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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

OMAR VARGAS, et al.,  
  
Plaintiffs,  
  
v.  
  
FORD MOTOR COMPANY,  
  
Defendant.

Case No. CV-12-08388 AB (FFMx)

**ORDER GRANTING RENEWED  
MOTION FOR FINAL APPROVAL  
OF CLASS ACTION SETTLEMENT**

Before the Court is Plaintiffs’ unopposed Renewed Motion for Final Approval of Class Action Settlement (“Motion,” Dkt. No. 297). The Motion was heard on February 28, 2020. For the following reasons, the Motion is **GRANTED**.

**I. BACKGROUND**

**A. Factual and Procedural Background**

In this class action, Plaintiffs allege that Ford Motor Company (“Ford”) manufactured, marketed, and sold them vehicles equipped with an alleged undisclosed defect in the DPS6 or dual clutch PowerShift automatic transmission (“Transmission”) that caused the vehicles slip, buck, jerk, and suffer sudden or delayed acceleration and delays in downshifts. *See* Compl. Plaintiffs alleged that nearly 1.5 million vehicles were equipped with the allegedly defective Transmission, and there are nearly 2 million class members. Following the consolidation of similar

1 cases with *Vargas—Klipfel v. Ford Motor Co.*, No. 2:15-cv-02140-AB (C.D. Cal.),  
2 *Cusick v. Ford Motor Company*, Case No. 2:15-cv-08831-AB (C.D. Cal.), and  
3 *Anderson v. Ford Motor Co.*, No. 1:16-cv-01632 (N.D. Ill.)—the First Amended  
4 Complaint in *Cusick* was deemed the operative complaint. *See* First Amended  
5 Complaint (“FAC,” Dkt. No. 118). The FAC asserted 18 claims under various states’  
6 consumer protection laws<sup>1</sup>; claims for breach of express and implied warranty under  
7 the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq.*, (“MMWA”), and under  
8 state warranty law; and fraud and related claims. The FAC sought damages and  
9 injunctive relief. *See generally* FAC.

10 Plaintiffs extensively investigated their claims, consulted with automotive  
11 experts, and propounded discovery on Ford that yielded 1.5 million documents and on  
12 Ford’s third-party vendors that yielded tens of thousands of documents. *See* Wu Decl.  
13 (Dkt. No. 279-1) ¶¶ 9, 10. Plaintiffs also deposed key witnesses from Ford and third-  
14 party vendor Getrag. Paul Decl. (Dkt. No. 279-2) ¶¶ 7-11. Plaintiffs also fielded  
15 contacts from tens of thousands of class members to report problems with their  
16 vehicles and seek relief, incorporating these complaints into their plans for litigation  
17 and settlement. Wu Decl. ¶ 9.

18 Beginning in August 2015, the parties worked with Professor Eric D. Green of  
19 Resolutions LLC over the course of four mediation sessions to negotiate a settlement.  
20 Dr. Green is considered one of the top mediators in the automotive defects field. The  
21 terms of relief for the class were negotiated in the first three sessions, and only after  
22 those terms were confirmed did the parties participate in a fourth mediation session  
23 with Dr. Green focused solely on the issues of attorneys’ fees, costs, and service  
24 awards. Wu Decl. ¶¶ 15-16. Thereafter, the Court granted a motion for preliminary  
25 approval, preliminarily certifying the class under Fed. R. Civ. P. (“Rule”) 23(b)(3),  
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27 <sup>1</sup> Claims were filed under the laws of Arizona, California, Colorado, Illinois, New  
28 Jersey, New York, Oregon, Pennsylvania, and Washington.

1 finding that the class settlement's terms were fair, reasonable and adequate such that  
2 preliminary approval was warranted, approving the proposed form and plan of notice,  
3 and appointing Capstone Law APC, Berger & Montague, P.C., and Zimmerman Law  
4 Offices, P.C., as Class Counsel and designating Capstone as Lead Class Counsel.  
5 (Dkt. No. 133.) Thereafter, the approved class notice plan was executed. *See* Wyatt  
6 Decl. (Dkt. No. 279-4) ¶¶ 3-16. As of the opt-out deadline, about 10,350 class  
7 members validly opted out, and fifteen members timely objected. Wu Decl. ¶¶ 22, 23.

8 Plaintiffs then moved for final approval of the settlement, and for attorneys'  
9 fees, costs, and service awards. *See* Dkt. Nos. 150, 146. After a several-hour hearing,  
10 the Court issued an Order granting final approval, overruling the objections, awarding  
11 Plaintiffs their fees, costs, and incentive awards, and entered judgment. *See* Orders at  
12 Dkt. Nos. 192, 193, 196. The Lott Objectors and objector Jason DeBolt appealed. The  
13 Ninth Circuit found that the Order approving the settlement omitted certain elements  
14 of the necessary analysis, and vacated it and remanded for further proceedings.

15 Following the Ninth Circuit decision, Plaintiffs, Ford, the Lott Objectors, and  
16 objector DeBolt engaged in further mediation with the assistance of Dr. Green and  
17 agreed to significant additional class benefits that address the objections. The instant  
18 Renewed Motion for Final Approval of the Amended Settlement Agreement (Dkt. No.  
19 279), as did Notices from the Lott Objectors and objector DeBolt withdrawing their  
20 objections. *See* Notices Withdrawing Objections (Dkt. Nos. 285, 287.)

## 21 **B. Material Terms of the Settlement Agreement**

22 The Settlement Agreement ("Settlement" or "Settlement Agreement") consists  
23 of the original Settlement Agreement and the Amendment thereto. *See* Wu Decl. ¶¶ 2,  
24 3; Exs. 1, 2 (original Settlement Agreement ("Sett. Agmt.") and Amendment), Suppl.  
25 Wu Decl. (Dkt. No. 281) Ex. 6 (fully-executed Amendment). The primary benefits of  
26 the Settlement are Cash Payments and a Repurchase/Arbitration program. The  
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1 material terms and features of the Settlement are as follows<sup>2</sup>:

2 ***Cash Payments for service visits guaranteed at \$30 million.*** The Settlement  
3 provides cash payments to Class Members who have had three or more qualifying  
4 Service Visits to authorized Ford dealers. The purpose of this benefit is to compensate  
5 Class Members for the inconvenience associated with having to get their vehicles  
6 repeatedly serviced due to Transmissions problems. There are three subcategories of  
7 the cash payment benefit. First, Class Members who have made three or more visits to  
8 authorized Ford dealers (“Service Visits”) to replace certain Transmission components  
9 (“Transmission Hardware Replacements”) are entitled to either a cash payment or a  
10 discount certificate, valued at twice the amount of the cash payment, toward the  
11 purchase or lease of a new Ford vehicle. (Sett. Agmt. ¶ II.C.) Payments start with  
12 \$200 for the third Service Visit, an additional \$275 for the next Service Visit, and an  
13 additional \$350 after that, and so on, up to a cumulative \$2,325 after the eighth Visit.  
14 Second, Class Members who do not qualify for Transmission Hardware Replacement  
15 payments may qualify to receive compensation for multiple updates of the  
16 Transmission Control Module (“Software Flashes), starting with the third, which  
17 entitles them to cash payments of \$50 for each, up to \$600, performed within the same  
18 7 year/100,000 mile limitation. (Sett. Agmt. ¶ II.B.) Third, Class Members who  
19 complained about Transmission problems but were denied repairs by a Ford Dealer  
20 may receive \$20 cash by attesting to those facts under penalty of perjury.  
21 (Amendment ¶ 8.) This will provide relief to Class Members who have reported being  
22 denied repairs by a Ford Dealer. For these payments, Ford has guaranteed a minimum  
23 net payout of \$30 million. (Amendment ¶ 9.) The last date to submit claims is October  
24 21, 2024. If the total payout after that is less than \$30 million, Ford will distribute the  
25 entire residue, on a per capita basis, to all Class Members who have received cash  
26 payments or benefits following a notice of intent to arbitrate, and thereafter any

27 \_\_\_\_\_  
28 <sup>2</sup> This summary is adapted from the memorandum filed in support of the motion.

1 unclaimed residue will be distributed to a cy pres beneficiary to ensure that nothing  
2 reverts to Ford.

3 ***Repurchases Through the Arbitration Program.*** Class Members may obtain a  
4 Repurchase of their Class Vehicles if they qualify under their state's lemon law or  
5 under a Settlement-created fall back standard. (Sett. Agmt. ¶ II.N.) For Claimants who  
6 prevail, Ford refunds the actual amount that the Class Member paid for the vehicle  
7 including finance charges, less a reasonable allowance for use. For leased vehicles,  
8 Ford refunds the payments made, less a reasonable allowance for use. The Repurchase  
9 remedy is awarded through an Arbitration Program that enhances Class Members'  
10 rights in several ways. First, the Program resolves Class Members' lemon law claims  
11 within two or three months of submission, rather than the year or more for state court  
12 lemon law suits. Second, the Program extends the applicable statute of limitations,  
13 preserving claims for six years from the date of original sale or six months of the  
14 Effective Date of the Settlement, whichever is later for both current and former  
15 owner/lessees. (*Id.* ¶ II.N.1.d.; Amendment ¶ 12.)

16 Claims for Repurchase will be governed either by the state lemon law  
17 applicable to each Class Member or, if the claims do not qualify under state lemon  
18 law, by the Settlement's consumer-friendly fallback standard under which the  
19 Arbitrator may award a repurchase if 4 or more Transmission Hardware Replacements  
20 were performed within 5 years/60,000 miles, and the vehicle continues to malfunction.  
21 (Sett. Agmt. ¶ II.N.1.e.) This is more generous to consumers than most state lemon  
22 laws. Ford will pay a maximum of \$6,000 in attorneys' fees to each Class Member  
23 who prevails on his or her claim in arbitration. (*Id.* ¶ II.N.1.h.) And, Class Members  
24 can appeal an adverse decision to a JAMS arbitrator, while Ford has no right to appeal  
25 except for an award of civil penalties. (*Id.* ¶ II.N.1.g.)

26 The Amendment removes several prior limitations on Repurchases. First, it  
27 eliminated the original Settlement's requirement allowing Ford to perform one final  
28 repair attempt after receiving a notice of intent to arbitrate from a Claimant with three

1 or fewer repair attempts. (Amendment ¶ 10.) Second, it permits Class Members to  
2 recover civil penalties not to exceed the amount of the Repurchase award, if (a) their  
3 state’s law authorizes civil penalties, (b) Ford knew of its obligation under state law or  
4 the Settlement Agreement, as amended, to repurchase the vehicle, and (c) prior to the  
5 arbitrator’s award, Ford declined to repurchase after being provided with the  
6 Claimant’s notice of intent to proceed to arbitration under the Settlement Agreement.  
7 (*Id.* ¶ 15.) Third, the identical statute of limitations period extension for current  
8 owners/lessees will be extended to former owners/lessees. (*Id.* ¶ 12.) Fourth, a former  
9 owner/lessee may obtain a Repurchase award if they meet the Settlement’s fallback  
10 standard, even if her state’s lemon law does not allow repurchase for former  
11 owners/lessees. (*Id.* ¶ 11.)

12 Due to the Settlement’s consumer-friendly rules and speed of resolution, most  
13 Class Members would do better under the Arbitration Program rather than in court. As  
14 of the end of 2019, Ford had paid \$47.4 million to Class Members to repurchase  
15 approximately 2,666 vehicles under the Settlement’s Repurchase remedy. *See* Barron  
16 Decl. (Dkt. No. 279-3) ¶ 3.

17 ***Ford Must Perform Repairs or Reimburse Class Members Through the***  
18 ***Arbitration Program.*** Class Members who have incurred out-of-pocket expenses for  
19 repairs they believe should have been covered by Ford’s New Vehicle Limited  
20 Warranty (“Warranty”) or who believe that a Ford dealer improperly denied Warranty  
21 repairs are eligible to pursue their claims in a qualified version of the Program  
22 (“Warranty Arbitration”). (Sett. Agmt. ¶ II.N.2.) Ford will pay the costs of each  
23 Warranty Arbitration, and the Arbitrator is authorized to award reimbursement, a free  
24 repair, an extension of warranty by Ford, or any combination thereof.

25 ***Reimbursements for Clutch Replacement.*** Class Members who own or lease a  
26 Class Vehicle manufactured after June 5, 2013, and who had two clutches replaced  
27 during the 5-year/60,000-mile Powertrain Warranty, are entitled to reimbursement for  
28 out-of-pocket costs for a third clutch replacement made within 7 years/100,000 miles

1 from delivery to the first retail customer. (Sett. Agmt. ¶ II.G.) The replacement clutch  
2 will also be covered by a two-year warranty. Ford's Customer Satisfaction Program  
3 19N08, issued in August 2019, improves on this provision. Under Program 19N08 and  
4 the previously issued Program 14M01, the clutches on most if not all Class Vehicles  
5 are covered by an extended warranty of 7 years/100,000 miles.

6 ***Ongoing Claims Process Open to Class Members for Years.*** The Settlement  
7 requires Class Members to submit documentation typically required to substantiate  
8 such claims. (Sett. Agmt. ¶ II.E.) Except for the sworn declaration payment, Class  
9 Members need only provide (either electronically through the Claims Administrator's  
10 website portal or by mail) a receipt, repair order, or other invoice containing standard  
11 information, (*e.g.*, repair date, a description of the vehicle, the dealership or facility  
12 where the work was performed, the vehicle' mileage at the time of repair, an itemized  
13 list of parts and labor), along with proof of ownership and a sworn written statement  
14 attesting to the authenticity of the documents provided. (*Id.*) Subsequent claims for  
15 cash payments will have a reduced standard for proof, as the Claims Administrator  
16 will retain previous submissions. (*Id.* ¶ II.E.4.) For those who were denied repairs and  
17 therefore cannot document Service Visits, the Amended Settlement provides a cash  
18 payment of \$20, if the Class Member attests to those facts. (Amendment ¶ 8.)

19 Claims can be submitted through the Settlement website. A portal will walk  
20 Class Members through a series of prompts and fields in which to provide the  
21 information required. The site provides clear instructions, and the portal permits Class  
22 Members to upload scanned documents supporting their claims.

23 Ford will pay the Claims Administrator to process Class Members' claims  
24 expeditiously following the Effective Date. (Sett. Agmt. ¶ II.O.) Class Members who  
25 are entitled to a cash payment or Certificate will be paid promptly following the claim  
26 submission or after the Effective Date, whichever is later. (*Id.*) The Claims  
27 Administrator's duties will continue for many years due to the ongoing claims  
28 process. So long as a Service Visit for a Transmission Hardware Replacement or



1 Software Flash is made within the 7 year/100,000 mile period of eligibility, the Class  
2 Member may continue to submit claims for qualifying Service Visits made after the  
3 Effective Date. Class Members will have up to 180 days from the qualifying visit to  
4 submit such claims. Some Class Members may have up to October 2024 to submit a  
5 claim for cash payments.

6 The Program is also streamlined. A Class Member initiates the process by  
7 calling a dedicated phone number or by submitting a form through the Settlement  
8 website or by mail, indicating directly to Ford his or her intent to submit a claim for  
9 repurchase or breach of warranty. (Sett. Agmt. ¶ II.N.1.) Ford will then have ten days  
10 to resolve the matter informally with the Class Member. (*Id.*) After that, the Class  
11 Member may proceed directly to arbitration.

12 ***The Limited Release.*** The Settlement specifically excludes from the Settlement  
13 Class consumers with suits related to the Transmission pending as of July 14, 2017,  
14 while giving them the choice to opt-in to the Settlement. (Sett. Agmt. ¶¶ I.L.) In  
15 addition, while Class Members do not release personal injury and property claims  
16 under the Settlement, they will release claims that were or could have been asserted by  
17 them in connection with the Alleged Transmission Defect. (*Id.* ¶ I.CC.)

18 ***Ford's Payment of Claims Administration Costs, Attorneys' Fees and Costs,***  
19 ***and Service Payments.*** Ford will pay the Claims Administration costs, including the  
20 Arbitration Administrator's costs, attorneys' fees and costs, and service awards to the  
21 Class Representatives. (Sett. Agmt. ¶¶ II.N., II.P, III.C.)

## 22 **II. LEGAL STANDARD**

23 Federal Rule of Civil Procedure 23 provides that “the claims, issues, or  
24 defenses of a certified class may be settled . . . only with the court’s approval.” Fed. R.  
25 Civ. P. 23(e). “The primary concern of [Rule 23(e)] is the protection of th[e] class  
26 members, including the named plaintiffs, whose rights may not have been given due  
27 regard by the negotiating parties.” *Officers for Justice v. Civil Serv. Comm’n of City &*  
28 *Cnty. of S.F.*, 688 F.2d 615, 624 (9th Cir. 1982), *cert. denied*, 459 U.S. 1217, 103



1 S.Ct. 1219, 75 L.Ed.2d 456 (1983). Whether to approve a class action settlement is  
2 “committed to the sound discretion of the trial judge[.]” *Class Plaintiffs v. City of*  
3 *Seattle*, 955 F.2d 1268, 1276 (9th Cir.), *cert. denied*, 506 U.S. 953, 113 S.Ct. 408, 121  
4 L.Ed.2d 333 (1992), who must examine the settlement for “overall fairness.” *Hanlon*  
5 *v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Neither district courts nor  
6 appellate courts “have the ability to delete, modify or substitute certain provisions.  
7 The settlement must stand or fall in its entirety.” *Id.* (internal quotation marks and  
8 citation omitted).

9 A court deciding whether to approve a class action settlement must conduct a  
10 four-step inquiry. First, the court must assess whether defendants have met the notice  
11 requirements under the Class Action Fairness Act (“CAFA”). *See* 28 U.S.C. §  
12 1715(b), (d). Second, the court must determine whether the notice requirements of  
13 Rule 23(c)(2)(B) have been satisfied. Third, the court must determine whether the  
14 class satisfies Rule 23. And where, as here, the parties reached a settlement before any  
15 class was certified, the court must pay “ ‘undiluted, even heightened, attention’ ” to  
16 class certification requirements that protect absent class members. *Hanlon*, 150 F.3d at  
17 1019 (*citing Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 117 S.Ct. 2231, 2248,  
18 138 L.Ed.2d 689 (1997) (“*Amchem*”). Finally, the court must conduct a hearing to  
19 determine whether the settlement agreement is “fair, reasonable, and adequate.” *See*  
20 Fed. R. Civ. P. 23(e)(2); *Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003)  
21 (discussing the Rule 23(e)(2) standard).

#### 22 **A. CAFA Notice Requirements are Satisfied.**

23 CAFA requires “[n]ot later than 10 days after a proposed settlement of a class  
24 action is filed in court, each defendant that is participating in the proposed settlement  
25 shall serve [notice of the proposed settlement] upon the appropriate State official of  
26 each State in which a class member resides and the appropriate Federal official.” 28  
27 U.S.C. § 1715(b). Here, on April 3, 2017, 10 days after the filing of Plaintiffs’ Motion  
28 for Preliminary Approval, the Claims Administrator Kurtzman Carson Consultants

1 (“KCC”) timely and properly sent notices to the Attorney General of the United States  
2 and the attorneys general of all 50 states and the relevant U.S. territories and districts,  
3 informing them of the proposed Settlement. (Wyatt Decl. ¶ 3.) No governmental  
4 authority has objected to the Settlement. *See In re LinkedIn User Privacy Litig.*, 309  
5 F.R.D. 573, 589 (N.D. Cal. 2015) (“CAFA presumes that, once put on notice, state or  
6 federal officials will raise any concerns that they may have during the normal course  
7 of the class action settlement procedures.”). This requirement is satisfied.

8 **B. Rule 23(c) Notice Requirements Are Satisfied.**

9 Class actions brought under Rule 23(b)(3) must satisfy the notice provisions of  
10 Rule 23(c)(2), and upon settlement of a class action, “[t]he court must direct notice in  
11 a reasonable manner to all class members who would be bound by the proposal.” Fed.  
12 R. Civ. P. 23(e)(1). Rule 23(c)(2) prescribes the “best notice that is practicable under  
13 the circumstances, including individual notice” of particular information. Fed. R. Civ.  
14 P. 23(c)(2)(B) (enumerating notice requirements for classes certified under Rule  
15 23(b)(3)).

16 The Settlement proposed a notice procedure and forms, *see* Sett. Agmt. III.C.,  
17 which the Court preliminarily approved as satisfying Rule 23(c). In brief, Ford was to  
18 pay for KCC to mail a court-approved Short-Form Class Notice to all class members.  
19 KCC was also to establish and maintain a website where the approved Long-Form  
20 Notice was to be posted, and arrange for publication notice in *USA Today*.

21 Project manager Kathleen Wyatt submitted a declaration detailing KCC’s  
22 efforts to implement this notice plan. *See* Wyatt Decl. ¶¶ 4-16. KCC mailed over 2.15  
23 million Short Form Notices, 129,996 were returned as undeliverable, and after running  
24 additional searches KCC re-mailed 87,342 class notices. *Id.* ¶16. In addition, the  
25 website providing additional notice and information, and serving as the primary  
26 claims portal, was established. In light of the unchallenged representations in the  
27 Wyatt Declaration, the Court finds that the court-approved notice plan was effectively  
28 implemented and that it satisfies Rule 23(c).

1           Because the Amendment to the Settlement Agreement only increases the  
2 benefits available to the class, with no reduction in benefits, no new notice to the  
3 Class is required. *See In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales*  
4 *Practices, & Prod. Liab. Litig.*, No. 810ML02151JVSMOX, 2013 WL 12327929, at  
5 \*12 n.15 (C.D. Cal. July 24, 2013) (“Where the benefit to the class is increased by  
6 changes to proposed class action settlements, courts have held that supplemental direct  
7 notice to the class is not required. ... This is so because an increase to a class  
8 member's recovery is not the type of change that would cause a class member to  
9 request exclusion from the class settlement.”). Nevertheless, the parties agreed to mail  
10 within 14 days of the effective date of the Settlement an additional postcard notice to  
11 class members to inform them that the Settlement has been amended with  
12 improvements, and directing them to further information on the website. The Court  
13 will order the parties to undertake this step.

#### 14           **C. Class Certification Requirements are Met.**

15           A class may be certified if it satisfies all of the prerequisites of Rule 23(a) and  
16 is one of the types of class actions defined in Rule 23(b). Plaintiffs seek to certify the  
17 following class under Rule 23(b)(3):

18           All current residents of the United States (including territories of the United  
19 States) who, prior to the Preliminary Approval Order, purchased or leased  
20 new or used Class Vehicles that (1) were originally sold in the United States  
21 (including territories of the United States) and (2) were equipped with the  
22 PowerShift Transmission.

23           Sett. Agmt. I(L) (defining the class, subject to routine exceptions). The Court finds  
24 that this class satisfies Rules 23(a) and (b)(3) for settlement purposes only.

25           First the Rule 23(a) prerequisites of (1) numerosity, (2) commonality, (3)  
26 typicality, and (4) adequacy of representation are plainly met in this case. Numerosity  
27 is satisfied because there are over 1 million members in the class, so their joinder is  
28 impracticable. Commonality is satisfied because all class members took possession of

1 a class vehicle that had the undisclosed alleged defect. The derivative factual and legal  
2 questions—for example, whether the transmission is defective, when and whether  
3 Ford knew of the alleged defect, what Ford’s legal obligations were—are also  
4 common to all class members. Typicality is also satisfied because the Plaintiffs’ and  
5 absent class members’ claims all arise from the same alleged conduct on Ford’s part:  
6 its manufacture and sale of a defective product. As such, the Plaintiffs’ and the absent  
7 class members’ claims are sufficiently co-extensive to satisfy the typicality  
8 requirement. *See Hanlon*, 150 F.3d at 1020 (“[u]nder the rule’s permissive standards,  
9 representative claims are ‘typical’ if they are reasonably co-extensive with those of  
10 absent class members; they need not be substantially identical.”). Finally, adequacy of  
11 representation is established here as the named Plaintiffs do not have interests that are  
12 antagonistic to or in conflict with the interests of the class.

13 The Court also finds that this class merits certification under Rule 23(b)(3),  
14 which requires that “questions of law or fact common to class members predominate  
15 over any questions affecting only individual members, and that a class action is  
16 superior to other available methods for fairly and efficiently adjudicating the  
17 controversy.” Fed. R. Civ. P. 23(b)(3). Even if just one common question  
18 predominates, “the action may be considered proper under Rule 23(b)(3) even though  
19 other important matters will have to be tried separately.” *Tyson Foods, Inc. v.*  
20 *Bouaphakeo*, — U.S. —, 136 S. Ct. 1036, 1045, 194 L.Ed.2d 124 (2016) (quoting  
21 7AA C. Wright, A. Miller, & M. Kane, *Federal Practice and Procedure* § 1778 pp.  
22 123-124 (3d ed. 2005)).

23 Rule 23(b)(3) lists four non-exclusive factors “pertinent” to a predominance  
24 finding: “(A) the class members’ interests in individually controlling the prosecution  
25 or defense of separate actions; (B) the extent and nature of any litigation concerning  
26 the controversy already begun by or against class members; (C) the desirability or  
27 undesirability of concentrating the litigation of the claims in the particular forum; and  
28 (D) the likely difficulties in managing a class action.” Fed. R. Civ. P. 23(b)(3).

1 Predominance is plainly satisfied in this case. First, the Supreme Court has  
2 observed that predominance is “readily met” in cases alleging consumer fraud.  
3 *Amchem*, 521 U.S. at 625. The crux of all of the claims in issue here is that Ford sold  
4 or leased the Class Members vehicles equipped with transmissions Ford knew were  
5 defective. Variations in the applicable state law and the remedies available under them  
6 do not thwart the predominance of common issues because they are simply “local  
7 variations of a generally homogenous collection of causes which include products  
8 liability, breaches of express and implied warranties, and ‘lemon laws’.” *Hanlon*, 150  
9 F.3d at 1022–23 (affirming certification under Rule 23(b)(3) because “the  
10 idiosyncratic differences between state consumer protection laws are not sufficiently  
11 substantive to predominate over the shared claims.”). Resolution via a class action is  
12 also superior method of adjudicating this controversy because it provides an efficient  
13 and certain means of resolution, in contrast to the inefficiency, delay, and uncertainty  
14 that would inhere in tens of thousands of individual lawsuits.

15 The Court also finds that none of the four potentially-relevant factors stated in  
16 Rule 23(b)(3) weigh against certification. “From either a judicial or litigant  
17 viewpoint, there is no advantage in individual members controlling the prosecution of  
18 separate actions. There would be less litigation or settlement leverage, significantly  
19 reduced resources and no greater prospect for recovery.” *Hanlon*, 150 F.3d at 1023.  
20 As for other litigation, there is presently an MDL ongoing in this district, and after  
21 about two years, only two cases out of about 1,000 have been brought to trial, with  
22 complex post-trial motions still pending, and appeals sure to follow. The Court is also  
23 aware of consolidated proceedings in California state court (involving several hundred  
24 cases), and a larger proceeding in Michigan state courts, but nothing about those  
25 proceedings counsels against approving the settlement here. The question of whether  
26 consolidating the cases in this forum is desirable and manageability concerns are not  
27 pertinent here, as the premise of the settlement is that the matter will not be further  
28 litigated. *See In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 556 (9th Cir.

1 2019) (en banc) (“manageability is not a concern in certifying a settlement class  
2 where, by definition, there will be no trial.”). In sum, “ ‘common questions present a  
3 significant aspect of the case and they can be resolved for all members of the class in a  
4 single adjudication,’ ” so the Court finds that “there is clear justification for handling  
5 the dispute on a representative rather than on an individual basis’ ” under Rule  
6 23(b)(3). *Hanlon*, 150 F.3d at 1022 (quoting Wright & Miller, § 1778).

#### 7 **D. The Settlement is Fair, Adequate, and Reasonable.**

##### 8 **1. Legal Standard**

9 To determine whether a settlement agreement is fair, adequate, and reasonable,  
10 the court must weigh some or all of the following factors: “[1] the strength of the  
11 plaintiff’s case; [2] the risk, expense, complexity, and likely duration of further  
12 litigation; [3] the risk of maintaining class action status throughout the trial; [4] the  
13 amount offered in settlement; [5] the extent of discovery completed and the stage of  
14 the proceedings; [6] the experience and views of counsel; [7] the presence of a  
15 governmental participant; and [8] the reaction of the class members of the proposed  
16 settlement.” *See Hanlon*, 150 F.3d at 1026 (“*Hanlon* factors”).

17 The recent amendments to Rule 23 direct the Court to consider a similar list of  
18 factors, including whether: (A) the class representatives and class counsel have  
19 adequately represented the class; (B) the proposal was negotiated at arm’s length; (C)  
20 the relief provided for the class is adequate, taking into account: (i) the costs, risks,  
21 and delay of trial and appeal; (ii) the effectiveness of any proposed method of  
22 distributing relief to the class, including the method of processing class-member  
23 claims; (iii) the terms of any proposed award of attorney’s fees, including timing of  
24 payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and  
25 (D) the proposal treats class members equitably relative to each other. Fed. R. Civ. P.  
26 23(e)(2). The Advisory Committee’s notes clarify that this list of factors does not  
27 “displace” the *Hanlon* factors, “but instead aim to focus the court and attorneys on  
28 ‘the core concerns of procedure and substance that should guide the decision whether



1 to approve the proposal.” *In re Extreme Networks, Inc. Sec. Litig.*, No. 15-04883,  
2 2019 WL 3290770, at \*6 (N.D. Cal. July 22, 2019) (quoting Rule 23(e)(2) advisory  
3 committee’s note to 2018 amendment).

4 In addition, when, “a settlement agreement is negotiated prior to formal class  
5 certification, consideration of these [] . . . factors alone is not enough to survive  
6 appellate review.” *In re Bluetooth Headset Prod. Liab. Litig.* (“*Bluetooth*”), 654 F.3d  
7 935, 946 (9th Cir. 2011) (emphasis in original). This is because “[p]rior to formal  
8 class certification, there is an even greater potential for a breach of fiduciary duty  
9 owed the class during settlement.” *Id.* Therefore, district courts must also determine  
10 “that the settlement is not the product of collusion among the negotiating parties.” *Id.*  
11 at 947 (internal quotation and alteration marks omitted).

12 To make that determination, courts should look for signs of collusion, including  
13 “(1) when counsel receive a disproportionate distribution of the settlement, or when  
14 the class receives no monetary distribution but class counsel are amply rewarded[;]”  
15 “(2) when the parties negotiate a clear sailing arrangement providing for the payment  
16 of attorneys’ fees separate and apart from class funds[;]” and “(3) when the parties  
17 arrange for fees not awarded to revert to defendants rather than be added to the class  
18 fund[.]” *Id.* at 947 (internal quotation marks, citations omitted) (“*Bluetooth* factors”).

## 19 **2. The *Hanlon* / Rule 23(e)(2) Factors Are Satisfied.**

20 The Court has considered all of the applicable factors set forth in *Hanlon* and  
21 the related factors set forth in Rule 23(e)(2), and finds that they strongly favor final  
22 approval of the settlement.

### 23 **a. The Class Was Adequately Represented And The Settlement Was** 24 **Negotiated At Arm’s Length.**

25 *First*, the Court finds that the class representatives and class counsel have  
26 adequately represented the class, and that the proposal was negotiated at arm’s length,  
27 satisfying Rule 23(e)(2)(A) and (B). Counsel—Plaintiffs’ counsel and the former  
28 objectors’ counsel included—have ably and vigorously represented their clients



1 through years of litigation, securing the original Settlement and obtaining additional  
2 benefits in the Amendment through further negotiations with the assistance of the  
3 objectors. There is no evidence or suggestion of any conflict between class counsel  
4 and representatives on one hand, and the class members on the other. Both the original  
5 Settlement and the Amended Settlement were the products of arm's-length  
6 negotiations presided by renowned mediator Eric Green, through multiple contentious  
7 in-person sessions over a year and a half, and then again after the Ninth Circuit  
8 mandate. Wu Decl. ¶¶ 14-16, 26. The former objectors' counsel likewise adequately  
9 represented their clients and secured additional benefits for the class. Following the  
10 Amendment, the former objectors now agree that the Settlement is a fair, reasonable  
11 and adequate resolution of the claims here. The adequacy of representation and the  
12 arms-length negotiations presided over by an experienced mediator tend to support  
13 that the settlement warrants approval.

14 **b. The Settlement Affords Significant Relief To The Class.**

15 *Second*, the Settlement affords significant relief to the Class, satisfying Rule  
16 23(e)(2)(C) and the first 3 *Hanlon* factors. Rule 23(e)(2)(C) requires the Court to  
17 examine “the relief to the Class in light of the costs, risks, and delay of trial and  
18 appeal, the effectiveness of any proposed method of distributing relief to the class,  
19 including the method of processing class-member claims, the terms of any proposed  
20 award of attorney's fees, including timing of payment; and any agreement required to  
21 be identified.” Similarly, the first three *Hanlon* factors consider the strength of the  
22 plaintiff's case balanced against the risk, expense, complexity and likely duration of  
23 further litigation, the risk of maintaining class certification through trial, and the  
24 amount of settlement. In assessing the settlement's value, courts are instructed to take  
25 into account that “the very essence of a settlement is compromise, ‘a yielding of  
26 absolutes and an abandoning of highest hopes.’” *Officers for Justice*, 688 F.2d at 624  
27 (citations omitted).

28 The relief secured to the class is substantial. As of the filing of the renewed

1 motion for final approval, Ford has paid out over \$47.4 million in payments for  
2 repurchases of 2,666 vehicles.<sup>3</sup> Counsel represented at oral argument that this amount  
3 is certain to increase significantly as because many Class Members are waiting to  
4 participate until the Settlement is finally approved. In addition, the Amended  
5 Settlement provides for cash payments of up to \$2,325 for multiple service visits  
6 (which were generally under warranty and for which Class Members generally had no  
7 out of pocket costs) and the guaranteed payout will be at least \$30 million. Thus, the  
8 settlement guarantees at least \$77.4 million in payments to Class Members. By  
9 comparison, the *MyFord Touch* settlement, recently approved by District Judge  
10 Edward Chen, primarily provides cash payments of up to \$445 for multiple warranty  
11 repairs (on a part that the plaintiffs claim to cause a safety problem) and a minimum  
12 guaranteed payout of \$17 million, and does not offer a repurchase remedy but instead  
13 releases all such claims that could arise under lemon law and related claims. *See In re*  
14 *MyFord Touch Consumer Litg.*, No. 13-03072-EMC, 2019 WL 1411510 (N.D. Cal.  
15 Mar. 28, 2019) (order granting preliminary approval). The terms of the present  
16 settlement strike the Court as significantly more advantageous to Class Members.

17 Furthermore, non-monetary features of the Arbitration Program (through which  
18 Class Members may seek a Repurchase) are advantageous to Class Members. For  
19 example, it extends the statute of limitations to six years from date of sale or six  
20 months after the approval date (whichever is later), whereas many state lemon laws  
21 require claims to be brought within one and a half to three years of purchase. *See*  
22 *Motion 28:4-8, fn. 23* (listing states whose lemon laws have statutes of limitations of  
23 up to three years). In addition, where a Class Member cannot meet the requirements of  
24 \_\_\_\_\_

25 <sup>3</sup> Because the Settlement Agreement would not take effect until all appeals are  
26 exhausted, in order to meet Class Member demand for the proffered remedies, the  
27 parties instituted a voluntary arbitration program that operates in the same way as the  
28 Arbitration Program under the Agreement. Given the relationship of the voluntary  
arbitration program to the Settlement Agreement, the payments made under the  
voluntary program are plainly a benefit of the Settlement Agreement.

1 their state’s lemon law, the Arbitration Program provides a fall-back standard where  
2 the arbitrator can award a buyback for a vehicle that had 4 or more Transmission  
3 Hardware Replacements performed within 5 years/60,000 miles, and the vehicle  
4 continues to malfunction. (Sett. Agmt. ¶ II(N)(1)(e).) Finally, under the Arbitration  
5 Program, claims will be resolved within three months, whereas lemon law suits in  
6 state court can take far longer. This much quicker route to relief supports approving  
7 the settlement. *See Browne v. Am. Honda Motor Co.*, No. CV 09-06750 MMM  
8 DTBX, 2010 WL 9499072, at \*13 (C.D. Cal. July 29, 2010) (finding that, despite the  
9 fact that class members may not be fully compensated by the proposed reimbursement  
10 program, immediate relief conferred by settlement supports final approval); *see also*  
11 *In re Mego Financial Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (approving  
12 settlement that provides immediate relief constituting one-sixth of the potential  
13 recovery in light of the difficulties of continued litigation).

14 Rule 23(e)(2)(C)(ii) requires the Court to go beyond the benefits offered and  
15 review of the method of distribution of the benefits. The method of distribution of the  
16 primary benefits here is reasonable and not onerous. For example, the Repurchase  
17 benefit is provided through a streamlined arbitration process that a Class Member can  
18 start simply by providing a Notice of Intent to Arbitrate. Claims for cash payments for  
19 service visits can be submitted by a claim form that is pre-populated with certain  
20 information. While Class Members must submit documentation for service visits, this  
21 requirement is reasonable and standard. *See Keegan, v. Am. Honda Motor Co.*, No.  
22 10-09508-MMM, 2014 WL 12551213, \*15 (C.D. Cal. Jan. 21, 2014) (“Courts  
23 frequently approve settlements that require class members to submit receipts or other  
24 documentation.”). This requirement should be easy to comply with because most  
25 states have record-retention laws, and “dealerships and service centers routinely  
26 maintain such records; thus, to the extent that class members do not have an invoice in  
27 their possession, it is likely that they would be able to secure such documentation.”  
28 *Asghari v. Volkswagen Grp. of Am.*, No. 13-02529-MMM, 2015 WL 12732462, at  
18.

1 \*29 (C.D. Cal. May 29, 2015) (overruling objection that requiring claimants to submit  
2 proof of compliance with scheduled oil changes in warranty maintenance manual is  
3 unfair and overly burdensome). The Amendment permits those who attempted to  
4 make repairs, but were turned away by a Ford Dealer, to submit claims for \$20  
5 without any documentation other than an attestation under oath. (Amendment ¶ 8.)  
6 Finally, any residue left from the guaranteed minimum \$30 million in cash payments  
7 benefit will be distributed on a pro rata basis to members who submitted a valid claim  
8 for cash payment or who received a payment through the Repurchase process. These  
9 are appropriate methods of distributing the Settlement benefits.

10 On the other side of the ledger, under Rule 23(e)(2)(C)(ii), are significant risks  
11 associated with continuing to litigate this factually and legally complicated case. To  
12 prevail at trial, Plaintiffs would have to prove that the problems experienced by Class  
13 Members can be traced to a transmission design defect, that the defect persisted in  
14 multiple versions of the Transmission and multiple engine/transmission combinations,  
15 that Ford had pre-sale knowledge of the Alleged Defect, that it acted on that  
16 knowledge, and that Class Members were damaged. Plaintiffs would have to  
17 overcome Ford's affirmative defenses, which include, among others, that no  
18 Transmission defect exists, or that, even if the Alleged Defect existed, Plaintiffs  
19 would not be able to show that it constitutes a safety concern. In addition, Plaintiffs  
20 would have to maintain class certification through trial, which is not a given in light of  
21 all of the variables at play. For example, as a result of changes in the manufacturing  
22 process, design, and software, there are multiple versions of the Transmission,  
23 potentially precluding the likelihood that one common defect exists, which further  
24 calls into question whether common questions predominate. Furthermore, in member  
25 cases of the parallel MDL proceeding, this Court rejected certain factual theories  
26 underlying comparable fraud claims, and also found that the plaintiff could not  
27 establish damages stemming from the fraud claim. *See Pedante v. Ford Motor Co.*,  
28 No. 18-ML-2814-AB (C.D. Cal. Oct. 29, 2019), ECF No. 605., at 5-14. Thus, the

1 fraud claim was disposed of before trial. Although these decisions will be appealed,  
2 they nevertheless reflect the sorts of obstacles Plaintiffs here would encounter in  
3 pursuing their fraud claims. *See In re Portal Software, Inc. Sec. Litig.*, No. C-03-5138  
4 VRW, 2007 WL 4171201, at \*3 (N.D. Cal. Nov. 26, 2007) (recognizing that “inherent  
5 risks of proceeding to . . . trial and appeal also support the settlement”). Finally, to  
6 continue to litigate this case, Plaintiffs’ counsel would have to take extraordinary risk  
7 by advancing the costs and other expenses associated with litigation, for an uncertain  
8 outcome, over a long period of protracted litigation. In light of all of these challenges  
9 inherent in continued complex litigation, the substantial benefits afforded by the  
10 Settlement are particularly attractive. *Eisen v. Porsche Cars North American, Inc.*, No.  
11 11-09405-CAS, 2014 WL 439006, at \*3 (C.D. Cal. Jan. 30, 2014) (“unless the  
12 settlement is clearly inadequate, its acceptance and approval are preferable to lengthy  
13 and expensive litigation with uncertain results.”). These considerations favor approval.

14 Rule 23(e)(2)(C)(iii) and (iv) require the Court to look at the terms and timing  
15 of an attorneys’ fee award, and any other agreement referenced in Rule 23(e)(3). The  
16 Settlement here does include fee awards for Plaintiffs’ counsel and former objectors’  
17 counsel that Ford will not oppose, but the parties negotiated these fees only after they  
18 negotiated the relief afforded to Plaintiffs. Plaintiffs’ counsel and attorneys for the  
19 former objectors have filed fee applications for the Court’s scrutiny, and fee payments  
20 will be made within 14 days of the Effective Date. Finally, regarding “other  
21 agreements,” Counsel have fee-sharing agreements with both Class Counsel Berger &  
22 Montague and Class Counsel Zimmerman Law Offices P.C. (“Zimmerman”), each of  
23 which has been consented to by each firm’s respective clients. These agreements were  
24 previously disclosed (Dkt. No. 167), and the parties aver that there are no other  
25 agreements. In sum, nothing about the substance or timing of the attorneys’ fees  
26 requests here, or other agreements, detracts from the value, fairness, or significance of  
27 the benefits the Settlement offers to Class Members.

28 Having considered the first three *Hanlon* factors and Rule 23(e)(2)(C), the

1 Court therefore finds that the relief provided to the class is adequate

2 **c. The Settlement Treats Class Members Equitably.**

3 *Third*, the Settlement treats class members equitably relative to each other. *See*  
4 Fed. R. Civ. P. 23(e)(2)(D). The Settlement does not give preferential treatment to  
5 any subset of the class. For example, former owners/lessees and current  
6 owners/lessees are subject to the same requirements and may secure the same benefits.  
7 And while the Settlement was structured to deliver the most complete relief to those  
8 Class Members that experienced persistent defects (*e.g.*, those with more service visits  
9 will receive a greater cash payment), this is an objective and logical explanation for  
10 the variations in monetary recovery. *See In re Citric Acid Antitrust Litig.*, 145 F. Supp.  
11 2d 1152, 1154 (N.D. Cal. 2001) (“A plan of allocation that reimburses class members  
12 based on the type and extent of their injuries is generally reasonable.”). The Court  
13 finds that the Settlement treats all Class Members equitably and satisfies Rule  
14 23(e)(2)(D).

15 **d. The Last Four Hanlon Factors Favor Approval**

16 *Finally*, the four remaining *Hanlon* factors favor approval. As described above,  
17 the Settlement was achieved after extensive discovery, and accordingly, Plaintiffs had  
18 ample information and opportunity to assess their claims and take appropriate  
19 negotiating positions. *Eisen*, 2014 WL 439006, at \*13 (finding that counsel had  
20 “ample information and opportunity to assess the strengths and weaknesses of their  
21 claims” despite “discovery [being] limited because the parties decided to pursue  
22 settlement discussions early on.”). Counsel, including Plaintiffs’ counsel, Ford’s  
23 counsel, and counsel representing the former objectors, are highly experienced and  
24 respected litigators, and they all favor approval. Notably, the Lott Group former  
25 objectors were represented in part by Michael Kirkpatrick, who litigates on behalf of  
26 Public Citizen, a highly regarded public interest organization that regularly advocates  
27 on behalf of consumers and employees before the U.S. Supreme Court. (*See*  
28 Amendment.) That his clients have withdrawn their objections and that he now favors



1 the Settlement speaks to its fairness, reasonableness, and adequacy. There are no  
2 governmental participants here, so this factor is not relevant.

3 Finally, the reaction of Class Members favors approval. Approximately 10,350  
4 of the 1.9 million Class Members, or under 1 percent of the Class, have opted out.  
5 (Wu Decl. ¶ 22; ECF No. 240, Ex. A.) This small percentage of exclusions  
6 demonstrate that Class Members have reacted favorably to the Settlement, supporting  
7 final approval. *See, e.g., Churchill Vill. v. Gen. Elec.*, 361 F.3d 566, 577 (9th Cir.  
8 2004) (affirming final approval where “only 45” of the approximately 90,000 class  
9 members objected and 500 opted out).

10 Furthermore, there were only 15 timely objections from Class Members, and  
11 none of them warrants rejecting the Settlement. *See Dennis v. Kellogg Co.*, 697 F.3d  
12 858, 864 (9th Cir. 2012) (the district court “must give a reasoned response to all non-  
13 frivolous objections”) (citations and quotation marks omitted). As stated above, the  
14 six objectors who appealed (the Lott Group and Mr. DeBolt) have withdrawn their  
15 objections and now support final approval. The Court has reviewed the former  
16 objectors’ explanations for why they are now satisfied with the Settlement, have  
17 withdrawn their objections, and support final approval, and they are persuasive. The  
18 other nine timely objections were from *pro se* class members. *See* Suppl. Memo (Dkt.  
19 No. 170) p. 39-41, and Exhibits referenced therein. These *pro se* objections boil down  
20 to arguing that the settlement should provide additional forms of relief, *e.g.*, canceling  
21 leases or compensation for diminution in value, or more relief, *e.g.*, higher cash  
22 payments. But simply wanting a more favorable settlement is not a sufficient basis for  
23 an objection to a class action settlement that is otherwise fair, adequate, and  
24 reasonable. *See Linney v. Cellular Alaska Partnership*, 151 F.3d 1234, 1242 (9th Cir.  
25 1998) (“[I]t is well settled that a proposed settlement may be acceptable even though it  
26 may amount to a fraction of the potential recovery that might be available to class  
27 members at trial.”). The timely *pro se* objections are therefore overruled.

28 The Court has since received two more putative objections: from Class Member  
22.



1 Ayanna Maharry (Dkt. No. 277) and from Robert Earl Case (Dkt. No. 296). The Court  
2 strikes these objections as untimely. The deadline for objecting was September 7,  
3 2017, and both objected more than two years later: Ms. Maharry in October 2019 and  
4 Mr. Case in February 2020. Their papers reflect no good cause for this delay.  
5 Although Ms. Maharry briefly describes “serious life situations” concerning family  
6 matters, this is not sufficient cause to accept an objection more than 2 years late. And  
7 Mr. Case provides no cogent explanation for his delay. In the alternative, the  
8 objections are without merit. Ms. Maharry is actually seeking to opt-out, but it is too  
9 late to opt-out. In addition, Ms. Maharry’s objection that Ford offered her only a buy-  
10 back and that she could not seek civil penalties (under the original settlement) is  
11 essentially a complaint that the settlement could have been better. This is not a valid  
12 ground for disapproving a settlement. Furthermore, under the Amended Settlement,  
13 Class Members may now obtain a civil penalty under specified circumstances. Mr.  
14 Case’s objection is hard to understand. He is an attorney who represented a class  
15 member in a lemon law suit in Florida and to whom that client later assigned a  
16 putative small claims lawsuit relating to her vehicle. It recounts, at length, arbitration  
17 proceedings in which his client was ultimately awarded a buyback, and his attempt to  
18 pursue some unspecified remaining claims in small claims court. But the lengthy  
19 submission does not object to anything specific about this settlement. The objection is  
20 overruled.

21 For the foregoing reasons, the last four *Hanlon* factors favor final approval.

### 22 **3. The Settlement Satisfies the *Bluetooth* Factors.**

23 Pre-certification settlements require further inquiry for “more subtle signs” of  
24 potential collusion between class counsel and defendant. *In re Bluetooth*, 654 F.3d at  
25 946-47. None of the three factors identified in *Bluetooth* are indicative of collusion  
26 here.

27 The first factor asks whether counsel will receive a disproportionate distribution  
28 of the settlement, or whether class will receive no monetary distribution but class

1 counsel are amply rewarded. The answer to both questions is no. Plaintiffs' counsel  
2 are seeking fees and costs of \$8.85 million, which is less than 12% of the \$77.4  
3 million minimum class payout. This is decidedly not disproportionate to Class's  
4 benefits. In addition, the class members have already received—and will continue to  
5 receive—substantial cash payouts. This factor does not suggest collusion in this case.

6 The second *Bluetooth* factor asks whether there is a clear-sailing provision,  
7 such that the defendant will not object to the plaintiffs' counsel's fee request, and  
8 whether this payment is separate from the class fund. However, clear-sailing  
9 provisions are not inherently problematic: if a fee is not disproportionate to the class  
10 award, is negotiated separately from the class benefits, and particularly with the help  
11 of a mediator, the mere existence of a clear-sailing provision is not indicative of  
12 collusion. *See, e.g., Schuchardt v. Law Office of Rory W. Clark*, 314 F.R.D. 673, 687  
13 (N.D. Cal. 2016) (clear-sailing provision does not signal collusion when the agreed-  
14 upon fees are reasonable and the relief negotiated for the class is favorable). Here,  
15 there is a clear-sailing provision but it is not problematic: the fee is not  
16 disproportionate to the class benefits, and was negotiated separately from the relief for  
17 the class and with the assistance of an experienced mediator. And, as set forth in  
18 Plaintiffs' renewed fee application, the requested fees represent a negative multiplier  
19 on Class Counsel's \$10,541,276.65 lodestar. "[C]ourts view self-reduced fees"  
20 representing a negative multiplier on the lodestar "favorably." *MyFord Touch*, 2019  
21 WL 1411510, at \*7 (quoting *Schuchardt*, 314 F.R.D. at 690). Furthermore, the  
22 settlement entitles the class to substantial relief. Accordingly, there are no signs of  
23 collusion relative to Plaintiffs' attorneys' fees.

24 The Court also expressly finds that none of the *Bluetooth* factors are evident in  
25 the participation of the Lott Group's or DeBolt's counsel in this case. The Lott  
26 Group's counsel will seek fees and costs of about \$350,000, and DeBolt's counsel will  
27 seek fees and costs of about \$98,000. First, these fees are not disproportionate to the  
28 class benefits. It is difficult to quantify the value of the service the objectors rendered

1 to the class, but the Court is confident that it is substantial: because the objectors  
2 appealed the original final approval order, pressed their objections, and engaged in  
3 negotiations, they were able to secure for the class the additional benefits reflected in  
4 the Amendment. The Court has little difficulty concluding that the fees they are  
5 seeking are not disproportionate to the value they added to the settlement. Second,  
6 while Ford has agreed to not object to their fee request, this clear sailing provision is  
7 not problematic for the reasons discussed above: the fee is not disproportionate, and  
8 was negotiated separately from the relief for the class and with the assistance of  
9 Professor Green.

10 Finally, the third *Bluetooth* factor is absent, as no class benefits will revert to  
11 Ford.

12 In sum, none of the *Bluetooth* indicia of collusion are present in this case to  
13 undermine the fairness, reasonableness, and adequacy of the settlement.

14 **III. CONCLUSION**

15 Having carefully considered all of the factors reflected in Rule 23 and the case  
16 law, the Court finds that the Settlement is fair, reasonable, and adequate, and warrants  
17 final approval. The Court hereby **GRANTS** the Motion and finally approves the  
18 Settlement. Concurrently with this Order, the Court will also adopt Plaintiffs'  
19 proposed Order granting the Motion, and will enter their proposed Judgment.

20  
21 **IT IS SO ORDERED.**

22  
23 DATED: March 5, 2020



24 \_\_\_\_\_  
25 HONORABLE ANDRÉ BIROTTE JR.  
26 UNITED STATES DISTRICT COURT JUDGE  
27  
28