

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CASE NO. 3:13-cv-03072-EMC

In re:

MYFORD TOUCH CONSUMER LITIGATION

**FEBRUARY 2019 STIPULATION AND AGREEMENT OF SETTLEMENT**

This Settlement Agreement is entered on this 7th day of February, 2019 by and among named plaintiffs Jennifer Whalen, Center for Defensive Driving, Jason Connell, William Creed, Joe D’Aguanno, Michael Ervin, Daniel Fink, Leif Kirchoff, Joshua Matlin, Jeffrey Miller, Henry Miller-Jones, Jerome Miskell, Debra J. Mitchell, as Trustee of the Thomas E. Mitchell Living Trust, Nuala Purcell, Russ Rizzo, Jose Randy Rodriguez, James Sheerin, Darcy Thomas-Maskrey, and Richard Decker Watson (the “Named Plaintiffs”) and defendant Ford Motor Company (“Ford”), by and through their respective counsel (together, the “Settling Parties”).

**RECITALS<sup>1</sup>**

WHEREAS on July 2, 2013, Named Plaintiff Jennifer Whalen filed an action entitled *Jennifer Whalen v. Ford Motor Company* in the United States District Court for the Northern District of California, and that action was assigned to the Honorable Edward M. Chen and given the case number 3:13-cv-03072-EMC;

WHEREAS the original *Whalen* complaint alleged causes of action against Ford for breach of express warranty, violations of the California Unfair Competition Law and Consumers Legal

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<sup>1</sup> These Recitals incorporate certain capitalized terms that are defined in Section I, *infra*.

Remedies Act, and unjust enrichment, and sought certification of a class of current and former owners and lessees of certain Ford vehicles in the United States and a subclass in California;

WHEREAS Plaintiffs filed the First Amended Class Action Complaint in the Litigation on November 12, 2013, on behalf of 24 named Plaintiffs from 15 states, asserting claims for violations of the Magnuson-Moss Warranty Act, breach of express warranty, breach of implied warranty of merchantability, violations of certain consumer protection statutes, breach of contract, and breach of common-law fraudulent concealment, all under various laws of those states, as well as for strict product liability under Colorado law and negligence under Ohio law;

WHEREAS the First Amended Class Action Complaint alleged that Ford sold Ford and Lincoln vehicles equipped with defective MyFord Touch or MyLincoln Touch (collectively, “MyFord Touch” or “MFT”) information and entertainment systems and that if Plaintiffs had known of the defects, they would not have purchased or leased their vehicles or would have paid less for the vehicles than they did;

WHEREAS the Settling Parties engaged in extensive motion practice which resulted in, among other things, the narrowing of the claims asserted by Plaintiffs; dismissal of certain named Plaintiffs; the addition of claims; and Ford’s Answer to the First Amended Complaint on July 18, 2014;

WHEREAS Plaintiffs filed their Second Amended Class Action Complaint against Ford on May 22, 2015, including the same general allegations that survived motion practice against the First Amended Class Action Complaint on behalf of 20 named plaintiffs from 14 states, including new plaintiffs in Ohio and Washington;

WHEREAS the Settling Parties again engaged in motion practice which resulted in, among other things, the narrowing of the claims asserted by Plaintiffs and the addition of more detailed allegations;

WHEREAS Plaintiffs filed their Third Amended Class Action Complaint against Ford on October 13, 2015, asserting claims on behalf of 19 named plaintiffs from 14 states;

WHEREAS Ford answered the Third Amended Class Action Complaint on October 30, 2015;

WHEREAS the Settling Parties engaged in significant discovery, including Fed. R. Civ. P. 26(a) initial disclosures, production by Ford of more than 8.3 million pages of documents, months of review by Plaintiffs' experts of source code for the MFT software, responses to at least nine sets of written discovery requests, depositions of fourteen Ford fact witnesses and five Ford experts, depositions of twenty named plaintiffs and four Plaintiffs' experts, and inspections of the named plaintiffs' vehicles;

WHEREAS the parties participated in a mediation with Randall W. Wulff on July 11, 2016, which did not result in a settlement of the action at that time;

WHEREAS by Order dated September 14, 2016, the Court partially granted and partially denied Plaintiffs' motion to certify this action as a class action, certifying classes on behalf of MFT-equipped vehicle owners and lessees in nine states;

WHEREAS on a motion for reconsideration, the Court decertified the statutory consumer fraud claims on behalf of the California, Ohio, Texas, and Virginia classes by Order dated November 22, 2016;

WHEREAS on December 20, 2017, Class Counsel, in conjunction with JND Class Action Administration, caused the class notice and opt-out form to be distributed via mail and e-mail to all reasonably identifiable potential class members;

WHEREAS the notice period concluded on February 5, 2018, at which point JND Class Action Administration stated that it received 429 opt-outs;

WHEREAS Ford moved for summary judgment on October 6, 2017, seeking dismissal of all certified claims, as well as the non-certified fraud-based claims brought by Plaintiffs Rodriguez, Ervin, and Miller-Jones, and the California Consumers Legal Remedies Act claim brought by Plaintiff Center for Defensive Driving;

WHEREAS the Court partially granted and partially denied Ford's motion for summary judgment on February 14, 2018, by dismissing: (1) the Colorado strict product liability claim (the sole certified claim on behalf of the Colorado class), (2) the California implied warranty claim under the Song-Beverly Act with respect to used car purchasers, and (3) Plaintiff Center for Defensive Driving's California Consumers Legal Remedies Act claim, while denying the motion with respect to the remaining claims;

WHEREAS on March 7, 2018, the Court ordered that the trial be bifurcated, separating trial of the certified express warranty, implied warranty, and Ohio negligence claims from trial of the certified Massachusetts Consumer Protection Act claim and all remaining individual claims;

WHEREAS Ford filed a motion to decertify the certified express warranty claims, the certified Massachusetts Consumer Protection Act claim, and the claims of those class members who purchased their vehicles used from an Authorized Ford Dealer;

WHEREAS prior to the March 29, 2018 hearing on Ford's decertification motion, the Parties reached a preliminary agreement on the terms of a settlement of this action and communicated that agreement to the Court at the hearing;

WHEREAS the Court vacated the pretrial deadlines and set a new date for trial pending approval of the settlement;

WHEREAS Plaintiffs filed an unopposed Motion for Preliminary Approval of Settlement on June 1, 2018 ("Motion");

WHEREAS the Court issued an Order Re Proposed Settlement (ECF No. 442) on June 7, 2018 indicating questions and concerns about the terms of the settlement agreement;

WHEREAS following a June 11, 2018 hearing on the issues raised in the Order Re Proposed Settlement, the Court instructed the parties to file supplemental briefing related to Plaintiffs' Motion by June 22, 2018 (ECF No. 448);

WHEREAS, on June 14, 2018, the Court issued an Order to Show Cause Why Preliminary Approval of Settlement Should Not Be Denied (ECF No. 449);

WHEREAS in response to the Court's directive at the June 11, 2018 hearing that the parties meet and confer to discuss the Court's questions and concerns, counsel for the parties met on June 19, 2018, to discuss those matters;

WHEREAS on June 21, 2018, Plaintiffs filed a Notice of Withdrawal of Class Action Settlement Agreement (ECF No. 452);

WHEREAS on August 1, 2018, the Court granted in part and denied in part Ford's decertification motion, decertifying the Massachusetts Consumer Protection Act claim (ECF No. 465) and denying Ford's motion in all other respects, at which point Plaintiffs' remaining certified claims stood as follows:

<b>State</b>	<b>Certified Claims</b>	<b>Uncertified Claims</b>
California	Breach of implied warranty of merchantability, Song-Beverly Act for breach of express warranty, Song-Beverly Act for breach of implied warranty, Unfair Competition Law predicated on bases other than fraud	Unfair Competition Law premised on fraud, False Advertising Law, fraudulent concealment, Secret Warranty Law, Consumers Legal Remedies Act
Arizona	None	Fraudulent concealment, Consumer Fraud Act
Colorado	None	Fraudulent concealment, Colorado Consumer Protection Act
Iowa	None	Breach of express warranty
Massachusetts	Breach of implied warranty of merchantability	Breach of express warranty, fraudulent concealment, Massachusetts Consumer Protection Act
New Jersey	Breach of implied warranty of merchantability	New Jersey Consumer Fraud Act, breach of express warranty, fraudulent concealment
New York	None	Breach of express warranty, New York General Business Law §§ 349-350, fraudulent concealment
North Carolina	Breach of implied warranty of merchantability	Breach of express warranty, North Carolina Unfair and Deceptive Trade Practices Act, fraudulent concealment
Ohio	Breach of implied warranty in tort, negligence	Fraudulent concealment, breach of express warranty, Consumer Sales Practices Act
Texas	None	Fraud by concealment, Deceptive Trade Practices Act
Virginia	Breach of implied warranty of merchantability	Breach of express warranty, fraudulent concealment, Virginia Consumer Protection Act
Washington	Breach of express warranty	Washington Consumer Protection Act

WHEREAS on August 24, 2018, the Court referred the case to Magistrate Judge Sallie Kim for a Settlement Conference;

WHEREAS Magistrate Judge Kim presided over a Settlement Conference between the Settling Parties on October 16, 2018, which did not result in a settlement of the action;

WHEREAS in October and November of 2018, Magistrate Judge Kim continued to assist the Settling Parties in arm's-length negotiations concerning a proposed classwide settlement, ultimately resulting in Judge Kim making a mediator's proposal, that included a recommendation on the amount of attorneys' fees and costs ("Mediator's Proposal");

WHEREAS the Settling Parties discussed attorneys' fees and costs with Magistrate Judge Kim, but not with each other, prior to their inclusion in the Mediator's Proposal;

WHEREAS the Settling Parties accepted the Mediator's Proposal on November 20, 2018 (subject to formal signoff by Ford's management, which was subsequently obtained);

WHEREAS Class Counsel conducted a thorough investigation and evaluation of the facts and law related to the remaining claims asserted in order to determine how best to serve the interests of the Named Plaintiffs and the Settlement Classes;

WHEREAS a hearing on Plaintiffs' Motion for Preliminary Approval of New Settlement Agreement was held on January 24, 2019 where the Court raised concerns regarding the timing of the claims process and the distribution of a second notice;

WHEREAS the Settling Parties agreed to slight changes in the New Settlement Agreement to ensure that the claims process is completed prior to the Fairness Hearing and also agreed that a second notice be sent to Class Members after the Effective Date of Settlement announcing the availability of benefits outlined in Section II.A, below;

WHEREAS the Named Plaintiffs and Class Counsel believe the Released Claims have merit. The Named Plaintiffs and Class Counsel, however, recognize and acknowledge the expense and length of continued proceedings that would be necessary to prosecute the Released Claims

against Ford through trial and any appeals and the value of providing timely benefits to Members of the Settlement Classes. The Named Plaintiffs and Class Counsel also have taken into account the uncertain outcome and risk of further litigation, as well as the difficulties and delays inherent in such litigation. The Named Plaintiffs and Class Counsel believe the proposed Settlement confers substantial benefits on the Settlement Classes. Based on their evaluation of all these factors, the Named Plaintiffs and Class Counsel have determined that the Settlement is in the best interests of the Settlement Classes and represents a fair, reasonable, and adequate resolution of the litigation; and

WHEREAS Ford denies any liability to the Named Plaintiffs or the Settlement Classes. Ford has taken thorough discovery concerning the claims asserted by the Named Plaintiffs and believes it has meritorious defenses to all of them. Nevertheless, Ford recognizes and acknowledges the expense and length of continued proceedings that would be necessary to defend the Litigation through trial and any appeals. In agreeing to enter this Settlement, Ford also has taken into account the uncertain outcome and the risk of further litigation, as well as the difficulties and delays inherent in such litigation;

NOW THEREFORE IT IS HEREBY STIPULATED AND AGREED, by and among the Settling Parties, subject to the approval of the Court, that the Litigation and the Released Claims shall be fully and finally compromised, settled, and released, and that the Litigation shall be dismissed with prejudice subject to and upon the terms and conditions described below.

## **I. DEFINITIONS**

### **A. Authorized Ford Dealer**

“Authorized Ford Dealer” means a Ford or Lincoln dealer authorized by Ford to sell, lease, and service Ford or Lincoln vehicles.



**B. Class Counsel**

“Class Counsel” means Steve W. Berman Esq., Craig Spiegel Esq., Catherine Y.N. Gannon Esq., Roland Tellis Esq., Mark Pifko Esq., Adam J. Levitt Esq., John E. Tangren Esq., Nicholas E. Chimicles Esq., Benjamin F. Johns Esq., and the law firms Hagens Berman Sobol Shapiro LLP, Baron & Budd, P.C., DiCello Levitt & Casey LLC, and Chimicles Schwartz Kriner & Donaldson-Smith LLP.

**C. Class Notice**

“Class Notice” means the notice of settlement that will be provided to the Members of the Settlement Classes, as defined herein. Class Notice will include a “Short Form Class Notice” to be mailed to the Members of the Settlement Classes in substantially the same form as Exhibit 1. Notice will be distributed to Members of the Settlement Classes using the same communication methods that were previously approved by this Court and used in the 2017 Litigation Class Notice campaign (*e.g.* mail and e-mail). The “Email Notice” will be in substantially the same form as Exhibit 2. The “Short Form Class Notice” and “Email Notice” will include a reference to a settlement website containing further details about the substance and procedure of the proposed Settlement and on which claim forms may be downloaded or submitted electronically that shall be established, maintained, and operated by the Settlement Administrator consistent with this Settlement Agreement, and it will also provide a telephone number that Members of the Settlement Classes may call with questions about the Settlement or the claims process. “Long Form Class Notice” means the notice of Settlement that will be posted on the settlement website in substantially the same form as Exhibit 3. The parties will also disseminate a “Software Update Notice” after the Effective Date of Settlement, announcing the availability of the benefits outlined in Section II.A, below. The Software Update Notice will also include information on how Class

Members can attain these benefits. A copy of the Software Update Notice will be submitted with Class Counsel's motion for final approval of settlement.

**D. Class Vehicle(s)**

"Class Vehicle(s)" means Ford or Lincoln vehicles containing MyFord Touch or MyLincoln Touch systems that were sold or leased by an Authorized Ford Dealer before August 9, 2013 in California, Massachusetts, New Jersey, North Carolina, Ohio, Virginia, and Washington.

**E. Effective Date of Settlement**

"Effective Date of Settlement" means the first date after: (1) the Court enters the Final Order and Judgment, in all material respects similar to the form attached hereto as Exhibit 5 and (2) all appellate rights with respect to said Final Order and Judgment have expired or been exhausted in such a manner as to affirm the Final Order and Judgment.

**F. Fairness Hearing**

"Fairness Hearing" means the final hearing, held after the Preliminary Approval Order is issued, in which the Court will determine whether this Settlement Agreement should be approved as fair, reasonable, and adequate, and whether the proposed Final Order and Judgment should be entered, and if so, to determine the amount of attorneys' fees and costs to be awarded to Class Counsel not to exceed the amount in this Settlement Agreement.

**G. Ford**

"Ford" means Ford Motor Company.

**H. Ford Motor Company Dealership**

"Ford Motor Company Dealership" means Authorized Ford Dealer.

**I. Ford's New Vehicle Limited Warranty**

“Ford's New Vehicle Limited Warranty” means the written limited warranty provided by Ford for the Class Vehicles (an example is attached as Exhibit 6).

**J. Litigation**

“Litigation” means *In re MyFord Touch Consumer Litigation*, No. 3:13-cv-03072-EMC, pending in the United States District Court for the Northern District of California, and includes any and all actions that have been, or in the future are, transferred or related to that case.

**K. MFT**

“MFT” means the MyFord Touch or MyLincoln Touch information and entertainment system.

**L. MFT Extended Warranty**

“MFT Extended Warranty” means the warranty Ford had previously provided covering MFT malfunctions in all new Ford vehicles from five years from the date of first purchase or lease (regardless of the vehicle mileage), and in all new Lincoln vehicles from six years from the date of first purchase or lease (regardless of the vehicle mileage) pursuant to prior Customer Satisfaction Programs 12M01 and 12M02.

**M. MFT Service and Software Records**

“MFT Service and Software Records” means records from Ford's Analytical Warranty System (“AWS”) showing MFT Software Repairs for a particular Class Vehicle.

**N. MFT Software Post-Warranty Repair**

“MFT Software Post-Warranty Repair” means actions undertaken by an automobile repair service provider other than an Authorized Ford Dealer in an effort to repair MFT software undertaken in response to a customer's complaint about an MFT software malfunction or problem,

if those actions were paid for by the Members of the Settlement Classes within one year after the expiration of the MFT Extended Warranty.

An “MFT Software Post-Warranty Repair” excludes any hardware-related repairs, including, for example, cables, connections, modules, screens, or cameras.

**O. MFT Software Repair**

“MFT Software Repair” means either an MFT Software Warranty Repair or an MFT Software Post-Warranty Repair.

**P. MFT Software Warranty Repair**

“MFT Software Warranty Repair” means any of the following:

1. Service performed by an Authorized Ford Dealer in an effort to repair MFT software undertaken in response to a customer’s complaint about an MFT malfunction or software problem pursuant to Ford’s New Vehicle Limited Warranty or the MFT Extended Warranty or within one year after the expiration of the MFT Extended Warranty. The MFT Software Warranty Repair must be evidenced by MFT Service and Software Records or a service record, receipt, or invoice from an Authorized Ford Dealer showing that procedures with one or more of the following vehicle function codes or customer concern codes were performed on the Class Vehicle:

- Vehicle Function Codes:
  - V80 (Sync And Connected Services)
  - V81 (Entertainment & Communication)
  - V84 (Electronic User Interface)
- Customer Concern Codes:
  - A02 (Stereo/Radio Reception)
  - A04 (Stereo/Radio Sound Quality)
  - A06 (Speakers)

- A07 (Other Audio Troubles)
- A08 (Clock Troubles)
- A09 (Clock Difficult To Read)
- A14 (Audio/Entertain/Nav Sys Cntrl Diff To Use/Understd)
- A15 (Tape Player/CD)
- A16 (CD Player)
- A18 (Family Entertainment System Troubles)
- A33 (Clock Troubles)
- A59 (Trip Comp./Navigation Systems Troubles)
- A60 (Satellite Digital Audio Rec System Troubles)
- A61 (Vehicle Assistance Serv Troubles (Sync 911, Onstar))
- A86 (Cellular Phone Troubles)

2. Installation of an updated version of MFT software by an Authorized Ford dealer through Customer Satisfaction Programs 10B20, 11A01, 11A02, 11A03, 12A04, 12M01, 12M02, or 13A01. The installation of an update must be evidenced by MFT Service and Software Records or a service record, receipt, or invoice from an Authorized Ford Dealer showing that procedures with one or more of the following transaction codes were performed on the Class Vehicle:

- 10B20
- 11A01
- 11A02
- 11A03
- 12A04
- 12M01
- 12M02
- 13A01

An “MFT Software Warranty Repair” excludes any hardware-related repairs, including, for example, replacements or adjustments to cables, connections, modules, screens, or cameras.

**Q. Named Plaintiffs**

“Named Plaintiffs” or “Plaintiffs” means Jennifer Whalen, Center for Defensive Driving, Jason Connell, William Creed, Joe D’Aguanno, Michael Ervin, Daniel Fink, Leif Kirchoff, Joshua Matlin, Jeffrey Miller, Henry Miller-Jones, Jerome Miskell, Debra J. Mitchell, as Trustee of the

Thomas E. Mitchell Living Trust, Nuala Purcell, Russ Rizzo, Jose Randy Rodriguez, James Sheerin, Darcy Thomas-Maskrey, and Richard Decker Watson.

**R. Notice of Pendency of Class Action**

“Notice of Pendency of Class Action” means December 22, 2017, the date on which members of the classes that were certified at that time were provided with notice of the action.

**S. Original Owner or Lessee**

“Original Owner or Lessee” means those persons or entities who initially purchased or leased a Class Vehicle from an Authorized Ford Dealer. An “Original Owner or Lessee” excludes those persons or entities who purchased or leased a used Class Vehicle.

**T. Proof of Membership in a Settlement Class**

“Proof of Membership in a Settlement Class” means information sufficient to establish that the claimant is a Member of the Settlement Classes, including:

1. The VIN of the Class Vehicle for which a claim is being made;
2. That the claimant purchased or leased the Class Vehicle for which a claim is being made from an Authorized Ford Dealer;
3. That the claimant purchased or leased the Class Vehicle for which a claim is being made before August 9, 2013; and
4. That the claimant purchased or leased the Class Vehicle for which a claim is being made in California, Massachusetts, New Jersey, North Carolina, Ohio, Virginia, or Washington State.

**U. Proof of Ownership or Lease**

“Proof of Ownership or Lease” means documentation establishing that the Class Member

owned or leased the Class Vehicle at the time of each MFT Software Warranty Repair or instance of Unsatisfactory MFT Performance forming the basis for a claim under Section II.B.1. “Proof of Ownership or Lease” shall be established through the submission of:

1. vehicle title, vehicle purchase agreement, vehicle lease agreement, dealer invoice, insurance documentation, financing documentation, vehicle registration, or a combination of these documents sufficient to identify the Class Member as the vehicle owner, purchaser, or lessee at the date (or as of an earlier date) of the first MFT Software Repair or instance of Unsatisfactory MFT Performance that forms the basis of the claim; AND
2. dealer invoice, insurance documentation, financing documentation, vehicle registration, or a combination of these documents sufficient to identify the same Class Member as the vehicle owner as of the date (or as of a later date) of the latest MFT Software Repair or instance of Unsatisfactory MFT Performance that forms the basis of the claim.

**V. Released Parties**

“Released Parties” means Ford, its past or present administrators, agents, assigns, associates, attorneys, Authorized Ford Dealers, co-insurers, controlling shareholders, directors, employees, insurers, joint ventures, licensees, managing agents, officers, parents, partners (which include, but are not limited to, BSquare Corporation and Microsoft Corporation), principals, re-insurers, related or affiliated entities, reorganized successors, successors, subsidiaries, underwriters, and vendors.

**W. Released Claims**

“Released Claims” means, with the exceptions described below, all claims, demands, causes of action, and suits pleaded against Ford in the Litigation, and all other claims, demands, actions, causes of action of any nature whatsoever, including, but not limited to, any claim for violations of federal, state, or other law (whether in contract, torts, or otherwise, including statutory and injunctive relief, common law, property, warranty, Lemon Law, and equitable claims), and also including Unknown Claims, that relate to malfunctions of the MFT in Ford and Lincoln vehicles sold or leased prior to August 9, 2013 and which are asserted or brought against any of the Released Parties.

Excluded from the Released Claims are individual claims seeking damages for an alleged personal injury caused by a malfunction of the MFT.

**X. Settlement**

“Settlement” means the settlement contemplated by this Stipulation and Agreement of Settlement.

**Y. Settlement Administrator**

“Settlement Administrator” means JND Class Action Administration, the entity that has been selected by the Settling Parties to administer the notice to the Members to the Settlement Classes as set forth herein and to administer the claims process as set forth herein at Ford’s expense.

**Z. Settlement Agreement**

“Settlement Agreement” means this New Stipulation and Agreement of Settlement.



**AA. Settlement Classes or Members of the Settlement Classes or Class Members**

“Settlement Classes” or “Members of the Settlement Classes” or “Class Members” means Named Plaintiffs and all entities and natural persons in any of the following classes:

- “California Settlement Class” means the California Class previously certified in the Litigation, which includes all persons or entities who purchased or leased a Ford or a Lincoln vehicle in California from Ford Motor Company or through a Ford Motor Company Dealership before August 9, 2013, which vehicle was equipped with a MyFord Touch or MyLincoln Touch in-vehicle information and entertainment system.
- “Massachusetts Settlement Class” means the Massachusetts Class previously certified in the Litigation, which includes all persons or entities who purchased or leased a Ford or a Lincoln vehicle in Massachusetts from Ford Motor Company or through a Ford Motor Company Dealership before August 9, 2013, which vehicle was equipped with a MyFord Touch or MyLincoln Touch in-vehicle information and entertainment system.
- “New Jersey Settlement Class” means the New Jersey Class previously certified in the Litigation, which includes all persons or entities who purchased or leased a Ford or a Lincoln vehicle in New Jersey from Ford Motor Company or through a Ford Motor Company Dealership before August 9, 2013, which vehicle was equipped with a MyFord Touch or MyLincoln Touch in-vehicle information and entertainment system.
- “North Carolina Settlement Class” means the North Carolina Class previously certified in the Litigation, which includes all persons or entities who purchased or leased a Ford or a Lincoln vehicle in North Carolina from Ford Motor Company or through a Ford Motor Company Dealership before August 9, 2013, which vehicle was equipped with a MyFord Touch or MyLincoln Touch in-vehicle information and entertainment system.

- “Ohio Settlement Class” means the Ohio Class previously certified in the Litigation, which includes all persons or entities who purchased or leased a Ford or a Lincoln vehicle in Ohio from Ford Motor Company or through a Ford Motor Company Dealership before August 9, 2013, which vehicle was equipped with a MyFord Touch or MyLincoln Touch in-vehicle information and entertainment system.
- “Virginia Settlement Class” means the Virginia Class previously certified in the Litigation, which includes all persons or entities who purchased or leased a Ford or a Lincoln vehicle in Virginia from Ford Motor Company or through a Ford Motor Company Dealership before August 9, 2013, which vehicle was equipped with a MyFord Touch or MyLincoln Touch in-vehicle information and entertainment system.
- “Washington Settlement Class” means the Washington Class previously certified in the Litigation, which includes all persons or entities who purchased or leased a Ford or a Lincoln vehicle in Washington from Ford Motor Company or through a Ford Motor Company Dealership before August 9, 2013, which vehicle was equipped with a MyFord Touch or MyLincoln Touch in-vehicle information and entertainment system.

Excluded from all of the Settlement Classes are: (1) all federal court judges who have presided over this case and any members of their immediate families; (2) all entities and natural persons that elect to exclude themselves from the Settlement Classes; (3) all entities and natural persons that have litigated claims involving MFT against Ford to final judgment; (4) all entities and natural persons who, via a settlement or otherwise, delivered to Ford releases of their claims involving MFT; (5) Ford’s employees, officers, directors, agents, and representatives, and their family members; and (6) all entities and natural persons who submitted a valid request for exclusion following the Notice of Pendency of Class Action, provided that any person who

excluded himself will be given an opportunity to revoke his exclusion and re-enter the Settlement Class.

**BB. Settling Parties**

“Settling Parties” means the Named Plaintiffs and Defendant.

**CC. Third Amended Class Action Complaint**

“Third Amended Class Action Complaint” means the complaint against Ford filed on October 13, 2015 in the Litigation.

**DD. Total Payment Amount**

“Total Payment Amount” has the meaning set forth in Section II.B.3.

**EE. Unknown Claims**

“Unknown Claims” means all claims, demands, causes of action, and suits that any Member of the Settlement Classes has relating to malfunctions of the MFT in Class Vehicles and that such class member does not know to exist against any of the Released Parties which, if known, might have affected his or her decision to enter into or to be bound by the terms of this Settlement.

**FF. Unsatisfactory MFT Performance**

“Unsatisfactory MFT Performance” means a Class Member experiencing any of the following types of malfunctions of the MFT software in their Class Vehicle:

1. Freezing up;
2. Crashing;
3. Blacking-out;
4. Failing to respond to touch and/or voice commands; or
5. Backup camera failure (failing to display the rearview camera properly or freezing on a previous image).

**GG. VIN**

“VIN” or “Vehicle Identification Number” means the unique 17-character number assigned to each vehicle.

**II. SETTLEMENT CONSIDERATION**

In consideration of the Release provided for in Section III.I and the dismissal of the Litigation with prejudice, Defendant agrees to provide the following consideration to the Settlement Classes under the terms of the Settlement Agreement. Ford will pay all valid claims submitted, and the Settlement Agreement contains no cap on the total amount of money Ford will pay in response to valid claims submitted by Members of the Settlement Classes.

**A. Access to Latest MFT Software Update**

For six months after the Effective Date of Settlement, Ford will make the most current compatible update of the MFT software (version 3.10 or later) available for free to all Members of the Settlement Classes. To obtain the most current compatible MFT software update, Members of the Settlement Classes may either download the MFT software update from a link provided on the Settlement Website (and which will also be made available on Ford’s website) and install it in their vehicle, or obtain a certificate (either by downloading it from the Settlement Website, or by requesting the Settlement Administrator to send it via U.S. Mail) entitling them to have an Authorized Ford Dealer install the software update in their vehicle, at no cost to them.<sup>2</sup>

Additionally, for one year after installation of the MFT software update pursuant to this paragraph, Authorized Ford Dealers will address, at no cost to Members of the Settlement Classes, any software problems any Member of the Settlement Classes experiences with the MFT software

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<sup>2</sup> Certain Class Vehicles equipped with certain versions of the MFT software are not compatible with the downloadable software update, and would only be able to obtain the update via an Authorized Ford Dealer.

update by confirming that the most current compatible update of the MFT software (version 3.10 or later) is correctly installed and working properly. Promptly after the Effective Date, Ford will send a Special Service Message to Authorized Ford Dealers to alert Ford Dealers to the availability of free MFT software updates and support for software problems with the update to Members of the Settlement Classes pursuant to this paragraph.

**B. Monetary Compensation**

**1. Claims for Monetary Compensation**

Members of the Settlement Classes may submit a claim for *one* of the following types of monetary compensation if they meet the eligibility criteria for that type of compensation and submit Proof of Membership in a Settlement Class and Proof of Ownership or Lease:

**a. Compensation for MFT Software Repairs**

Members of the Settlement Classes who, within 180 days after the Preliminary Approval Order, submit a valid claim under Paragraph II.D with evidence that they sought one or more MFT Software Repairs to their Class Vehicle during the time they owned or leased it and before the date of the Preliminary Approval Order, will receive a monetary payment following the Effective Date of Settlement as follows:

<b>Number of MFT Software Repairs</b>	<b>Monetary Amount</b>
1	\$100
2	\$250
3 or more	\$400

**b. Reimbursement of Costs of MFT Software Post-Warranty Repairs**

Members of the Settlement Classes who, within 180 days after the Preliminary Approval Order, submit a valid claim under Paragraph II.D with evidence that they paid for an MFT Software

Post-Warranty Repair (either by an Authorized Ford Dealer or another automobile repair service provider) within one year after the expiration of the MFT Extended Warranty will, following the Effective Date of Settlement, receive reimbursement of the full amount they paid for all such repairs.

**c. Compensation for Unsatisfactory MFT Performance**

Members of the Settlement Classes who, within 180 days after the Preliminary Approval Order, submit a valid claim under Paragraph II.D attesting that they experienced two or more instances of Unsatisfactory MFT Performance before the date of the Preliminary Approval Order, will receive \$45 following the Effective Date of Settlement. Members of the Settlement Classes do not require proof of MFT Software Repair to qualify for this category of monetary compensation.

**2. Unilateral Payments**

Ford will cause to be made the following unilateral payments to Class Members:

**a. Unilateral Payment to Original Owners or Lessees of Class Vehicles That Received MFT Software Repairs**

After the conclusion of the claims process as set forth in Section II.D (including resolution of any disputed claims under Section II.D.4), Ford will cause a payment of \$55 to be sent to all Original Owners or Lessees of a Class Vehicle that received one or more MFT Software Warranty Repairs as identified in Ford's MFT Service and Software Records, but as to which Class Vehicle no claim for monetary compensation (as set forth in Section II.B.1) was submitted.

**b. Unilateral Payment to Original Owners or Lessees of Class Vehicles That Did Not Receive MFT Software Repairs**

After the conclusion of the claims process as set forth in Section II.D (including resolution of any disputed claims under Section II.D.4), Ford will cause a payment of \$20 to be sent to all

Original Owners or Lessees of a Class Vehicle that *did not* receive an MFT Software Warranty Repair as identified in Ford's MFT Service and Software Records, *and* as to which Class Vehicle no claim for monetary compensation (as set forth in Section II.B.1) was submitted.

### **3. Guaranteed Minimum Payment**

After the conclusion of the claims process as set forth in Section II.D (including resolution of any disputed claims under Section II.D.4), the Settlement Administrator will calculate the Total Payment Amount, which will be the sum of (1) the total dollar amount of valid claims for monetary compensation under Section II.B.1, and (2) the total dollar amount of unilateral payments under Section II.B.2.

If the Total Payment Amount is less than \$17 million, Ford will cause the difference between the Total Payment Amount and \$17 million to be distributed on a *pro rata* basis to all Members of the Settlement Classes who, prior to 180 days after the Preliminary Approval Order, submitted valid claims of any type under Section II.B.1. Ford and the Settlement Administrator will, in consultation, with Class Counsel, complete this distribution reasonably promptly after the conclusion of the claims process as set forth in Section II.D (including resolution of any disputed claims under Section II.D.4).

### **C. Administration of the Settlement**

Within 45 days after the Preliminary Approval Order, Ford will direct the Settlement Administrator to open a "Ford Claim Center" to receive and appropriately respond to all claims submitted by Members of the Settlement Classes. The Ford Claim Center will include: (1) personnel assigned to manage the settlement implementation process; (2) a toll-free telephone number that Members of the Settlement Classes may call to obtain information; (3) a mailing address to which Members of the Settlement Classes can send claims for reimbursement; and (4)

a website containing information about the Settlement, including claim forms that can be completed online and prepopulated, where possible, with information regarding ownership and MFT Software Warranty Repairs. The claims submission deadline will be at least 60 days prior to the Fairness Hearing. Ford will bear the majority of the costs and expenses related to the administration of this Settlement. Class Counsel will bear the costs associated with the Software Update Notice.

**D. Submission of Claims**

To obtain compensation under Section II.B.1, a Member of the Settlement Classes must submit a claim to the Settlement Administrator. In the event that two Members of the Settlement Classes submit claims for the *same* Class Vehicle for the *same* time period, the Member of the Settlement Classes who first submitted a valid claim will be entitled to relief. Class Counsel will participate in the design of the claims administration process and will receive periodic information about the Settlement Administrator's handling of claims sufficient to let them comment upon and/or raise objections to how it is being performed. Plaintiffs will work continuously with Ford throughout the Settlement Administration Process to ensure that the claims process is fair and as simple as is reasonably possible.

**1. Deadlines to Submit Claims**

The Settlement Administrator will not review or pay any claims for monetary compensation submitted by a Member of the Settlement Classes after the deadline(s) identified in the Settlement Agreement.



**2. Content of and Support for Claims**

**a. Identification of Benefit Sought**

All claims for monetary compensation must indicate whether the claimant is submitting a claim for: (1) compensation for MFT Software Repairs (under Section III.B.1.a); (2) reimbursement of costs of MFT Software Post-Warranty Repairs (under Section III.B.1.b), or (3) compensation for Unsatisfactory MFT Performance (under Section III.B.1.c). These options will be readily apparent on the claim form.

**b. Proof of Membership in Settlement Classes**

All claims for monetary compensation must include Proof of Membership in a Settlement Class. Ford will work in good faith with the Settlement Administrator when designing the claims-submission feature of the settlement website to simplify the ability of persons known to Ford to be Original Owners or Lessees of Class Vehicles to confirm their status as Class Members without needing to independently submit the information required to show Proof of Membership in a Settlement Class described in Section I.T. To simplify the ability of persons known to Ford to be an Original Owner or Lessee to confirm their status as a Member of the Settlement Classes, the Settlement Administrator will provide claim forms that can be completed online and prepopulated, where possible, with ownership information for Class Members to review and confirm.

**c. Claims for Compensation for MFT Software Repairs**

In addition to the information identified in Section II.D.2.a and II.D.2.b, claims for compensation for MFT Software Repairs under Section II.B.1.a must include evidence sufficient to establish:

1. That the Class Vehicle owned or leased by the Class Member received one or more MFT Software Repairs;

2. The date(s) of the MFT Software Repair(s);
3. The identity of the Authorized Ford Dealer(s) or other automobile repair service provider(s) who performed the MFT Software Repair(s); and
4. Proof of Ownership or Lease;

For MFT Software Repairs performed by an Authorized Ford Dealer, a Member of the Settlement Classes may elect to rely on Ford's MFT Service and Software Records, which Ford will provide to the Settlement Administrator, to establish items 1 through 3. The Settlement Administrator will provide claim forms that can be completed online and prepopulated, where possible, with MFT Software Warranty Repairs identified in Ford's MFT Service and Software Records.

To simplify the ability of persons known to Ford to be an Original Owner or Lessee to confirm their status as a Member of the Settlement Classes, the Settlement Administrator will provide claim forms that can be completed online and prepopulated, where possible, with ownership information for Class Members to review and confirm.

**d. Claims for Reimbursement of Costs of MFT Software Post-Warranty Repairs**

In addition to the information identified in Section II.D.2.a and II.D.2.b, claims for reimbursement of amounts paid for MFT Software Post-Warranty Repairs under Section II.B.1.b must include information showing:

1. That the Class Member obtained one or more MFT Software Post-Warranty Repairs for a Class Vehicle within one year after the expiration of the MFT Extended Warranty;
2. The date(s) of the MFT Software Post-Warranty Repair(s);

3. The identity of the Authorized Ford Dealer(s) or other automobile repair service provider(s) who performed the MFT Software Post-Warranty Repair(s);
4. Proof of payment of the amount the Class Member paid for the repair(s); and
5. Proof of Ownership or Lease.

**e. Claims for Compensation for Unsatisfactory MFT Performance**

In addition to the information identified in Section II.D.2.a and II.D.2.b, a Member of the Settlement Classes seeking monetary compensation for Unsatisfactory MFT Performance under Section II.B.1.c must demonstrate Unsatisfactory MFT Performance by submitting a claim signed under penalty of perjury describing two instances of Unsatisfactory MFT Performance before the date of the Preliminary Approval Order. The claim must describe the nature and approximate date (month/year) of each instance of Unsatisfactory MFT Performance. The claim form will be available for download or submission on the settlement website. Claims must contain a physical or electronic signature, but need not be notarized.

Claims for compensation for Unsatisfactory MFT Performance must also include evidence sufficient to show:

1. The VIN of the Class Vehicle for which a claim is being made; and
2. Proof of Ownership or Lease.

To simplify the ability of persons known to Ford to be Original Owners or Lessees to confirm their status as a member of the Settlement Classes, the Settlement Administrator will provide claim forms that can be completed online and prepopulated, where possible, with ownership information for Class Members to review and confirm.

### **3. Rejected Claims**

The Settlement Administrator may reject any claim that does not include the required information, documentation, or certification specified in the previous subsections. The Settlement Administrator may investigate any claim, including by requesting from the Class Member additional documentation to determine whether the claim is valid. If the Settlement Administrator rejects a claim, it will advise the Class Member who submitted it of the reason(s) for the rejection (*e.g.*, missing information, documentation or certification, ineligibility to submit a claim, claim does not involve MFT in a Class Vehicle). If a claim is rejected due to missing information or documentation, the Settlement Administrator will give the Class Member thirty days to resubmit that claim along with additional information, so long as the claim was originally submitted by the deadline to submit the claim. The Settlement Administrator will copy Class Counsel on all rejected claims.

### **4. Disputed Claims**

If a Class Member disputes either the Settlement Administrator's rejection of a claim or the amount to be reimbursed pursuant to a claim, the Class Member may appeal the Settlement Administrator's decision by submitting the claim, the Settlement Administrator's decision on the claim, and an explanation of the Settlement Administrator's alleged error within 30 days of the postmark date on the envelope in which the Settlement Administrator mailed its decision to the Class Member. Appeals will be sent (either electronically or via U.S. Mail) to an entity agreed upon by Class Counsel and Ford to receive such appeals, which shall make a final, binding determination of the appeal following its receipt of Ford's response to the appeal.

**E. Attorneys' Fees and Expenses**

Ford shall pay Class Counsel reasonable attorneys' fees and litigation expenses, separate and apart from the consideration provided to the Settlement Classes, in an amount awarded by the Court provided that the award does not exceed \$16 million. Class Counsel shall apply to the Court for a total award of attorneys' fees and expenses of no more than this amount, covering all legal services provided by, or under the authorization of, Class Counsel in the past and future to the Members of the Settlement Classes in connection with the Litigation, the Settlement, any appeal in connection with the Settlement, and implementation of the Settlement Agreement (the "Fee and Expense Application"). If limited to this amount, Ford will not dispute or oppose the Fee and Expense Application, which shall be subject to Court approval. Further, Class Counsel shall not accept any amount in excess of these sums. The Court will determine what amount of fees and expenses shall be awarded and issue an Order stating the amount of fees and expenses to be awarded. In addition, the majority of costs of Notice of Settlement and Claims Administration shall be paid by Ford. Class Counsel will pay the costs of the Software Update Notice.

Class Counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of Plaintiffs and to execute and legally bind all Plaintiffs to this Agreement. Class Counsel further represent and warrant that no other attorney or law firm who has appeared on any document filed in this Litigation on behalf of any of the Plaintiffs or Members of the Settlement Classes in the Litigation, and no other attorney who has participated in the Litigation, has any claim for attorneys' fees separate from those fees to be awarded to Class Counsel pursuant to this Settlement Agreement.

Within ten business days after the Effective Date of Settlement, Ford shall pay the amount of attorneys' fees and costs awarded by the Court (subject to the limitations of this Section II.E) pursuant to the terms of this Settlement Agreement to Class Counsel.

At least 21 days before payment, Class Counsel must provide Ford with a completed W-9 form for the payees to whom Ford should pay attorneys' fees and costs.

**F. Service Award for Named Plaintiffs**

As part of their motion seeking final approval of the Settlement at the Fairness Hearing, Class Counsel will submit to the Court an application for a \$9,000 service award for each of the 19 Named Plaintiffs. Ford will pay any such service award (up to but not to exceed that amount) approved by the Court pursuant to the terms of this Settlement Agreement within ten business days after the Effective Date of Settlement. Ford will do so by sending payment to Class Counsel to be forwarded to the Named Plaintiffs, provided that Class Counsel give Ford completed W-9 forms for the Named Plaintiffs at least 21 days before payment.

**III. SETTLEMENT APPROVAL PROCESS**

**A. Preliminary Approval of Settlement**

Promptly after execution of the Settlement Agreement, Class Counsel will present the Settlement Agreement to the Court, along with a motion requesting that the Court issue a Preliminary Approval Order substantially in the form attached as Exhibit 4, which will include, among other things:

- A finding that the Settlement Classes have previously been certified in the Litigation, and have been found to satisfy requirements for class certification as set forth by Federal Rule of Civil Procedure 23;

- Preliminary approval of the Settlement memorialized in this Settlement Agreement as fair, reasonable, and adequate;
- Approval of the Class Settlement Notice containing the language in Exhibits 1, 2, and 3 for distribution to Members of the Settlement Classes;
- A direction to Ford to disseminate, at its expense, the Class Notice in the forms approved by the Court to Members of the Settlement Classes;
- A direction that each potential Member of the Settlement Classes who wishes to be excluded from the Settlement Classes must respond to the Class Notice in writing in accordance with the instructions set forth in the Class Notice and that their responses must be received by the date set forth in the Preliminary Approval Order;
- A finding that the Class Notice constitutes the best practicable notice under the circumstances, including individual notice to all Members of the Settlement Classes who can be identified with reasonable effort, and constitutes valid, due, and sufficient notice to Members of the Settlement Classes in full compliance with the requirements of applicable law, including the due process clause of the United States Constitution;
- A direction that, pending final determination of the joint application for approval of this Settlement Agreement, all proceedings in this Litigation other than settlement approval proceedings shall be stayed and all Members of the Settlement Classes who do not validly request exclusion from the Settlement Classes shall be enjoined from commencing or prosecuting any action, suit, proceeding, claim, or cause of action in any court or before any tribunal based on MFT issues in the Class Vehicles;

- A direction that any Member of the Settlement Classes who has not properly and timely requested exclusion from the Settlement Classes will be bound by the Final Order and Judgment;
- The scheduling of a final hearing to determine whether this Settlement Agreement should be approved as fair, reasonable, and adequate and whether the proposed Final Order and Judgment should be entered (the Fairness Hearing);
- A direction that the Settlement Administrator shall tabulate communications from prospective Members of the Settlement Classes asking to be excluded from the Settlement Classes and shall report the names and addresses of such entities and natural persons to the Court and to Ford and Class Counsel no less than seven days before the Fairness Hearing;
- A direction that Class Counsel shall file a Fee and Expense Application and Named Plaintiffs' Service Award application approximately thirty-five days prior to the date set forth in the Preliminary Approval Order as the deadline for the objections; that Class Counsel shall file any supplemental brief in support of final approval of the Settlement Agreement no later than seven days prior to the Fairness Hearing; and that the Court shall, separately from its order regarding final approval of the Settlement Agreement, determine at the Fairness Hearing in what amount attorneys' fees and reimbursement of expenses should be awarded to Class Counsel counsel pursuant to the terms of the Settlement Agreement, as well as the amount of the Service Awards that should be awarded to the Named Plaintiffs pursuant to the terms of the Settlement Agreement;
- A direction that any Member of the Settlement Classes who wishes to object to the proposed Settlement Agreement, the proposed Final Order and Judgment, the Fee and Expense Application, and/or the Named Plaintiffs' Service Award must file and serve such



objections no later than the date set forth in the Preliminary Approval Order, which shall be approximately one month before the Fairness Hearing, together with copies of all papers in support of his or her position as provided in Section III.D.1 of the Settlement Agreement. The Class Notice shall state that the Court will not consider the objections of any Member of the Settlement Classes who has not properly served copies of his or her objections on a timely basis or complied with the requirements of Section III.D.1 of the Settlement Agreement.

- A provision ordering that all Members of the Settlement Classes and their representatives who do not timely exclude themselves from the Settlement are preliminarily enjoined from filing, commencing, prosecuting, maintaining, intervening in, participating in, conducting, or continuing, individually, as class members, or otherwise, any lawsuit (including putative class actions), arbitration, remediation, or administrative or regulatory proceeding or order in any jurisdiction, asserting any claims based on alleged malfunctions of the MFT in Ford and Lincoln vehicles or asserting any Released Claims.

**B. Notice to Attorneys General**

In compliance with the attorney general notification provision of the Class Action Fairness Act, 28 U.S.C. § 1715, within ten days after the motion for Preliminary Approval Order is filed, Ford shall provide notice of this proposed Settlement to the Attorney General of the United States, and to the attorneys general of each state or territory in which a Member of the Settlement Classes may reside. The notice will include (1) a copy of the Third Amended Class Action Complaint, (2) a copy of this Settlement Agreement and its exhibits, and (3) a reasonable estimate of the number of Members of the Settlement Classes in each state/territory and their percentage representation in

the Settlement Classes. Ford will provide copies of such notifications to Class Counsel at the time of their submission to the attorneys general.

**C. Notice to Members of the Settlement Classes**

The Settlement Administrator will mail or otherwise disseminate, in accordance with the Preliminary Approval Order, at Ford's expense, the Short Form Class Notice in substantially the same form as Exhibit 1, the Email Notice in substantially the same form as Exhibit 2, and post on a website established for purposes of this Settlement the Long Form Class Notice substantially in the same form as Exhibit 3. As soon as practicable after the preliminary approval of the Settlement, the Settlement Administrator will obtain the name and last known address of each potential member of the Settlement Classes. The last known address of potential Members of the Settlement Classes will be checked and updated via the National Change of Address database. Thereafter, the Settlement Administrator shall mail, or otherwise disseminate, in accordance with the Preliminary Approval Order, a copy of the Short Form Class Notice to each Member of a Settlement Class so identified. The Settlement Administrator shall use its best efforts to complete the mailing of the Short Form Class Notice to potential Members of the Settlement Classes within 75 days after the preliminary approval of the Proposed Settlement.

If any Short Form Class Notice mailed or disseminated to any potential Member of the Settlement Classes is returned to the Settlement Administrator as undeliverable, then the Settlement Administrator shall perform a reasonable search for a more current name and/or address for the potential Member of the Settlement Classes and (provided that a more current name and/or address can be found through such a search) re-send the returned Short Form Class Notice to the potential Member of a Settlement Class. In the event that any Short Form Class Notice mailed to a potential Member of the Settlement Classes is returned as undeliverable a second time, then no

further mailing shall be required. The Settlement Administrator will promptly log each Short Form Class Notice that is returned as undeliverable and provide copies of the log to Class Counsel.

Within 30 days of the Effective Date of Settlement, the Settlement Administrator will mail or otherwise disseminate, at the expense of Class Counsel, a Software Update Notice informing Members of the Settlement Classes about the availability of updated MFT software pursuant to Section II.A.

**D. Response to Notice**

**1. Objection to Settlement**

Any Member of the Settlement Classes who intends to object to the fairness of the Settlement Agreement must, by the date specified in the Preliminary Approval Order and recited in the Class Notice, file any such objection with the Court.

Any objection to the Settlement Agreement must be individually and personally signed by the Member of the Settlement Classes submitting it (if the Member of the Settlement Classes is represented by counsel, the objection must also be signed by such counsel), and must include:

- The case name and number (*In Re MyFord Touch Consumer Litigation*, Case Number 13-cv-3072-EMC);
- The objecting Member of the Settlement Classes's full name, address, and telephone number;
- The model, model year, and VIN of the objecting Member of the Settlement Classes's Class Vehicle, along with Proof of Membership in a Settlement Class;
- A written statement of all grounds for the objection, accompanied by any legal support for the objection;
- Copies of any papers, briefs, or other documents upon which the objection is based;

- A list of all cases in which the Member of the Settlement Classes and/or his or her counsel filed or in any way participated—financially or otherwise—objecting to a class settlement during the preceding five years;
- The name, address, email address, and telephone number of every attorney representing the objector; and
- A statement indicating whether the objector and/or his or her counsel intends to appear at the Fairness Hearing and, if so, a list of all persons, if any, who will be called to testify in support of the objection.

Any Member of the Settlement Classes who does not file a timely written objection to the Settlement and notice of his or her intent/non-intent to appear at the Fairness Hearing, or who otherwise fails to comply with the requirements of this section shall be foreclosed from seeking any adjudication or review of the Settlement by appeal or otherwise.

## **2. Request for Exclusion**

Any Member of the Settlement Classes who wishes to be excluded from the Settlement Classes, and who did not previously exclude themselves, must submit a request for exclusion (“Request for Exclusion”) to the Settlement Administrator at the address specified in the Class Notice by the date specified in the Preliminary Approval Order and recited in the Class Notice. This requirement does not apply to members of the classes who previously opted out. The 429 putative class members who previously submitted valid opt-out forms need not opt-out again. Members of the Settlement Classes who wish to be excluded from the Settlement Classes must do so with respect to all Class Vehicles they own(ed) or lease(d). Members of the Settlement Classes may not exclude themselves from the Settlement Classes with respect to one or more Class Vehicles and include themselves in the Settlement Classes with respect to one or more other Class

Vehicles. To be effective, the Request for Exclusion must be sent via first-class U.S. mail to the specified address and:

- Include the Member of the Settlement Classes's full name, address, and telephone number;
- Identify the model, model year, and vehicle identification number of the Member of the Settlement Classes's Class Vehicle(s);
- Explicitly and unambiguously state his, her, or its desire to be excluded from the Settlement Classes in *In re MyFord Touch Consumer Litigation*; and
- Be individually and personally signed by the Member of the Settlement Classes (if the Member of the Settlement Classes is represented by counsel, it must also be signed by such counsel).

Any Member of the Settlement Classes who fails to submit a timely and complete Request for Exclusion sent to the proper address shall be subject to and bound by this Settlement Agreement and every order or judgment entered pursuant to this Settlement Agreement. Any purported Request for Exclusion or other communication sent to such address that is unclear or internally inconsistent with respect to the Member of the Settlement Classes's desire to be excluded from the Settlement Classes will be deemed invalid unless determined otherwise by the Court. Requests for exclusion can only be submitted individually on behalf of each Class Vehicle(s) owned or leased by the individual Member of the Settlement Classes. For example, mass-opt outs and class requests for exclusion shall not be permitted.

The Settlement Administrator will receive purported Requests for Exclusion and will follow guidelines developed jointly by Class Counsel and Ford's counsel for determining in the first instance whether they meet the requirements of a Request for Exclusion. Any communications from Members of the Settlement Classes (whether styled as an exclusion request,

an objection, or a comment) as to which it is not readily apparent that the Member of the Settlement Classes meant to exclude himself or herself from the Class will be evaluated jointly by Class Counsel and Ford's counsel, who will make a good faith evaluation, if possible, of the Member of the Settlement Classes's intentions. Any uncertainties about whether a Member of the Settlement Classes is requesting exclusion from the Settlement Classes will ultimately be resolved by the Court.

The Settlement Administrator will maintain a list of all Requests for Exclusion. The Settlement Administrator shall report the names and addresses of all such entities and natural persons requesting exclusion to the Court and Class Counsel seven days prior to the Final Hearing, and the list of entities and natural persons deemed by the Court to have excluded themselves from the Settlement Classes will be attached as an exhibit to the Final Order and Judgment.

**E. Persons Objecting to the Settlement**

None of Defendant, the Settlement Classes, or Class Counsel shall be responsible for fees, costs, or expenses related to any Class Members who submit objections to the Settlement Agreement or any appeal by an objector arising from the Action for attorneys' fees, costs, or expenses of any kind.

**F. Fairness Hearing**

On the date set forth in the Preliminary Approval Order, a Fairness Hearing will be held at which the Court will: (1) decide whether to approve the Settlement Agreement as fair, reasonable, and adequate, (2) decide whether to approve the application for a Service Award for the Named Plaintiffs, and (3) decide whether to approve Class Counsel's Fee and Expense Application and issue an Order memorializing that decision. The Settling Parties will request that the Court hold

the Fairness Hearing approximately two months after the deadline for submitting claims, objections and Requests for Exclusion.

**G. Final Order and Judgment**

If this Settlement Agreement is finally approved by the Court, a Final Order and Judgment directing the entry of judgment pursuant to Fed. R. Civ. P. 54(b) shall be entered substantially in the form attached as Exhibit 5, as follows:

- Approving the Settlement Agreement as fair, reasonable, and adequate as it applies to the Settlement Classes;
- Declaring the Settlement Agreement to be binding on Ford and the Named Plaintiffs, as well as all Members of the Settlement Classes;
- Dismissing on the merits and with prejudice the Third Amended Class Action Complaint in *In re MyFord Touch Consumer Litigation*;
- Forever discharging the Released Parties from all Released Claims;
- Indicating the amount of the Service Award for the Named Plaintiffs;
- Indicating the amount of attorneys' fees and expenses to be awarded to Class Counsel; and
- Providing that all Members of the Settlement Classes who did not request exclusion from the Settlement Classes be permanently enjoined from commencing or prosecuting any action, suit, proceeding, claim, or cause of action asserting the Released Claims in any court or before any tribunal.

**H. Withdrawal from Settlement**

Either party shall have the option to withdraw from this Settlement Agreement, and to render it null and void, if any of the following occurs:

- Any objections to the proposed settlement are sustained and such objection results in Court-ordered changes to the Settlement Agreement that the withdrawing party deems to be material (*e.g.*, because it increases the cost of the settlement, delays approval and/or implementation of the Settlement, or deprives the withdrawing party of a benefit of the Settlement);
- Any attorney general is allowed to intervene in the action and such intervention results in Court-ordered changes to the agreement that the withdrawing party deems to be material (*e.g.*, because it increases the cost of the Settlement, delays approval and/or implementation of the Settlement, or deprives the withdrawing party of a benefit of the Settlement);
- The preliminary or final approval of the Settlement Agreement is not obtained without modification to the proposed preliminary and final approval orders attached as exhibits to this Settlement Agreement, and any modification to such orders requested or stated by the Court as a condition for approval is deemed to be material and is not agreed to by the withdrawing party (*e.g.*, because it increases the cost of the Settlement, delays approval and/or implementation of the Settlement, narrows the definition of or refuses to certify all of the Settlement Classes, or deprives the withdrawing party of a benefit of the Settlement);
- Any award of attorneys' fees and litigation expenses above the agreed-upon amount, or
- Entry of the Final Order and Judgment described in this Settlement is reversed or modified by an appellate court in a manner that the withdrawing party deems to be material, except that a reversal or modification of an order awarding reasonable attorneys' fees and expenses shall not be a basis for withdrawal, so long as the award of attorneys' fees and expenses does not exceed the agreed-upon amount.



Ford shall, in addition, have the right to withdraw from this Settlement Agreement, and to render it null and void, if Members of the Settlement Classes collectively owning or leasing 10,000 or more Class Vehicles exclude themselves from the Settlement.

To withdraw from the Settlement Agreement under this Section, the withdrawing party must provide written notice of withdrawal to the other party's lead counsel and to the Court. In the event either party withdraws from the Settlement, this Settlement Agreement shall be null and void, shall have no further force and effect with respect to any party in the Litigation, and shall not be offered in evidence or used in any litigation for any purpose, including the existence, certification, or maintenance of any purported class. In the event of such withdrawal, this Settlement Agreement and all negotiations, proceedings, documents prepared, and statements made in connection herewith shall be without prejudice to the Settling Parties, and shall not be deemed or construed to be an admission or confession by any party of any fact, matter, or proposition of law, and shall not be admitted into evidence or otherwise used in any manner for any purpose, and all parties to the Litigation shall stand in the same position as if this Settlement Agreement had not been negotiated, made, or filed with the Court. Upon withdrawal, either party may elect to move the Court to vacate any and all orders entered pursuant to the provisions of this Settlement Agreement.

**I. Release of Members of the Settlement Classes' Claims**

Upon the Effective Date of the Settlement, the Named Plaintiffs and each other Member of the Settlement Classes shall be deemed to have, and by operation of the Final Order and Judgment shall have, released, waived, and discharged the Released Parties from his, her, or its Released Claims as defined above.

The Members of the Settlement Classes acknowledge that they may later discover facts in addition to or different from those that they now know or believe to be true concerning the subject matter of this release, but nevertheless fully, finally, and forever settle and release any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist, may later exist, or heretofore have existed based upon malfunctions of the MFT in the Class Vehicles, without regard to subsequent discovery or existence of such different or additional facts concerning each of the Released Parties. The foregoing waiver includes, without limitation, an express waiver to the fullest extent permitted by law by the Members of the Settlement Classes of any and all rights under California Civil Code § 1542 or any similar law of any other state or of the United States, which provides:

**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 MIGHT HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

Also upon the Effective Date of the Settlement, Ford will release Named Plaintiffs and Named Plaintiffs' counsel from any potential claims, counter-claims, or other relief (including the ability to seek a bill of cost under the Federal Rules of Civil Procedure) that could potentially be asserted against them, and which in any way relate to the Litigation.

#### **IV. MISCELLANEOUS PROVISIONS**

##### **A. Effect of Exhibits**

The exhibits to this Settlement Agreement are an integral part of the Settlement and are expressly incorporated and made a part of this Settlement Agreement.

##### **B. No Admission**

This Settlement Agreement is for settlement purposes only. Neither the fact of, nor any provision contained in this Settlement Agreement, nor any action taken hereunder, shall constitute,

or be construed as, any admission of the validity of any claim or any fact alleged in the Litigation or of any wrongdoing, fault, violation of law, or liability of any kind on the part of Ford or any admissions by Ford of any claim or allegation made in any action or proceeding against Ford. Nor shall it constitute, or be construed as, any admission or concession by Ford that the Court's orders in the Litigation, including those granting in part the Named Plaintiffs' motion for class certification and denying in part Ford's motion for summary judgment, are correctly decided. This Settlement Agreement shall not be offered or be admissible in evidence against Ford or cited or referred to in any action or proceeding, except in an action or proceeding brought to enforce its terms.

**C. Return of Confidential Documents**

Upon the Effective Date of Settlement, all documents and information marked or designated as "Confidential," as defined in and subject to the Protective Order granted May 16, 2014, or any other protective order entered in this Litigation, shall be disposed of within the time frame and according to the procedures set forth in the Protective Order.

**D. Entire Agreement**

This Settlement Agreement represents the entire agreement and understanding among the Settling Parties and supersedes all prior proposals, negotiations, agreements, and understandings relating to the subject matter of this Settlement Agreement. The Settling Parties acknowledge, stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation, or understanding concerning any part or all of the subject matter of this Settlement Agreement has been made or relied on except as expressly set forth in this Settlement Agreement. No modification or waiver of any provisions of this Settlement Agreement shall in any event be

effective unless the same shall be in writing and signed by the person against whom enforcement of the Settlement Agreement is sought.

**E. Counterparts**

This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original as against any party who has signed it, and all of which shall be deemed a single agreement.

**F. Arm's-Length Negotiations**

The Settling Parties have negotiated all of the terms and conditions of this Settlement Agreement at arm's length, and under the supervision of a mediator, Magistrate Judge Sallie Kim. All terms, conditions, and exhibits in their exact form are material and necessary to this Settlement Agreement and have been relied upon by the Settling Parties in entering into this Settlement Agreement. All Settling Parties, through counsel, have participated in the drafting of this agreement and it is not to be construed in favor of or against either of the Settling Parties.

**G. Dispute Resolution**

Any dispute, challenge, question, or the like relating to this Settlement Agreement (other than those which this Settlement Agreement provides shall be resolved by otherwise) shall be heard only by this Court.

**H. Continuing Jurisdiction**

The Court shall retain continuing and exclusive jurisdiction over the parties to this Settlement Agreement, including all Members of the Settlement Classes, for the purpose of the administration and enforcement of this Settlement Agreement.

**I. Binding Effect of Settlement Agreement**

This Settlement Agreement shall be binding upon and inure to the benefit of the Settling Parties and their representatives, heirs, successors, and assigns.

**J. Nullification**

In the event any one or more of the provisions contained in this Settlement Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions only if Ford and Class Counsel mutually elect to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Settlement Agreement.

**K. Extensions of Time**

The Settling Parties may agree upon a reasonable extension of time for deadlines and dates reflected in this Settlement Agreement, without further notice (subject to Court approval as to Court dates).

**L. Service or Notice**

Whenever, under the terms of this Settlement Agreement, a person is required to provide service or written notice to Ford or Class Counsel, such service or notice shall be directed to the individuals and addresses specified below, unless those individuals or their successors give notice to the other Settling Parties in writing:

As to the Named Plaintiffs:

Steve W. Berman  
Catherine Y.N. Gannon  
Craig Spiegel  
Hagens Berman Sobol Shapiro LLP  
1301 2nd Ave., Suite 2000  
Seattle, Washington 98101  
Telephone: (206) 623-7292  
Steve@hbsslaw.com

Adam J. Levitt  
John E. Tangren  
DiCello Levitt & Casey LLC  
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**M. Authority to Execute Settlement Agreement**

Each counsel or other person executing this Settlement Agreement or any of its exhibits on behalf of any party hereto warrants that such person has the authority to do so.

\* \* \* \* \*

IN WITNESS HEREOF, the Settling Parties have caused this Settlement Agreement to be executed by their duly authorized attorneys, as of February 7, 2019.

**ON BEHALF OF FORD MOTOR COMPANY**



\_\_\_\_\_  
CRAIG HALSETH  
Counsel, Litigation  
Ford Motor Company

2/7/19  
\_\_\_\_\_  
DATE

**ON BEHALF OF PLAINTIFFS**

\_\_\_\_\_  
STEVE W. BERMAN

\_\_\_\_\_  
DATE

\_\_\_\_\_  
ADAM J. LEVITT

\_\_\_\_\_  
DATE

\_\_\_\_\_  
ROLAND TELLIS

\_\_\_\_\_  
DATE

\_\_\_\_\_  
NICHOLAS E. CHIMICLES

\_\_\_\_\_  
DATE

**Plaintiffs' Class Counsel**

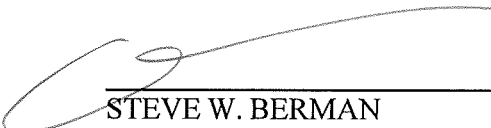
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**ON BEHALF OF FORD MOTOR COMPANY**

\_\_\_\_\_  
CRAIG HALSETH  
Counsel, Litigation  
Ford Motor Company

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2/7/19  
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**Plaintiffs' Class Counsel**