \$74,775,000, to be paid from the common fund.

## V. DISMISSAL OF CLAIMS, RELEASE

27. All economic loss claims asserted against Ford in the Action are hereby dismissed with prejudice on the merits and without costs to any party, except as otherwise provided herein or in the Settlement Agreement.

28. Upon entry of this Final Order Approving Class Action Settlement and the Final Judgment, class representatives and each Class Member (except those listed on Appendix B), on behalf of themselves and any other legal or natural persons and entities who or which may claim by, through or under them, including their executors, administrators, heirs, assigns, privies, predecessors and successors, agree to fully, finally and forever release, relinquish, acquit, discharge and hold harmless the Released Parties from the Claims and any and all other claims, demands, suits, petitions, liabilities, causes of action, rights, losses and damages and relief of any kind or type regarding the subject matter of the Actions, including, but not limited to, compensatory, exemplary, statutory, punitive, restitutionary, expert or attorneys' fees and costs, whether past, present, or future, mature or not yet mature, known or unknown, suspected or unsuspected, contingent or non-contingent, derivative, vicarious or direct, asserted or un-asserted, and whether based on federal, state or local law, statute, ordinance, rule, regulation, code, contract, tort, fraud or misrepresentation, common law, violations of any state's or territory's deceptive, unlawful, or unfair business or trade practices, false, misleading or fraudulent advertising, consumer fraud or consumer protection statutes, or other laws, unjust enrichment, any breaches of express, implied or any other warranties, violations of any state's Lemon Laws, the Racketeer Influenced and Corrupt Organizations Act, or the Magnuson-Moss Warranty Act, or any other source, or any claims under the Trade Regulation Rule Concerning the Preservation of Consumers' Claims and Defenses 16. C.F.R. § 433.2, or any claim of any kind, in law or in equity, arising from, related to, connected with, or in any way involving the Claims or the Actions, the Subject Vehicles' driver or passenger front airbag modules containing desiccated or non-desiccated Takata



PSAN inflators, and any and all claims involving the Takata Airbag Inflator Recalls that are, or could have been, alleged, asserted or described in the Complaint, Amended Consolidated Class Action Complaint, the Second Amended Consolidated Class Action Complaint, the Revised Third Amended Consolidated Class Action Complaint, the Fourth Amended Consolidated Class Action Complaint, the Actions or any amendments of the Actions.

29. If a Class Member who does not opt out commences, files, initiates, or institutes any new legal action or other proceeding against a Released Party for any claim released in this Settlement in any federal or state court, arbitral tribunal, or administrative or other forum, such legal action or proceeding shall be dismissed with prejudice at that Class Member's cost.

30. Notwithstanding the Release set forth in the Settlement and this Order, Class Representatives and Class Members are not releasing and are expressly reserving all rights relating to claims for bodily injury, wrongful death or physical property damage (other than to the Subject Vehicle) arising from an incident involving a Subject Vehicle, including the deployment or non-deployment of a driver or passenger front airbag with a Takata PSAN inflator.

31. Notwithstanding the Release set forth in the Settlement and this Order, Class Representatives and Class Members are not releasing and are expressly reserving all rights relating to claims against Excluded Parties.

32. By not excluding themselves from the Action and to the fullest extent they may lawfully waive such rights, all class representatives and Class Members are deemed to acknowledge and waive Section 1542 of the Civil Code of the State of California and any law of any state or territory that is equivalent to Section 1542. Section 1542 provides that:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

33. The Court orders that the Settlement Agreement shall be the exclusive remedy for all claims released in the Settlement Agreement for all Class Members not listed on Appendix B.

34. Therefore, except for those listed on Appendix B, all class representatives, Class Members and their representatives are hereby permanently barred and enjoined from, either directly, through their representatives, or in any other capacity instituting, commencing, filing, maintaining, continuing or prosecuting against any of the Released Parties (as that term is defined in the Settlement Agreement) any action or proceeding in any court or tribunal asserting any of the matters, claims or causes of action described. In addition, all class representatives, Class Members and all persons and entities in active concert or participation with Class Members are permanently barred and enjoined from organizing Class Members who have not been excluded from the Class into a separate class for purposes of pursuing, as a purported class action, any lawsuit against the Released Parties based on or relating to the claims and causes of action in the complaint in the Action, or the facts and circumstances relating thereto or the release in the Settlement Agreement. Pursuant to 28 U.S.C. §§1651(a) and 2283, the Court finds that issuance of this permanent injunction is necessary and appropriate in aid of its continuing jurisdiction and authority over the settlement as set forth in the Settlement Agreement, and the Action.

35. Class Members are not precluded from addressing, dealing with, or complying with requests or inquiries from governmental authorities relating to the issues raised in this class action settlement.

## **VI. OTHER PROVISIONS**

36. Without affecting the finality of this Final Order Approving Class Action Settlement or the accompanying Final Judgment, the Court retains continuing and exclusive jurisdiction over the Action and all matters relating to the administration, consummation, enforcement and interpretation of the Settlement Agreement and of this Final Order Approving Class Action Settlement and the accompanying Final Judgment, to protect and effectuate this Final Order Approving Class Action Settlement and the accompanying Final Judgment, and for any

other necessary purpose. The Parties, the class representatives, and each Class Member not listed on Appendix B are hereby deemed to have irrevocably submitted to the exclusive jurisdiction of this Court, for the purpose of any suit, action, proceeding or dispute arising out of or relating to the Settlement Agreement or the applicability of the Settlement Agreement, including the exhibits thereto, and only for such purposes.

37. In the event that the Effective Date does not occur, certification of the Class shall be automatically vacated and this Final Order Approving Class Action Settlement and the accompanying Final Judgment, and other orders entered in connection with the Settlement Agreement and releases delivered in connection with the Settlement Agreement, shall be vacated and rendered null and void as provided by the Settlement Agreement.

38. Without further order of the Court, the Parties may agree to reasonably necessary extensions of time to carry out any of the provisions of the Settlement Agreement. Likewise, the Parties may, without further order of the Court, agree to and adopt such amendments to the Settlement Agreement (including exhibits) as are consistent with this Final Order Approving Class Action Settlement and the accompanying Final Judgment and do not limit the rights of Class Members under the Settlement Agreement.

39. Nothing in this Final Order Approving Class Action Settlement or the accompanying Final Judgment shall preclude any action in this Court to enforce the terms of the Settlement Agreement.

40. Neither this Final Order Approving Class Action Settlement nor the accompanying Final Judgment (nor any document related to the Settlement Agreement) is or shall be construed as an admission by the Parties. Neither the Settlement Agreement (or its exhibits), this Final Order Approving Class Action Settlement, the accompanying Final Judgment, or any document related to the Settlement Agreement shall be offered in any proceeding as evidence against any of the Parties of any fact or legal claim; provided, however, that Ford and the Released Parties may file any and all such documents in support of any defense that the Settlement Agreement, this Final

Order Approving Class Action Settlement, the accompanying Final Judgment and any other related document is binding on and shall have res judicata, collateral estoppel, and/or preclusive effect in any pending or future lawsuit by any person or entity who is subject to the release described above in Paragraph 19 asserting a released claim against any of the Released Parties.

41. A copy of this Final Order Approving Class Action Settlement shall be filed in, and applies to, each economic loss member action in this multidistrict litigation. Filed concurrently herewith is the Court's Final Judgment. Attached hereto as Appendix A is a list of the Subject Vehicles (identified by make, model, and year) to which these Orders and the Court's Final Judgment apply. Also attached hereto as Appendix B is a list of persons, entities, and organizations who have excluded themselves from (or "opted out" of) the Class.

**DONE AND ORDERED** in Chambers at Miami, Florida this \_\_\_\_ day of \_\_\_\_\_ 2018.

\_\_\_\_\_  
FEDERICO A. MORENO  
UNITED STATES DISTRICT JUDGE

Copies furnished to:  
Counsel of record

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
MDL No. 2599  
MASTER CASE NO. 1:15-md-02599-FAM  
S.D. Fla. Case No.: 14-cv-24009-MORENO**

**IN RE: TAKATA AIRBAG PRODUCTS  
LIABILITY LITIGATION,**

This Document Relates to:

ALL ECONOMIC LOSS ACTIONS  
AGAINST FORD MOTOR COMPANY

**[PROPOSED] FINAL JUDGMENT**

IT IS on this \_\_\_\_ day of \_\_\_\_\_ 2018, HEREBY ADJUDGED AND DECREED PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 54(b) AND 58 AS FOLLOWS:

(1) On this date, the Court entered a Final Order Approving Class Action Settlement (Dkt. No.\_\_); and

(2) For the reasons stated in the Court's Final Order Approving Class Action Settlement, judgment is entered in accordance with the Final Order Approving Class Action Settlement and Plaintiffs' class action economic loss claims asserted against Ford in this Action are dismissed with prejudice, without costs to any party, except as otherwise provided in the Final Order Approving Class Action Settlement or in the Settlement Agreement.

**DONE AND ORDERED** in Chambers at Miami, Florida this \_\_\_\_ day of \_\_\_\_ 2018.

\_\_\_\_\_  
FEDERICO A. MORENO  
UNITED STATES DISTRICT JUDGE

Copies furnished to:  
Counsel of record