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10

11 UNITED STATES DISTRICT COURT

12 CENTRAL DISTRICT OF CALIFORNIA—WESTERN DIVISION

13

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

17 Plaintiffs,

18 v.

19 FORD MOTOR COMPANY,

20 Defendant.

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Case No. CV12-08388 AB (FFMx)

The Hon. André Birotte Jr.

**PLAINTIFFS’ NOTICE OF MOTION
 AND MOTION FOR FINAL
 APPROVAL OF CLASS ACTION
 SETTLEMENT; MEMORANDUM OF
 POINTS AND AUTHORITIES IN
 SUPPORT THEREOF**

Date: October 2, 2017

Time: 10:00 a.m.

Place: Courtroom 7B

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on October 2, 2017, at 10:00 a.m., in Courtroom
3 7B of the above-captioned Court, located at 350 West First Street, Los Angeles, CA
4 90012, the Honorable André Birotte Jr. presiding, Plaintiffs, on behalf of themselves and
5 all others similarly situated, will, and hereby do, move this Court to:

- 6 1. Enter an order finally approving the settlement described in the Settlement
7 Agreement [Dkt. No. 121-1] preliminarily approved by the Court on April 25, 2017;
8 2. Finally certify the Settlement Class;
9 3. Enter a judgment to dismiss the action.

10 This Motion, unopposed by Ford, is based upon: (1) this Notice of Motion and
11 Motion; (2) the Memorandum of Points and Authorities in Support of Motion for Final
12 Approval of Class Action Settlement; (3) the Declarations of Jordan L. Lurie, Russell D.
13 Paul and Kathleen Wyatt; (4) the Settlement Agreement and attached exhibits thereto;
14 (5) the [Proposed] Final Order and Judgment; (6) the records, pleadings, and papers filed
15 in this action; and (7) such other documentary and oral evidence or argument as may be
16 presented to the Court at or prior to the hearing of this Motion.

17 Dated: August 28, 2017

Respectfully submitted,

18 By: /s/ Jordan L. Lurie

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1 **I. INTRODUCTION**

2 The proposed Settlement provides extraordinary relief for up to 1.9 million Class
 3 Members and resolves this complex action involving alleged defects in the DPS6 or dual
 4 clutch PowerShift automatic transmission (“Transmission”).¹ During this five-year
 5 litigation, thousands of Class Members contacted Class Counsel to report that their Class
 6 Vehicles slip, buck, kick and/or jerk, resulting in sudden or delayed acceleration—
 7 problems that echo Plaintiffs’ allegations against Defendant Ford Motor Company
 8 (“Ford”) in the Complaint. Plaintiffs diligently investigated these claims, reviewing
 9 millions of documents and recording Class Members’ experiences.² With the guidance
 10 of esteemed mediator Professor Eric Green, the Parties eventually reached a Settlement.

11 Under the proposed Settlement, Class Members, current and former owners and
 12 lessees of the 2011-2016 Ford Fiesta and 2012-2016 Ford Focus vehicles equipped with
 13 the Transmission (“Class Vehicles”), may receive:

- 14 • Cash payments for three or more Service Visits for Transmission-related
 15 repairs—either for Software Flashes or Transmission Hardware Replacements
 16 —even where Class Members have incurred no out-of-pocket costs. Starting
 17 with the third Service Visit, Class Members will either receive \$50 for each
 18 qualifying Software Flash, for up to \$600 in total payments, or \$200 for the
 19 first qualifying Transmission Hardware Replacement, with increasing
 20 payments for each subsequent qualifying Service Visit up to \$2,325.³
- 21 • A repurchase of their Class Vehicle through an innovative Arbitration

22
 23 ¹ All capitalized terms herein are defined in the Settlement Agreement previously
 submitted by the Parties and preliminarily approved by the Court. (Dkt. No. 121-1.)

24 ² Plaintiffs are Omar Vargas, Michelle Harris, Sharon Heberling, Robert Bertone,
 25 Kevin Klipfel, Andrea Klipfel, Maureen Cusick, Eric Dufour, Abigail Fisher, Christi
 26 Groshong, Virginia Otte, Tonya Patze, Lindsay Schmidt, Patricia Schwennker, Patricia
 Soltesiz, Joshua Bruno, Jason Porterfield, and Jamie Porterfield.

27 ³ “Transmission Hardware Replacement” is a defined term and, in lieu of cash,
 28 Class Members may elect to receive a Vehicle Discount Certificate (“Certificate”) toward the purchase of a new Ford vehicle for twice the cash value.

1 Program (the “Program”) that extends the statute of limitations for consumers
2 for repurchase claims under state law to six years from the date of original sale
3 or six months of the Effective Date of the Settlement, whichever is later
4 (which is considerably longer than the limitations period for most states’
5 lemon laws). Under the Program, an Arbitrator will award a repurchase if the
6 Class Member qualifies under the lemon law of the state in which the Class
7 Member took delivery of the car or, in the alternative, the Settlement’s default
8 rule, which requires 4 Transmission Hardware Replacements within 5
9 years/60,000 miles from delivery of the vehicle to the first owner or lessee
10 (which is more generous than most states’ lemon laws).

- 11 • Other Settlement benefits include (a) a qualified version of the Program
12 (“Warranty Arbitration”) for Class Members who have incurred out-of-pocket
13 expenses for repairs that should have been covered by Ford’s New Vehicle
14 Limited Warranty or who believe that a Ford dealer improperly denied
15 Warranty repairs, and (b) reimbursement for a third clutch replacement for
16 certain Class Vehicles.

17 Importantly, Class Members can continue to submit claims for qualifying Service Visits
18 made within 7 years /100,000 miles of original delivery of each Class Vehicle, which
19 means that the claims process will remain open to Class Members for years after Final
20 Approval.

21 Together, these Settlement benefits provide relief to Class Members who might
22 otherwise have no recourse for the problems associated with the alleged Transmission
23 defect. Current and former Class Members can receive cash payments for multiple
24 Service Visits for Transmission repairs covered under warranty (where they incurred no
25 out-of-pocket costs). And by creating a consumer-friendly Program for the resolution of
26 repurchase claims, the Settlement helps Class Members who were most adversely
27 affected by the defect alleged. Consumers with suits related to the Transmission pending
28 as of July 14, 2017, are automatically excluded from the Settlement but may opt-in, and

1 Class Members are not required to release personal injury or property claims. These
2 benefits are in addition to the warranty extension and other services under the two
3 customer satisfaction programs that Ford implemented after Plaintiffs filed this lawsuit,
4 *supra*.

5 The Settlement’s benefits are particularly impressive in light of the considerable
6 risks faced by Plaintiffs if litigation continued, including the uncertainty of certifying the
7 Class based on the alleged defect, prevailing at trial, and surviving an appeal. In sum, the
8 proposed Settlement is fair, reasonable, and adequate. Accordingly, the Parties
9 respectfully request that the Court enter an order (a) granting final approval of the
10 Settlement and overruling the objections, (b) finally certifying the Settlement Class, (c)
11 granting Plaintiffs’ Motion for Attorneys’ Fees, Costs, and Service Awards, and (d)
12 entering the concurrently-filed proposed Final Order and Judgment.

13 **II. FACTS AND PROCEDURE**

14 **A. Overview of the Litigation**

15 This action consolidates three cases. The original action was filed by Plaintiff
16 Omar Vargas on September 28, 2012, in the Central District of California against
17 Defendant Ford Motor Co. and complained of lunging or jerking forward when
18 attempting to decelerate, hesitation, and jerking when attempting to accelerate, akin to a
19 slingshot effect. (Dkt. No. 1.) The Complaint alleged that the Transmission, which Ford
20 billed as a new type that combines the best features of automatic and standard
21 transmissions, causes Class Vehicles to slip, buck, jerk, and suffer sudden or delayed
22 acceleration and delays in downshifts (“Alleged Defect”). Alleging Ford failed to
23 disclose to consumers the Alleged Defect and that it was a safety hazard, Plaintiff sought
24 damages and injunctive relief under California consumer protection laws, breach of
25 express warranty, and breach of implied warranty under the Song-Beverly Consumer
26 Warranty Act.

27 The First Amended Complaint was filed on December 12, 2012, to add a claim
28 for damages. (Dkt. No. 24) The Second Amended Complaint was filed on August 30,

1 2013, to join additional plaintiffs Robert Bertone, Michelle Harris, and Sharon Heberling
2 and to add a claim for violation of Florida’s consumer’s laws. (Dkt. No. 57.)

3 Another suit alleging nearly identical claims, *Klipfel v. Ford Motor Co.*, No. 15-
4 CVP0044, was first filed in San Luis Obispo Superior Court on February 20, 2015. Ford
5 removed *Klipfel* to the Central District of California under the assigned case number
6 2:14-cv-02140-AB (FFMx). Following the Parties’ stipulation, the Court consolidated
7 the *Vargas* and *Klipfel* actions on December 2, 2015. (*Vargas* Dkt. No. 34.) Two
8 additional actions alleging similar claims, *Cusick v. Ford Motor Co.*, No. 2:15-cv-
9 08831-AB (C.D. Cal.), filed on November 12, 2015, and *Anderson v. Ford Motor Co.*,
10 No. 1:16-cv-01632 (N.D. Ill.), filed on April 21, 2016, were also brought by Ford
11 consumers. *Cusick* was consolidated with the instant action on February 22, 2017
12 (*Vargas* Dkt. 52), and the First Amended Complaint in *Cusick*, filed on February 22,
13 2016, was deemed the “Operative Complaint” for settlement purposes.

14 Ford instituted two Customer Satisfaction Programs, called 14M01 and 14M02,
15 during the pendency of the litigation. (*See* Declaration of Jordan L. Lurie [“Lurie
16 Decl.”], ¶ 5.) The 14M01 Program attempted to address the problems Plaintiffs
17 identified in this lawsuit by extending the warranty coverage for the Transmission’s
18 input shafts, clutch, and software calibration in those Class Vehicles manufactured prior
19 to June 5, 2013. (*Id.*) The 14M02 Program extended the warranty on the Transmission
20 Control Module to 10 years of service or 150,000 miles for specific 2011-2015 Fiesta
21 and 2012-2015 Focus vehicles. (*Id.*) However, Plaintiffs alleged that neither program
22 fully remedied the harm Class Members experienced. (*Id.*)

23 **B. Plaintiffs’ Considerable Investigation and Discovery**

24 Both before and after these actions were filed, Plaintiffs thoroughly investigated
25 and litigated their claims, including conducting testing regarding the Alleged Defect,
26 which allowed Plaintiffs’ counsel to evaluate Ford’s representations concerning the
27 alleged Transmission problems and repair solutions. (Lurie Decl. ¶ 6.) Among other
28 tasks, Plaintiffs fielded tens of thousands of inquiries from putative Class Members and

1 investigated many of their reported claims. They consulted and retained automotive
2 experts and researched publicly available materials and information provided by the
3 National Highway Traffic Safety Administration (“NHTSA”) concerning consumer
4 complaints about the Transmission. They reviewed and researched consumer complaints
5 and discussions of Transmission problems in articles and forums online, in addition to
6 various manuals and technical service bulletins (“TSBs”) discussing the alleged defect.
7 Finally, they conducted research into the various causes of actions and other similar
8 automotive actions. (*Id.*)

9 Furthermore, Plaintiffs propounded discovery on Ford. (Lurie Decl. ¶ 7.) In
10 response, Ford produced over 1.5 million pages of documents, including spreadsheets
11 with millions of lines of data, owners’ manuals, maintenance and warranty manuals,
12 design documents (*e.g.*, technical drawings), VIN Decoders, TSBs, field reports,
13 customer comments detail reports, warranty data, and internal emails and emails
14 between Ford and third parties regarding the Transmission. Class Counsel also defended
15 depositions of four class representatives. (*Id.*)

16 Plaintiffs obtained additional discovery from third parties Getrag Transmission
17 Corporation (“Getrag”), and LuK USA LLC, LuK Clutch Systems, LLC and LuK
18 Transmission Systems, LLC (collectively, “LuK”), the manufacturers and suppliers of
19 the Transmission and its clutches. Plaintiffs subpoenaed and received over 20,000
20 documents comprised of 117,000 pages from Getrag and nearly 10,000 documents
21 comprised of over 36,000 pages from LuK. In addition, Plaintiffs took the deposition of
22 Getrag’s corporate representative. (Declaration of Russell D. Paul [“Paul Decl.”] ¶¶ 7-
23 11.)

24 In reviewing this discovery, including hundreds of thousands of pages of email
25 correspondence and databases containing millions of lines of data, Plaintiffs identified
26 information that was instrumental to the case and to Plaintiffs’ efforts during mediation
27 (Lurie Decl. ¶ 8.) For example, Plaintiffs identified the “DPS6 Evidence Book
28 (November 22, 2013),” a 166-page document compiled by Ford after the original

1 *Vargas* action was filed that catalogued the steps taken by Ford during the
2 Transmission’s development, manufacture, and implementation. (*Id.*)

3 Plaintiffs identified topics for their Fed. R. Civ. P. 30(b)(6) depositions, including
4 that of Chris Kwasniewicz, the engineer Ford assigned to “problem solve” the
5 Transmission, and Matt Fyie, a Design Analysis Engineer for Ford’s automatic
6 transmissions. (Lurie Decl. ¶ 9.) These depositions elicited information about the
7 Transmission’s design, its dual-clutch function, the manufacturing processes of its
8 various components, the problems it exhibited and their root causes, changes to the
9 clutch material, the input shaft seals, control software, and the customer service
10 programs and warranty extensions Ford initiated during the litigation. (*Id.*)

11 Finally, over the course of litigation, thousands of Class Members contacted Class
12 Counsel to report problems with their Class Vehicles and seek relief. (Lurie Decl. ¶ 10.)
13 Class Counsel logged each Class Member’s complaint in a database and developed a
14 plan for litigation and settlement based in part on Class Members’ reported experiences
15 with their Class Vehicles and with Ford dealers. (*Id.*)

16 **C. The Parties’ Protracted Arms-Length Settlement Negotiations**

17 The proposed Settlement is the culmination of lengthy discussions between the
18 Parties, consultation with their experts, comprehensive discovery, and thorough analysis
19 of the pertinent facts and law at issue. (Lurie Decl. ¶ 11.) To facilitate settlement, the
20 Parties, on August 18, 2015, attended the first of a series of mediation sessions in
21 Boston, Massachusetts with one of the top mediators in the field, Professor Eric D.
22 Green of Resolutions LLC. (*Id.*) In advance of the mediation, the Parties submitted
23 detailed mediation briefs setting forth their positions. (*Id.*) The Parties were unable to
24 reach an agreement on all material terms of the proposed relief to the Class in this initial
25 mediation but agreed to engage in further negotiations with Prof. Green. (*Id.*)

26 Following a second session on May 6, 2016, the Parties made substantial
27 progress, and, with Prof. Green’s continuing assistance, agreed to terms regarding relief
28 for the Class during a third session on June 2, 2016. (*Id.* ¶ 12.) On June 9, 2016, after

1 confirming the terms for Class relief, the Parties participated in a fourth mediation
 2 session in Boston with Prof. Green focused solely on the issue of attorneys' fees, costs,
 3 and service awards, which they were ultimately able to resolve. (*Id.*) Plaintiffs and Class
 4 Counsel took care to ensure that their interests aligned with those of the Class by
 5 negotiating attorneys' fees, costs, and service awards only after the Settlement benefits
 6 for the Class had been determined. (*Id.*)

7 After completing mediation, the Parties worked diligently to formalize this
 8 complex, sweeping Settlement. Counsel for the Parties devoted considerable effort and
 9 time to, *inter alia*, (a) refining and harmonizing the separate cash payment components
 10 of the Settlement, (b) researching each state's lemon laws and drafting the Program
 11 Rules, (c) creating notices and other materials that answer Class Members' anticipated
 12 questions about the Settlement, and (d) drafting the Settlement Agreement and the
 13 motion papers seeking its approval. (Lurie Decl. ¶ 13.)

14 **D. Material Terms of the Class Action Settlement**

15 **1. Cash Payments or Vehicle Discount Certificates for Hardware** 16 **Part Replacements**

17 The Settlement provides that Class Members who have had three or more
 18 qualifying Service Visits to authorized Ford dealers to replace qualifying parts, *i.e.*
 19 Transmission Hardware Replacements,⁴ are entitled to either a cash payment or a
 20 Discount Certificate, valued at twice the amount of the cash payment, toward the
 21 purchase or lease of a new Ford vehicle. (Settlement Agreement ¶ II.C.) The value of
 22 each cash payment or Certificate is determined by the number of Service Visits made,
 23 with \$2,325 cash or \$4,650 Certificate value being the maximum amount payable. The
 24

25 ⁴ Transmission Parts are defined as the following parts for the Transmission: (1)
 26 7B546 Disc Asy-Clutch; (2) 7Z369 Control Mod Trans (TCM); (3) 7052 Oil Seal-Trans
 27 Rear; (4) 7000 Transmission Asy-Aut; (5) 7C604 Motor-Frt Clutch; (6) 7A508 Rod-
 28 Cl/Slave Cyl Pus; (7) 6K301 Seal/RetC/Shft Oil; (8) 7060 Shaft/Bshg Asy-Out; (9) 7048
 Seal-Input Shaft Oil; and/or (10) 7515 Lever Asy-Clutch Rel. These ten parts are the
 most common parts replaced on the Transmission.

1 full payment schedule is below:

2	3	4	5	6	7	8	9
	Number of Service Visits for Transmission Part Replacements	Cash Payment	Certificate Value				
	3	\$200	\$400				
	4	\$275	\$550				
	5	\$350	\$700				
	6	\$425	\$850				
	7	\$500	\$1,000				
	8	\$575	\$1,150				
	Total maximum	\$2,325	\$4,650				

10 The Settlement does not impose a definitive cut-off date for Class Members to
 11 submit claims for which they qualify (Settlement Agreement ¶ II.D.), and each Class
 12 Member remains eligible for new or additional benefits for a qualifying Transmission
 13 Hardware Replacement made within 7 years of delivery of the Vehicle to the first retail
 14 customer or within 100,000 miles of the date of delivery of the Vehicle to the first retail
 15 customer, and the Class Member timely files the claim.

16 2. Cash Payments for Software Flashes

17 The Settlement provides that Class Members are also entitled to receive \$50 for
 18 each Software Flash, starting with the third, that was performed within the same 7
 19 year/100,000 mile period. (Settlement Agreement ¶ II.B.) Class Members may receive
 20 up to \$600 in payments for Software Flashes. As with the Transmission Hardware
 21 Replacements, Class Members may continue to submit new or additional claims for
 22 each qualifying Service Visit that is made within 7 years or 100,000 miles of the date of
 23 delivery of the Vehicle to the first retail customer, whichever comes first. (*Id.*, ¶ II.D.)
 24 Once Class Members have qualified for and submitted a Transmission Hardware
 25 Replacement payment, however, they are no longer eligible for Software Flash
 26 payments.

27 3. Arbitration Program for Repurchases

28 Class Members are eligible to participate in the Program, paid for by Ford, to seek

1 the repurchase or replacement of their Class Vehicles. (Settlement Agreement ¶ II.N.)
2 This Program enhances Class Members' rights in several ways. The Program resolves
3 Class Members' lemon law claims within two months of submission, rather than the
4 year or more for a lemon law suit filed in state court. The Program also extends the
5 applicable statute of limitations, preserving claims for six years from the date of original
6 sale or six months of the Effective Date of the Settlement, whichever is later. (*Id.*, ¶
7 II.N.1.d.) Ford will pay a maximum of \$6,000 in attorneys' fees to each Class Member
8 who prevails on his or her claim.⁵ (*Id.*, ¶ II.N.1.h.)

9 Perhaps most importantly, claims for repurchase submitted to the Program will be
10 governed either by the state lemon law applicable to each Class Member or by the
11 Settlement's consumer-friendly default remedy. (*Id.*, ¶ II.N.1.e.) Under the default
12 remedy, if the Class Member does not satisfy the requirements of the applicable state
13 law, the Arbitrator may award a repurchase if 4 or more Transmission Hardware
14 Replacements were performed within 5 years or 60,000 miles of the original purchase,
15 and the vehicle continues to malfunction. This default remedy is more generous to
16 consumers than most state's lemon laws.

17 **4. Arbitration Program for Breach of New Vehicle Limited** 18 **Warranty**

19 Class Members who have incurred out-of-pocket expenses for repairs they
20 believe should have been covered by Ford's New Vehicle Limited Warranty

21
22 ⁵ Significantly, Class Members will have the opportunity to appeal an adverse
23 Program decision to a JAMS arbitrator, though any costs for an appeal must be
24 advanced by the Class Member, to be reimbursed by Ford if the Class Member prevails.
25 (*Id.*, ¶ II.N.1.g.) Ford has no right to appeal. The Arbitrator may not award civil penalties
26 or punitive damages, which are available in some jurisdictions, and Class Members
27 cannot appeal an adverse decision to a court. (*Id.*, II.N.1.g & II.N.3.) Furthermore, even
28 if a Class Member's first repurchase claim is denied, he or she may pursue a second
repurchase claim under the Program if his or her Class Vehicle has subsequent
qualifying repairs. (*Id.*, ¶ II.N.1.i.) Finally, Class Members will not be denied the
opportunity to re-submit a repurchase claim to the Program, even if an initial claim for a
buyback made with the Better Business Bureau or other similar organization prior to the
Settlement was denied. (*Id.*)

1 (“Warranty”) or who believe that a Ford dealer improperly denied Warranty repairs are
2 eligible to pursue their claims in a qualified version of the Program (“Warranty
3 Arbitration”). (Settlement Agreement ¶ II.N.2.) Ford will pay the costs of each Warranty
4 Arbitration, and the Arbitrator is authorized to award reimbursement, a free repair, an
5 extension of warranty by Ford, or any combination thereof. However, the Arbitrator may
6 not award a Class Member’s attorneys’ fees, and claims must be submitted within the
7 statute of limitations for express warranty claims as determined by law of the state in
8 which the Class Vehicle was purchased.

9 **5. Reimbursements for Clutch Replacement**

10 The Settlement provides that Class Members who own or lease a Class Vehicle
11 manufactured after June 5, 2013, and who had two clutches replaced during the 5-
12 year/60,000-mile Powertrain Warranty, are entitled to reimbursement for out-of-pocket
13 costs for a third clutch replacement made within 7 years/100,000 miles from delivery to
14 the first retail customer. (Settlement Agreement ¶ II.G.) The replacement clutch will also
15 be covered by a two-year warranty.

16 **6. A Streamlined Claims Process That Will Be Open to Class**
17 **Members for Years**

18 The claims process has been designed to minimize the burden on Class Members
19 while ensuring that only valid claims are paid. The Settlement requires Class Members
20 to submit documentation typically required to substantiate such claims. (Settlement
21 Agreement ¶ II.E.) Class Members need only provide, either electronically through the
22 Claims Administrator’s website portal or by mail, a receipt, repair order, or other invoice
23 containing standard information, (*e.g.*, repair date, a description of the vehicle, the
24 dealership or facility where the work was performed, the vehicle’ mileage at the time of
25 repair, an itemized list of parts and labor), along with proof of ownership and a sworn
26 written statement attesting to the authenticity of the documents provided.⁶ (*Id.*)

27
28 ⁶ For reimbursement of a clutch replacement, Class Members will need to show proof of payment, common for such claims, and a diagnostic from a Ford dealer

1 Subsequent claims for cash payments will have a reduced standard for proof, as the
2 Claims Administrator will retain previous submissions. (*Id.*, ¶ II.E.4.) This process
3 imposes minimal burdens on Class Members while satisfying the need for proof.

4 Claims may be submitted easily through the Settlement website immediately
5 following Final Approval. A portal will walk Class Members through a series of
6 prompts and fields in which to provide the information required. The site will provide
7 clear instructions, and the portal will permit Class Members to upload scanned
8 documents supporting their claims.

9 Ford will pay the Claims Administrator to process Class Members' claims
10 expeditiously following Final Approval, including their review and evaluation of Class
11 Members' claims. (Settlement Agreement ¶ II.O.) Class Members who are entitled to a
12 cash payment or Certificate will be paid promptly following the claim submission or
13 after the Effective Date, whichever is later. (*Id.*) The Claims Administrator's duties will
14 continue for many years. As explained above, so long as a Service Visit for a
15 Transmission Hardware Replacement or Software Flash is made within the 7
16 year/100,000 mile period of eligibility, the Class Member may continue to submit claims
17 for qualifying Service Visits made after the Effective Date. Class Members will have up
18 to 180 days from the qualifying visit to submit such claims.

19 Furthermore, the Settlement provides that Class Members have 30 days to cure
20 and resubmit any claim the Claims Administrator rejects due to missing information or
21 other curable deficiency.

22 The Program is also streamlined. A Class Member initiates the process by calling
23 a dedicated phone number or by submitting a form through the Settlement website or by
24 mail, indicating directly to Ford his or her intent to submit a claim for repurchase or
25 breach of warranty. (Settlement Agreement ¶ II.N.1.) Ford will then have ten days to
26 resolve the matter informally with the Class Member. During that period, if the Class

27 _____
28 showing that a clutch replacement was necessary, which is provided as a matter of
course. (*Id.* ¶ II.G.1-2.)

1 Member's claim is for repurchase and no more than three Transmission repairs have
2 been attempted, Ford will have an opportunity to attempt a single, additional repair at no
3 cost to the Class Member. If that additional repair does not immediately resolve the
4 problem, the Class Member may then proceed to Arbitration after the 10-day notice
5 period. (Settlement Agreement ¶ II.N.1.b.) Class Members with claims for repurchase
6 who have had four or more attempted Transmission repairs made by a Ford dealer or
7 who have already sold or returned the Class Vehicle may directly proceed to Arbitration
8 after the 10-day Notice period. (*Id.*)

9 **7. The Limited Release**

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

16 **8. Ford's Payment of Claims Administration Costs, Attorneys' 17 Fees and Costs, and Service Payments**

18 Under the Settlement, Ford will pay the Claims Administration costs, including
19 the Arbitration Administrator's costs, Attorneys' fees and costs, and service awards to
20 the Class Representatives. (*See* Settlement Agreement ¶¶ II.N, II.P, III.C.) These costs
21 are considerable. As detailed below, the Claims Administrator, Kurtzman Carson
22 Consultants ("KCC"), mailed over 2 million notices and has already devoted substantial
23 resources to maintaining the Settlement website. The costs to process Class Members'
24 claims will also be high. Furthermore, the Arbitration Administrator, DeMars &
25 Associates, Ltd. ("DeMars"), will be launching its own website and staffing personnel to
26 review repurchase and breach of warranty claims. Ford will pay the Program's fees for
27 claims and for attorneys' fees of up to \$6,000 to Class Members who prevail on a
28 repurchase claim. (Settlement Agreement, ¶¶ II.N., II.N.1.h.)

1 The Parties have negotiated sums for attorneys’ fees, expenses, and service
2 awards separately, with the amount finally awarded by the Court not affecting or
3 diminishing the Class benefits in any way. (*See* Settlement Agreement ¶ II.P.) Subject to
4 Court approval, Ford has agreed to pay Class Counsel’s attorneys’ fees and documented
5 costs of a combined sum up to \$8,856,600 on behalf of all Plaintiffs’ Counsel. (*Id.*)
6 Subject to Court approval, Ford has also agreed to pay service awards to the named
7 Class Representatives for their efforts to secure relief on behalf of the Settlement Class,
8 in the sum of between \$1,000 and \$10,000 each, to be paid separately from the Class
9 benefits. (*Id.* ¶ II.Q.) Support for Plaintiffs’ fees, costs, and service awards is set forth in
10 the Motion for Attorneys’ Fees, Costs, and Service Awards, filed on August 21, 2017.
11 (Dkt. No. 146.)

12 **E. The Court Granted Preliminary Approval**

13 Class Counsel filed Plaintiffs’ Motion for Preliminary Approval of the Class
14 Action Settlement on March 24, 2017. (Dkt. No. 120.) Following the hearing on
15 April 24, 2017, the Court granted preliminary approval on April 25, 2017. (Dkt.
16 No. 133.) In its Order Granting Preliminary Approval, this Court determined that the
17 Settlement Class, as defined, satisfies the requirements of Federal Rules of Civil
18 Procedure 23(a) and 23(b)(3). (*Id.* ¶¶ 3-7.) The Court designated Plaintiffs Omar Vargas,
19 Michelle Harris, Sharon Heberling, Robert Bertone, Kevin Klipfel, Andrea Klipfel,
20 Maureen Cusick, Eric Dufour, Abigail Fisher, Christie Groshong, Virginia Otte, Tonya
21 Patze, Lindsay Schmidt, Patricia Schwennker, Patricia Soltesiz, Joshua Bruno, Jason
22 Porterfield, and Jamie Porterfield as the Class Representatives of the Settlement Class.
23 (*Id.* ¶ 5.) The Court also appointed Capstone Law APC, Berger & Montague, P.C., and
24 Zimmerman Law Offices, P.C. as Class Counsel and designated Capstone as Lead Class
25 Counsel. (*Id.* ¶ 6.)

26 Upon review of the Settlement terms, this Court also found that the Settlement’s
27 “terms appear sufficiently fair, reasonable, and adequate” for the purposes of preliminary
28 approval. (*Id.* ¶ 8.) The Court approved the form of the notices, including the Short Form

1 Class Notice to be disseminated to Class Members and a Long Form Class Notice that
2 has been uploaded to the Settlement website. (*Id.* ¶ 9.) The Court then appointed KCC as
3 Claims Administrator to administer the notice and claims process. (*Id.* ¶ 11.)

4 Following the Parties' Stipulations, the Court entered orders amending the
5 Preliminary Approval Order on scheduling (Dkt. No. 135) and the temporary restraining
6 order. (Dkt. No. 139.)

7 **F. Implementing the Class Notice Program**

8 Pursuant to the Settlement Agreement and the Preliminary Approval Order, KCC
9 and the Parties successfully implemented the Class Notice plan. On April 3, 2017, 10
10 days after Plaintiffs filed the Motion for Preliminary Approval, KCC sent out notices to
11 attorneys general of all fifty states pursuant to the Class Action Fairness Act ("CAFA").
12 (Declaration of Kathleen Wyatt ["Wyatt Decl."] ¶ 3.) KCC then obtained the contact
13 information for Class Members from Ford and a third-party vendor, Polk. (*Id.* ¶¶ 4-10.)

14 Pursuant to the Scheduling Order, on July 7, 2017, KCC sent over 2.15 million
15 Short Form Class Notices to Class Members.⁷ (*Id.* ¶ 11.) The Short Form Class Notice,
16 which was approved by the Court, advises Class Members about their rights under the
17 Settlement and the Settlement's benefits, including the deadline to object, opt-out, or opt-
18 in (for those with pending suits). The Short Form Class Notice also provides KCC's toll-
19 free number and website address www.FordTransmissionSettlement.com, which
20 provides additional information and will serve as the primary claims portal. The
21 Settlement website provides extensive information regarding the Settlement, including
22 FAQs for Class Members, and maintains important documents for Class Members to
23 review. KCC then caused the publication notice to be published in the USA Today on
24 July 13, 2017. (*Id.* ¶ 14.) 129,996 mailed Class Notices were returned as undeliverable.
25 After performing an additional search through a third-party locator service to update
26

27 ⁷ Approximately 258,726 non-Class Members (owners/lessees of Focus and
28 Fiestas not equipped with the DPS6 PowerShift Transmission) were inadvertently sent
Class Notices. (Wyatt Decl. ¶ 15.)

1 addresses, KCC promptly re-mailed 87,342 Class Notices. (*Id.* ¶ 16.)

2 The deadline for opt-outs, objections, and opt-ins (for those with pending
3 lawsuits) is September 5, 2017. Thus far, 1,081 Class Members have opted out. (Wyatt
4 Decl ¶ 17.) Pursuant to the Court's order, Plaintiffs will submit updated information
5 regarding the final reaction of Class Members and respond to each objection in a
6 supplemental brief.

7 **G. Class Counsel's Ongoing Efforts to Educate and Advise Class**
8 **Members**

9 Due to the high interest in this litigation, even before Preliminary Approval, Class
10 Counsel received dozens of inquiries a day, with a substantial number of putative Class
11 Members continuing to submit repair orders or provide other, detailed information about
12 their experiences with the Class Vehicles and the Alleged Defect. (Lurie Decl. ¶¶ 17-19.)
13 Since Preliminary Approval, Class Counsel has continued to devote considerable time
14 and resources to Class Members' inquiries, which now surpass 18,000, confirming and
15 explaining the Settlement benefits. (*Id.*) Indeed, the flood of Class Member inquiries
16 following Preliminary Approval required multiple attorneys to work exclusively on this
17 case. (*Id.*)

18 As part of their comprehensive efforts to accommodate Class Members following
19 the dissemination of Class Notice, Lead Class Counsel responded to hundreds of phone
20 calls a day from Class Members, e-mailed another several dozen a day, created an
21 interactive voice response system, developed a content-rich website to educate Class
22 Members about the Settlement's benefits, and worked to resolve numerous
23 administrative issues that arose during this phase. (Lurie Decl. ¶ 18.) Moreover, Class
24 Counsel worked with Ford's counsel to contribute to the development of the Claims
25 Administrator's Settlement website and interactive voice response system, as well as to
26 the Arbitration Administrator's website. (*Id.*) The Claims Administrator's website has
27 had 279,500 hits since its inception, underscoring Class Members' high interest in this
28 case. (Wyatt Decl. ¶ 13.)

1 **III. ARGUMENT**

2 **A. The Parties Have Met Their Obligations Under Preliminary**
3 **Approval Order**

4 In its Order Granting Preliminary Approval (Dkt. No. 133), the Court set forth
5 certain obligations that need to be satisfied, including the CAFA Notice and the Class
6 Notice requirements. Both requirements have been satisfied.

7 **1. CAFA Notice Requirements Were Satisfied**

8 Notice under CAFA, 28 U.S.C. § 1715, has been satisfied. CAFA requires that
9 “[n]ot later than 10 days after a proposed settlement of a class action is filed in court,
10 each defendant that is participating in the proposed settlement shall serve [notice of the
11 proposed settlement] upon the appropriate State official of each State in which a class
12 member resides and the appropriate Federal official.” 28 U.S.C. § 1715(b). A court is
13 precluded from granting final approval of a class action settlement until CAFA notice
14 requirements are met. 28 U.S.C. § 1715(d) (“An order giving final approval of a
15 proposed settlement may be issued earlier than 90 days after the later of the dates on
16 which the appropriate Federal official and the appropriate State officials are served with
17 the notice required under [28 U.S.C. § 1715(b)].”).

18 On April 3, 2017, 10 days after the filing of Plaintiffs’ Motion for Preliminary
19 Approval, the Claims Administrator timely and properly sent notices to the Attorney
20 General of the United States and the attorneys general of all 50 states and the relevant
21 U.S. territories and districts, informing them of the proposed Settlement. (Wyatt Decl. ¶
22 3.) At the request of the attorneys general of California, Arizona, Michigan, New Jersey,
23 North Carolina, Texas, and Washington, the Parties stipulated to amend the Preliminary
24 Approval Order to ensure that Class Members can cooperate with any state
25 investigation, and that stipulation was filed on July 7, 2017. (Dkt. No. 138.) The Court
26 granted the request and entered the amended order on July 11, 2017. (Dkt. No. 139.)

27 At this time, no governmental authority has indicated that it will object to the
28 Settlement. *See In re LinkedIn User Privacy Litig.*, 309 F.R.D. 573, 589 (N.D. Cal.

1 2015) (finding that “CAFA presumes that, once put on notice, state or federal officials
2 will raise any concerns that they may have during the normal course of the class action
3 settlement procedures”).

4 **2. Rule 23(c) Notice Requirements Were Satisfied**

5 The Court “must direct to class members the best notice that is practicable under
6 the circumstances.” Fed. R. Civ. P. 23(c)(2). Notice serves to afford class members due
7 process, providing them with the opportunity to be excluded from the class action and
8 not be bound by any subsequent judgment. *See Eisen v. Carlisle & Jacquelin*, 417 U.S.
9 156, 173-74 (1974). However, “due process requires reasonable effort to inform affected
10 class members through individual notice, not receipt of individual notice.” *Rannis v.*
11 *Recchia*, 380 F. App’x 646, 650 (9th Cir. 2010).

12 As detailed above, Notice was provided in accordance with the Court-approved
13 Notice program. As detailed in project manager Kathleen Wyatt’s declaration, KCC
14 undertook considerable effort to collect the names and contact information of the
15 owners/lessees of Class Vehicles. (Wyatt Decl. ¶¶ 4-10.) After compiling this
16 information, KCC mailed 2.1 million individual Short Form Class Notices. (*Id.* ¶ 11.)
17 This Notice, approved by this Court, provides basic information about the case and its
18 allegations, the Settlement’s benefits, Class Members’ rights, and the opt-out and
19 objection deadlines and identifies the Settlement website address and KCC’s toll-free
20 number. *See, e.g., Hartless v. Clorox Co.*, 273 F.R.D. 630, 636 (S.D. Cal. 2011)
21 (granting final approval of class action settlement where the notice contained a
22 description of the lawsuit and settlement relief, a description of class members’ rights,
23 and the settlement website and toll-free number).

24 The Settlement website maintained by KCC provides detailed information about
25 the case and the Settlement Agreement, including a FAQ section and a downloadable
26 copy of the Long Form Class Notice that provides detailed information about the case
27 and answers anticipated questions from Class Members. (Wyatt Decl., ¶ 12-13.) For
28 their part, Lead Class Counsel also maintain a Settlement website with detailed

1 explanations, in layman’s terms, about the Settlement benefits and Class Members’
2 rights. (Lurie Decl. ¶ 18.) As noted above, KCC took additional steps to update
3 addresses and re-mail 87,342 of the notices that were returned as undeliverable and
4 caused the publication notice to be published in *USA Today*. (Wyatt Decl. ¶¶ 14, 16.)
5 Based on the foregoing, the notice requirement has been satisfied.

6 **B. Class Certification Requirements Are Met**

7 The Court certified the Class for settlement purposes upon Preliminary Approval,
8 finding that requirements under Rule 23(a) and Rule 23(b)(3) are satisfied. (*See* Dkt. No.
9 133, ¶¶ 3-7.) Nothing has changed that would affect the Court’s ruling on class
10 certification. (Lurie Decl. ¶ 20.) *See Chambers v. Whirlpool Corp.*, 214 F. Supp. 3d 877
11 (C.D. Cal. 2016) (reconfirming the certification set forth in the preliminary approval
12 order “[b]ecause the circumstances have not changed” since that order). Therefore, the
13 Court should grant final certification of the settlement class.

14 **C. The Court Should Grant Final Approval of the Class Settlement**

15 Upon final approval, the Court’s duty is to determine whether the proposed
16 Settlement is “fundamentally fair, adequate, and reasonable.” *Hanlon v. Chrysler Corp.*,
17 150 F.3d 1011, 1026 (9th Cir. 1998). In evaluating the Settlement, the Court is guided by
18 several important policies. First, federal courts favor settlements, particularly in class
19 actions, where the costs, delays and risks of continued litigation might otherwise
20 overwhelm any potential benefit the class could hope to obtain. *See Class Plaintiffs v.*
21 *City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) (noting the “strong policy that favors
22 settlements, particularly where complex class action litigation is concerned”). As one
23 court put it, “[t]he economics of litigation are such that pre-trial settlement may be more
24 advantageous for both sides than expending the time and resources inevitably consumed
25 in the trial process.” *Franklin v. Kaypro*, 884 F.2d 1222, 1225 (9th Cir. 1989). Thus, in
26 reviewing class action settlements, the court should give “proper deference to the private
27 consensual decision of the parties.” *Hanlon*, 150 F.3d at 1027.

28 Second, when the parties’ negotiations are non-collusive and involved a respected

1 mediator, the resulting settlement is entitled to “a presumption of fairness.” *In re Toys*
 2 “R” *Us-Del., Inc. FACTA Litig.*, 295 F.R.D. 438, 450 (C.D. Cal. 2014). Here, the
 3 proposed Settlement is the product of prolonged mediation over many sessions before
 4 one of the preeminent mediators in legal practice, Eric D. Green. Professor Green is the
 5 co-author of the first textbook on alternative dispute resolution and has successfully
 6 mediated many high stakes cases, including the *United States v. Microsoft* antitrust
 7 case.⁸ *See Fleisher v. Phoenix Life Ins. Co.*, No. 11-8405, 2015 WL 10847814, at *3
 8 (S.D.N.Y. Sept. 9, 2015) (summarizing Prof. Green’s impressive credentials). Guided by
 9 this experienced mediator, the Parties forcefully advocated their respective positions in
 10 arms’-length negotiations over many months. (Lurie Decl. ¶ 11.) The Parties then
 11 reached a resolution for class relief before conducting a separate mediation on attorneys’
 12 fees and service awards. (*Id.* ¶ 12.) Based on these factors, the Settlement is entitled to a
 13 presumption of fairness.

14 Guided by these policies, the district court may consider some or all of the
 15 following factors in evaluating the reasonableness of a settlement: (1) the strength of the
 16 plaintiff’s case and the risk, expense, complexity, and likely duration of further litigation;
 17 (2) the risk of maintaining class action status throughout trial; (3) the amount offered in
 18 settlement; (4) the extent of discovery completed and the stage of proceedings; (5) the
 19 participation of a governmental participant; (6) the experience and views of counsel; and
 20 (7) the reaction of class members. *See Churchill Village v. Gen. Elec.*, 361 F.3d 566, 575
 21 (9th Cir. 2004) (“*Churchill factors*”). “Under certain circumstances, one factor alone
 22 may prove determinative in finding sufficient grounds for court approval.” *Nat’l Rural*

23
 24 ⁸ *See, e.g., Halley v. Honeywell Int’l, Inc.*, No. 10-3345, 2016 WL 1682943, at
 25 *12 (D.N.J. Apr. 26, 2016) (considering the participation of mediator Eric Green,
 26 “whose background the Court has independently reviewed,” as an important factor in
 27 approving a \$10 million settlement); *Fleisher*, 2015 WL 10847814, at *5 (finding that
 28 “the extensive participation of an experienced mediator [Prof.. Green] also ‘reinforces
 that the Settlement Agreement is non-collusive’” in a case valued at over \$100 million);
Maine State Ret. Sys. v. Countrywide Fin. Corp., No. 10-00302 MRP, 2013 WL
 6577020, at *12 (C.D. Cal. Dec. 5, 2013) (naming Prof. Green as one factor in finding
 presumption of fairness of a settlement valued at over \$500 million).

1 *Telecom. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 525-526 (C.D. Cal. 2004). In
 2 determining the overall fairness, reasonableness and adequacy of the Settlement, “the
 3 district court’s determination is nothing more than an amalgam of delicate balancing,
 4 gross approximations, and rough justice.” *Officers for Justice v. Civil Service Comm’n*,
 5 688 F.2d 615, 625 (9th Cir. 1982) (internal quotation omitted).

6 **1. The Strength of Plaintiffs’ Case Balanced with the Risk,**
 7 **Expense, Complexity, and Duration of Continued Litigation,**
 8 **Including Maintaining Class Certification Through Trial**

9 The first two *Churchill* factors, the strength of the plaintiff’s case balanced against
 10 the risk, expense, complexity and likely duration of further litigation and the risk of
 11 maintaining class certification through trial, overlap and are both satisfied here. In
 12 evaluating these considerations, a court assesses “objectively the strengths and
 13 weaknesses inherent in the litigation and the impact of those considerations on the
 14 parties’ decisions to reach [a settlement].” *Adoma v. Univ. of Phoenix, Inc.*, 913 F. Supp.
 15 2d 964, 975 (E.D. Cal. 2012). However, there is “no single formula” to be applied, but
 16 the court may presume that the parties’ counsel and the mediator arrived at a reasonable
 17 range of settlement by considering the plaintiffs’ likelihood of recovery. *Rodriguez v.*
 18 *West Pub. Corp.*, 463 F.3d 948, 965 (9th Cir. 2009). The risks presented here—
 19 including the difficulty of prevailing, the future expenses that must be incurred, and the
 20 duration of litigation—strongly favor approving the Settlement.

21 First, the difficulty of the litigation, including prevailing on class certification and
 22 on the merits, favors approval. While Plaintiffs believe that their allegations have merit,
 23 Ford has raised a number of substantive defenses that present serious risks to Plaintiffs’
 24 case. These defenses include, among others, that no Transmission defect exists, or that,
 25 even if the Alleged Defect existed, Plaintiffs would not be able to show that it constitutes
 26 a safety concern. As a threshold matter, the existence of a defect may not lead to legal
 27 liability under federal or state statutes. *See, e.g., Smith v. Ford Motor Co.*, 749 F. Supp.
 28 2d 980, 991-92 (N.D. Cal. 2010) (granting defendant’s motion for summary judgment

1 and finding alleged ignition-lock defect not a safety risk), *aff'd*, 462 F. App'x 660 (9th
2 Cir. 2011). Accordingly, Plaintiffs must meet a high burden to establish violations of
3 state and federal consumer protection and warranty statutes.

4 Indeed, Plaintiffs may well be unable to maintain class status through trial. Ford
5 contends that, as a result of changes in the manufacturing process, design, and software,
6 there are multiple versions of the Transmission, precluding the likelihood that one
7 common defect exists. (Lurie Decl. ¶ 28.) Had litigation continued, Ford would have
8 argued that the variations in the Transmission and in the Alleged Defect also preclude
9 class certification of the consumer fraud claims for omission. In addition, Ford would
10 have argued that, among other individual variations, questions regarding each
11 customer's proper maintenance of the vehicle, driving conditions, and repair attempts,
12 such as whether the vehicle was timely taken to the dealer for repairs, among others,
13 would preclude certification of the warranty claims.

14 While Plaintiffs would vigorously dispute these claims, consumers bringing
15 automotive defect actions face an uphill battle and are frequently denied class
16 certification due to lack of common proof.⁹

17 Recently, a California district court denied class certification involving a theory
18 based on material omission of a similar defect involving a Ford vehicle. *See Philips v.*
19 *Ford Motor Co.*, No. 14-02989, 2016 WL 7428810, at *17 (N.D. Cal. Dec. 22, 2016)
20 (finding that the plaintiffs failed to present a compelling damages model supporting a
21 classwide determination regarding Ford's alleged omission of a "systemic defect" in the
22 vehicle's electronic steering system). *Philips* underscores the heightened litigation risk
23 for plaintiffs seeking class certification. This Court has also recently denied certification
24

25 ⁹ *See, e.g., Grodzitsky v. Am. Honda Motor Co.*, No. 2-01142-SVW, 2014 U.S.
26 Dist. LEXIS 24599 (C.D. Cal. Feb. 19, 2014) (denying certification due to lack of
27 evidence that common materials were used for all defective "window regulators" in the
28 class); *Cholakyan v. Mercedes-Benz USA, LLC*, 281 F.R.D. 534, 553 (C.D. Cal. 2012)
("There is also no evidence that a single design flaw that is common across all of the
drains in question is responsible for the alleged water leak defect....").

1 of a consumer fraud claim in *Rafofsky v. Nissan N.A.*, No. 15-01848-AB (MANx) (C.D.
2 Cal. Feb. 17, 2017), finding that Nissan’s advertising campaign was not so pervasive as
3 to result a presumption of classwide reliance. The Ninth Circuit’s decision in *Mazza v.*
4 *Am. Honda Motor. Co.*, 666 F.3d 581, 594 (9th Cir. 2012), which makes it difficult to
5 certify a nationwide class based on alleged violations of California consumer law, would
6 also likely have stymied Plaintiffs’ efforts, had litigation continued.

7 Aside from certification risk, Plaintiffs could face the termination of their action at
8 summary judgment or at trial. For instance, in another action against Ford involving a
9 different vehicle, summary judgment was recently entered in favor of defendant after
10 years of litigation, underscoring the difficulties faced by Plaintiffs here. *See Coba v.*
11 *Ford Motor Co.*, No. 12-1622-KM, 2017 WL 3332264 (D.N.J. Aug. 4, 2017).

12 Second, the anticipated additional expenses that must be incurred also support
13 final approval. *See Chambers*, 214 F. Supp. 3d at 888 (“In assessing the risk, expense
14 and complexity of further litigation, the court evaluates the time and cost required.”
15 [citation omitted]). Here, Plaintiffs shoulder exceedingly high financial risks in pursuing
16 this action. This class action against a major automotive manufacturer, where Plaintiffs
17 allege that nearly 1.5 million vehicles suffer a serious defect, has the strong potential to
18 engulf Plaintiffs and Class Counsel in protracted, resource-draining court battles. In a
19 contested certification motion, Ford would likely submit expert testimony from a Ford
20 engineer showing that the Transmission for various Class Vehicles differs in kind—for
21 example, that some Transmissions contain a linear-sliding piston while others do not, or
22 that some contain an “Anti-Shuffle Control” while others do not. Plaintiffs would rely on
23 the testimony of a technical expert to dispute the import of what they consider to be
24 minor part variations, along with that of an expert on consumer expectations and a
25 damages expert. These hefty costs would have to be advanced by Plaintiffs and Class
26 Counsel and would add significantly to the risks of proceeding in litigation, which
27 already exceeds \$300,000 without them. *See Aarons v. BMW of N. Am. LLC*, No. 11-
28 7667, 2014 U.S. Dist. LEXIS 118442, at *29-31 (C.D. Cal. Apr. 29, 2014) (approving a

1 settlement on a transmission defect and observing that “it is the very uncertainty of
2 outcome in litigation and avoidance of wasteful and expensive litigation that induce
3 consensual settlements.” [citation omitted]; *In re Toys “R” Us-Del FACTA Litig.*, 295
4 F.R.D. at 451 (observing that the “substantial risk of incurring the expense of a trial
5 without any recovery” supports approval).

6 Third, prompt settlements are highly preferable to protracted litigation. In actions
7 involving automotive defects, “where motor vehicles have a relatively short lifespan,
8 there is a premium upon promptly finding a remedy for alleged defects to restore full
9 enjoyment of the vehicle.” *Yaeger v. Subaru of Am., Inc.*, No. 11-4490 (JBS), 2016 WL
10 4541861, at *9 (D.N.J. Aug. 31, 2016). Thus, even if Plaintiffs were to certify the Class
11 on contested motion, and prevail on dispositive motions and at trial,¹⁰ the years of
12 litigating this action would almost certainly diminish the relief to Class Members, as
13 their Vehicles’ value will depreciate over time. For instance, California’s Lemon Law
14 specifically enumerates a method for calculating depreciation on vehicles. *See* Cal. Civ.
15 Code § 1793.2(d)(2)(C). The National Traffic and Motor Vehicle Safety Act likewise
16 includes depreciation in any remedy following a safety recall. 49 U.S.C.
17 § 30120(a)(1)(A)(iii). Any restitution remedies they could obtain would also be subject
18 to offsets for car owners’ use of the vehicles.

19 Because any repurchase or rescission remedy requires that a consumer return the
20 product in a condition comparable to what he or she received, and because the vehicle’s
21 value depreciates significantly with use and time, Plaintiffs believe that a prompt
22 resolution of this action provides the greatest benefit to Class Members. (Lurie Decl. ¶
23 34.) Thus, Plaintiffs negotiated the Program to resolve Class Members’ claims
24 expeditiously through arbitration while preserving their right to their own state lemon
25 law remedies. (*Id.*) The Program also expands Class Members’ rights by increasing the

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27 ¹⁰ The inherent risks of proceeding to trial weigh in favor of settlement. *See In re*
28 *Portal Software, Inc. Sec. Litig.*, 2007 U.S. Dist. LEXIS 88886, at *7-8 (N.D. Cal. Nov.
26, 2007) (recognizing that “inherent risks of proceeding to . . . trial and appeal also
support the settlement”).

1 applicable statute of limitations for owners and lessees bringing suit and providing for a
2 default repurchase remedy where state law provides no relief.

3 In short, “unless the settlement is clearly inadequate, its acceptance and approval
4 are preferable to lengthy and expensive litigation with uncertain results.” *Eisen v.*
5 *Porsche Cars North American, Inc.*, No. 11-09405-CAS, 2014 WL 439006, at *3 (C.D.
6 Cal. Jan. 30, 2014) (quoting *Nat’l Rural Telecom. Coop.*, 221 F.R.D. at 526). Here, the
7 risk of continuing litigation, including the risk of certification and/or judgment on the
8 merits, increased costs, and protracted litigation that would eat into the value of the
9 subject vehicles, weighs heavily in favor of settlement.

10 2. The Amount Offered in the Settlement

11 The Court must also consider the relief or remedy offered in the Settlement in
12 granting final approval. In assessing the settlement’s value, courts are instructed to take
13 into account that “the very essence of a settlement is compromise, ‘a yielding of
14 absolutes and an abandoning of highest hopes.’” *Officers for Justice*, 688 F.2d at 624
15 (citations omitted). The Ninth Circuit has explained, in light of the vagaries of litigation,
16 “the proposed settlement is not to be judged against a hypothetical or speculative
17 measure of what might have been achieved by the negotiators.” *Id.* at 625. Accordingly,
18 courts, in evaluating automotive defect settlements, do not require the plaintiff to present
19 speculative measures of the maximum value of the action upon a successful trial. *See,*
20 *e.g., Warner v. Toyota Motor Sales U.S.A.*, No. 15-02171-FMO (C.D. Cal. May 21,
21 2017), Dkt. No. 140, at *13 (granting final approval without a maximum valuation,
22 noting that settlements involve “abandoning of highest hopes”); *Corson v. Toyota Motor*
23 *Sales U.S.A.*, No. 12-8499-JGB, 2016 WL 1375838, *7 (C.D. Cal. Apr. 4, 2016)
24 (granting final approval, based in part, on “substantial recovery” that class members
25 would receive as a result of the settlement).¹¹ Further, a Settlement may be fair,

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¹¹ *See also Chambers*, 214 F. Supp. 3d at 888-89 (no valuation required to
approve consumer class action settlement); *Zakskorn v. Am. Honda Motor Co.*, No. 11-
02610-KJM, 2015 WL 3622990, at *8 (E.D. Cal. June 9, 2015) (same); (finding that
settlement provides adequate compensation without requiring extensive valuation);

1 reasonable and adequate even if it provides only a “fraction of the potential recovery.”
2 *Mendoza v. Hyundai Motor Co.*, No. 15-01685-BLF, 2017 WL 342059, at *6 (N.D. Cal.
3 Jan. 23, 2017).

4 Here, the Settlement offers substantial benefits to Class Members, including cash
5 payments for multiple repair attempts and an expeditious arbitration process that
6 expands Class Members’ rights. The Settlement makes available a gamut of benefits for
7 Class Members who have suffered persistent Transmission problems.

8 Plaintiffs expect that a substantial number of Class Members will qualify to
9 receive cash payments, which, to be clear, are not reimbursement for out-of-pocket
10 expenses. Rather, the cash payment is meant to benefit Class Members who have taken
11 their vehicle for repairs covered under warranty and had to drive a vehicle with the
12 symptoms of the Alleged Defect.¹² This benefit provides relief to Class Members even
13 though Ford extended the warranty on certain transmission components to the majority
14 of Class Vehicles during the pendency of the suit (which Plaintiffs believe to be in
15 response to the suit), resulting in few Class Members bearing out-of-pocket costs for
16 qualifying repairs. Furthermore, the Settlement’s expedited Warranty Arbitration is an
17 additional benefit to Class Members who believe they have unreasonably incurred out-
18 of-pocket costs for Transmission repairs. *See Mendoza*, 2017 WL 342059, at *3 (finally

19 _____
20 *Sadowska v. Volkswagen Group of America*, No. 11-00665-BRO, 2013 WL 9500948, at
*4 (C.D. Cal. Sep. 25, 2013) (same).

21 ¹² While the value of the Settlement’s benefits cannot be ascertained with
22 precision, based on reports documenting Ford’s sales of Transmission parts to Ford
23 dealers for the purpose of warranty repairs (i.e., parts ordered by Ford dealers to respond
24 to repair demands from Ford customers). Based on the data analyzed by Class Counsel,
25 Ford is projected to provide over 8 million Transmission parts to Ford dealers that
26 qualify for Transmission Hardware Replacements as of the date of this Motion. Given
27 that there are approximately 1,468,890 Class Vehicles, each Class Vehicle would
28 average 5 qualifying repairs based on this data. (*Id.*) To be sure, the distribution of
Transmission parts is not spread evenly to all Class Vehicles, as many Class Vehicles
have not yet had any replacements performed. However, the projection of 8 million
Transmission Hardware Replacements strongly suggests that a significant proportion of
the approximately 1.9 million Class Members will qualify for at least one of the
Settlement’s benefits. (*See also* Dkt. No. 146 [Mot. For Attorneys’ Fees] at 24-26.)

1 approving a settlement that provides for warranty disputes to be resolved through Better
2 Business Bureau (“BBB”) arbitration).

3 One of the central benefits of the Settlement is creating an expedited procedure
4 for repurchase (or “buyback”). Class Members with persistent Transmission problems
5 may seek to have their vehicles repurchased by Ford through the Program, which has
6 consumer-friendly rules. The Program’s comprehensive procedures resolve claims
7 quickly—within two months after submission—rather than the year or more for a typical
8 lemon law suit filed in court.

9 The Program expands Class Members’ rights in significant ways. Under the
10 Settlement, Class Members will have up to six years from the date of original sale or six
11 months of the effective date of the Settlement, whichever is later, to submit claims for
12 repurchase that qualify under the applicable state lemon law. This is a significant
13 extension of Class Members’ rights, as the statutes of limitation in most states are far
14 more restrictive—often requiring claims to be brought within two or three years of
15 original delivery or purchase.¹³ The Settlement will therefore make available a
16 repurchase remedy for many Class Members who otherwise would have been without
17 recourse because their claims would have expired.

18 Class Members who prevail in the Program will have their attorneys’ fees paid by
19 Ford, with no liability to pay Ford’s attorneys’ fees if they should lose. (Settlement
20 Agreement ¶ II.N.1.h.) This one-way fee shifting provision is also valuable and not
21 available to consumers in many other states.¹⁴ See *Brown v. W. Covina Toyota*, 26 Cal.

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23 ¹³ Many states, including Alabama, Florida, Georgia, Hawaii, Idaho, Illinois,
24 Iowa, Kentucky, Maine, Massachusetts, Nevada, New Mexico, South Carolina, South
25 Dakota, Virginia, and Wisconsin, limit lemon law claims to those that can be brought
within one and one-half to three years from the date of original delivery or sale
(sometimes with further limitations based on the timing of the express warranty).

26 ¹⁴ While, in some instances, there may be other ways to obtain attorneys’ fees to a
27 prevailing consumer, states that lack express one-way fee shifting statutes for lemon law
28 claims include: Alaska, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii,
Idaho, Illinois, Kansas, Minnesota, Missouri, Montana, Nebraska, Nevada, New
Hampshire, New Mexico, North Carolina, North Dakota, Oregon, Texas, Utah, Virginia,

1 App. 4th 555, 561 (1994) (explaining that one-way fee statutes provide important
2 protection for consumers). The Settlement thus increases the likelihood that counsel
3 would take on repurchase claims in states where one-way fees are not available.

4 Importantly, the Settlement authorizes the Arbitrator to award a repurchase
5 consistent with the Class Member's state lemon law and, if the Class Member does not
6 meet its requirements, provides a unique default remedy. Under this default remedy, a
7 repurchase may be awarded if 4 or more Transmission Hardware Replacements were
8 performed within 5 years/60,000 miles of delivery to original owner and the vehicle
9 continues to malfunction. Ford will refund the actual amount that the Class Member paid
10 for the vehicle (excluding any modifications or additions after the vehicle's purchase or
11 lease), including finance charges, less a reasonable allowance for use. If the vehicle was
12 leased, Ford will refund to the Class Member payments made to the lending institution
13 or lessor plus net trade-in and cash down payment (excluding rebates, if any), less a
14 reasonable allowance for use.

15 The Settlement's default remedy is more favorable to consumers than the lemon
16 laws of most states. Thus, many Class Members will be entitled to a repurchase that
17 would otherwise not be available to them if they had to pursue the claim in court.

18 Moreover, Plaintiffs spent considerable time vetting arbitration administrators
19 before choosing DeMars. Plaintiffs, through Class Counsel, also created arbitration rules
20 that favor consumers. And federal courts have routinely approved a settlement-created
21 dispute resolution program, including to resolve claims in private arbitration. *See*
22 *Mendoza*, 2017 WL 342059, at *6 (finally approving a settlement with settlement-
23 created program to resolve trade-in claims and BBB arbitration for warranty claims);
24 *Kearney v. Hyundai Motor Am.*, No. 09-1298-JST, 2013 U.S. Dist. LEXIS 91636, at
25 *17 (C.D. Cal. June 28, 2013) (finding that the settlement benefits, including the
26 arbitration for repurchase if a complementary repair does not fix airbag problem, is fair
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28 _____
and the U.S. Virgin Islands.

1 and reasonable).

2 Finally, the Settlement provides reimbursement for a third clutch replacement to
3 certain Class Members not covered by Ford's customer service campaigns.

4 The Settlement provides substantial relief to Class Members, with benefits that
5 are commensurate with the types of harms they suffered. Thus, Class Members who had
6 multiple warranty Transmission repairs but do not have a state lemon law claim are still
7 entitled to benefits. Class Members may also resolve their claims through the Program,
8 which, on balance, is more favorable than proceeding in court.

9 As a whole, the Settlement's benefits are far more valuable than typical benefits,
10 such as an extended warranty for the alleged part and reimbursement for out-of-pocket
11 costs, offered in automotive settlements approved by federal courts. *See, e.g., Yaeger v.*
12 *Subaru of America*, No. 14-4490-JBS, 2016 WL 4541861 (D. N.J. Aug. 31, 2016)
13 (primarily extending warranty for oil consumption problems); *Seifi v. Mercedes-Benz*
14 *USA*, No. 12-05493-THE, 2015 WL 12964340 (N.D. Cal. Aug. 18, 2015) (primarily
15 extending warranty and providing reimbursement]; *Sadowska*, 2013 WL 9500948
16 (primarily extended warranty on CVT transmissions); *Eisen v. Porsche.*, 2014 WL
17 439006, at *2-3 (approving settlement primarily extending the mileage/years of
18 coverage on the warranty for that defect, along with a reimbursement program with
19 limitations); *Collado v. Toyota Motor Sales, U.S.A., Inc.*, No. 10-3113, 2011 U.S. Dist.
20 LEXIS 133572 (C.D. Cal. Oct. 17, 2011), *fee order rev'd*, 550 Fed. Appx. 368 (9th Cir.
21 Cal. 2013) (approving settlement extending warranty coverage for defective headlights
22 along with a limited reimbursement program for out-of-pocket expenses for repairs).¹⁵

23
24 ¹⁵ The Settlement benefits are also superior to other automotive settlements
25 approved in other jurisdictions. *See, e.g., Falk/Zwicker v. General Motors Corporation*,
26 Case No. C07-0291-JCC (W.D. Wash. 2008), Docket No. 125-1 (settlement agreement)
27 §§ C.1 & C.2 (providing 7-year/70,000-mile warranty for replacement/reimbursement of
28 speedometer for owners of 2003-2004 and certain 2005 GMT800 platform vehicles, and
replacement/reimbursement for cost of speedometer part only, excluding labor costs, for
owners of 2003-2004 vehicles who repaired problem between 70,000-80,000 miles);
Alin v. American Honda Motor Co., Inc., Case No. 08-4825-KSH-PS (D.N.J. 2011),
Docket No. 54-3 (settlement agreement) §§ 4.2 & 4.3 (providing reimbursement of

1 Because the benefits offered here are more comprehensive and valuable than the
2 benefits provided in other settlements of comparable automotive class actions that have
3 been found to be fair, adequate and reasonable, this factor strongly supports final
4 approval of the proposed Settlement.¹⁶

5 3. The Extent of Discovery and Stage of Proceedings

6 Courts may also consider the extent of discovery and the current stage of the
7 litigation to evaluate whether parties have sufficient information to make an informed
8 decision to settle the action. *See Linney v. Cellular Alaska Partnership*, 151 F.3d 1234,
9 1239 (9th Cir. 1998). A settlement negotiated at an earlier stage in the litigation will not
10 be denied so long as sufficient investigation has been conducted. *Eisen v. Porsche*, 2014
11 WL 439006, at *13 (finding that counsel had “ample information and opportunity to
12 assess the strengths and weaknesses of their claims” despite “discovery [being] limited
13 because the parties decided to pursue settlement discussions early on.”).

14 As described in Section II.B, *supra*, Plaintiffs engaged in extensive investigation
15 and discovery, including reviewing over a million documents, retaining experts and
16 conducting their own testing, and taking depositions of two of Defendant’s corporate
17 representatives in Michigan and a corporate representative of Transmission part supplier
18 Getrag. (*See* Lurie Decl ¶¶ 6-10; Paul Decl. ¶¶ 7-11.)

19 _____
20 15%-100% of out-of-pocket expenses, based on time and mileage thresholds between 3
21 years/36,000 miles and 8 years/96,000 miles, for allegedly defective air conditioning
22 condenser or compressor); *Henderson v. Volvo Cars of North America*, Case No. 09-
23 4146-CCC-JAD (D.N.J. 2012), Docket No. 71-1 (settlement agreement) § III.A
(providing 8-year/100,000-mile extended warranty and reimbursement of either 50% for
original owners and lessees, or 25% for all other class members, for out-of-pocket costs
for allegedly defective automatic transmissions).

24 ¹⁶ That the Settlement will confer immediate monetary and equitable relief to
25 Class Members is a strong factor in approving the proposed Settlement. *Browne v. Am.*
26 *Honda*, 2010 U.S. Dist. LEXIS 145475, at *42-43 (C.D. Cal. July 29, 2010) (finding
27 that, despite the fact that class members may not be fully compensated by the proposed
28 reimbursement program, immediate relief conferred by settlement supports final
approval); *see also, In re Mego Financial Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir.
2000) (approving a settlement that provides immediate relief constituting one-sixth of
the potential recovery in light of the difficulties of continued litigation).

1 Based on this discovery and on their independent investigation and evaluation,
 2 Class Counsel believes that this Settlement, for the consideration and on the terms set
 3 forth in the Settlement Agreement, is fair, reasonable, and adequate, and is in the best
 4 interest of the Settlement Class in light of all known facts and circumstances, including
 5 the risk of significant delay and uncertainty associated with litigation of this type, and the
 6 various defenses asserted by Ford.

7 **4. The Views of Experienced Counsel**

8 The fact that sophisticated parties with experienced counsel have agreed to settle
 9 their dispute should be given considerable weight by courts, since “parties represented
 10 by competent counsel are better positioned than courts to produce a settlement that fairly
 11 reflects each party’s expected outcome in the litigation.” *In re Pac. Enters. Sec. Litig.*, 47
 12 F.3d 373, 378 (9th Cir. 1995).

13 Here, the Parties achieved a settlement after a thorough review of relevant
 14 documents and testimony, as well as a rigorous analysis of the Parties’ claims and
 15 defenses. The Settlement incorporates the expectations of all Parties and, as set forth
 16 above, is non-collusive, being the product of arms’-length negotiations and finalized
 17 with the assistance of an experienced and respected mediator. The Parties were
 18 represented by counsel possessing significant experience in automotive defect and class
 19 action matters. (*See, e.g.*, Lurie Decl. ¶¶ 38-40; Paul Decl. ¶¶ 21-28.) Likewise, Ford’s
 20 counsel, Dykema Gossett, is a well-respected defense firm. The Parties’
 21 recommendation to approve this Settlement should therefore “be given great weight.”
 22 *Eisen*, 2014 WL 439006, at *5 (crediting the experience and views of counsel in
 23 approving a settlement resolving automotive defect allegations).

24 **5. The Reaction of Class Members to the Proposed Settlement¹⁷**

25 The objection, opt-out, and opt-in deadline is September 5, 2017. Per the Order
 26 dated May 3, 2017, Plaintiffs will submit a supplemental brief advising the Court of the
 27

28 ¹⁷ There is no governmental participant in this case, and so this factor is neutral.

1 final figures and responding to objections. To date, only 1,081 of the 1.9 million Class
 2 Members, or 0.05 percent, have chosen to opt out. (Wyatt Decl. ¶ 17.) This small
 3 percentage of exclusions and objections demonstrate that Class Members have reacted
 4 favorably to the Settlement, supporting final approval. *See, e.g., Eisen*, 2014 WL
 5 439006, at *5 (“Although 235,152 class notices were sent, 243 class members have
 6 asked to be excluded”); *Milligan v. Toyota Motor Sales, U.S.A.*, No. 09-05418-RS,
 7 2012 U.S. Dist. LEXIS 189782, at *25 (N.D. Cal. Jan. 6, 2012) (finding favorable
 8 reaction where 364 individuals opted out [0.06%] following a mailing of 613,960
 9 notices); *Browne*, 2010 U.S. Dist. LEXIS 14575, at *49 (finding favorable class reaction
 10 where, following a mailing of 740,000 class notices, 480 or 0.65% opted out).

11 **IV. CONCLUSION**

12 Based on the foregoing, the proposed Settlement is fair, adequate, and reasonable,
 13 and satisfies the standard for final approval. Accordingly, Plaintiffs move the Court to
 14 enter the Final Order and Judgment granting final approval of the Settlement Agreement
 15 and grant such other and additional relief as the Court may deem appropriate.

16 Dated: August 28, 2017

Respectfully submitted,

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