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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  
16 individually, and on behalf of a class of  
similarly situated individuals,

17 Plaintiffs,

18 v.

19 FORD MOTOR COMPANY,

20 Defendant.  
21  
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23  
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25  
26  
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28

Case No. CV12-08388 AB (FFMx)

The Hon. André Birotte Jr.

**PLAINTIFFS’ NOTICE OF MOTION  
AND MOTION FOR ATTORNEYS’  
FEES, COSTS, AND SERVICE  
AWARDS; 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  
3 Courtroom 7B of the above-captioned Court, located at 350 West First Street, Los  
4 Angeles, CA 90012, the Honorable André Birotte Jr. presiding, Plaintiffs, on behalf of  
5 themselves and all others similarly situated, will, and hereby do, move this Court to  
6 enter an award of attorneys' fees, expenses, and class representative incentive awards.  
7 Plaintiffs seek reasonable attorneys' fees in the amount of \$8,530,130.68, reimbursable  
8 costs in the amount of \$326,369.32, and service awards ranging between \$1,000 to  
9 \$10,000 to each of the named Plaintiffs. The requested fees are reasonable under the  
10 lodestar method for calculating fees, as they are of product of reasonable hour and  
11 reasonable rates, and enhanced by a modest multiplier of 1.22. The requested fees are  
12 also reasonable as a percentage of the benefits conferred on the Class.

13 This Motion is based on: (1) this Notice of Motion and Motion; (2) the  
14 Memorandum of Points and Authorities in Support of Motion for Attorneys' Fees,  
15 Costs, and Service Awards incorporated herewith; (3) the Declarations of Jordan Lurie  
16 and Russell Paul, and exhibits thereto, filed concurrently herewith; (4) the [Proposed]  
17 Order filed concurrently herewith; (5) the records, pleadings, and papers filed in this  
18 action; and (6) on such other documentary and oral evidence or argument as may be  
19 presented to the Court at the hearing of this Motion.

20  
21 Dated: August 21, 2017

Respectfully submitted,

22  
23 By: /s/ Jordan L. Lurie

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Class Counsel have committed the last four years to successfully prosecuting  
4 this action involving an alleged Transmission defect, ultimately achieving an  
5 extraordinary Settlement.<sup>1</sup> The Settlement makes substantial benefits available to  
6 nearly 1.9 million current and former owners and lessees of 2011-2016 Ford Fiesta and  
7 2012-2016 Ford Focus vehicles equipped with the DPS6 PowerShift Transmission  
8 (“Class Vehicles”). The benefits to Class Members include actual cash payments of up  
9 to \$2,325 per vehicle or up to \$4,650 in discounts towards the purchase or lease of a  
10 new Ford vehicle and cash payments of up to \$600 for certain software upgrades  
11 performed to the Class Vehicles.

12 The Settlement also provides for the repurchase (or “buyback”) of Class  
13 Members’ vehicles by Ford through a novel and innovative Arbitration Program that  
14 preserves Class Members’ lemon law claims. The Arbitration Program provides a  
15 comprehensive mechanism for those claims to be resolved quickly—within two  
16 months—rather than the year or more for a typical lemon law suit filed in court. By  
17 extending the statute of limitations for consumers to file a claim for repurchase for a  
18 considerable period, the Arbitration Program creates a remedy for Class Members who  
19 otherwise would have been without recourse because their claims would have expired.<sup>2</sup>  
20 Other Settlement benefits include: (a) a qualified version of the Arbitration Program  
21 (“Warranty Arbitration”) for Class Members who have incurred out-of-pocket  
22 expenses for repairs covered by Ford’s New Vehicle Limited Warranty (“Warranty”) or  
23 who believe that a Ford dealer improperly denied Warranty repairs; and (b)  
24 reimbursement for a third clutch replacement for certain Class Vehicles.

25 <sup>1</sup> The capitalized terms in this brief shall have the same meaning as the terms  
26 defined in the proposed Settlement Agreement. (Dkt. No. 121-1.)

27 <sup>2</sup> The Settlement permits Class Members to file claims for repurchase up to six  
28 years from the date of original sale or six months of the effective date of the Settlement,  
whichever is later. This goes well beyond the limitation period for state lemon  
lawclaims.

1           Respectfully, this motion now seeks for Class Counsel to be compensated for  
2 their efforts on behalf of the Class and for service awards to the named Plaintiffs who  
3 prosecuted this action. Plaintiffs seek attorneys’ fees of \$8,530,130.68 and expenses of  
4 \$326,369.32 and service awards ranging from \$1,000 to \$10,000 for Plaintiffs.

5           The attorneys’ fees requested were separately mediated by a renowned neutral,  
6 Professor Eric D. Green of Resolutions LLC, after the Parties agreed on the Settlement  
7 benefits for the Class. The fees will be paid by Ford, not by Class Members or from a  
8 common fund. Awarding the negotiated fees in full will not affect the benefits for Class  
9 Members and will fairly compensate Class Counsel for their work in this case, as  
10 confirmed under the prevailing lodestar method for calculating fees.

11           The lodestar is based on reasonable hours multiplied by reasonable rates,  
12 enhanced by a multiplier, if necessary. Class Counsel have expended a collective  
13 13,500 hours prosecuting this case—a reasonable number given the complexities of  
14 this action and its settlement. Among the many tasks performed, Class Counsel have  
15 responded, to date, to over 18,000 inquiries by Class Members, which includes  
16 reviewing Class Members’ repair orders and answering questions about the  
17 Transmission and the Settlement. Class Counsel will be honoring their obligations to  
18 Class Members for many years to come because the claims’ process is ongoing and  
19 open to Class Members for qualifying repairs within 7 years /100,000 miles of the first  
20 date of sale of each Class Vehicle. Furthermore, Class Counsel reviewed over 1.5  
21 million pages of documents, defended Plaintiffs’ depositions, and deposed key Ford  
22 witnesses and one of Ford’s suppliers. To achieve the Settlement, Class Counsel  
23 attended multiple mediation sessions and spent over a year crafting and negotiating  
24 settlement terms, which include the unique Arbitration Program, and working with a  
25 third-party administrator to ensure that it would be implemented effectively.  
26 Considerable time was also devoted to creating Lead Class Counsel’s own dedicated  
27 website with multiple pages, including FAQs, to better assist and inform the Class  
28 about the Settlement benefits and to complement the information provided by the

1 Claims Administrator.

2 Class Counsel's hourly rates are reasonable and are within the range of rates  
3 recently approved by the Central District. A modest multiplier of 1.22 is appropriate in  
4 light of the high contingent risk presented by this case and the extraordinary results  
5 achieved, as well as to account for the hundreds of additional hours that Class Counsel  
6 expects to put into this case after the Settlement is finally approved. Finally, the  
7 requested fee is a fraction of the monetary benefit conferred on the Class by this  
8 Settlement.

9 The expenses advanced by Class Counsel are those that would typically be billed  
10 to a paying client and should be reimbursed. The requested service awards are similarly  
11 reasonable and should be approved.

## 12 **II. FACTS AND PROCEDURE**

### 13 **A. Overview of the Litigation<sup>3</sup>**

14 This action consolidates three cases.<sup>4</sup> The original action was filed by Plaintiff  
15 Omar Vargas in the Central District of California against Defendant Ford Motor Co.  
16 and complained of symptoms of the Transmission Defect, including lunging or jerking  
17 forward when attempting to decelerate, hesitation, and jerking when attempting to  
18 accelerate, akin to a slingshot effect. (Dkt. No. 1.) The Complaint alleged that the  
19 PowerShift Transmission, which Ford billed as a new type that combines the best  
20

21 <sup>3</sup> A more extensive summary of the events in this litigation will be set forth in  
22 the Motion for Final Approval of Class Action Settlement.

23 <sup>4</sup> Another suit alleging nearly identical claims, *Klipfel v. Ford Motor Co.*, No.  
24 15-CVP0044, was first filed in San Luis Obispo Superior Court on February 20, 2015.  
25 Ford then removed *Klipfel* to the Central District of California under the assigned case  
26 number 2:14-cv-02140-AB (FFMx). Following the Court's stipulation, the Court  
27 consolidated the *Vargas* and *Klipfel* actions on December 2, 2015. (*Vargas* Dkt. No.  
28 34.) Two additional actions alleging similar claims, *Cusick v. Ford Motor Company*,  
Case No. 2:15-cv-08831-AB (C.D. Cal.), filed on November 12, 2015, and *Anderson v.*  
*Ford Motor Co.*, No. 1:16-cv-01632 (N.D. Ill.), filed on April 21, 2016, were also  
brought by Ford consumers. *Cusick* was consolidated with the instant action on  
February 22, 2017 (*Vargas* Dkt. 52), and the First Amended Complaint in *Cusick*, filed  
on February 22, 2016, was deemed the "Operative Complaint" for settlement purposes.

1 features of automatic and standard transmissions, causes Class Vehicles to slip, buck,  
2 jerk, and suffer sudden or delayed acceleration and delays in downshifts. Based on an  
3 allegation that Ford failed to disclose to consumers the defective nature of the  
4 Transmission, Plaintiff sought damages and injunctive relief under California consumer  
5 protection laws, breach of express warranty, and breach of implied warranty under the  
6 Song-Beverly Consumer Warranty Act.

7 Plaintiffs thoroughly investigated and litigated their claims, including  
8 conducting testing regarding the Transmission Defect, which allowed Plaintiffs'  
9 counsel to evaluate Ford's representations concerning the problems alleged and  
10 solutions proposed. (*See, e.g.*, Declaration of Jordan L. Lurie ["Lurie Decl."], ¶¶ 8-12.)  
11 Among other tasks, Class Counsel consulted and retained automotive experts and  
12 researched publicly available materials and information provided by the National  
13 Highway Traffic Safety Administration ("NHTSA") concerning consumer complaints  
14 about the Transmission. Counsel reviewed Ford's voluminous discovery production,  
15 which included 1.5 million pages of documents, including spreadsheets with millions  
16 of lines of data, owners' manuals, maintenance and warranty manuals, design  
17 documents (*e.g.*, technical drawings), VIN Decoders, technical service bulletins, field  
18 reports, customer comment detail reports, warranty data, internal emails, and emails  
19 between Ford and third parties regarding the Transmission. Class Counsel also sought,  
20 reviewed, and evaluated third-party documents from parts' manufacturers Getrag  
21 Transmission Corporation ("Getrag") and LuK USA LLC, LuK Clutch Systems LLC,  
22 and LuK Transmission Systems (collectively "LuK"). Furthermore, Class Counsel  
23 defended depositions of four class representatives and took the depositions of two of  
24 Ford's most knowledgeable employees. (*Id.*)

25 **B. Class Counsel Engaged in Protracted Settlement Negotiations and**  
26 **Devoted Considerable Resources to Post-Settlement Motion Practice**  
27 **and Service to Class Members**

28 The Parties settled the consolidated action after multiple grueling mediation

1 sessions, starting on August 18, 2015, with Professor Green. (Lurie Decl. ¶¶ 13-15.)  
2 Following a second session, the Parties made substantial progress, and, with Prof.  
3 Green's continuing assistance, agreed to terms regarding relief for the Class on June 2,  
4 2016. (*Id.*) After confirming the terms for class relief, on June 9, 2016, the Parties  
5 participated in another mediation session in Boston with Prof. Green focused solely on  
6 the issue of attorneys' fees, costs, and incentive awards, which they were ultimately  
7 able to resolve. (*Id.*) Plaintiffs and Class Counsel took care to ensure that their interests  
8 aligned with those of the Class by negotiating attorneys' fees, costs, and service awards  
9 only after the Settlement benefits for the Class had been determined. (*Id.*)

10 After completing the mediation, the Parties worked diligently to formalize this  
11 complex, sweeping Settlement. Counsel for the Parties devoted considerable effort and  
12 time to, *inter alia*, (a) refining and harmonizing the separate cash payment components  
13 of the Settlement, (b) researching each state's lemon laws and drafting the Arbitration  
14 Rules, (c) creating notices that answers Class Members' anticipated questions about the  
15 Settlement, and (d) drafting the Settlement Agreement and the motion papers seeking  
16 its approval. (Lurie Decl. ¶ 15.)

17 Class Counsel filed Plaintiffs' Motion for Preliminary Approval of the Class  
18 Action Settlement on March 24, 2017. (Dkt. No. 120.) Following the hearing, the Court  
19 granted preliminary approval on April 25, 2017. (Dkt. No. 133.) Following the hearing,  
20 on July 7, 2017, the Claims Administrator sent over 2.15 million Class Notices to Class  
21 Membersby .

22 Due to the high interest in this litigation, even before preliminary approval, Class  
23 Counsel received dozens of inquiries a day, with a substantial number of putative Class  
24 Members continuing to submit repair orders or providing other information about their  
25 experiences with the Class Vehicles. (Lurie Decl. ¶ 17.) Since preliminary approval,  
26 Class Counsel continue to devote considerable time and resources to Class Members'  
27 inquiries, which now surpass 18,000, confirming and explaining the Settlement  
28 benefits. (*Id.*) Indeed, the flood of Class Member inquiries following preliminary

1 approval required multiple attorneys to devote all of their time to this case. (*Id.*)

2 As part of their comprehensive efforts to accommodate Class Members  
 3 following the dissemination of Class Notice, Class Counsel responded to hundreds of  
 4 phone calls a day from Class Members, e-mailed another several dozen a day, created  
 5 an interactive voice response system, developed a content-rich website to educate Class  
 6 Members about the Settlement's benefits, and worked to resolve numerous  
 7 administrative issues that arose during this phase. (Lurie Decl. ¶ 18.) Moreover, Class  
 8 Counsel, jointly with Ford's counsel, contributed to the development of the Claims  
 9 Administrator's settlement website and interactive voice response system, as well as to  
 10 the Arbitration Administrator's web site. (*Id.*)

11 Class Counsel also prepared this Motion and will be finalizing the Motion for  
 12 Final Approval of the Class Action Settlement and a supplemental brief responding to  
 13 objections. In addition, Class Counsel will continue to serve Class Members during the  
 14 claims' period, which will run for years to process both cash payments and arbitration.  
 15 Class Counsel expects that it will expend hundreds of hours after the filing of this  
 16 Motion delivering services to Class Members. (Lurie Decl. ¶ 19.)

### 17 **III. SETTLEMENT BENEFITS**

18 Class Counsel negotiated a Settlement with several tiers of benefits to provide  
 19 relief to Class Members with varying experiences and suffering different types of  
 20 harms associated with the Class Vehicle's Transmission.

#### 21 **A. Cash Payments or Vehicle Discount Certificates for Hardware Part** 22 **Replacements**

23 The Settlement provides that Class Members who have had three or more  
 24 Service Visits to authorized Ford dealers to replace qualifying parts ("Transmission  
 25 Hardware Replacement")<sup>5</sup> will be entitled to either a cash payment or a Discount

26 <sup>5</sup> Transmission Parts are defined as the following parts for the Transmission: (1)  
 27 7B546 Disc Asy-Clutch; (2) 7Z369 Control Mod Trans (TCM); (3) 7052 Oil Seal-  
 28 Trans Rear; (4) 7000 Transmission Asy-Aut; (5) 7C604 Motor-Frt Clutch; (6) 7A508

1 Certificate, valued at twice the amount of the cash payment, toward the purchase or  
 2 lease of a new Ford vehicle. (Settlement Agreement ¶ II.C.) The value of each cash  
 3 payment or Certificate is determined by the number of Service Visits made, with  
 4 \$2,325 cash or \$4,650 Certificate value being the maximum amount payable. The full  
 5 payment schedule is below:

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

14 The Settlement does not impose a definitive cut-off date for Class Members to  
 15 submit claims for which they qualify. (Settlement Agreement ¶ II.D.) Each Class  
 16 Member may qualify for new or additional benefits if an applicable Service Visit for a  
 17 Transmission Hardware Replacement is made within the 7 year/100,000 mile period,  
 18 and the Class Member timely files the claim.

19 **B. Cash Payments for Software Flashes**

20 The Settlement provides that Class Members are also entitled to receive \$50 for  
 21 each Software Flash, starting with the third, that was performed within the same 7  
 22 year/100,000 mile period. (Settlement Agreement ¶ II.B.) Class Members may receive  
 23 up to \$600 in payments for Software Flashes. As with the Transmission Hardware  
 24 Replacements, Class Members may continue to submit new or additional claims for  
 25 each qualifying Service Visit that is made within seven years of the date of delivery of  
 26

27 \_\_\_\_\_  
 28 Rod-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 the Vehicle to the first retail customers or within 100,000 miles, whichever comes first.  
 2 (*Id.*, ¶ II.D.) Once Class Members have qualified for a Transmission Hardware  
 3 Replacement payment, however, they are no longer eligible for a Software Flash  
 4 payment.

### 5 **C. Arbitration Program for Repurchases**

6 Class Members are eligible to participate in the Program, paid for by Ford, to  
 7 seek the repurchase or replacement of their Class Vehicles. (Settlement Agreement  
 8 ¶ II.N.) This Program enhances Class Members' rights in several ways. The Program  
 9 resolves Class Members' lemon law claims within two months of submission, rather  
 10 than the year or more for a lemon law suit filed in state court. The Program also  
 11 extends the statute of limitations, preserving claims for six years from the date of  
 12 original sale or six months of the effective date of the Settlement, whichever is later.  
 13 (*Id.*, ¶ II.N.1.d.) Ford will pay a maximum of \$6,000 in attorneys' fees to each Class  
 14 Member who prevails on his or her claim.<sup>6</sup> (*Id.*, ¶ II.N.1.h.)

15 Perhaps most importantly, claims for repurchase submitted to the Program will  
 16 be governed either by the state lemon law applicable to each Class Member, or by the  
 17 Settlement's consumer-friendly default remedy. (*Id.*, ¶ II.N.1.e.) Under the default  
 18 remedy, the Arbitrator may award a repurchase if four or more Transmission Hardware  
 19 Replacements were performed within five years or 60,000 miles of the original  
 20 purchase, and the vehicle continues to malfunction, even if the applicable state law  
 21 does not otherwise authorize a repurchase in the Class Member's circumstances. This

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22  
 23 <sup>6</sup> Significantly, Class Members will have the opportunity to appeal an adverse  
 24 Program decision to a JAMS arbitrator, though any costs for an appeal must be  
 25 advanced by the Class Member, to be reimbursed by Ford if the Class Member  
 26 prevails. (*Id.*, ¶ II.N.1.g.) Ford has no right to appeal. The Arbitrator may not award  
 27 civil penalties or punitive damages, which are available in some jurisdictions, and Class  
 28 Members cannot appeal an adverse decision to a court. (*Id.*, II.N.1.g & II.N.3.)  
 Furthermore, even 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 default remedy is more generous to consumers than most state’s lemon laws.

2 **D. Arbitration Program for Breach of New Vehicle Limited Warranty**

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

13 **E. Reimbursements for Clutch Replacement**

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

20 **IV. ARGUMENT**

21 **A. The Parties Have Separately Negotiated Fees That Will Not Affect**  
22 **Class Benefits**

23 At the conclusion of a successful class action, the plaintiff may apply to the  
24 Court for an award of “reasonable attorneys’ fees and non-taxable costs that are  
25 authorized by law or the parties’ agreement.” Fed. R. Civ. P. 23(h). In considering the  
26

27 <sup>7</sup> Customer Service Programs 14M01 and 14M02 cover some Transmission  
28 repairs for certain Class Vehicles. This benefit is available to Class Members whose  
Class Vehicles were not covered by 14M01/14M02.

1 fee application, courts must ensure that the fees awarded are reasonable. *See In re*  
2 *Bluetooth Headset Products Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011). In their  
3 evaluation, however, district courts must account for the fact that “the parties are  
4 compromising to avoid litigation.” *Laguna v. Coverall North America*, 753 F.3d 918,  
5 922 (9th Cir. 2014) *vac’d as moot*, 2014 U.S. App. LEXIS 21950 (9th Cir. Nov. 20,  
6 2014). Accordingly, “the district court need not inquire into the reasonableness of the  
7 fees even at the high end with precisely the same level of scrutiny as when the fee  
8 amount is litigated.” *Id.* (quoting *Staton v. Boeing Co.*, 327 F.3d 938, 966 (9th Cir.  
9 2003)). This standard is consistent with the strong policy discouraging a “second major  
10 litigation” arising from a request for attorneys’ fees. *Hensley v. Eckerhart*, 461 U.S.  
11 424, 437 (1983) (“Ideally, of course, litigants will settle the amount of a fee”).

12 Here, the agreed-upon attorneys’ fees and expenses in the amount of \$8,856,500  
13 (*see* Settlement Agreement. ¶ II.P) are the product of a non-collusive adversarial  
14 negotiation, facilitated by leading class action mediator, Eric Green. (Lurie Decl., ¶¶  
15 13-15.) With Prof. Green’s guidance, the Parties negotiated and resolved attorneys’  
16 fees well after the Class relief had been finalized to avoid any appearance of (or actual)  
17 conflict. (*Id.*) Because the Settlement would not be contingent on any agreement as to  
18 attorneys’ fees, there was no reason for Class Counsel to make unfavorable  
19 concessions with regard to Class claims in exchange for higher fees. (*Id.*) Furthermore,  
20 by agreeing to resolve attorneys’ fees amicably, Ford’s counsel averted the possibility  
21 that Class Counsel might apply for, and receive, a much larger award. Accordingly, this  
22 Court’s review of the reasonableness of the fee request should take into consideration  
23 the Parties’ bargain, including the important fact that the attorneys’ fees, negotiated  
24 well after the Class relief had been finalized, are discrete from the funds that have been  
25 designated as relief for the Class.

### 26 **B. The Fee Request is Reasonable Under the Lodestar Method**

27 “In diversity actions, federal courts look to state law in determining whether a  
28 party has a right to attorneys’ fees and how to calculate those fees.” *Mangold v. Calif.*

1 *Public Utilities Comm'n*, 67 F.3d 1470, 1478 (9th Cir. 1995). The state law governing  
 2 the underlying claims in a diversity action “also governs the award of fees.” *Vizcaino v.*  
 3 *Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). Here, California law governs, as  
 4 Plaintiffs brought suit under the Consumer Legal Remedies Act (“CLRA”), and, as  
 5 successful parties, they are entitled to fees under its one-way fee-shifting provision.<sup>8</sup>

6 Under California law, the lodestar is the “starting point of every fee award.”  
 7 *Serrano v. Priest*, 20 Cal. 3d 25, 48 n.23 (1977) (“*Serrano III*”). For any fee application  
 8 subject to a statutory award, courts should “presume that the Legislature intended  
 9 courts to use the prevailing lodestar adjustment method.” *Ketchum v. Moses*, 24 Cal.  
 10 4th 1122, 1136 (2001); accord *In re Bluetooth*, 654 F.3d at 941 (“The ‘lodestar  
 11 method’ is appropriate in class actions brought under fee-shifting statutes.”). This is  
 12 because the lodestar method most effectively compensates successful counsel for “all  
 13 the hours reasonably spent.” *Ketchum*, 24 Cal.4th at 1133. “Anchoring the analysis to  
 14 [the lodestar] is the only way of approaching the problem that can claim objectivity, a  
 15 claim which is obviously vital to the prestige of the bar and the courts.” *Serrano III*, 20  
 16 Cal. 3d at 48 n.23.

17 The lodestar method is also appropriate “where the relief sought and obtained is  
 18 not easily monetized, ensuring compensation for counsel who undertake socially

19  
 20 <sup>8</sup> Under the mandatory fee-shifting provision of the CLRA, the Court “shall  
 21 award court costs and attorneys’ fees to a prevailing plaintiff in a litigation” under that  
 22 section. Cal. Civ. Code § 1780(e). “[A]n award of attorney fees to ‘a prevailing  
 23 plaintiff’ in an action brought pursuant to the CLRA is mandatory, even where the  
 24 litigation is resolved by a pre-trial settlement agreement.” *Kim v. Euromotors West/The*  
 25 *Auto Gallery*, 149 Cal. App. 4th 170, 178-179 (2007). There is no dispute that  
 26 Plaintiffs, having obtained the relief they sought when they filed suit, are the prevailing  
 27 party. See *Parkinson v. Hyundai Motor America*, 796 F. Supp. 2d 1160, 1171 (C.D.  
 28 Cal. 2010) (authorizing fees under CLRA when the plaintiff obtained relief sought by  
 way of a class action settlement). And Ford recognized Plaintiffs’ right to recover fees  
 by entering into the Settlement Agreement under which it would not oppose Plaintiffs’  
 request for attorneys’ fees and expenses in an amount not exceeding \$8,856,500.  
 (Settlement Agreement, ¶ II.P.) Plaintiffs are also entitled to fees under the Magnuson-  
 Moss Warranty Act, 15 U.S.C. § 2310(d)(2) and the Song-Beverly Consumer Warranty  
 Act, Cal. Civ. Code § 1794(d).

1 beneficial litigation.” *Yamada v. Nobel Biocare Holding AG*, 825 F.3d 536, 546 (9th  
2 Cir. 2016) (quoting *In re Bluetooth*, 654 F.3d at 941–42). Here, the benefits cannot be  
3 monetized *with certainty* because the claims’ process will be available to Class  
4 Members for years, and several components of the Settlement’s benefits are difficult to  
5 quantify with precision. The lodestar method is therefore the appropriate method for  
6 calculating fees in this action.

7 To determine the lodestar, the Court must first multiply “the number of hours  
8 reasonably expended on the litigation . . . by a reasonable hourly rate.” *In re Bluetooth*,  
9 654 F.3d at 941. However, because the base lodestar does not capture the full market  
10 value of the services rendered, California policy strongly encourages “a fee-  
11 enhancement reflecting the risk that the attorney will not receive payment if the  
12 suit does not succeed.” *Ketchum*, 24 Cal. 4th at 1138 (citing Posner, *Economic*  
13 *Analysis of Law* (4th ed. 1992), at 534, 567) (emphasis added).

#### 14 **1. The Hours Expended Are Reasonable**

15 In evaluating the reasonableness of the hours Class Counsel expended, courts  
16 must “focus on providing an award of attorneys’ fees reasonably designed to fully  
17 compensate plaintiffs’ attorneys for the services provided.” *Horsford v. Board of*  
18 *Trustees of California State Univ.*, 132 Cal. App. 4th 359, 395 (2005). Courts do so by  
19 looking at “the entire course of the litigation, including pretrial matters, settlement  
20 negotiations, discovery, [and] litigation tactics...” *Vo v. Las Virgenes Municipal Water*  
21 *Dist.*, 79 Cal. App. 4th 440, 445 (2000). The general principle is that “the attorney who  
22 takes [a statutory fee-shifting] case can anticipate receiving full compensation for every  
23 hour spent litigating a claim even against the most polemical opponent.” *Weeks v.*  
24 *Baker & McKenzie*, 63 Cal. App. 4th 1128, 1175 (1998). However, courts should not  
25 be “enmeshed in a meticulous analysis of every detailed facet of the professional  
26 representation.” *Serrano v. Unruh*, 32 Cal. 3d 621, 642 (1982) (“*Serrano IV*”). Rather,  
27 “[t]he essential goal in shifting fees (to either party) is to do rough justice, not to  
28 achieve auditing perfection.” *Fox v. Vice*, 131 S. Ct. 2205, 2216 (2011).

1 Class Counsel have expended approximately 13,500 hours thus far to prosecute  
 2 this action<sup>9</sup> and secure benefits for the Class, not counting the hours that will be spent  
 3 preparing further briefing (including finalizing the motion for final approval and the  
 4 supplemental brief in support of final approval) and the hundreds of hours Class  
 5 Counsel anticipate will be required to help Class Members understand the Settlement  
 6 and submit claims for many years to come.<sup>10</sup> Class Counsel have reviewed billing  
 7 entries describing tasks performed that attorneys entered contemporaneously into Class  
 8 Counsel’s billing program.<sup>11</sup> (*See* Lurie Decl. ¶¶ 31-32; Declaration of Russell Paul  
 9 [“Paul Decl.”] ¶ 4.) Following the review of the voluminous records, Class Counsel  
 10 sorted the entries by task categories, summarizing those tasks for the Court’s  
 11 convenience. (*Id.*) The hours incurred reflect Class Counsel’s exceptional efforts in  
 12 surmounting a number of obstacles, including strong resistance from a well-financed  
 13 opponent represented by highly experienced and skilled counsel, to secure an excellent  
 14 Settlement for the Class. The following are the most time-intensive categories:

15 **Advising Class Members.** Class Counsel have devoted extraordinary resources

16  
 17 <sup>9</sup> In an exercise of billing discretion, Lead Class Counsel have voluntarily  
 18 excluded over 1,000 hours, representing over \$650,000 in lodestar, from the lodestar  
 19 submission. (Lurie Decl. ¶ 31, n.3.) The Court should take the voluntary reductions into  
 20 consideration in evaluating the reasonableness of the fee request. *See Moreno v. City of*  
*Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008) (instructing courts to take into  
 account existing voluntary deductions in making evaluating whether further deductions  
 should be made, and crediting counsel with a voluntary 10% “haircut”).

21 <sup>10</sup> Also in the exercise of billing discretion, Class Counsel also has not  
 22 submitted the time of Zimmerman Law Offices, P.C., also named as Class Counsel in  
 the action. The bulk of the time spent by the Zimmerman firm is in the *Anderson* case,  
 which will be dismissed following judgment in this case.

23 <sup>11</sup> California law does not require actual billing records; courts may award  
 24 statutory fees based on declarations and summaries. *See PLCM Group, Inc. v. Drexler*,  
 25 22 Cal. 4th 1084, 1098 (2000); *Winterrowd v. Am. Gen. Annuity Ins. Co.*, 556 F.3d  
 26 815, 827 (9th Cir. 2009) (applying California law and determining that the “testimony  
 of an attorney as to the number of hours worked on a particular case is sufficient  
 27 evidence to support an award of attorney fees, even in the absence of detailed time  
 record.”). Accordingly, Class Counsel prepared detailed time summaries to ease the  
 28 Court’s burden of reviewing the over 20,000 contemporaneously-entered time entries  
 upon which the time summaries were based. (Lurie Decl ¶ 31.) However, Class  
 Counsel stands ready to provide the complete billing records upon the Court’s request.

1 to this case, particularly in response to the intense interest from Class Members seeking  
2 a remedy for an alleged defect in their vehicles. Class Counsel responded to over  
3 18,000 inquiries from Class Members. During the litigation itself, Class Counsel  
4 advised Class Members as to the status of the litigation, reviewed their repair orders,  
5 and documented their complaints in a detailed database. Following preliminary  
6 approval and the dissemination of approximately 2.15 million Class Notices, Class  
7 Counsel have been inundated with calls and emails from Class Members seeking  
8 further explanation and advice regarding the Settlement and its terms. During this  
9 time—still ongoing as of the date of this filing— multiple attorneys have worked on  
10 this case exclusively, including responding to Class Members’ inquiries.

11 Lead Class Counsel also spent considerable time (a) developing their own,  
12 content-rich website to educate Class Members about the Settlement and the claims  
13 process, (b) creating an interactive voice response system to answer anticipated  
14 questions, (c) training attorneys on the Settlement’s terms, and (d) collaborating with  
15 Ford’s attorneys on both the Claims Administrator’s website and phone system and the  
16 Arbitration Administrator’s website. The 5,380 hours that Class Counsel has dedicated  
17 to educating and advising Class Members have been both reasonable and necessary.

18 **Settlement Negotiations and Settlement Motions.** Class Counsel have also  
19 spent 2,480.6 hours on preparing the Settlement and Settlement motions. This  
20 expenditure is reasonable and necessary given the nature of the Settlement negotiations  
21 and the Settlement drafting process. The proposed Settlement comes after multiple  
22 mediations and months of drafting and fine-tuning the Settlement Agreement and its  
23 various companion documents. (Lurie Decl. ¶¶ 13-16.) This was no ordinary  
24 agreement; the Settlement features several novel components, including a unique  
25 arbitration program, a default repurchase remedy, and compensation for inconvenience.  
26 Class Counsel spent considerable time harmonizing the various benefit components,  
27 researching each state’s lemon laws, reviewing class action settlements in other car  
28 cases, and refining the processes for claims submission and arbitration.

1 Class Counsel also spent considerable time preparing the Motion for Preliminary  
2 Approval, this Motion, and the Motion for Final Approval, including examining and  
3 categorizing over 12,000 billing entries, conducting legal research, and drafting the  
4 memorandum of points and authorities.

5 **Discovery.** Class Counsel also spent a reasonable 3,249.2 hours on discovery.  
6 Among other tasks, Class Counsel consulted and retained automotive experts and  
7 researched publicly available materials and information provided by NHTSA  
8 pertaining to the Transmission.<sup>12</sup> They reviewed and researched consumer complaints  
9 and discussions of Transmission problems in articles and forums online, in addition to  
10 various manuals and technical service bulletins discussing the alleged defect. Finally,  
11 they conducted research into the applicable causes of action and other similar  
12 automotive actions. In response to Class Counsel's discovery requests, Ford produced  
13 over 1.5 million pages of documents, including spreadsheets with millions of lines of  
14 data, owners' manuals, maintenance and warranty manuals, design documents (*e.g.*,  
15 technical drawings), VIN Decoders, technical service bulletins, field reports, customer  
16 comments detail reports, warranty data, internal emails, and emails between Ford and  
17 third parties. Furthermore, Plaintiffs' Counsel defended depositions of four class  
18 representatives.

19 Class Counsel also obtained significant discovery from third-parties Getrag and  
20 LuK, the manufacturers and suppliers of the Transmission and its clutches. Plaintiffs  
21 subpoenaed and received over 20,000 documents comprised of 117,000 pages from  
22 Getrag and nearly 10,000 documents comprised of over 36,000 pages from LuK. In  
23 addition, Plaintiffs took the deposition of Getrag's corporate representative.

24 In reviewing this discovery, including hundreds of thousands of pages of email  
25 correspondence and databases containing millions of lines of data produced by Ford,  
26 Class Counsel identified information that was instrumental to the case and to Plaintiffs'

27 \_\_\_\_\_  
28 <sup>12</sup> The work on discovery is laid out in detail in the Motion for Preliminary  
Approval and the declaration in support thereof.



1 efforts during mediation. Moreover, Class Counsel identified relevant topics and took  
 2 the Fed. R. Civ. P. 30(b)(6) depositions of Chris Kwasniewicz, the engineer Ford  
 3 assigned to “problem solve” the DPS6 Transmission, and Matt Fyie, a Design Analysis  
 4 Engineer for Ford’s automatic transmissions. The time spent on this important phase of  
 5 the litigation is reasonable.

6 **Pleadings and Motion Practice.** Class Counsel also spent 1010.4 hours on  
 7 pleadings, legal and factual analysis, and motion practice. Much of this time was spent  
 8 drafting detailed complaints in the three cases subsequently consolidated by the Court.  
 9 Moreover, Class Counsel prepared oppositions to Ford’s motion to dismiss and  
 10 motions consolidating the actions and analyzed and prepared motions relating to Ford’s  
 11 implementation, during the pendency of the litigation, of the 14M01 and 14M02  
 12 Customer Satisfaction Programs that extended the warranty coverage for certain  
 13 Transmission parts for a good portion of the Class Vehicles.

14 All told, Class Counsel’s base lodestar of \$6,988,275.15, reflecting 13,500.6  
 15 hours worked, is reasonable. This figure is not excessive and does not reflect  
 16 duplicative or unnecessary work. Indeed, courts should defer to successful counsel’s  
 17 judgment as to how much work was needed to succeed:

18 [L]awyers are not likely to spend unnecessary time on  
 19 contingency fee cases in the hope of inflating their fees. The  
 20 payoff is too uncertain as to both the result and the amount in  
 21 fee... By and large, the court should defer to the winning  
 lawyer’s professional judgment as to how much time he was  
 required to spend on the case; after all he won and might not  
 have, had he been more of a slacker.

22 *Moreno*, 534 F.3d at 1112. Accordingly, the time devoted by Class Counsel in  
 23 prosecuting their case is reasonable and should be approved.

## 24 2. The Hourly Rates are Reasonable

25 Class Counsel’s hourly rates, which range from \$245 for associates to \$725 for  
 26 very senior attorneys and partners, are also reasonable. (*See* Lurie Decl., ¶ 32; Paul  
 27 Decl., ¶ 4.) Counsel are entitled to their requested hourly rates if those rates are within  
 28

1 the range of rates charged by and awarded to attorneys of comparable experience,  
 2 reputation, and ability for similar work, *i.e.*, complex class action litigation. *Children’s*  
 3 *Hospital and Med. Center v. Bonta*, 97 Cal. 4th 740, 783 (2002) (affirming rates that  
 4 were “within the range of reasonable rates charged by, judicially awarded to,  
 5 comparable attorneys for comparable work”); *accord Blum v. Stenson*, 465 U.S. 886,  
 6 895 n.11 (1984) (determining reasonable rate by examining the rate “prevailing in the  
 7 community for similar services by lawyers of reasonably comparable skill, experience,  
 8 and reputation”). Prior judicial orders are probative evidence of market rates. *See*  
 9 *Margolin v. Regional Planning Com.*, 134 Cal. App. 3d 999, 1005 (1982) (rejecting the  
 10 defendant’s attacks on prior court orders and deeming such orders to be highly  
 11 probative of rates).

12 Class Counsel’s rates are wholly consistent with rates approved by courts in this  
 13 district for major consumer class actions.<sup>13</sup> *See Chambers v. Whirlpool Corp.*, 214 F.  
 14 Supp. 3d 877, 899 (C.D. Cal. 2016) (approving rates of \$485 to \$750 for consumer  
 15 class action attorneys on a contested fee motion); *Etter v. Thetford Corporation*, No.  
 16 13-00081-JLS, 2017 WL 1433312 (C.D. Cal. Apr. 14, 2017) (approving \$275 to \$775  
 17 for attorneys on a contested fee motion); *Bravo v. Gale Triangle, Inc.*, No. 16-03347  
 18 BRO, 2017 WL 708766, at \*17 (C.D. Cal. Feb. 16, 2017) (approving rates between  
 19 \$350 and \$700). (*See also* Lurie Decl. ¶ 36.)

20 Here, Lead Class Counsel Capstone Law APC’s (“Capstone”) rates have  
 21 specifically been approved by California district courts in approving settlements

22  
 23 <sup>13</sup> *See also, Kearney v. Hyundai Motor Am.*, No. 09-1298, 2013 U.S. Dist.  
 24 LEXIS 91636 (C.D. Cal. June 28, 2013) (approving hourly rates of \$650-\$800 for  
 25 senior attorneys in consumer class action); *Parkinson v. Hyundai Motor America*, 796  
 26 F. Supp. 2d 1160, 1172 (C.D. Cal. 2010) (approving hourly rates between \$445 and  
 27 \$675); *Richard v. Ameri-Force Mgmt. Servs., Inc.* (San Diego Super. Ct., August 27,  
 28 2010, No. 37-2008-00096019) (\$695 to \$750 an hour for partners; \$495 an hour for  
 associates); *Barrera v. Gamestop Corp.* (C.D. Cal. Nov. 29, 2010, No. CV 09-1399)  
 (\$700 an hour for partners; \$475 an hour for associates); *Anderson v. Nextel Retail  
 Stores, LLC* (C.D. Cal. June 20, 2010, No. CV 07-4480) (\$655 to \$750 an hour for  
 partners; \$300 to \$515 an hour for associates).

1 involving automotive defects. *See, e.g., MacDonald v. Ford Motor Co.*, No. 13 -02988-  
2 JST, 2016 WL 3055643, \*9 (May 31, 2016) (approving rates of \$370 to \$695 for many  
3 of the same attorneys as here on a contested catalyst motion); *Klee v. Nissan N. Am.,*  
4 *Inc.*, 2015 U.S. Dist. LEXIS 88270, \*38 (C.D. Cal. July 7, 2015) (approving rates of  
5 \$370 to \$695 for Capstone attorneys in an automotive defect case); *Asghari v.*  
6 *Volkswagen Grp. Of America*, No. 13-02529-MMM, 2015 WL 12732462 (May 29,  
7 2015) (same); *Aarons v. BMW of North America*, No. 11-7667-PSG, 2014 U.S. Dist.  
8 LEXIS 118442, \*40-41 (C.D. Cal. Apr. 29, 2014) (same). In *Aarons*, the district court  
9 also approved rates for comparable plaintiffs’-side firms such as Baron & Budd (rates  
10 ranging from \$775 for the requested partner to \$390-\$630 for non-partners),  
11 Wasserman, Comden, Casselman, & Essensten (rates ranging from \$670-750 for  
12 partners and \$300-500 for associates), and Blood Hurst & O’Reardon (\$510-695 for  
13 partners). *Id.* Berger & Montague’s rates are consistent with the rates approved by  
14 numerous courts. (Paul Decl. ¶¶ 11-12.)

15 Moreover, Capstone and Berger & Montague are both large, reputable  
16 plaintiffs’-side firms responsible for numerous class action settlements and significant  
17 appellate decisions. (*See* Lurie Decl. ¶¶ 33-34; Ex. 1; Paul Decl. ¶¶ 5-11.) Capstone  
18 regularly litigates against prominent defense firms in Los Angeles and San Francisco,  
19 including Sheppard, Mullin, Richter & Hampton (\$490 - \$875 for partners and senior  
20 counsel; \$275 to \$535 an hour for associates), Cooley (\$660 - \$ 990 for partners, \$525  
21 average rate for associates), and Morrison & Forester (\$595 - \$1195 for partners, \$525  
22 average rate for associates), as collected in a survey conducted by the National Law  
23 Journal (“NLJ”) in 2013. (*See* Lurie Decl. ¶ 37; Ex. 2.) The NLJ survey is widely  
24 accepted as evidence of reasonable market rates. *See Building a Better Redondo, Inc. v.*  
25 *City of Redondo Beach*, 203 Cal. App. 4th 852, 871 (2012) (affirming rates for  
26 contingency fee attorneys in Southern California based, in part, on the NLJ survey,  
27 which has partner rates of “\$475 to \$850 and associate rates from \$ 275 to \$505”); *Ctr.*  
28 *for Biological Diversity v. County of San Bernardino*, 188 Cal. App. 4th 603, 615

1 (2010) (awarding market rates and crediting the NLJ survey for, among other evidence,  
2 establishing the market rate).

3 In short, Class Counsels' hourly rates are within the range of hourly rates  
4 charged by comparable attorneys and approved by multiple jurisdictions, including by  
5 courts in the Central District of California. The requested rates should be approved.

### 6 **3. Class Counsel's Lodestar Should Be Enhanced with a Modest** 7 **Contingent Risk Multiplier**

8 Class Counsel are also entitled to the application of a positive multiplier. In  
9 determining whether a multiplier should be applied, the Court must consider a number  
10 of factors, including: (1) the contingent nature of the fee and the complexity of the  
11 case; (2) the results achieved and the awards made in similar cases; and (3) a  
12 percentage cross-check. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-50 (9th Cir.  
13 2002); *accord In re Consumer Privacy Cases*, 175 Cal. App. 4th 545, 551 (2009).  
14 While no single factor is determinative of reasonableness, these factors also support  
15 Plaintiffs' fee request. Indeed, based on the factors below, a multiplier of 2.0 (or  
16 higher) for Class Counsel would be justified. *See, e.g., MacDonald*, 2016 WL  
17 3055643, at \*10 (applying a 2.0 multiplier for contingent risk and results achieved to  
18 Lead Class Counsel on a contested catalyst fee motion against Ford).<sup>14</sup> The modest  
19 multiplier of 1.22 is therefore reasonable and should be approved.<sup>15</sup>

20  
21  
22 <sup>14</sup> A multiplier of 2.0 or above is frequently applied. *See Van Vranken v. Atlantic*  
23 *Richfield Co.*, 901 F. Supp. 294, 298 (N.D. Cal. 1995) (stating the existence of a "3-4  
24 range [of] common" multipliers for sophisticated class actions); *Steiner v. American*  
25 *Broad. Co.*, 248 Fed. Appx. 780, 783 (9th Cir. 2007) (affirming fee award where the  
26 lodestar multiplier was 3.65). *See also, Graham*, 34 Cal. 4th at 581 (affirming a 2.25  
27 multiplier for work on the merits); *Sutter Health Uninsured Pricing Cases*, 171 Cal.  
28 App. 4th 495, 512 (2009) (applying a 2.52 multiplier in an antitrust class action);  
*Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 60 (2008) (applying a 2.5 multiplier in a  
consumer class action).

<sup>15</sup> The multiplier is the quotient of the requested fee amount of \$8,530,130.68  
and the base lodestar of \$6,988,275.15.

1 (a) **The Contingent Risk Borne by Plaintiffs’ Counsel,**  
2 **the Complexity of Litigation, and the Expected**  
3 **Future Work All Support the Application of the**  
4 **Requested Multiplier**

5 Under California law, a risk multiplier is meant to compensate the contingency  
6 attorney for the risk he or she undertakes to enforce important public rights:

7 A lawyer who both bears the risk of not being paid and  
8 provides legal services is not receiving the fair market value  
9 of his work if he is paid only for the second of these functions.  
If he is paid no more, competent counsel will be reluctant to  
accept fee award cases.

10 *Ketchum*, 24 Cal. 4th at 1132-33; *see Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th  
11 553, 580 (2014) (explaining California’s policy of adjusting the lodestar upward to  
12 account for contingent risk). A court abuses its discretion if it fails to apply a risk  
13 multiplier where the attorneys undertook the case with the expectation that they would  
14 receive a risk enhancement if they prevailed, the case was risky, and the hourly rate  
15 does not reflect that risk. *See Fischel v. Equitable Life Assur. Society of U.S.*, 307 F.3d  
16 997, 1008 (9th Cir. 2002).

17 The contingent risk factor is the single most important enhancement factor under  
18 California law for actions where statutory fees are available, and it must be considered  
19 by the court in fixing fees. *See Horsford*, 132 Cal. App. 4th at 399 (reversing a trial  
20 court order for failure to consider contingent risk for statutory fees); *Vizcaino*, 290 F.3d  
21 at 1049-1050. This enhancement stems from the “established practice in the private  
22 legal market to reward attorneys for taking the risks of non-payment by paying them a  
23 premium over their normal hourly rates for winning contingency cases.” *In re*  
24 *Washington Public Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994).  
25 This risk is particularly acute for contingency fee attorneys because they “must use  
26 savings or incur debt to keep their offices afloat and their families fed during the years-  
27 long litigation.” *Horsford*, 132 Cal. App. 4th at 400. Because attorneys pursuing claims  
28 in contingency will sometimes lose after expending thousands of hours and advancing

1 tens of thousands of dollars in expenses, despite litigating diligently and expertly, an  
2 enhancement ensures that the risks do not outstrip the incentive to pursue claims on  
3 behalf of consumers.

4 This case presents substantial risk. First, this case against a major automotive  
5 manufacturer alleging a defect in over a million Class Vehicles has the potential to  
6 consume significant amounts of attorneys' time and Court resources. Had litigation  
7 continued, Ford would have argued that no defect exists, or that, even if it did exist,  
8 Plaintiffs would not be able to show that the defect constitutes a safety concern. Ford  
9 would also be expected to argue that individual issues as to liability and damages  
10 would prevail over common issues. *See, e.g., Smith v. Ford Motor Co.*, 749 F. Supp. 2d  
11 980, 991-92 (N.D. Cal. 2010) (granting defendant's motion for summary judgment and  
12 finding alleged ignition-lock defect not a safety risk).

13 Second, Plaintiffs may well be unable to maintain class status through trial. The  
14 technological issues in this case are complex, and Ford contends that changes in the  
15 manufacturing process, design, and software created multiple versions of the  
16 PowerShift Transmission, precluding the likelihood of one common defect. (Lurie  
17 Decl. ¶¶ 38-41.) Had litigation continued, Ford would likely have argued that the  
18 variations in the Transmission and in the defects alleged also preclude class  
19 certification of the consumer fraud claims for omission. In addition, Ford would have  
20 argued that, among other individual variations, questions regarding each customer's  
21 proper maintenance of the vehicle, driving conditions, and the reasonableness of repair  
22 attempts, such as whether the vehicle was taken timely to the dealer for repairs, among  
23 others, would preclude certification of the warranty claims. These are the types of  
24 defenses that, if accepted, would support a denial of certification. *See, e.g., Philips v.*  
25 *Ford Motor Co.*, No. 14-02989, 2016 WL 7428810, \*17 (N.D. Cal. Dec. 22, 2016)  
26 (finding that plaintiffs failed to present a compelling damages model supporting a  
27 class-wide determination regarding Ford's alleged omission of a "systemic defect" in  
28 the vehicle's electronic steering system); *Grodzitsky v. Am. Honda Motor Co.*, No. 2-

1 01142-SVW, 2014 U.S. Dist. LEXIS 24599 (C.D. Cal. Feb. 19, 2014) (denying  
2 certification due to lack of evidence that common materials were used for all defective  
3 “window regulators” in the class); *Cholakyan v. Mercedes-Benz USA, LLC*, 281 F.R.D.  
4 534, 553 (C.D. Cal. 2012) (“There is also no evidence that a single design flaw that is  
5 common across all of the drains in question is responsible for the alleged water leak  
6 defect ...”).

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

13       In short, Class Counsel faced the crippling, if not the termination, of their action  
14 at every stage in the litigation. For this type of contingent risk, courts have applied a  
15 multiplier of 1.5 or more to account for the “return expected by lawyers.” *Fadhl v. City*  
16 *and County of San Francisco*, 859 F.3d 649, 650 (9th Cir. 1988) (awarding a 2.0  
17 multiplier); *see also Chambers*, 214 F. Supp. 3d at 904 (applying a 1.68 multiplier on a  
18 contested fee motion); *In re Volkswagen & Audi Warranty Extension Litig.*, 89 F.  
19 Supp. 3d 155, 170-71 (D. Mass. 2015) (applying a 2.0 multiplier in awarding fees to  
20 successful plaintiff’s counsel in an action involving defectively-designed engines).

21       Earlier this year, Judge Fernando Olguin of this District approved a fee request  
22 based on a 2.9 multiplier in an automotive defect settlement based on contingent risk.  
23 *See Warner v. Toyota Motor Sales, U.S.A.*, No. 15-02171-FMO (C.D. Cal. May 21,  
24 2017), Dkt. No. 140, at \*\*22-25. The order in *Warner*, a case with a similar procedural  
25 posture to this action but with far fewer Class Members, is instructive.

26       The fees are also reasonable given the “novelty and difficulty of the questions  
27 involved, and the skill displayed in presenting them.” *Serrano III*, 20 Cal. 3d at 49.  
28 (finding that this existence of this factor justifies a multiplier to the lodestar). There is

1 little question that this action presented both novel and difficult questions of law. In  
 2 investigating and prosecuting this action, Class Counsel was required to understand the  
 3 advanced technology at issue, defeat a motion to dismiss, and fashion a sophisticated  
 4 and unique settlement that addressed a range of harms. (Lurie Decl. ¶ 42.) Class  
 5 Counsel’s skill, particularly in creating the Settlement and managing the Settlement  
 6 process, also supports the requested multiplier.

7 Finally, considering the lengthy claims’ period, which will run for years, and the  
 8 number of Class Members who have already contacted Class Counsel, Class Counsel  
 9 expects to expend hundreds, if not thousands, of hours on this case after final approval  
 10 (assuming it is granted). The requested multiplier would help compensate Class  
 11 Counsel for the expected future work aiding class members. *See Browne v. Am. Honda*  
 12 *Motor Co.*, No. 09-06750 MMM, 2010 WL 9499073, at \*11 (C.D. Cal. Oct. 5, 2010)  
 13 (approving a 1.5 multiplier in part on future “work with class members as they seek  
 14 reimbursement under the settlement over the coming months”).

15 **(b) The Results Achieved and the Awards in Similar**  
 16 **Cases Support the Application of a Multiplier**

17 A multiplier is also warranted when attorneys achieved a high level of success,  
 18 often because of the attorneys’ “exceptional effort.” *Graham*, 34 Cal. 4th at 583. By  
 19 any measure, the results achieved by Class Counsel are exceptional. The Settlement  
 20 upon which the Parties ultimately agreed provides a full repurchase for those who  
 21 qualify—based on a resolution procedure friendly to consumers. Class Members who  
 22 have had multiple repairs under warranty, with no out-of-pocket costs, are still entitled  
 23 to cash payments, a benefit not typically included in settlements of automotive class  
 24 actions, which usually involve a combination of an extended warranty and  
 25 reimbursement for expenses incurred.<sup>16</sup>

26 <sup>16</sup> Ford extended the warranty on the transmission to the majority of Class  
 27 Members during the pendency of the suit (which Plaintiffs believe to be in response to  
 28 the suit). However, believing that the extended warranty was insufficient, Plaintiffs



1 In automobile defect cases, courts frequently evaluate the success achieved by  
2 valuing the benefit conferred to the Class. *See In re Volkswagen & Audi Warranty*  
3 *Extension Litig.*, 89 F. Supp. 3d, at 171 (valuing benefits conferred at \$101,148,498,  
4 including over \$18 million for repairs and \$8 million for reimbursements, along with  
5 over \$73 million for the extended warranty based on “the price a class member would  
6 have paid for such a service absent settlement.”); *Trew v. Volvo Cars of N. Am., LLC*,  
7 No. S-05-1379-RRB, 2007 U.S. Dist. LEXIS 55305, at \*15 (S.D. Cal. July 31, 2007)  
8 (valuing the settlement benefit of replacing a throttle module at \$24 million based on  
9 part replacement costs and applying a percentage method to determine fees); *Alin v.*  
10 *Honda Motor Co.*, No. 08-4825, 2012 WL 8751045, at \*19 (D.N.J. Apr. 13, 2012)  
11 (valuing the settlement benefit at over \$38 million based on replacement costs of item  
12 for all class vehicles covered by the warranty).<sup>17</sup>

13 Here, while not all of the Settlement benefits can be valued with precision, Class  
14 Counsel have reviewed reports documenting Ford’s sales of Transmission parts to  
15 Ford dealers for the purpose of warranty repairs (i.e., parts ordered by Ford dealers to  
16 respond to repair demands from Ford customers). (Lurie Decl. ¶¶ 27-29.) Based on this  
17 data, Ford is projected to provide over 8 million Transmission parts to Ford dealers that  
18 qualify for Transmission Hardware Replacements as of the date of this Motion. Given  
19 that there are approximately 1,468,890 Class Vehicles, each Class Vehicle would  
20 average 5 qualifying repairs based on this data. (*Id.*) To be sure, the distribution of  
21 Transmission parts is not spread evenly to all Class Vehicles, as many Class Vehicles  
22 have not yet had any replacements performed. However, the projection of 8 million

23 \_\_\_\_\_  
24 negotiated relief to benefit Class Members in other ways, including providing cash  
25 payments for multiple Service Visits for Transmission Hardware Replacements and/or  
26 Software Flashes.

27 <sup>17</sup> *See also In re Toyota Motor Corp.*, No. 8:10ML-02151-JVS, 2013 U.S. Dist.  
28 LEXIS 94485, at \*211 (C.D. Cal. June 17, 2013) (valuing the relief involving the  
installation of a break override system at \$400 million); *O’Keefe v. Mercedes-Benz*  
*United States, LLC*, 214 F.R.D. 266, 305-307 (E.D. Pa. 2003) (valuing extended  
warranty coverage at approximately \$20 million and applying a percentage method to  
determine fees).

1 Transmission Hardware Replacements strongly suggests that a significant proportion of  
2 the approximately 1.9 million Class Members will qualify for at least one of the  
3 Settlement's benefits.

4 To illustrate the minimum value of the Transmission Hardware Replacement  
5 award, a Class Member with five qualifying Transmission Hardware Replacements  
6 would receive \$825 under the Settlement. (Lurie Decl. ¶ 27.) Even if only ten percent  
7 (10%) of the class had five qualifying repairs performed, which is extremely  
8 conservative based on the warranty parts data, the Settlement would still be valued at  
9 ***\$121,183,425 for Transmission Hardware Replacement payments alone.*** Plaintiffs'  
10 fees would be a very modest seven percent (7%) of just this one component of the  
11 Settlement, as this calculation does not even contemplate the number of Class  
12 Members who would be entitled to a full repurchase (i.e. \$20,000+) of their vehicles  
13 under the default remedy.

14 As for the repurchase remedy, even if only ***1%*** of the Class Vehicles (14,689  
15 vehicles) were eligible under the Settlement's default remedy, the settlement value  
16 would still far exceed an amount that would justify Plaintiffs' fee request. (Lurie Decl.  
17 ¶ 28.) Under a very conservative assumption that these Class Members purchased their  
18 vehicles for \$10,000 with a third Transmission Hardware Replacement performed at  
19 30,000 miles (for purposes of a mileage deduction under the default remedy), their  
20 recovery would amount to at least \$7,500 each. If a vehicle, on average, maintains 37%  
21 of its value after five years, each Class Member would recover \$3,800 more from the  
22 Settlement than they would from an independent sale. Thus, even if only 1% of the  
23 Class prevailed on this claim (an overly conservative assumption made to emphasize  
24 the point), the Settlement would be valued at \$55,818,200, and Plaintiffs' fees would  
25 amount to ***15.3% of just this one Settlement benefit alone.***

26 Furthermore, this calculation does not include the attorneys' fees (up to \$6,000  
27 per prevailing Class Member) and the arbitrator's fees and costs (at least \$3,000) per  
28 arbitration that would be paid by Ford, which are also quantifiable benefits for Class

1 Members. *See In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934 (9th Cir. 2015)  
2 (finding that the district court did not abuse its discretion in calculating the fee award as  
3 a percentage of the total settlement fund, including notice and administrative costs, and  
4 litigation expenses). The aggregate value of the administrative costs and attorneys' fees  
5 (if granted in full) would be \$132,201,000, if only 1% of the Class were to prevail on  
6 repurchase claims through the Arbitration Program and were awarded the full  
7 attorneys' fees permissible. This amount also omits the value to Class Members of the  
8 cash payments for Software Flashes, reimbursement for clutch replacements, or awards  
9 made through Warranty Arbitration.

10 In sum, Class Counsel's fee request of \$8,530,130.68 represents a tiny  
11 percentage of the benefits conferred. Given the success achieved in this litigation, a  
12 1.22 multiplier is reasonable and should be approved. *See In re: Volkswagen and Audi*  
13 *Warranty Extension Litig.*, 89 F. Supp. 3d at 171 (\$15,468,000 in attorneys' fees costs  
14 awarded, awarding a 2.0 multiplier); *Warner v. Toyota*, No. 15-02171-FMO, at \*22-25  
15 (awarding \$ 9,750,000 in requested fees in an automotive defect settlement and  
16 awarding a 2.9 multiplier).

#### 17 **4. A Percentage Cross-Check Confirms the Reasonableness of the** 18 **Requested Fees**

19 In cases "where classwide benefits are not easily monetized, a cross-check is  
20 entirely discretionary." *Yamada*, 825 F.3d at 547. While the Court does not need to  
21 conduct a cross-check, if it does do so, it should value the Settlement by the potential  
22 awards made available to the Class. *Williams v. MGM-Pathe Commc'ns Co.*, 129 F.3d  
23 1026, 1027 (9th Cir. 1997)); *see also Six Mexican Workers v. Arizona Citrus Growers*,  
24 904 F.2d 1301, 1311 (1990) (citing *Boeing Co. v. Ven Gemert*, 444 U.S. 472, 480-81  
25 (1980) ("The Supreme Court has stated that attorneys' fees sought under a common  
26 fund theory should be assessed against every class members' share, not just the  
27 claiming members.")).

28 As set forth above, the overall benefit conferred on the Class for repurchase and

1 Transmission Hardware Replacements awards (both based on exceptionally  
 2 conservative assumptions) exceeds \$300 million. (Lurie Decl. ¶ 30.) This figure does  
 3 not include the costs of claims administration, cash payments for software flashes,  
 4 reimbursement for clutch replacements, and awards through and costs of Warranty  
 5 Arbitration. The requested amount in attorneys’ fees and expenses of \$8,530,130.68  
 6 represents less than 4% of that value, which is substantially lower than the 25%  
 7 benchmark in the Ninth Circuit<sup>18</sup> and is therefore reasonable. Conversely, the 25%  
 8 benchmark would be met if the Settlement delivers \$34.12 million in value to the  
 9 Class. To put this in perspective, \$34.12 million in settlement benefits would be  
 10 reached if only 41,358 of Class Members have had five Transmission Hardware  
 11 Replacements—a figure that represents 2.8% of the Class and requires only 206,790  
 12 qualifying repairs. Given that there were over 8 million Transmission parts sold that  
 13 would qualify for Transmission Hardware Replacements, the Settlement will  
 14 dramatically exceed \$32.12 million in value conferred, confirming the reasonableness  
 15 of the fee request on a percentage cross-check.

16 **C. The Expenses Advanced by Class Counsel Should be Reimbursed**

17 For litigation expenses, the rule is that prevailing parties may recover, as part of  
 18 statutory attorneys’ fees, “litigation expenses...when it is ‘the prevailing practice in the  
 19 given community’ for lawyers to bill those costs separate from their hourly rates.” *Trs.*  
 20 *of the Constr. Indus. and Laborers Health and Welfare Trust v. Redland Ins. Co.*, 460  
 21 F.3d 1253, 1258 (9th Cir. 2006) (citation omitted). Attorneys are reimbursed for out-of-  
 22 pocket expenses “such as ‘1) meals, hotels, and transportation; 2) photocopies; 3)  
 23 postage, telephone, and fax; 4) filing fees; 5) messenger and overnight delivery; 6)  
 24 online legal research; 7) class action notices; 8) experts, consultants, and investigators;  
 25 and 9) mediation fees.’” *Johnson v. General Mills, Inc.*, No. 10-00061-CJC, 2013 U.S.  
 26 Dist. LEXIS 90338, \*20-\*21 (C.D. Cal. June 17, 2013) (quoting *In re Immune*

27  
 28 <sup>18</sup> See *Six Mexican Workers*, 904 F.2d at 1311 (announcing a 25% benchmark  
 and authorizing district courts to make upward or downward adjustments as necessary).

1 *Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177 (S.D. Cal. 2007) (both courts  
2 awarding the requested expenses, including for expert witnesses, mediation,  
3 photocopying and computerized research).

4 Here, Class Counsel have expended \$326,369.32 in costs and expenses that  
5 would typically be billed to a paying client. The costs are documented in Counsels'  
6 respective declarations. (Lurie Decl. ¶ 17; Paul Decl. ¶ 13.) The expenses they  
7 advanced on behalf of the Class should be reimbursed.

8 **D. Service Payments From \$1000 to \$10,000 Should be Awarded to**  
9 **Each of the Named Plaintiffs**

10 Payment of a service award to the putative class representative is routinely  
11 awarded as compensation for named Plaintiff's undertaking the risk and expense of  
12 litigation to advance the class' interests. *See Rodriguez v. W. Pub. Corp.*, 563 F.3d 948,  
13 958-59 (9th Cir. 2009). In light of the valuable benefits conferred to Class Members,  
14 the sum of \$10,000 to Plaintiff Omar Vargas, \$7,500 each to Plaintiffs Michelle Harris,  
15 Sharon Heberling, and Robert Bertone, \$5,000 to each of the Class Representatives in  
16 the *Klipfel* and *Cusick* actions,<sup>19</sup> and \$1,000 to each Class Representative in the  
17 *Anderson* action are modest and well within the range of service awards that have been  
18 approved in similar cases.<sup>20</sup>

19  
20 <sup>19</sup> The Class Representatives in *Klipfel* are Andrea and Kevin Klipfel. The Class  
21 Representatives in the *Cusick* action are: Joshua Bruno, Maureen Cusick, Eric Dufour,  
22 Abigail Fisher, Christi Groshong, Virginia Otte, Tonya Patze, Jamie Porterfield, Jason  
23 Porterfield, Lindsay Schmidt, Patricia Schwenker and Patricia Soltesiz. Each of these  
24 Class Representatives fulfilled his or her duties as Class Representative, and deserves a  
25 \$5,000 service award. (Lurie Decl. ¶ 44; Paul Decl. ¶ 14.) Furthermore, the *Anderson*  
26 action will be resolved by this Settlement, and the 46 Class Representatives in that case  
27 deserve the modest \$1,000, each, for aiding with the investigation and reviewing  
28 documents.

<sup>20</sup> Courts frequently approve different amounts of service awards to different  
named plaintiffs, based on each plaintiff's contributions to the case. *See Hartless v.*  
*Clorox Co.*, 273 F.R.D. 630, 646-47 (S.D. Cal. 2011) (approving an award of \$4,000  
for one named plaintiff and \$2,000 for another who participated for a shorter time);  
*Stevens v. Safeway, Inc.*, No. 05-01988, 2008 U.S. Dist. LEXIS 17119, \*\*34-37 (C.D.  
Cal. Feb. 25, 2008) (\$20,000 and \$10,000 to two class representatives).

1 Plaintiffs are entitled to class representative payments for their time and effort to  
2 support a case in which they had a modest personal interest but which provided  
3 considerable benefits to Class Members—a commitment undertaken without any  
4 guarantee of recompense. Each Plaintiff provided documents to, and consulted with,  
5 Counsel about the claims in this case and assisted throughout the course of the  
6 litigation. Plaintiffs reviewed the allegations, kept in constant contact with Class  
7 Counsel regarding the status of the case, and responded to inquiries regarding Ford and  
8 Ford dealers’ efforts to remedy the problems Plaintiffs experienced. Plaintiffs have  
9 also stayed abreast of Settlement negotiations, reviewed the Settlement terms, and  
10 approved the Settlement on behalf of the Class. (Lurie Decl. ¶¶ 44-46.)

11 Furthermore, enhanced services awards for Plaintiffs Vargas, Harris, Heberling,  
12 and Bartone are merited. Plaintiff Vargas initiated this action in 2014, was deposed,  
13 and has been consistently involved in this litigation since its inception, while Plaintiffs  
14 Harris, Heberling, and Bertone provided their vehicles for inspection, responded to  
15 discovery, produced documents, and sat for depositions. (Lurie Decl. ¶ 46.) *See, e.g.,*  
16 *Seifi v. Mercedes-Benz USA, LLC*, No. 12-CV-05493-TEH, 2015 WL 12952902, at \*3  
17 (N.D. Cal. Aug. 18, 2015) (awarding incentive award of \$9,000 to named plaintiffs);  
18 *Keegan v. Am. Honda Motor Co, Inc.*, No. 10-09508-MMM, 2014 WL 12551213, at  
19 \*32 (C.D. Cal. Jan. 21, 2014) (awarding \$5000 incentive payments to multiple  
20 plaintiffs); *Vizzi v. Mitsubishi Motors N. Am., Inc.*, No. 08-00650-JVS, 2010 WL  
21 11508375, at \*11 (C.D. Cal. Mar. 29, 2010) (“Because this case could not have  
22 proceeded without the participation of Vizzi, the Court grants him \$10,000”).

## 23 **V. CONCLUSION**

24 For the foregoing reasons, Plaintiffs respectfully request that the Court grant  
25 Plaintiffs’ motion and award fees of \$8,530,130.68, costs in the amount of  
26 \$326,369.32, and incentive payments ranging from \$1000 to \$10,000 for each of the  
27 named Plaintiffs.

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Respectfully submitted,

By: /s/ Jordan L. Lurie

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