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Attorneys for Plaintiffs and Class Members

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA—WESTERN DIVISION

OMAR VARGAS, ROBERT
BERTONE, MICHELLE HARRIS, and
SHARON HEBERLING individually,
and on behalf of a class of similarly
situated individuals,

Plaintiffs,

v.

FORD MOTOR COMPANY,
Defendant.

Case No. CV12-08388 AB (FFMx)

The Hon. André Birotte Jr.

**DECLARATION OF RUSSELL D.
PAUL IN SUPPORT OF PLAINTIFFS’
UNOPPOSED MOTION FOR
ATTORNEYS’ FEES, COSTS, AND
SERVICE AWARDS**

Date: October 2, 2017
Time: 10:00 a.m.
Place: Courtroom 7B

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DECLARATION OF RUSSELL D. PAUL

I, Russell D. Paul, declare under penalty of perjury under the laws of the United States of America, that the following is true to the best of my knowledge, information and belief:

1. I am a Shareholder of the law firm Berger & Montague. P.C. (“Berger & Montague”). Berger & Montague serves as counsel of record for Plaintiffs in the above-captioned action along with (“Class Counsel”). I make this declaration in support of Plaintiffs’ Unopposed Motion for Attorneys’ Fees, Costs, and Service Awards.

2. I believe that the proposed Settlement is fair, reasonable and adequate and a commendable result in the circumstances for the Class. The accompanying Declaration of Jordan Lurie, which is being file contemporaneously herewith, accurately summarizes the allegations and procedural history, the work undertaken by Class Counsel for the benefit of the Class, the Settlement Negotiations and post-Preliminary Approval services, the substantial contingent risks in and the complexity of this litigation, the benefits of the Settlement, and the valuation of those Settlement benefits.

HOURS EXPENDED BY BERGER & MONTAGUE ATTORNEYS

3. Berger & Montague has expended 1,041.10 hours through August 20, 2017, amounting to \$624,835.15 in lodestar, prosecuting this action and securing the benefits for the Class. These hours do not account for the additional hours that will be spent preparing further briefing (including finalizing the motion for final approval and the supplemental brief in support of final approval) and the many additional hours assisting Class Members in understanding the Settlement and submitting claims for many years to come. Berger & Montague has reviewed billing entries describing tasks performed that attorneys entered contemporaneously into counsel’s billing program (time not included in the hours submitted). California law does not require actual billing records; courts may award statutory fees based on declarations and summaries.

Accordingly, Berger & Montague prepared detailed time summaries to ease the Court’s

1 burden of reviewing the contemporaneously-entered time entries upon which the time
 2 summaries were based. However, Berger & Montague stands ready to provide the
 3 complete billing records upon the Court's request.

4 4. Following the review of the voluminous records, Berger & Montague
 5 sorted the entries by task categories, summarizing those tasks for the Court's
 6 convenience. The hours incurred reflect Class Counsel's exceptional efforts in
 7 surmounting a number of obstacles, including strong resistance from a well-financed
 8 opponent represented by highly experienced and skilled counsel, to secure an excellent
 9 Settlement for the Class:

10 **LODESTAR BY BILLER**

| Name | Position | Hours | Rate | Lodestar |
|------------------------|---------------------|-------|-------|--------------|
| Paul, Russell D. | Shareholder | 554.5 | \$675 | \$374,287.50 |
| Deutsch, Lawrence | Shareholder | 4.8 | \$695 | \$3,336.00 |
| Abramson, Glen L | Shareholder | 3.1 | \$675 | \$2,092.50 |
| Lechtzin, Eric | Shareholder | 27.7 | \$665 | \$18,420.50 |
| Stock, Arthur M. | Shareholder | 0.5 | \$665 | \$332.50 |
| Tompkins, Eugene R. | Senior Associate | 25 | \$560 | \$14,000.00 |
| Vines, Lane | Senior Counsel | 343.9 | \$550 | \$189,145.00 |
| Suter, Mark R | Associate | 13.4 | \$320 | \$4,288.00 |
| Filbert, David A. | Paralegal | 44.3 | \$330 | \$14,619.00 |
| Matteo, Shawn L. | Paralegal | 7 | \$330 | \$2,310.00 |
| Stein, Mark R. | Paralegal | 4 | \$330 | \$1,320.00 |

| | | | | |
|------------------|---|-----------------|--------|---------------------|
| Scafidi, Susan K | Legal Assistant | 0.5 | \$150 | \$75.00 |
| Fox, Trevor X | IT Consultant | 0.8 | \$60 | \$48.00 |
| McCollum, Sandy | Litigation Technology Support Coordinator | 4.3 | \$57.5 | \$247.25 |
| Rajendran, Arun | Database Analyst | 7.3 | \$43 | \$313.90 |
| TOTAL | | 1,041.10 | | \$624,835.15 |

Lodestar by Major Phase/Task of the Litigation

| Major Phases/Tasks of the Litigation | Hours | Amount(\$) |
|---|-----------------|---------------------|
| Arbitration (AR) | 64 | 42,859.50 |
| Client Communication (CC) | 55.8 | 36,565.00 |
| Discovery Factual Investigation (DI) | 183.4 | 97,763.90 |
| Case Strategy (FS) | 74.8 | 36,998.50 |
| Pretrial, Motion, Brief, Research (PT) | 323 | 209,480.25 |
| Settlement (ST) | 283.6 | 163,030.50 |
| Travel (TL) | 56.5 | 38,137.50 |
| TOTAL | 1,041.10 | \$624,835.15 |

BERGER & MONTAGUE’S QUALIFICATIONS, EXPERIENCE AND HOURLY RATES

5. Short biographies summarizing my experience and that of other attorneys at Berger & Montague are set forth in the firm resume attached as Exhibit A to the Declaration of Russell D. Paul in Support of Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement [Dkt. # 122]. Also set forth in the firm resume are Berger & Montague’s major accomplishments.

6. Berger & Montague pioneered the use of class actions in the United States and its work has resulted in numerous record-breaking recoveries over the past five decades. By way just a few examples:

- *Cook v. Rockwell International Corp.*, No. 14-1112, 2015 WL 3853593 (10th Cir. June 23, 2015) (reinstating a \$926 million trial judgment,

1 including prejudgment interest and punitive damages, obtained by Berger
2 & Montague on behalf of thousands of property owners whose homes
3 were contaminated by radioactive materials);

- 4 • Exxon Valdez Oil Spill Litig., No. A89 0095 (D. Alaska) (Berger &
5 Montague was a principal trial counsel and obtained a jury award of \$5
6 billion, later reduced to \$507.5 million by the U.S. Supreme Court); and
- 7 • *King Drug Co. of Florence, Inc. v. Cephalon, Inc.*, No. 2:06-cv-1797 (E.D.
8 Pa. Oct. 19, 2015) (\$512 million cash settlement in antitrust case alleging
9 delayed generic entry of narcolepsy drug Provigil).

10 7. *The National Law Journal*, which recognizes a select group of law firms
11 each year that have done “exemplary, cutting-edge work on the plaintiffs side,” has
12 selected Berger & Montague in 11 out of the last fourteen years (2003-05, 2007-13,
13 2015-16) for its “Hot List” of top plaintiffs’ oriented litigation firms in the United States.
14 The firm has also achieved the highest possible rating by its peers and opponents as
15 reported in Martindale-Hubbell.

16 8. In 2009, The Public Justice Foundation awarded its prestigious Trial
17 Lawyer of the Year Award to Berger & Montague attorneys in the *Rocky Flats* mass
18 tort/environmental class action, for their “long and hard-fought” trial victory against
19 “formidable corporate and government defendants,” the second time Berger &
20 Montague has won this award.

21 9. Most recently, Berger & Montague was honored as the top plaintiffs’ law
22 firm in the Employment category by *The National Law Journal* at the “2015 Elite Trial
23 Lawyer” awards.

24 10. In the field of consumer class actions, Berger & Montague has secured
25 substantial settlements. Examples of such settlements include: *In re TJX Cos. Retail*
26 *Security Breach Litig.*, MDL No. 1838 (D. Mass.) (Berger & Montague appointed co-
27 lead counsel in a consumer class action arising from what was then the largest data theft

1 case in history and obtained a settlement valued at over **\$200 million**); *Casey v.*
2 *Citibank, N.A.*, No. 5:12-cv-820 (N.D.N.Y.) (co-lead counsel on behalf of a nationwide
3 class of consumers concerning lender-placed insurance obtained a settlement valued at
4 over **\$122 million**); *In re Pet Foods Product Liab. Litig.*, MDL No. 1850 (D.N.J.)
5 (Berger & Montague appointed co-lead counsel in an MDL consumer class action
6 concerning contaminated pet food and obtained a **\$24 million** settlement providing class
7 members up to 100% of their economic damages); *Clements v. JPMorgan Chase Bank,*
8 *N.A.*, No. 12-cv-2179 (N.D. Cal.) (Berger & Montague served as co-lead counsel in
9 flood insurance case and obtained a **\$22 million** cash settlement).

10 11. Berger & Montague has an established practice group in automotive defect
11 class actions and has served as class counsel or a steering committee member in class
12 action settlements involving automotive defects on many occasions, including:

- 13 • *In re Volkswagen and Audi Warranty Extension Litig.*, No. 07-md-01790-
14 WGY (D. Mass.) (Berger & Montague, as co-lead counsel, obtained a
15 settlement that applied to 479,768 vehicles; allegations were that the 1.8
16 liter turbo-charged engines in Audi vehicles from the 1997 to 2004 model
17 years and Volkswagen Passat vehicles from the 1998 to 2004 model years
18 were unusually prone to the formation of oil sludge and coking deposits)
- 19 • *Yaeger, et al. v. Subaru of America, Inc., et al.*, No. 14-4490 (JBS/KMW)
20 (D. NJ) (class action settlement providing oil consumption testing, certain
21 repairs and replacements of engine components, reimbursements for
22 certain past expenses including for excess oil consumption, and warranty
23 extension to cover repairs and replacements of parts necessary to address
24 the oil consumption problem in certain Subaru vehicles)
- 25 • *Alex Soto and Vince Eagen, et al. v. American Honda Motor Co., Inc.*, No.
26 3:12-cv-1377-SI (N.D. Cal.) (Berger & Montague obtained a settlement
27 valued over \$40 million that provided reimbursements for engine misfire
28

1 repairs and extension of the Powertrain Limited Warranty of each
2 Settlement Class Vehicle to cover engine misfire until eight (8) years after
3 the original sale or lease of each Settlement Class Vehicle with no mileage
4 limitation)

- 5 • *Burgo v. Volkswagen of America, Inc. d/b/a Audi of America, Inc.*, No.
6 HUD-L-2392-01 (N.J. Super. Ct.) (Berger & Montague, as co-lead
7 counsel on behalf of a nationwide class, alleged that defendants' tires were
8 defective, and obtained a class settlement providing reimbursements for
9 tires and replacement of tires); and
- 10 • *Parker v. American Isuzu Motors, Inc.*, Sept. Term 2003, No. 3476 (Ct.
11 Com. Pleas, Phila. Cty.) (Berger & Montague, as lead counsel, obtained a
12 settlement providing class members up to \$500 each for economic
13 damages due to faulty brakes).

14 12. Berger & Montague's hourly rates for work on automotive defect cases
15 and other product defect class actions are consistent with rates that have been judicially
16 approved by numerous federal district courts. *See, e.g., MacDonald v. Ford Motor Co.*,
17 No. 13-02988-JST, 2016 WL 3055643 (N.D. Cal. May 31, 2016) (approving rates of
18 \$370 to \$695 action in an automotive defect case for the same attorneys at Capstone
19 working on this); *Klee v. Nissan N. Am., Inc.*, 2015 U.S. Dist. LEXIS 88270, *38 (C.D.
20 Cal. July 7, 2015) (approving rates of \$370 to \$695 for same attorneys at Capstone as
21 here in an automotive defect case); *Asghari v. Volkswagen Grp. of Am., Inc.*, No.
22 CV1302529MMMVBKX, 2015 WL 12732462, at *43 (C.D. Cal. May 29, 2015)
23 (same); *Aarons v. BMW of N. Am., LLC*, No. CV 11-7667 PSG CWX, 2014 WL
24 4090564, at **17-18 (C.D. Cal. Apr. 29, 2014), *objections overruled*, No. CV 11-7667
25 PSG CWX, 2014 WL 4090512 (C.D. Cal. June 20, 2014).

26 Berger & Montague's hourly rates are also consistent with the judicially-approved
27 hourly rates of comparable plaintiffs'-side attorneys, which rates are set forth in the

1 Declaration of Jordan Lurie, filed contemporaneously herewith.

2 **COSTS ADVANCED BY BERGER & MONTAGUE TO CLASS MEMBERS**

3 13. Berger & Montague incurred and advanced a total of \$19,965.90 in costs
4 and expenses—costs that would be normally billed to a fee-paying client—consisting of
5 the following based on information provided to me:

| 6 Cost & Expense Categories | Amount |
|--|--------------------|
| 7 Telephone | \$198.35 |
| 8 Travel | \$6,515.08 |
| 9 Reproduction costs | \$489.90 |
| 10 Reproduction costs: Print | \$276.20 |
| 11 Reproduction costs: Scans | \$7.65 |
| 12 Color Prints | \$2.40 |
| 13 Convert To Tiff | \$73.83 |
| 14 OCR | \$24.61 |
| 15 Hosting | \$5,829.11 |
| 16 Transcripts | \$487.95 |
| 17 Postage | \$11.23 |
| 18 Filing & Misc. Fees | \$1,430.00 |
| 19 Computer Research | \$1,383.99 |
| 20 Delivery & freight | \$154.60 |
| 21 VeloBind | \$1.00 |
| 22 DVD/CD Burns | \$80.00 |
| 23 TOTAL | \$16,965.90 |

24 **CONTRIBUTIONS OF NAMED PLAINTIFFS**

25 14. The requested service awards for Berger & Montague's clients, \$5,000,
26 each, to Joshua Bruno, Jamie Porterfield and Jason Porterfield, are reasonable and
27 appropriate. These Named Plaintiffs in *Cusick v. Ford Motor Company*, Case No. 2:15-
28 cv-08831-AB (C.D. Cal.), filed on November 12, 2015, are entitled to class
representative payments for their time and effort to support a case in which they had a
modest personal interest but which provided considerable benefits to Class Members—a
commitment undertaken without any guarantee of a financial award. Each of these
Named Plaintiffs provided documents to, and consulted with, counsel about the claims

1 in this case, and assisted throughout the course of the litigation. Each Plaintiff reviewed
2 the allegations of the *Cusick* Complaint and First Amended Complaint, kept in constant
3 contact with counsel regarding the status of the case, and responded to inquiries
4 regarding Ford and Ford dealers' efforts to remedy the problem. These Plaintiffs have
5 also stayed abreast of Settlement negotiations, reviewed the Settlement terms, and
6 approved the Settlement on behalf of the Class.

7

8 I declare under penalty of perjury under the laws of the United States of America
9 that the foregoing is true and correct. Executed this 21st day of August, 2017, at
10 Philadelphia, Pennsylvania.

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/s/ Russel D. Paul
Russell D. Paul

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