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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)

CLASS ACTION

Hon. André Birotte Jr.

**[PROPOSED] FINAL ORDER AND
JUDGMENT**

Date: October 2, 2017
Time: 10:00 am
Place: Courtroom 7B

1 On April 25, 2017, the Court entered a Preliminary Approval Order that
2 preliminarily approved the proposed Settlement Agreement in this Litigation and
3 specified the manner in which Ford Motor Company (“Ford”) was to provide
4 Class Notice to the Class. All capitalized terms used herein shall have the same
5 meaning as defined in the Settlement Agreement, which was filed with the Court
6 on March 24, 2017 [Dkt. 121-1] and is incorporated by reference.

7 Following the dissemination of the Class Notice, all Class Members were
8 given an opportunity to request exclusion from the Class or object to the
9 Settlement Agreement (including Class Counsel’s request for attorneys’ fees and
10 expenses and the Class Representatives’ collective application for a Service
11 Award). Prospective Class Members who had a pending suit against Ford as of
12 the Notice Date were given an opportunity to opt-in.

13 A Fairness Hearing was held on October 2, 2017, at which time all
14 interested persons were given a full opportunity to state any objections to the
15 Settlement Agreement or to Class Counsel’s request for attorneys’ fees and
16 expenses and the Class Representatives’ collective application for Service
17 Awards. The Fairness Hearing was held more than 90 days after Ford provided
18 notice of the proposed Settlement to federal and state-level attorneys general as
19 required by 28 U.S.C. § 1715(b), thus complying with 28 U.S.C. § 1715(d).

20 Having read and fully considered the Settlement Agreement and all
21 submissions made in connection with it, the Court finds that the Settlement
22 Agreement is fair, reasonable and adequate and should be finally approved and the
23 Litigation dismissed with prejudice as to all Class Members who have not
24 excluded themselves from the Class, and without prejudice as to all persons who
25 timely and validly excluded themselves from the Class. Accordingly,

26 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS**
27 **FOLLOWS:**

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1 1. This Court has both subject matter jurisdiction and personal
2 jurisdiction as to this action and all Parties before it, including all Class Members.
3 The Court certifies the following Class for purposes of settlement only:

4 All current residents of the United States (including
5 territories of the United States) who, prior to the
6 Preliminary Approval Order, purchased or leased new or
7 used Class Vehicles that (1) were originally sold in the
8 United States (including territories of the United States)
9 and (2) were equipped with the PowerShift
10 Transmission.

11 Excluded from the Class are:

12 (1) except as to the Named Plaintiffs in this Litigation
13 and the *Anderson* plaintiffs, all owners or lessees of
14 Class Vehicles who have filed and served litigation
15 against Ford alleging problems with the PowerShift
16 Transmission in Class Vehicles that was pending as of
17 [insert Notice Date] and who do not dismiss their actions
18 before final judgment and affirmatively elect to opt-in to
19 the Settlement (Owners or lessees of Class Vehicles who
20 dismiss such litigation and affirmatively opt-in to the
21 Settlement shall be members of the Class for all
22 purposes); (2) Ford's officers, directors, employees,
23 affiliates and affiliates' officers, directors and
24 employees; their distributors and distributors' officers,
25 directors, and employees; and Ford Dealers and Ford
26 Dealers' officers and directors; (3) judicial officers
27 assigned to the Actions and their immediate family
28 members, and any judicial officers who may hear an
appeal on this matter; (4) all entities and natural persons
who have previously executed and delivered to Ford
releases of their claims based on the PowerShift
Transmission; (5) all parties to litigation against Ford
alleging problems with the PowerShift Transmission in
Class Vehicles in which final judgment has been entered,
and (6) all those otherwise in the Class who timely and
properly exclude themselves from the Class as provided
in this Settlement.

1 2. The Class certified for the purposes of settlement satisfies all of the
2 requirements of Federal Rules of Civil Procedure 23(a) and 23(b)(3).

3 3. The Court appoints and finally approves Plaintiffs Omar Vargas,
4 Michelle Harris, Sharon Heberling, Robert Bertone, Kevin Klipfel, Andrea
5 Klipfel, Maureen Cusick, Eric Dufour, Abigail Fisher, Christie Groshong,
6 Virginia Otte, Tonya Patze, Lindsay Schmidt, Patricia Schwennker, Patricia
7 Soltesiz, Joshua Bruno, Jason Porterfield, and Jamie Porterfield as
8 representatives of the above-described Class.

9 4. The Court finds that Capstone Law APC, Berger & Montague, P.C.
10 and Zimmerman Law Group have demonstrable experience litigating consumer
11 and other class actions. The Court hereby appoints and finally approves said law
12 firms as Class Counsel and designates Capstone Law APC as Lead Class
13 Counsel.

14 5. The Court finds that the mailing of the Short Form Class Notice to
15 the Class, publication of the Publication Notice, and posting of the Long Form
16 Class Notice to the Settlement Website has been completed in conformity with
17 the Settlement Agreement and the Preliminary Approval Order. These forms of
18 notice, taken together, provided adequate notice of the proceedings, including the
19 proposed settlement terms as set forth in the Settlement Agreement. The Class
20 Notice fully satisfied due process requirements and the requirements of Rule 23 of
21 the Federal Rules of Civil Procedure. As executed the Class Notice was the best
22 notice practicable under the circumstances.

23 6. The Court finds that appropriate notice was given by Defendant to all
24 “appropriate State and Federal Officials” pursuant to 28 U.S.C. §1715(a), and that
25 no objections were filed.

26 7. The Court hereby finally approves the terms set forth in the
27 Settlement Agreement and finds that the Settlement is, in all respects, fair,
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1 reasonable and adequate, and directs the Parties to effectuate all remaining
2 provisions of the Settlement Agreement according to its terms. The Court finds
3 that the Settlement Agreement has been reached as a result of informed and non-
4 collusive, arm's-length negotiations. The Court further finds that Plaintiffs and
5 Defendant have conducted extensive investigation and research into the factual
6 and legal aspects of Plaintiffs' claims, and their attorneys were able to
7 reasonably evaluate their respective positions.

8 8. The Court also finds that the Parties, by settling now, will avoid
9 additional and potentially substantial litigation costs, as well as delay and risks if
10 the Parties were to continue to litigate the case. Additionally, after considering
11 the prospective and monetary relief provided as part of the Settlement in light of
12 the challenges posed by continued litigation, the Court concludes that Class
13 Counsel secured fair, reasonable and adequate relief for Class Members.

14 9. The Settlement Agreement is not an admission of fault by Defendant
15 or by any other Released Party, nor is this Final Order and Judgment a finding on
16 the validity of any allegations or of any wrongdoing by Defendant or any other
17 Released Party. Neither this Final Order and Judgment, the Settlement
18 Agreement, nor any document referred to herein, nor any action taken to carry out
19 the Settlement Agreement, may be construed as, or may be used as, an admission
20 of any fault, wrongdoing, omission, concession, or liability whatsoever by or
21 against Defendant or any of the other Released Parties.

22 10. The Settlement Agreement shall be fully, finally, and forever
23 binding on Ford and all Plaintiffs, including all members of the Class who did
24 not opt out of this Settlement and have not been otherwise excluded pursuant to
25 the Settlement Agreement.

26 11. Having granted final approval to this Settlement, the Court
27 dismisses on the merits and with prejudice *Vargas v. Ford Motor Co., No. 2:12-*
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1 cv-08388-AB (FFMx) (C.D. Cal.) and each and every action transferred and
2 consolidated with it, including *Klipfel v. Ford Motor Co.*, No. 2:14-cv-02140-AB
3 (FFMx) (C.D. Cal.), and *Cusick v. Ford Motor Company*, Case No. 2:15-cv-
4 08831-AB (C.D. Cal.). In accordance with the Settlement, the plaintiffs in
5 *Anderson v. Ford Motor Co.*, No. 1:16-cv-01632 (N.D. Ill.) are obligated to
6 dismiss that action with prejudice. In addition, the Court also dismisses all
7 claims which any Class Member alleged or could have alleged in any complaint,
8 action, or litigation, based upon the Transmission defect in the Class Vehicles.

9 12. All Class Members were given a full and fair opportunity to
10 participate in the Fairness Hearing, and all Class Members who asked to be
11 heard were heard. The objections of _____ are hereby overruled. Members of
12 the Class also have had a full and fair opportunity to exclude themselves from
13 the proposed Settlement and the Class. Attached hereto as Exhibit A is a list
14 setting forth the name of each person who has requested exclusion from the
15 Class under the procedures set forth in the Preliminary Approval Order.

16 13. Having granted final approval to this Settlement, the Named
17 Plaintiffs and each Class Member hereby forever discharge the Released Parties
18 from all Released Claims.

19 14. To effectuate the Settlement, the Court hereby orders that all Class
20 Members who did not timely exclude themselves from the Settlement are barred,
21 enjoined, and forever restrained from commencing, prosecuting or asserting any
22 Released Claims against any Released Parties as set forth in Paragraph 13 above,
23 except that Class Members may continue to pursue claims in the Arbitration
24 Program as set forth in the Settlement Agreement and the Arbitration Rules.

25 15. The Court hereby finds that all Class Members who have not made
26 their objections to the Settlement in the manner provided in the Class Notice are
27 deemed to have waived any objections by appeal, collateral attack or otherwise.
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1 16. The Court has considered Plaintiffs' Motion for Attorneys' Fees,
2 Costs, and Service Awards separate from its consideration of the fairness,
3 reasonableness and adequacy of the Settlement Agreement. Any order or
4 proceedings relating to the Motion for Attorneys' Fees, Costs, and Service
5 Awards, or any appeal from any order relating thereto or reversal or modification
6 thereof, shall not disturb or affect this Final Order and Judgment or affect or
7 delay its finality.

8 17. The Court awards \$8,530,130.68 in attorneys' fees to Class Counsel
9 and costs in the amount of \$326,369.32. Lead Class Counsel are to allocate the
10 fees and cost reimbursement according to the fee allocation agreement among
11 Class Counsel.

12 18. The Court also approves and awards \$10,000 to Plaintiff Omar
13 Vargas, \$7,500 to Plaintiffs Michelle Harris, Sharon Heberling, Robert Bertone
14 and \$5,000 to Plaintiffs Kevin Klipfel, Andrea Klipfel, Maureen Cusick, Eric
15 Dufour, Abigail Fisher, Christie Groshong, Virginia Otte, Tonya Patze, Lindsay
16 Schmidt, Patricia Schwenker, Patricia Soltesiz, Joshua Bruno, Jason Porterfield,
17 Jamie Porterfield for their services on behalf of the Class and \$1,000 for each of
18 the Plaintiffs in *Anderson v. Ford Motor Co.*, No. 1:16-cv-01632 (N.D. Ill.) for
19 their dismissal of their action with prejudice, and accordingly orders Defendant
20 to pay those amounts to the Claims Administrator for distribution to those Class
21 Representatives.

22 19. If either (a) the Effective Date of the Settlement does not occur for
23 any reason whatsoever, or (b) the Settlement Agreement becomes null and void
24 pursuant to the terms of the Settlement Agreement, this Final Order and
25 Judgment shall be deemed vacated and shall have no force or effect whatsoever.

26 20. Without affecting the finality of the Final Order and Judgment in
27 any way, the Court retains continuing and exclusive jurisdiction over the Parties,
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1 including the Class Members, to enforce the terms of the Final Order and
2 Judgment, and shall have continuing jurisdiction over the construction,
3 interpretation, implementation, and enforcement of the Settlement Agreement.
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5 **IT IS SO ORDERED, ADJUDGED, AND DECREED.**

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7 Dated: _____, 2017

The Hon. André Birotte Jr
United States District Judge

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