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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. 2:12-cv-08388-AB-FFMx
Hon. Judge André Birotte Jr.

**LOTT GROUP'S NOTICE OF
MOTION AND MOTION FOR
ATTORNEYS' FEES, COSTS, AND
APPROVAL OF SERVICE
PAYMENTS, AND
MEMORANDUM IN SUPPORT
THEREOF**

Date: February 28, 2020

Time: 10:00am

Place: Courtroom 7B

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

PLEASE TAKE NOTICE that on February 28, 2020, at 10:00 a.m., in Courtroom 7B of the above-captioned Court, located at 350 West First Street, Los Angeles, CA 90012, the Honorable André Birotte Jr. presiding, class members Brenda Lott, Suzanne Lutz, Carlie Oliviant, Gail Slomine, and Philip Woloszyn (the Lott Group) will and hereby do, move this Court to award attorneys' fees and expenses, and approve service payments, as authorized by the parties' agreement. The Lott Group seeks—and Ford has agreed to pay—reasonable attorneys' fees in the amount of \$339,216.60 and reimbursable costs in the amount of \$8,787.12, and service awards of \$5,000 to each of the five members of the Lott Group.

This Motion is based on: (1) this Notice of Motion and the incorporated Memorandum in Support; (2) the attached Declarations of Michael T. Kirkpatrick and David J. Gorberg with exhibits; (3) the attached [Proposed] Order; (4) the records, pleadings, and papers filed in this action; and (5) such other documentary and oral evidence or argument as may be presented to the Court at the hearing of this Motion.

1 Dated: January 31, 2020

Respectfully submitted,

2 /s/ Michael T. Kirkpatrick

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MEMORANDUM IN SUPPORT

INTRODUCTION

Pursuant to Federal Rules of Civil Procedure 23(e)(5)(B)(i), 23(h), and 54(d)(2), the Lott Group respectfully moves the Court to award attorneys' fees and expenses, and approve service payments, as authorized by the parties' agreement.

The Lott Group seeks attorneys' fees in the amount of \$339,216.60 and expenses of \$8,787.12, and service payments of \$5,000 for each of the five members of the Lott Group. These payments are justified because the efforts of the Lott Group resulted in material changes to the settlement that substantially benefitted the class. *See Rodriguez v. Disner*, 688 F.3d 645, 658–59 (9th Cir. 2012) (finding that district court erred in denying fees to objectors' counsel "in light of the benefit they conferred on the class"); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1052 (9th Cir. 2002) (recognizing objectors' entitlement to fees based on "a showing that the objectors substantially enhanced the benefits to the class under the settlement"); *Horton v. USAA Cas. Ins. Co.*, 266 F.R.D. 360, 364 (D. Ariz. 2009) ("Courts have the authority to award attorneys' fees to objectors who confer a benefit upon the class."); *In re Leapfrog Enterprises, Inc., Securities Litigation*, 2008 WL 5000208, *2 (N.D. Cal. 2008) ("Counsel for objectors who confer a benefit upon the class are entitled to an award of reasonable attorneys' fees and expenses.").

The requested payments, which Ford has agreed to make, were separately negotiated after an agreement in principle was reached to improve the terms of the

1 settlement agreement, and payments by Ford to the Lott Group will not diminish
 2 the benefits available to the class under the improved settlement agreement because
 3 those benefits are uncapped. The attorneys' fees requested are reasonable under the
 4 lodestar method for calculating fees, and they are a small fraction of the increased
 5 value of the revised settlement as compared to the original one. The out-of-pocket
 6 expenses for which reimbursement is sought were reasonably incurred. Finally, the
 7 members of the Lott Group should receive service payments for undertaking the
 8 risk of objecting to the original settlement agreement and pursuing an appeal to
 9 advance the interests of the class.

10 ARGUMENT

11 I. The Lott Group conferred substantial benefits on the class.

12 As described in detail in plaintiffs' renewed motion for final approval (ECF
 13 No. 279), and in the Lott Group's withdrawal of its objections and non-opposition
 14 to final approval, the Lott Group's participation in a mediation and further
 15 negotiations following a decision of the Court of Appeals (ECF No. 272) vacating
 16 this Court's final approval of the original settlement agreement (ECF No. 193)
 17 substantially improved the settlement agreement.¹ The improved settlement
 18 agreement includes (1) a guaranteed minimum payout of \$30 million to class
 19 members who submit valid claims under the cash payment component of the
 20

21 ¹ The amendments to the settlement agreement are set forth in Exhibit 2 to
 the declaration of Ryan Wu, ECF No. 279-1.

1 settlement; (2) expansion of the cash payment component to allow for compensation
2 to class members who sought transmission repairs but were turned away by a Ford
3 dealer who claimed that there was nothing wrong with the car; (3) elimination of
4 the requirement that class members with fewer than four transmission repair
5 attempts provide Ford with a final opportunity to repair the vehicle before
6 proceeding to repurchase arbitration; (4) extension of the statute of limitations for
7 former owners to seek repurchase;² (5) expansion of the settlement-created
8 repurchase standard to include former owners; and (6) addition of a provision
9 allowing the arbitrator, under certain circumstances, to award civil penalties in
10 addition to repurchase where such penalties are available under the applicable state
11 law.

12 In addition to the improvements to the settlement terms listed above, the Lott
13 Group negotiated Ford's agreement to put on the record evidence regarding the
14 amount that Ford has paid to repurchase class vehicles from class members who,
15 during the pendency of the appeal, submitted notices of intent to seek repurchase
16 through the arbitration program. Provision of this information will aid the Court in
17 determining the value of the repurchase component of the settlement. Further, the
18 Lott Group obtained Ford's agreement to provide notice to the class regarding the
19

20 ² In the context of former owners, "repurchase" does not involve a return of
21 the vehicle because it is no longer in the possession of the class member. Rather,
repurchase for former owners is a refund of their purchase price less the amount
they recovered when they sold the vehicle.

1 improvements to the settlement by means of a postcard mailed at Ford's expense
2 using the same mailing list as the original class notice. Such informational notice is
3 critically important because class members who were not entitled to relief under the
4 original settlement agreement would be unlikely to return to the settlement website
5 to learn of the expanded benefits.

6 There is no dispute that the settlement was substantially enhanced by the
7 efforts of the Lott Group. *See* Amendment to Stipulation and Agreement of
8 Settlement ¶ 2 (acknowledging that the Lott Group "contributed substantially to the
9 improvements to the Settlement contained in this Amendment"); Decl. of Ryan Wu
10 ¶ 26, ECF No. 279-1 (describing the Lott Group's participation in negotiations
11 culminating in "additional benefits to the Class"). The Lott Group identified
12 deficiencies in the terms of the original settlement and in the evidence submitted to
13 support it and successfully pursued the appeal. Although the Court of Appeals
14 remanded the case on procedural grounds without reaching the issue of substantive
15 fairness, but for the efforts of the Lott Group, the original settlement would have
16 become effective and the class would not have enjoyed the benefits described
17 above—each of which is due, at least in part, to the efforts of the Lott Group.

18 **II. The payments Ford has agreed to make to the Lott Group were**
19 **separately negotiated and cannot diminish class benefits.**

20 The parties did not discuss the attorneys' fees, expenses, or service payments
21 Ford agreed to pay the Lott Group until after an agreement in principle had been

1 reached regarding the improvements to the settlement agreement, and the
2 negotiations regarding the payments were conducted with the assistance of a
3 respected and experienced mediator. The Ninth Circuit has “approved such an
4 approach.” *In re Hyundai and Kia Fuel Econ. Litig.*, 926 F.3d 539, 570 (9th Cir.
5 2019) (en banc) (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir.
6 1998) and *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 965 (9th Cir. 2009)).

7 Although “class action defendants are generally indifferent to the allocation
8 of settlement funds between class and counsel, which can encourage a settlement
9 that is overly generous to counsel at the expense of the class,” *In re Hyundai*, 926
10 F.3d at 569, there is no cause for such concern in this case because the settlement
11 benefits are uncapped. Thus, Ford’s payment of fees, expenses, and service awards
12 to the Lott Group cannot reduce the value of the settlement to the class.

13 **III. The payments Ford has agreed to make are justified and reasonable.**

14 Although authorized by the parties’ agreement, the payments sought by the
15 Lott Group require court approval under Rule 23(e)(5)(B)(i) because they will be
16 made in connection with the withdrawal of the Lott Group’s objections. Further,
17 Rule 23(h) requires a court to review the fees and costs sought to ensure that they
18 are fair and proper.

1 **A. The requested attorneys’ fees are reasonable under the lodestar**
2 **method.**

3 “Courts in this circuit determine attorney’s fees in class actions using either
4 the lodestar method or the percentage-of-recovery method.” *In re Hyundai*, 926
5 F.3d at 570. The lodestar method “begins with the multiplication of the number of
6 hours reasonably expended by a reasonable hourly rate.” *Id.* That figure may then
7 be adjusted to account for factors such as “the quality of the representation, the
8 benefit obtained for the class, the complexity and novelty of the issues presented,
9 and the risk of nonpayment.” *Id.*

10 Here, the Court should rely on the lodestar method to review the attorneys’
11 fees because that is how Ford and the Lott Group arrived at the agreed-upon fee,
12 and because it is difficult to estimate the upper bound of the value of an uncapped
13 settlement, especially where, as here, additional class members are likely to become
14 eligible for relief in the future.

15 **1. The Lott Group seeks recovery for a reasonable number of**
16 **hours.**

17 Ford has agreed to pay the Lott Group for a total of 409.4 hours expended by
18 three attorneys who worked on this case, as set forth in detail in the billing records
19 attached as exhibits to the Declarations of Michael T. Kirkpatrick and David J.
20 Gorberg. As explained above, the Lott Group conferred substantial benefits on the
21 class by improving the terms of the settlement in ways that both increase the

1 settlement's value to the class and expand the number of class members eligible for
2 relief. Accordingly, the Court should award the Lott Group the full number of hours
3 its counsel reasonably billed. *Hensley v. Eckerhart*, 461 U.S. 424, 435 (1983)
4 (holding that lawyers who achieve excellent results "should recover a fully
5 compensatory fee," which typically "encompass[es] all hours reasonably expended
6 on the litigation"). As the Supreme Court has held, courts "need not, and indeed
7 should not, become green-eyeshade accountants" in evaluating the reasonableness
8 of the hours billed; the goal of fee shifting "is to do rough justice, not to achieve
9 auditing perfection." *Fox v. Vice*, 563 U.S. 826, 838 (2011).

10 The Lott Group's billing records reflect each lawyer's work on the case, but
11 do not include all of the hours they expended. Rather, counsel for the Lott Group
12 has exercised billing judgment in "a good faith effort to exclude from [the] fee
13 request hours that are excessive, redundant, or otherwise unnecessary." *Hensley*,
14 461 U.S. at 434. Specifically, Mr. Kirkpatrick excluded all hours expended by other
15 attorneys at Public Citizen Litigation Group. Further, Mr. Kirkpatrick did not record
16 time for short emails and conversations with Mr. Gorberg, Ms. Robison, or his
17 colleagues, or time spent responding to inquiries from the public. Kirkpatrick Decl.
18 ¶ 9. Mr. Gorberg did the same. Gorberg Decl. ¶ 6. Moreover, the hours for which
19 the Lott Group seeks compensation cut off as of late December 2019, even though
20 counsel spent considerable time during January 2020 reviewing and editing the
21 amendments to the settlement agreement, drafting the notice of withdrawal of

1 objections and non-opposition to final approval, and preparing this motion and its
2 attachments. Kirkpatrick Decl. ¶ 13. In addition, counsel will attend the fairness
3 hearing on February 28, 2020.

4 The resulting total request—for 409.4 hours—is reasonable. This case
5 involved a lengthy and complex settlement agreement with multiple components
6 that required considerable time to analyze. Preparing the objections was labor
7 intensive. Counsel for the Lott Group attended the first fairness hearing and
8 presented argument. Counsel also participated in mediation conferences with the
9 Ninth Circuit mediator and prepared extensive appellate briefs and excerpts of
10 record. While the appeal was pending, the Lott Group filed or responded to four
11 statements of supplemental authority submitted under Federal Rule of Appellate
12 Procedure 28(j). Counsel for the Lott Group successfully opposed a motion in this
13 Court to compel the depositions of the Lott Group, and, after members of the Lott
14 Group were served with deposition subpoenas, filed a motion to quash in the Eastern
15 District of Pennsylvania. Counsel for the Lott Objectors successfully opposed a
16 motion for an appellate bond. Throughout the entire pendency of this matter,
17 discussions with class counsel continued, both by telephone and in person, and
18 counsel for the Lott Group received multiple settlement offers that they discussed
19 with their clients. Following the decision of the Court of Appeals, such discussions
20 continued, and counsel for the Lott Objectors drafted a mediation statement and
21 attended a full day mediation in Boston on December 9, 2019, which culminated in

1 the improved settlement agreement. Kirkpatrick Decl. ¶¶ 7–10; Gorberg Decl.
2 ¶¶ 4–7.

3 Counsel for the Lott Group litigated this case efficiently and they were careful
4 not to duplicate effort. Mr. Gorberg had the direct relationship with the five clients
5 and kept them informed of the status of the matter, and he conferred with them
6 regarding the multiple settlement offers received. Mr. Gorberg also contributed his
7 expertise in litigating lemon law cases, as did his associate, Ms. Robison. Mr.
8 Gorberg billed 133.2 hours on the case from April 2017 to December 2019, and Ms.
9 Robison billed 34.9 hours from August to October of 2017. The Lott Group’s other
10 counsel, Mr. Kirkpatrick, was primarily responsible for drafting the motions and
11 briefs and presenting oral argument. He billed 241.3 hours on the case from April
12 2017 to December 2019. Kirkpatrick Decl. ¶¶ 7–10; Gorberg Decl. ¶¶ 4–7. Given
13 the work involved, the at-times intense pace, the array of adversaries, the high
14 stakes, and the results achieved, 409.4 hours of attorney time is more than
15 reasonable.

16 Further, the efforts of counsel for the Lott Group were not duplicative of the
17 efforts of other objectors. As the Court is aware, class member Jason DeBolt filed
18 an objection that the Court rejected. ECF No. 192 at 3. Mr. DeBolt’s counsel,
19 George Cochran, did not appear as an attorney of record in this Court. *See* ECF Nos.
20 210 and 214. Mr. Cochran did appear in the Court of Appeals and filed briefs on
21 behalf of Mr. DeBolt, and he attended the appellate argument. Post-appeal, Mr.

1 Cochran did not submit a mediation statement and did not travel to Boston to attend
2 the mediation in person, but he was available by telephone. Thus, the work
3 performed by counsel for the Lott Group is not duplicative of the work done by
4 counsel for Mr. DeBolt.

5 **2. The hourly rates are reasonable.**

6 A reasonable hourly rate is the rate “prevailing in the community for similar
7 services by lawyers of reasonably comparable skill, experience and reputation.”
8 *Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984). The prevailing market rate applies
9 “regardless of whether plaintiff is represented by private or nonprofit counsel.” *Id.*
10 at 895. Here, counsel for the Lott Group has used—and Ford has agreed to pay—
11 the same hourly rates as those used by similarly experienced class counsel and
12 which this Court approved when it granted class counsel’s first motion for
13 attorneys’ fees. The Lott Group seeks fees for the work of Mr. Kirkpatrick and Mr.
14 Gorberg at the hourly rate of \$725, and the work of Ms. Robison at the hourly rate
15 of \$320. Kirkpatrick Decl. ¶ 11; Gorberg Decl. ¶ 8.

16 As described in detail in the declarations attached to this motion, both Mr.
17 Kirkpatrick and Mr. Gorberg have extensive relevant experience. Mr. Kirkpatrick
18 has practiced law for 28 years. He is an attorney at Public Citizen Litigation Group
19 (PCLG) in Washington, DC, where he litigates public interest cases at all levels of
20 the federal and state judiciaries, including the U.S. Supreme Court. He has
21

1 experience litigating class actions as both class counsel and counsel for objectors.
2 Kirkpatrick Decl. ¶¶ 3–6.

3 Mr. Gorberg has practiced law since 1988. He is the founding attorney of
4 David J. Gorberg & Associates, P.C., a law firm that specializes in representing
5 consumers in lemon law cases throughout Pennsylvania, New Jersey, and New
6 York. The firm has been recognized nationally and locally as a leader in the field of
7 lemon law, and the firm has recovered millions of dollars for consumers. Gorberg
8 Decl. ¶¶ 2–3.

9 The rates sought by the Lott Group are conservative in several respects. For
10 example, the rate sought for Mr. Kirkpatrick’s work is lower than his hourly rate of
11 \$899 based on the “LSI *Laffey* Matrix,” which the federal courts in the District of
12 Columbia use to establish presumptively reasonable rates for complex federal
13 litigation. *See DL v. Dist. of Columbia*, 924 F.3d 585, 591 (D.C. Cir. 2019);
14 Kirkpatrick Decl. ¶ 11. Further, Mr. Kirkpatrick was awarded attorneys’ fees in the
15 Ninth Circuit and the Central District of California at the rate of \$640 an hour for
16 work performed eight to ten years ago. *See* Kirkpatrick Decl. ¶ 11 (listing cases).
17 Because the hourly rates sought by the Lott Group are within the range of hourly
18 rates charged by comparable attorneys, including by class counsel in this case, the
19 requested rates should be approved.

1 **3. The requested multiplier is reasonable.**

2 The Lott Group requests that the Court allow a modest multiplier of 1.2 on
3 their counsel's lodestar of \$282,680.50. Such a multiplier is the same as that
4 approved by the Court when it granted class counsel's first motion for attorneys'
5 fees. A multiplier is likewise appropriate for the Lott Group based on the
6 outstanding results achieved, the litigation risk, and the additional hours counsel has
7 worked and will work since the agreement on fees was reached. *See* Kirkpatrick
8 Decl. ¶ 13; Gorberg Decl. ¶11. As explained above, the Lott Group conferred
9 substantial benefits on the class by improving the terms of the settlement in ways
10 that both increase the settlement's value to the class and expand the number of class
11 members eligible for relief. Counsel for the Lott Group assumed substantial risk
12 that their efforts would not be successful and that they would receive no
13 compensation. As described by class counsel in their motion for attorneys' fees,
14 ECF No. 280 at 21, enhancement for contingent risk is commonly awarded under
15 California law, and the multiplier sought by the Lott Group is in-line with others
16 that have been affirmed by the Ninth Circuit. *See In re Hyundai*, 926 F.3d at 572
17 (collecting cases).

18 **B. The requested attorneys' fees are reasonable under the percentage**
19 **method.**

20 The Ninth Circuit "do[es] not require courts employing the lodestar method
21 to perform a 'crosscheck' using the percentage method," *id.* at 571, because the

1 lodestar is presumptively reasonable. Nevertheless, it is clear that the value of the
2 improvements to the settlement have substantially increased its value. For example,
3 the \$30 million guaranteed payout for the cash component is much more valuable
4 than the cash component in the original settlement. This improvement ensures at
5 least \$30 million for the class under this component of the settlement, even if there
6 is a lower-than-expected claims rate. Indeed, the claims rate and first-round payout
7 under the cash component might be low because the class members eligible for a
8 significant cash payment will also be eligible for the more-valuable repurchase
9 program and a class member cannot benefit from both. Similarly, the expansion of
10 the repurchase program to reach more former owners has substantially increased the
11 value of the settlement because former owners constitute at least a quarter of the
12 two million class members. Finally, the elimination of the final-opportunity-to-
13 repair requirement will allow a greater number of class members to qualify for
14 repurchase and to do so sooner.

15 Although the value of the increased settlement benefits cannot be estimated
16 with precision, there is no doubt that the fees requested by the Lott Group are a tiny
17 fraction of the increased value, and certainly far below the 25 percent benchmark
18 that some courts in the Ninth Circuit have used to cross-check the lodestar amount.

C. The Lott Group’s out-of-pocket expenses are reasonable and should be reimbursed.

Ford has agreed to reimburse counsel for the Lott Group for \$8,787.12 in out-of-pocket expenses, as set forth in Exhibit C to the Gorberg Declaration. These expenses include travel for the fairness hearing, appellate argument, and mediation, as well as filing fees and courier fees. The Court should approve the payment of these reasonable expenses.

D. The requested service payments to each member of the Lott Group are reasonable and should be approved.

The Court should approve the \$5,000 payments Ford has agreed to make to each of the five members of the Lott Group. The amount of these service awards is the same as that approved by the Court for payment to many of the class representatives.

Class action objectors play a crucial role in the settlement process by speaking for absent class members and ensuring adversarial presentation of issues. “Objectors provide a critically valuable service of providing knowledge from a different point of view.” *Lane v. Facebook, Inc.*, 696 F.3d 811, 830 (9th Cir. 2012) (Kleinfeld, J. dissenting); *see Eubank v. Pella Corp.*, 753 F.3d 718, 721 (7th Cir. 2014) (praising objectors because “without them there would have been no appellate challenge to the settlement”); *Bell Atl. Corp. v. Bolger*, 2 F.3d 1304, 1310 (3d Cir. 1993) (“In seeking court approval of their settlement proposal, plaintiffs’ attorneys’

1 and defendants' interests coalesce and mutual interest may result in mutual
2 indulgence. The parties can be expected to spotlight the proposal's strengths and
3 slight its defects. In such circumstances, objectors play an important role by giving
4 courts access to information on the settlement's merits." (citation omitted)); *see also*
5 *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768,
6 789 (3d Cir. 1995) (noting, in the context of a settlement class, that when "the issue
7 of certification is never actively contested, the judge never receives the benefit of
8 the adversarial process"); *see generally Ortiz v. Fibreboard Corp.*, 527 U.S. 815,
9 847 (1999) (recognizing that "in settlement-only class actions the procedural
10 protections built into the Rule to protect the rights of absent class members are never
11 invoked in an adversarial setting").

12 Furthermore, "[w]hen there are objecting class members, the judge's task is
13 eased because he or she has the benefit of an adversary process: objectors versus
14 settlors (that is, versus class counsel and the defendant)." *Redman v. RadioShack*
15 *Corp.*, 768 F.3d 622, 629 (7th Cir. 2014). Indeed, the Advisory Committee's note
16 to the 2018 amendments to Rule 23(e)(5)(B) recognizes that "[g]ood-faith
17 objections can assist the court in evaluating a proposal under Rule 23(e)(2). It is
18 legitimate for an objector to seek payment for providing such assistance." Plaintiffs
19 agree that the Lott Group raised "good faith objections to the original Settlement."
20 Pls. Renewed Mtn. for Fin. App. at 38.

1 Service payments are appropriate here for several reasons. First, as explained
2 above, the Lott Group conferred a substantial benefit on the class. Second, the Lott
3 Group incurred substantial personal risk by staying in the class to object to the
4 original settlement agreement, rather than opting out to preserve and pursue their
5 individual claims. Third, the Lott Group rejected multiple settlement offers that
6 would have benefitted them personally so that they could continue the appeal in an
7 effort to benefit the class as a whole. Fourth, the Lott Group did not give up, even
8 after they were served with deposition subpoenas and after plaintiffs sought an
9 appellate bond of almost a half million dollars. Indeed, in denying the bond, this
10 Court recognized that:

11 Although the Court overruled the [Lott] Objectors' objections and
12 approved the settlement, and although the standard of review on appeal
13 is not favorable to the Objectors, at this stage, the Court rejects
14 Plaintiffs' suggestion that the objections were frivolous and that the
15 Objectors are acting in bad faith in pursuing the appeal. While the
16 Objectors face an uphill battle on appeal, the issues they raise are
17 worthy of appellate review.

18 ECF No. 260 at 2. The Lott Group prevailed in their uphill battle and substantially
19 improved the terms of the settlement. Thus, the Court should approve the service
20 payments that Ford has agreed to make to each member of the Lott Group.

CONCLUSION

For these reasons, the Lott Group respectfully requests that the Court grant this motion, award reasonable attorneys' fees in the amount of \$339,216.60 and reimbursable costs in the amount of \$8,787.12 and approve service payments in the amount of \$5,000 to each of the five members of the Lott Group.

Dated: January 31, 2020

Respectfully submitted,

/s/ Michael T. Kirkpatrick

Michael T. Kirkpatrick (admitted *PHV*)

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Attorneys for the Lott Group

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. 2:12-cv-08388-AB-FFMx
Hon. Judge André Birotte Jr.

**DECLARATION OF MICHAEL T.
KIRKPATRICK IN SUPPORT OF
THE LOTT GROUP'S MOTION
FOR ATTORNEYS' FEES, COSTS,
AND APPROVAL OF SERVICE
PAYMENTS**

Date: February 28, 2020

Time: 10:00am

Place: Courtroom 7B

DECLARATION OF MICHAEL T. KIRKPATRICK

I, Michael T. Kirkpatrick, declare:

1. I am an attorney admitted *pro hac vice* in this matter. Unless the context indicates otherwise, I have personal knowledge of the facts stated in this declaration and, if called as a witness, I could and would testify competently thereto. I am an attorney at Public Citizen Litigation Group (PCLG) and one of the counsel of record for Brenda Lott, Suzanne Lutz, Carlie Oliviant, Gail Slomine, and Philip Woloszyn (the Lott Group). I make this declaration in support of the Lott Group's Motion for Attorneys' Fees, Costs, and Approval of Service Payments.

2. PCLG is a public interest law firm that litigates cases at all levels of the federal and state judiciaries. A significant part of our practice involves class actions and consumer cases. We have worked both as class counsel and as counsel for objectors to unfair class action settlements, and we have commented and testified regarding proposed changes to Rule 23. PCLG is a strong proponent of the proper use of class actions to allow consumers, workers, and others to litigate claims collectively in circumstances where individual actions are likely to be ineffective or impractical, and where greater benefits can be achieved through class proceedings than would be possible in piecemeal litigation.

3. I joined PCLG in February 2004.¹ My practice areas include constitutional law, civil rights, class actions, administrative law, and open government. Since joining PCLG, I have been counsel for a plaintiff class in several cases, including *Roach v. T.L. Cannon Corp.*, 778 F.3d 401 (2d Cir. 2015)

¹ In 2014, I left PCLG to accept a two-year appointment as a Visiting Professor at Georgetown Law School, where I was Director of the Civil Rights Clinic. In that capacity, I directed a full-time student clinic engaged in complex civil rights and other public interest litigation, and I taught litigation skills to student attorneys and graduate teaching fellows. I returned to PCLG in August 2016.

(vacating district court's denial of class certification in wage-and-hour case and holding that individualized damages determinations alone cannot preclude class certification under Rule 23(b)(3)); *Harris v. Medical Transportation Management, Inc.*, 317 F. Supp. 3d 421 (D.D.C. 2018) (granting conditional certification of class, tolling statute of limitations, and ordering notice in class and collective action for unpaid wages); *Gonzalez v. Pritzker*, 2016 WL 5395905 (S.D.N.Y. Sept. 20, 2016) (granting final approval of settlement in Title VII disparate impact class action challenging Census Bureau's use of arrest records to screen applicants for temporary jobs for the decennial census); and *Easterling v. Connecticut Department of Correction*, No. 08-826 (D. Conn. Sept. 12, 2013) (judgment for plaintiff class pursuant to final approval of settlement in Title VII disparate impact case challenging employer's use of discriminatory test).

4. In addition to representing plaintiffs, I have also represented objectors to class action settlements in several cases, including *Day v. Persels & Associates, LLC*, 729 F.3d 1309 (11th Cir. 2013) (reversing district court's approval of class action settlement that provided no monetary relief to absent class members); *In Re: Katrina Canal Breaches Consolidated Litigation*, 628 F.3d 185 (5th Cir. 2010) (reversing district court's certification of a limited fund mandatory class and approval of a settlement in a mass tort case); *Wilson v. DirectBuy, Inc.*, 2011 WL 2050537 (D. Conn. May 16, 2011) (denying final approval of proposed class action settlement); and *True v. American Honda Motor Co., Inc.*, 2010 WL 707338 (C.D. Cal. Feb. 26, 2010) (denying final approval of proposed class action settlement).

5. From 1995 to 2004, I was a senior trial attorney with the Civil Rights Division of the U.S. Department of Justice, where I litigated employment discrimination cases against state and local government employers. I was lead counsel from initial investigation through discovery and trial of two complex pattern-or-practice cases that used the disparate impact theory to challenge the

1 discriminatory use of written cognitive tests in selecting public safety officers.
2 Earlier in my career (1991–1995), I was a staff attorney with the Farm Worker
3 Division of Texas Rural Legal Aid, Inc., where I litigated employment and civil
4 rights cases on behalf of migrant, transnational, and contingent workers, including
5 class and collective actions. I am a 1991 graduate of American University,
6 Washington College of Law.

7 6. In addition to my work as a litigator, I have served on the faculty for
8 more than one hundred academic or continuing legal education seminars. Since
9 2007, I have been an adjunct professor at Georgetown Law School, where I teach
10 a course each fall on ethics in public interest practice. I have also taught an
11 externship seminar on public interest lawyering at George Washington University
12 Law School, and I have been a guest lecturer for law school courses at American,
13 Cardozo, Catholic, Fordham, Georgetown, George Washington, Harvard, Texas,
14 and Yale. I have been a Wasserstein Public Interest Fellow at Harvard Law School,
15 the Law and Policy Mentor for the Jack Kent Cooke Foundation, and a
16 Government Fellow for the American Bar Association’s Section of Labor and
17 Employment Law. I am a recipient of the Peter M. Cicchino Award for
18 Outstanding Advocacy in the Public Interest, and a seven-time recipient of the
19 Department of Justice Special Achievement Award in recognition of sustained
20 superior performance. In 2017, I received the Public Justice Trial Lawyer of the
21 Year Award.

22 7. In April 2017, PCLG was contacted by David J. Gorberg concerning
23 the original proposed settlement in this class action. Mr. Gorberg explained that
24 he had clients from his lemon law practice who were in the class and were
25 interested in objecting to the terms of the settlement, and he asked whether PCLG
26 would assist him in doing so. After reviewing the proposed settlement agreement
27 and related information, and discussing the matter with Mr. Gorberg, we agreed to
28 jointly represent the Lott Group. I was primarily responsible for drafting the

1 motions and briefs and presenting oral arguments. Mr. Gorberg was had the direct
2 relationship with the five clients and was responsible for keeping them informed
3 of the status of the matter, including discussing with them the various settlement
4 offers received. Mr. Gorberg also contributed his expertise in litigating lemon law
5 cases, as did his associate, Emma Robison.

6 8. The Lott Group seeks an award of attorneys' fees for 241.3 hours of
7 work I performed in connection with this case including the preparation of the Lott
8 Group's objections to the original settlement agreement, argument at the first
9 fairness hearing, participation in mediation conferences with the Ninth Circuit
10 mediator, preparation of appellate briefs and excerpts of record, four statements of
11 supplemental authority submitted under Federal Rule of Appellate Procedure
12 28(j), an opposition to a motion in this Court to compel the depositions of the Lott
13 Group, a motion to quash deposition subpoenas filed in the Eastern District of
14 Pennsylvania, and an opposition to a motion for an appellate bond. In addition,
15 throughout the entire pendency of this matter, I was involved in discussions with
16 counsel for the settling parties. I also drafted a mediation statement and attended
17 a full day mediation in Boston on December 9, 2019, which culminated in the
18 improved settlement agreement.

19 9. A description of the tasks I performed and the time spent on each is
20 attached to this declaration as Exhibit A. Considerable billing judgment was used
21 in recording the hours reflected in Exhibit A. For example, I did not record any
22 time for short emails and conversations with Mr. Gorberg and Ms. Robison or my
23 colleagues at PCLG, or responding to inquiries from the public. In addition, we
24 are not seeking an award of attorneys' fees for the time that my colleagues at
25 PCLG spent proofreading and offering comments on drafts of the various papers
26 filed in this case. Thus, the hours set forth in Exhibit A are less than all of the
27 hours actually spent by PCLG on this case.

28

1 10. The 241.3 hours of my work for which the Lott Group seeks fees were
2 necessary and reasonable. This case involved a lengthy and complex settlement
3 agreement with multiple components that required considerable time to analyze,
4 and many of the legal issues were complex. Further, Mr. Gorberg and I were very
5 careful not to duplicate effort, and Mr. Gorberg's expertise in lemon law
6 contributed to the efficiency with which our work was completed.

7 11. The Lott Group seeks fees at the rate of \$725 for my work on this
8 case, which is the same hourly rate used in 2017 by similarly experienced class
9 counsel and which this Court approved when it granted class counsel's first motion
10 for attorneys' fees. The hourly rate of \$725 for my work is conservative in several
11 respects. It is lower than my hourly rate of \$899 based on the "LSI *Laffey* Matrix,"
12 which the federal courts in the District of Columbia use to establish presumptively
13 reasonable rates for complex federal litigation. *See DL v. Dist. of Columbia*, 924
14 F.3d 585, 591 (D.C. Cir. 2019). Further, I have been awarded attorneys' fees in
15 the Ninth Circuit and the Central District of California at the rate of \$640 an hour
16 for work performed eight to ten years ago. *See Order, Ka.D. v. Nest*, No. 10-56320
17 (9th Cir. Aug. 1 2014) (awarding \$640 an hour for my work); Order Granting
18 Motion for Attorneys' Fees, *Compton Unified Sch. Dist. v. Addison*, No. 06-4717
19 (C.D. Cal. Feb. 24, 2012) (same); *C.B. v. Garden Grove Unified Sch. Dist.*, No.
20 08-1047, 2012 WL 161806, *5-6 (C.D. Cal. Jan. 18, 2012) (same); Order Granting
21 in Part Motion for Attorney's Fees, *D'Lil v. Best Western Encina Lodge & Suites*,
22 No. 02-9506 (C.D. Cal. April 13, 2010) (same).

23 12. The attorneys' fees, expenses, and service payments sought by the
24 Lott Group were negotiated with Ford during a mediation in Boston on December
25 9, 2019. The parties did not discuss these payments until after an agreement in
26 principle had been reached regarding the improvements to the settlement
27 agreement. At the mediation, Ford agreed not oppose a request by the Lott Group
28 that it pay an award of attorney fees to their counsel, provided that the award did

not exceed 1.2 times their verified reasonable lodestar, plus verified costs. Following the mediation, the Lott Group presented their billing and expense records to Ford and Ford agreed to pay up to \$348,004, which was calculated as follows:

Michael Kirkpatrick 241.3 hours x \$725 = \$174, 942.50

David Gorberg 133.2 hours x \$725 = \$96,570

Emma Robison 34.9 hours x \$320 = \$11,168

Total is \$282,680.50 x 1.2 = \$339,216.60 + expenses of \$8,787.12 = 348,003.72.

13. Application of the multiplier of 1.2 on the counsel's lodestar is appropriate because it is the same as that approved by the Court when it granted class counsel's first motion for attorneys' fees. Further, it is appropriate based on the outstanding results achieved, the litigation risk, and the additional hours counsel has worked and will work since the agreement on fees was reached. The Lott Group conferred substantial benefits on the class by improving the terms of the settlement in ways that both increase the settlement's value to the class and expand the number of class members eligible for relief. Counsel for the Lott Group assumed substantial risk that their efforts would not be successful and that they would receive no compensation. Enhancement for contingent risk is commonly awarded under California law, and the multiplier sought by the Lott Group is in-line with others that have been affirmed by the Ninth Circuit.

14. Ford further agreed, subject to the Court's approval, to make service payments of \$5,000 to each of the five members of the Lott Group. Such payments are appropriate because the Lott Group conferred a substantial benefit on the class by improving the terms of the settlement. Further, the Lott Group incurred substantial personal risk by staying in the class to object to the original settlement agreement, rather than opting out to preserve and pursue their individual claims, and they rejected several settlement offers that would have benefitted them

1 personally so that they could continue the appeal in an effort to benefit the class
2 as a whole.

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6 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing
7 is true and correct. Signed on January 31, 2020, in Washington, DC.

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10 /s/ Michael T. Kirkpatrick
11 Michael T. Kirkpatrick
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EXHIBIT A

PUBLIC CITIZEN LITIGATION GROUP
1600 20th Street NW • Washington DC 20009
202/588-1000 • www.citizen.org

Time Records Report

Staff	Date	Time	Description
Vargas v. Ford Motor Co.			
Kirkpatrick, Michael			
	4/19/2017	1.4	exchange emails with potential co-counsel and begin review of settlement agreement
	4/25/2017	0.5	Exchange emails with potential co-counsel re: objections
	5/5/2017	0.6	exchange emails with potential co-counsel re: objections
	5/11/2017	1.3	review case materials (.6) and have telcon with co-counsel (.7) to discuss issues and next steps.
	5/18/2017	2.1	review settlement agreement and related documents and make notes re: potential objections
	5/24/2017	1.2	continue reviewing settlement agreement and related documents and make notes re: potential objections
	6/22/2017	0.6	exchange emails with co-counsel re: potential motion to take discovery
	8/9/2017	3.4	draft preliminary outline of objections, check requirements and deadlines
	8/10/2017	1.1	send timeline and outline of objections to co-counsel, telcon with co-counsel to discuss preparation of objections
	8/18/2017	2.9	begin drafting objections, research, review of settlement terms
	8/23/2017	2.8	continue drafting objections
	8/24/2017	3.9	complete rough draft of objections and send to co-counsel with list of issues and areas where declarations or exhibits might be needed
	8/28/2017	0.8	exchange emails with co-counsel re: need for declarations/evidence
	8/29/2017	1.3	review motion for final approval and identify issues that need to be addressed in the objections
	8/29/2017	3.3	continue research and drafting objections
	8/30/2017	5.9	continue drafting objections and send sections to co-counsel to review as completed
	8/31/2017	4.7	complete final two sections of objections, add case citations
	9/1/2017	2.1	combine various sections, including those received from co-counsel, into one single document and make edits
	9/1/2017	0.5	telcon with class counsel
	9/4/2017	7.6	Finalize objections for filing, format to conform to C.D. Cal. rules, tables, cover, certificates, assemble exhibits, exchange multiple drafts, proofread
	9/5/2017	1.7	send objections and 8 exhibits to local counsel to file, exchange multiple emails with local counsel re: filing
	9/6/2017	0.3	Send completed PHV application and certificates to local counsel for filing
	9/15/2017	1.1	draft and send letter to J. Lurie requesting information
	9/26/2017	1.1	print and read motion for final approval and exhibits, make margin notes

9/26/2017	0.8	Assemble materials to take to fairness hearing
9/27/2017	0.5	telcon with opposing counsel
9/27/2017	2.1	review all filings and prep for fairness hearing
10/1/2017	8	travel from DC to LA for fairness hearing, review materials and make outline for oral argument during the flight
10/2/2017	1.5	Attend fairness hearing, present argument
10/3/2017	8	travel back from LA to DC
10/18/2017	1.2	review minute order overruling objections and judgment approving settlement and exchange emails with co-counsel re: same
11/3/2017	0.5	telcon with opposing counsel
11/10/2017	0.9	Telcon with counsel for various parties, including opt-outs, re: appeals and status
11/14/2017	2.7	Review local rules and judge's procedures, draft notice of appeal, email with co-counsel re: appeal, file through ECF
11/21/2017	3.2	Review 9th Circuit rules, draft mediation questionnaire and representation statement and certificate of service, send to all co-counsel to review, file same
11/22/2017	0.5	prepare appellant's notice re: transcript and send to opposing counsel
11/30/2017	1.5	consider mtn to expedite, research for potential opposition
12/1/2017	0.8	emails with opposing counsel to negotiate compromise on schedule
12/6/2017	0.5	file designation of record on appeal
1/9/2018	0.5	exchange emails with co-counsel re: call from 9th Circuit mediator
1/24/2018	6.2	Begin working on opening brief on appeal, review all documents from district court and decisions, begin outlining arguments
1/25/2018	4	Continue research and drafting for opening brief
1/26/2018	5.3	continue research and drafting of opening brief on appeal
1/30/2018	0.5	review deposition notices
1/30/2018	4.5	complete draft of opening brief other than adding cites to record, cover and tables
1/31/2018	4.1	complete opening brief and circulate for comments/edits
2/1/2018	2.3	make final edits to opening brief based on comments received
2/2/2018	1.8	file opening brief on excerpts of record
2/7/2018	0.7	telephone assessment conference with 9th Circuit mediator
2/13/2018	1.2	exchange emails with class counsel re: depositions of objectors
2/14/2018	0.3	exchange emails re: scheduling meet and confer
2/25/2018	3.1	read answering briefs filed by settling parties and make margin notes
3/2/2018	2.8	read cases cited in class counsel's mtn to compel objectors' depositions, research issue
3/5/2018	1.6	draft objectors' portion of joint stipulaion re: motion to compel depositions
3/5/2018	4.3	research and drafting of 9th Cir. reply brief
3/6/2018	2.1	complete draft of objectors' portion of joint stipulation re: mtn to compel depositions and send to co-counsel to review

3/6/2018	6.2	research and drafting reply brief
3/7/2018	0.7	finalize objectors' portion of joint stip and send to class counsel
3/7/2018	5.5	continue research and drafting of reply brief
3/8/2018	7.1	finish draft of reply brief
3/9/2018	0.3	review formatted draft of joint stip and email class counsel approving it to file
3/9/2018	2.3	add tables, proofread, and file reply brief
3/19/2018	0.3	review notice of subpoenas to objectors
3/21/2018	0.5	review class counsel's supplement to motion to compel
3/21/2018	1.5	prepare and file supp. memo re: motion to compel
3/21/2018	0.3	send supplemental memo and NEF to local counsel with instructions re: chambers' copies
3/27/2018	1.2	begin reviewing motion for appellate bond
3/27/2018	1.5	exchange emails with opposing counsel re: calendar conflict for hearing on mtn for appellate bond. Draft joint stip to reschedule, declaration in support, and proposed order, send to opposing counsel to approve, file same.
3/28/2018	1	research for motion to quash
3/29/2018	3.7	continue research and draft motion to quash, including standards in E.D. Pa. and 3rd Cir. and district court jurisdiction during pending appeal
3/30/2018	4	finalize motion to quash and send to co-counsel for filing in E.D. Pa.
4/2/2018	0.5	review Magistrate Judge's decision re: mtn to compel depositions
4/3/2018	1.3	prepare and file notice of supplemental authority in support of motion to quash
4/3/2018	1.8	exchange emails with opposing counsel re: withdrawing motion to quash, prepare and file notice of withdrawal of motion to quash
4/10/2018	4.5	research for opposition to motion for appeal bond, begin drafting opposition
4/11/2018	5.9	continue research and drafting of opp to mtn for appeal bond
4/12/2018	2.1	finalize and file opposition to motion for bond and send mandatory chambers copy to local counsel for delivery
4/20/2018	0.8	review reply on motion for appeal bond
5/1/2018	0.3	review decision on motion
5/7/2018	0.5	telcon with opposing counsel
7/13/2018	1.7	draft and file response to 28(j) letter
7/26/2018	0.5	telephone conference
8/16/2018	1	mediation conference
2/14/2019	0.2	file acknowledgment of hearing notice
3/1/2019	2.1	draft and file 28(j) letter
3/30/2019	1.6	draft and file 28(j) letter
4/2/2019	4.1	prep for oral argument by reviewing record and all briefs and 28(j) letters
4/3/2019	2.1	prep materials to take to oral argument and outline argument
4/3/2019	1.5	moot court at Public Citizen to prep for oral argument

4/4/2019	1.6	moot court at Georgetown Law to prep for oral argument
4/7/2019	8	travel from DC to LA for oral argument and prep during flight
4/8/2019	8	travel back from LA to DC
4/8/2019	3.5	oral argument at 9th Cir.
6/12/2019	1.1	draft and file response to 28(j) letter
9/13/2019	2.1	review decision from 9th Cir. and discuss same with co-counsel
11/15/2019	0.3	email all counsel re: mediation
11/19/2019	0.5	review mediation package and sign and return
11/27/2019	2.1	prepare and submit mediation statement
12/5/2019	2	review settling parties' mediation statements
12/8/2019	2.5	travel to Boston for mediation
12/9/2019	7.5	Mediation
12/9/2019	2.5	travel back from mediation
12/18/2019	0.8	telephone conference with all parties to continue settlement discussions from mediation
Staff total:	241.3	
Case total:	241.3	
Grand total	241.3	

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David J. Gorberg And Associates
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Ardmore, PA 19003
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Attorneys for the Lott Group

UNITED STATES DISTRICT COURT
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OMAR VARGAS, ROBERT
BERTONE, MICHELLE HARRIS,
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individually and on behalf of a class
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Hon. Judge André Birotte Jr.

**DECLARATION OF DAVID J.
GORBERG IN SUPPORT OF THE
LOTT GROUP'S MOTION FOR
ATTORNEYS' FEES, COSTS, AND
APPROVAL OF SERVICE
PAYMENTS**

Date: February 28, 2020

Time: 10:00am

Place: Courtroom 7B

DECLARATION OF DAVID J. GOTBERG

I, David J. Gorberg, declare:

1. I am an attorney admitted *pro hac vice* in this matter. Unless the context indicates otherwise, I have personal knowledge of the facts stated in this declaration and, if called as a witness, I could and would testify competently thereto. I am an attorney at David J. Gorberg & Associates, P.C., and one of the counsel of record for Brenda Lott, Suzanne Lutz, Carlie Oliviant, Gail Slomine, and Philip Woloszyn (the Lott Group). I make this declaration in support of the Lott Group's Motion for Attorneys' Fees, Costs, and Approval of Service Payments.

2. David J. Gorberg & Associates, P.C. Gorberg & Associates is a law firm that specializes in representing consumers in lemon law cases throughout Pennsylvania, New Jersey and New York. The firm has been recognized nationally and locally as a leader in the field of lemon law, and the firm has recovered millions of dollars for consumers.

3. I am the the founding attorney of David J. Gorberg & Associates, P.C. and I concentrate my practice in the field of lemon law and breach of warranty. I graduated from the Southwestern School of Law in 1988. I have been admitted to practice in Pennsylvania, New Jersey and New York. I am a member of the Pennsylvania Trial Lawyers Association, Philadelphia Trial Lawyers Association, and Philadelphia Bar Association. I have been recognized nationally in the field of lemon law and consumer protection. I am the only lemon law attorney in the state of Pennsylvania to be named to Philadelphia Magazine's Top 100 Lawyers list for 2004, 2005, and 2007, and I have been named a 2004, 2005, 2006, 2007, 2008, 2009, 2010 and 2011 Pennsylvania Super Lawyer.

4. In April 2017, I contacted the Public Citizen Litigation Group concerning the original proposed settlement in this class action. I had clients from my lemon law practice who were in the class and were interested in objecting to

1 the terms of the settlement, and I asked whether PCLG would assist me in doing
2 so. PCLG agreed to jointly represent the Lott Group. I had the direct relationship
3 with the five clients and I was responsible for keeping them informed of the status
4 of the matter, including discussing with them the various settlement offers
5 received. I also worked closely with PCLG, and contributed my expertise in
6 litigating lemon law cases, as did my associate, Emma Robison.

7 5. The Lott Group seeks an award of attorneys' fees for 133.2 hours of
8 work I performed in connection with this case, and 34.9 hours of work performed
9 by Ms. Robison. Our work included research and drafting for the objections, and
10 we were primarily responsible for communicating with the clients, keeping them
11 informed of the status of the matter, collecting documents needed to support the
12 objections, and conferring with our clients regarding settlement offers.

13 6. A description of the tasks I performed and the time spent on each is
14 attached to this declaration as Exhibit A, and a description of the tasks performed
15 by Ms. Robison and the time spent on each is attached as Exhibit B. Considerable
16 billing judgment was used in recording the hours reflected in Exhibits A and B.
17 For example, Ms. Robison and I did not record time for many short emails and
18 conversations we had with Mr. Kirkpatrick and with members of the public who
19 contacted us about the case. Thus, the hours set forth in Exhibits A and B are less
20 than all of the hours actually spent by Ms. Robison and I on this case.

21 7. The 133.2 hours of my work, and the 34.9 hours for Ms. Robison's
22 work, for which the Lott Group seeks fees were necessary and reasonable. This
23 case involved a lengthy and complex settlement agreement with multiple
24 components that required considerable time to analyze, and many of the legal
25 issues were complex. Further, Mr. Kirkpatrick and I were very careful not to
26 duplicate effort, and Mr. Kirkpatrick's expertise in class actions, coupled with my
27 expertise in lemon law, contributed to the efficiency with which our work was
28 completed.

1 8. The Lott Group seeks fees at the hourly rate of \$725 for my work on
2 this case, and \$320 per hour for Ms. Robison's work, which are the same hourly
3 rates used in 2017 by similarly experienced class counsel and which this Court
4 approved when it granted class counsel's first motion for attorneys' fees.

5 9. The Lott Group seeks an award of \$8,787.12 to reimburse my firm
6 for out-of-pocket expenses, which are set forth in Exhibit C. These expenses
7 include travel for the fairness hearing, appellate argument, and mediation, as well
8 as filing fees and courier fees.

9 10. The attorneys' fees, expenses, and service payments sought by the
10 Lott Group were negotiated with Ford during a mediation in Boston on December
11 9, 2019. The parties did not discuss these payments until after an agreement in
12 principle had been reached regarding the improvements to the settlement
13 agreement. At the mediation, Ford agreed not oppose a request by the Lott Group
14 that it pay an award of attorney fees to their counsel, provided that the award did
15 not exceed 1.2 times their verified reasonable lodestar, plus verified costs.
16 Following the mediation, the Lott Group presented their billing and expense
17 records to Ford and Ford agreed to pay up to \$348,004, which was calculated as
18 follows:

19 Michael Kirkpatrick 241.3 hours x \$725 = \$174, 942.50

20 David Gorberg 133.2 hours x \$725 = \$96,570

21 Emma Robison 34.9 hours x \$320 = \$11,168

22 Total is \$282,680.50 x 1.2 = \$339,216.60 + expenses of \$8,787.12 =
23 348,003.72.

24 11. Application of the multiplier of 1.2 on the counsel's lodestar is
25 appropriate because it is the same as that approved by the Court when it granted
26 class counsel's first motion for attorneys' fees. Further, it is appropriate based on
27 the outstanding results achieved, the litigation risk, and the additional hours
28 counsel has worked and will work since the agreement on fees was reached. The

1 Lott Group conferred substantial benefits on the class by improving the terms of
2 the settlement in ways that both increase the settlement's value to the class and
3 expand the number of class members eligible for relief. Counsel for the Lott Group
4 assumed substantial risk that their efforts would not be successful and that they
5 would receive no compensation. Enhancement for contingent risk is commonly
6 awarded under California law, and the multiplier sought by the Lott Group is in-
7 line with others that have been affirmed by the Ninth Circuit.

8 12. Ford further agreed, subject to the Court's approval, to make service
9 payments of \$5,000 to each of the five members of the Lott Group. Such payments
10 are appropriate because the Lott Group conferred a substantial benefit on the
11 class by improving the terms of the settlement. Further, the Lott Group incurred
12 substantial personal risk by staying in the class to object to the original settlement
13 agreement, rather than opting out to preserve and pursue their individual claims,
14 and they rejected several settlement offers that would have benefitted them
15 personally so that they could continue the appeal in an effort to benefit the class
16 as a whole.

17
18 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing
19 is true and correct. Signed on January 31, 2020.

20
21 /s/ David J. Gorberg
22 David J. Gorberg
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EXHIBIT A

DAVID J. GORBERG & ASSOCIATES, P.C.

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**DAVID J. GORBERG[†]
LAURA L. WOLFE[‡]
COURTNEY L. SOFIA^{*}
DANIEL B. UNGER[§]**

***MEMBER OF PA AND NJ BARS
†MEMBER OF PA, NJ AND NY BARS
‡MEMBER OF PA AND MA BARS
§MEMBER OF PA BAR**

Time Records Report Vargas vs. Ford - DJG

4-4-17	2.0	Review Settlement agreement and discuss with ER.
4-5-17	0.5	Tele conf with Ray Gallo, research and exchange of emails with Shanon Carson
4-5-17	0.5	Tele conf with Russel Paul and exchange of emails
4-10-17	1.0	Conference call with class counsel, Ray Gallo, Ford's atty and other lemon law attorneys explaining settlement.
4-11-17	0.2	Exchange emails with Jordan Laurie and Ray Gallo
4-14-17	0.2	Email from Jordan Lurie regarding communicating with class
4-17-17	0.2	Exchange of emails with Roy Gallo and Class Counsel
4-17-17	0.3	Discussions with potential co-counsel and exchange emails and research.
4-17-17	0.2	Exchange email with Nancy Gray as potential local co-counsel
4-17-17	0.5	Tele conf with Nancy Gray
4-17-17	0.2	Email to regarding judge assigned to case
4-17-17	0.5	Exchange of emails from Roy Gallo and research and review of 15 documents attached.
4-17-17	0.3	Discussion with potential counsel and research objections
4-18-17	0.2	Exchange emails with counsel about details of settlement agreement
4-18-17	0.2	Email to Jordan Laurie and Russel Paul regarding ability to communicate with client
4-18-17	0.2	Exchange Emails with Jordan Laurie and Paul Russel about conference call for next week and scheduling
4-19-17	7.0	Begin researching and drafting objection letter to be filed at prelim hearing

4-19-17	0.2	Email to Nancy Gray with attachments as requested for obj and follow up phone call
4-19-17	0.2	Discussions with Public Citizen by exchange of emails with documents
4-19-17	1.2	Discussion with Marek Klepadlo about representation and objection along with sending initial letter
4-20-17	1.2	Phone call from Ruth Burbridge about objection and discussion concerning rep along with letter and fee agreement to her.
4-20-17	0.3	Send email to Nancy Gray (0.2) for filing objection letter along with follow up call as to procedure (0.4)
4-20-17	1.0	Discussion with Carlie Olivant regarding representing her for objection. Prepare and send DocuSign Agreement and review and file
4-21-17	0.3	Receipt of signed Agreement to Represent by Burbridge for objection and review
4-21-17	0.3	Prepare and docusigned agreement to object by Klepadlo and received back signed and file.
4-21-17	0.2	Email from Russel Paul and follow up call.
4-21-17	0.2	Email to Jordan Laure to call objection letter
4-21-17	0.2	Email copy of letter objecting to prelim fairness hearing to Jordan Laurie and Russel Paul
4-21-17	0.2	Email from Jordan Laurie scheduling phone conference to today
4-21-17	0.8	Phone conference with Jordan and Russel Paul about letter objecting
4-21-17	0.2	Exchange of emails with Nancy Gray and confirm filing letter for Kelpaldo and Burbridge with court.
4-21-17	0.2	Email to Carlie Olivant with objection letter for prelim hearing
4-22-17	1.0	Phone discussion with Gail Slomine and letter sent to her along with obj agreement.
4-24-17	0.3	Email from Nancy about hearing and Judges Order and follow up phone call
4-24-17	0.2	Email to Kirkpatrick about status of objection participation
4-25-17	0.2	Research and discussions with potential co- counsel – referral of PC
4-25-17	0.2	Exchange emails with further potential co-counsel including Public Citizen
4-25-17	0.5	Review of Documents by Klepadlo (letter objecting sent to us and summary write up)

4-26-17	0.3	Exchange of emails with RG and further research on communicating with class
4-27-17	1.0	Discussion with Brenda Lott about representing her for the formal objection, letter confirming and agreement letter to sign and filing and file setup.
4-28-17	0.3	Receipt of class action agreement from Gail Slomine. Call and confirm
5-01-17	0.3	Receipt of signed class action obj agreement and records from partial records from Lott (missing purchase agreement)
5-4-17	0.2	Email to Kirkpatrick re Order on proposed settlement
5-5-17	0.2	Exchange emails with co-counsel re objections and schedule conf call
5-08-17	0.5	Signed authorizations from Lott to Bank for purchase agreement. Discuss with client and follow up with bank.
5-11-17	0.3	Follow up letter to Ford Motor Credit and call for Lott Purchase agreement
5-11-17	0.2	Email from Kirkpatrick of deadlines etc prior to conf call
5-11-17	0.5	Conf call with Kirkpatrick and Sherman at Public Citizen and follow up email with research and analysis.
5-17-17	1.0	Review of records for Brenda Lott and do write up
5-15-17	0.2	Receipt and review of purchase agreement from FMC on Lott
5-16-17	0.5	Summary of repair invoices and purchase agreement on Lott
5-18-17	0.3	Exchange of emails with Kirkpatrick regarding conf call of May 11
5-23-17	0.2	Exchange of emails with Ryan Wu
5-24-17	0.2	Exchange of emails regarding potential objection with Kirkpatrick
6-5-17	1.2	Sign up of Phillip Woloszyn and discussion of case and objection. Letter sent to him along with agreement and file setup
6-13-17	0.3	Letter sent and phone call to dealer along with call for Woloszyn records
6-21-17	0.2	Exchange of emails with Kirkpatrick regarding objection and scheduling conf call
6-22-17	0.2	Exchange email with co-counsel regarding taking of deps and discovery
6-29-17	0.3	Exchange of emails with Kirkpatrick re scheduling conf call and draft motion for discovery
7-13-17	0.3	Exchange of emails with Ryan Ru regarding settlement of vargas
8-10-17	0.3	Exchange email with Kirkpatrick regarding timeline and objection and discuss research and preparation

8-16-17	0.3	Receipt and review of repair records for Lutz and add to file
8-17-17	0.5	Discussion with Woloszyn and about agreement to object, and certification of class member and sent to him.
8-17-17	1.5	Discussion with Suzanne Lutz about representing her for the formal objection, letter confirming and agreement letter to sign and filing and exchanging of emails.
8-17-17	0.2	Create Letter and Fax to dealer and bank (FMC) for records for Gail Slomine.
8-17-17	0.3	Fed ex Certification and discussion with Lott and Slomine to sign
8-17-17	0.3	Preparation of certification of class member and discussion with Lutz to sign.
8-19-17	0.2	Receipt of signed agreement to represent Woloszyn and follow up call.
8-24-17	1.5	Receipt of email from Kirkpatrick with Draft Objection. Review and discuss
8-28-17	0.2	Exchange of email from Kirkpatrick regarding declarations of ind claims
8-28-17	0.2	exchange emails with co-counsel regarding declarations and cert.
8-28-17	1.0	Receipt of repair orders and purchase agreement for Gail Slomine. Review, summarize and file
8-29-17	0.2	Receipt of signed agreement to represent and certification from Lott
8-29-17	0.2	Receipt of signed agreement to represent and certification
8-29-17	0.2	Receipt and review and file the Purchase agreement for Lutz
8-30-17	0.2	Exchange of emails with co-counsel regarding objection issue
8-30-17	1.0	Email with first half of objection from Kirkpatrick. Review and Respond
8-30-17	0.5	Create objector packages for Slomine, Woloszyn, Lutz and Lot
8-30-17	0.2	Receipt of signed certification of class member from Lutz
8-30-17	0.2	Exchange emails with Nancy Gray regarding filing Objection
9-1-17	4.5	Continued research on Objection Brief re subclass
9-1-17	0.3	Create objection package for Olivant for filing with Kirkpatrick.
9-5-17	0.2	Exchange emails with Nancy Gray re filing objections
9-5-17	0.2	Confirm filing of Objection by Kirkpatrick

9-14-17	0.3	Compose PHV and documents for Emma and DJG and email to Gray for filing
9-14-17	0.2	Email from Nancy confirm PHV for DJG, Emma and Mike. Review along with copy of orders from court
9-15-17	0.2	Review letter to Jordan Laurie for Discovery Request
9-26-17	1.0	Read motion for final approval and exhibits and discuss with Kirkpatrick
9-27-17	0.5	Telecon with class counsel
10-2-17	1.2	Teleconf with Emma regarding hearing
10-3-17	0.3	Email to Mike with case to read regarding objection
10-4-17	0.2	Email from Mike regarding hearing
10-18-17	0.3	Review order overruling objection and approving settlement discuss with co-counsel
10-20-17	0.3	Conversation with Gail Slomine re overruling objection.
11-3-17	0.5	Telecon with opposing counsel
11-7-17	0.2	Email from Kirkpatrick regarding filing of appeal by Nov 17
11-9-17	0.3	Exchange of emails between objectors and Liblang, Gielegem for coordination of appeal and scheduling conference
11-10-17	1.0	Telecon with counsel for various parties, including opt out re appeal coordination
11-10-17	0.2	Email from John Thomas re court staying case
11-13-17	0.3	Joint ex parte application to lift say by ford with proposed order and dec
11-29-17	0.2	Email from Ryan Wu regarding expedited appeal.
12-22-17	0.4	Receipt of Settlement offer from Ford along with Release. Review and discuss with Kirkpatrick
12-22-17	0.2	Email from co counsel regarding offer from Ford and discussion.
12-22-17	1.4	Conference call with each client regarding offer from ford which was rejected.
1-3-18	0.3	Conference with Carlie Olivant regarding appeal and follow up email
1-9-18	0.2	Exchange emails regarding Mediation with co-counsel
1-17-18	0.2	Email to Mediation 9 th circuit requesting to be added in to conf.
1-23-18	1.0	5 Letters and checks and case law from Capstone re offer.

1-24-18	0.4	spoke to gail slomine over the phone and explained the offer. She agreed to reject it and continue forward, made notes
1-24-18	0.4	Conference with Brenda Lott about offer and status of case, made notes
1-24-18	0.4	Discussion with Phillip Woloszyn about offer to settle and follow up email, made notes
1-24-18	0.4	Discussion with Carlie Olivan about offer to settle, status of case, made notes.
1-24-18	0.2	Email to Kirkpatrick relying the rejection of all clients to offer, made notes
1-25-18	0.4	Discussion with Suzanne Lutz regarding current offer to settle, status of case and emailed to confirm, made notes
1-25-18	0.2	Email to Kirkpatrick all clients reject offer.
1-30-18	0.3	Review Deposition Notices from Capstone via email
1-30-18	1.0	Discuss Deposition notice with clients and advise
1-31-18	0.3	Email from Kirkpatrick with appeal brief
2-1-18	2.0	Review appeal brief and all exhibits and discuss with Kirkpatrick.
2-1-18	0.2	Email from Ted Frank requesting permission to file amicus and our consent
2-2-18	0.2	Email from Ford not agreeing to Amicus Brief by Ted Frank
2-3-18	0.3	Exchange emails with Jordan Lurie regarding depositions
2-7-18	0.7	Telephone assessment conf with 9 th cir mediator.
2-13-18	0.2	Exchange emails with class counsel re depo notice
2-14-18	0.2	Schedule via email meet and confer with Lurie
2-19-18	0.4	Meet and confer with Jordan Lurie via phone
2-25-19	1.0	Review of Plaintiff's Class Counsel Appeal Brief
2-28-18	0.2	Email from Ryan Wu re 10k offer to settle along with attachments
3-7-18	0.3	Review stipulation re motion to compel from Kirkpatrick via email
3-8-18	0.2	Exchange of email from Capstone with joint stip to be filed.
3-9-18	0.2	Exchange of Email and filing of joint stip
3-19-18	0.2	Review of subpoenas to objectors
3-19-18	0.3	Spoke to Gail Slomine about subpoena for her dep and status of case.
3-19-18	0.3	Spoke to Brenda Lott about Subpoena for dep and status of case

3-21-18	0.3	Review of supplemental memo to be filed by Objectors re subpoenas
3-21-18	0.3	Filing of Supplemental Memo by co-counsel
3-23-18	0.4	Review Filing of motion for Bond by class counsel
3-27-18	0.2	Exchange of emails with co-counsel re calender conflict and Ryan Wu re stips and proposed order
3-29-18	0.3	Exchange of Email to Jordan Lurie requesting deps be taken off calender pending motion to quash and request to meet in LA by Jordan Lurie
3-29-18	0.3	Capstone's letters to clients with case authority and offers to settle
3-29-18	0.3	Exchange of emails with co-counsel regarding offers and request to meet by Lurie
3-30-18	0.5	Exchange emails with co counsel re Motion to Quash to be filed in ED PA. Review.
4-2-18	0.2	Email from Kirkpatrick to class counsel regarding filing of motion to quash
4-2-18	0.5	Filing of Motion to Quash with EDPA and hand deliver
4-2-18	0.2	Review Magistrate's order re motion to compel
4-2-18	0.4	Discussion with Gail Slomine regarding 2 nd offer to settle.
4-2-18	0.4	Spoke to Brenda Lott about 2 nd offer to settle and status of case
4-2-18	0.4	Spoke to Phillip Woloszyn about 2 nd offer and status of case
4-2-18	0.4	Spoke to Suzanne Lutz about 2 nd offer and status of case
4-2-18	0.4	Spoke to Carlie Olivant about 2 nd offer, status of case.
4-3-18	0.3	Exchange of emails with Ryan Wu and letter withdrawing Dep notices with stipulated agreement and court order
4-3-18	0.2	Email from Kirkpatrick with Judge Diamonds (ED PA) Procedures
4-3-18	0.2	File Notice of Withdrawal on Motion to Quash re email with Ryan Wu (ED PA)
4-4-18	0.3	Spoke to Suzanne Lutz about no deps per court order and status of case
4-4-18	0.3	Spoke to Gail Slomine about deps notices being withdrawn and status of case
4-4-18	0.3	Spoke to Phillip Woloszyn about deps notice being withdrawn and status of case
4-4-18	0.3	Spoke to Carlie Olivant about deps notice being withdrawn and status of case
4-5-18	0.3	Email to Suzanne Lutz confirming rejecting offer
4-9-18	0.2	Email from Jordan Lurie scheduling meeting in San Diego
4-10-18	1.0	Research and consult with ethics atty regarding case law and ethics on offer.

4-12-18	0.3	Review response to Motion for Bond
4-12-18	0.2	Email from Ryan Wu regarding to schedule conf
4-13-18	0.2	Exchange emails from Nancy Gray re filing of response to bond
4-13-18	0.4	Conference with Suzanne Lutz about 2 ND offer to settle.
4-13-18	0.4	Conference with Gail Slomine about 2 nd offer and rejecting
4-13-18	0.4	Conference with Brenda Lott regarding 2 nd offer and rejecting
4-13-18	0.4	Conference with Phillip Woloszyn regarding 2 nd offer and rejecting
4-13-18	0.4	Conference with Carlie Olivant regarding 2 nd offer and rejecting
4-17-18	0.5	Conference call with Jordan Lurie – schedule meeting in LA and emails
4-22-18	0.2	Email from Jordan Lurie confirming meeting in LA
4-22-18	8.0	Travel to LAX from PHL – meeting with Lurie
4-24-18	3.0	Meeting with Jordan Lurie in LA and exchange of emails
4-26-18	8.0	Travel from LAX to PHL – meeting with Lurie
4-29-18	0.2	Schedule phone conference with Jordan and John Thomas for May.
5-1-18	0.2	Email from Jordan Lurie confirming conf call with Thomas on May 7
5-1-18	0.2	Review courts decision to deny bond
5-7-18	0.4	Tele conference with Thomas and Lurie and exchange of emails
5-14-18	0.2	Email from Lurie regarding response from Thomas
5-29-18	0.2	Filing to withdrawal ER from ECF and exchange of email from NG
6-7-18	0.8	Teleconf with John Thomas and Jordan Lurie and exchange of emails
6-7-18	0.2	Email to Kirkpatrick about discussion with Thomas conf call
6-11-18	0.3	Email from John Thomas with case law for no new notice needed.
6-12-18	0.2	Email from John Thomas re new proposal and tele conference
6-25-18	0.3	Spoke to Gail Slomine about Ford's position of no new notice and status of case.
6-25-18	0.3	Spoke to Brenda Lott about Ford's settlement position and status of case
6-25-18	0.3	Spoke to Carlie Olivant about Ford's settlement position and status of case
7-13-18	0.3	Email to Thomas and Lurie rejecting new negotiations.

7-26-18	0.5	Teleon with co counsel and class counsel
7-29-18	0.3	Exchange of emails with co-counsel regarding 9 th cir mediator
8-2-18	0.2	Notice of mandatory mediation conference and email with co-counsel
8-7-18	0.5	Exchange of emails with co counsel regarding issues to mediate for settlement
8-10-18	0.3	Email from Kay Suk and follow up call to her
8-13-18	0.2	Email from Kay Suk scheduling mediation
8-16-18	0.2	Email from Kay Suk re mediation
8-16-18	1.0	Mediation conference with Kay from 9 th circuit
10-6-18	0.2	Email from Pouneh Porooshani along with letter re settlement offers
10-8-18	0.2	Exchange of emails with RPaul regarding mediation
10-10-18	0.2	Email and Letter from Capstone regarding cashing of checks for deposition
10-10-18	0.3	spoke to gail slomine about letter from capstone today at 6:58pm via telephone. She never cashed the check and said she destroyed it. Spoke about the offer from Capstone and she agreed to reject it as before.
10-10-18	0.3	Spoke to Phillip Woloszyn about allegation of dep checks being depositing and status of case.
10-10-18	0.3	spoke to Brenda Lott about allegation of cashing dep check and status of case
10-11-18	0.3	Spoke to Brenda Lutz about allegation of cashing checks and status of case.
10-13-18	0.3	Spoke to Carlie Olivant about allegation of cashing checks and status of case.
10-13-18	0.3	Draft letter to Ryan Wu and email to him and Kirkpatrick Dep Checks
11-30-18	0.2	Notice from Capston Laurie no longer with firm
01-3-19	0.2	Email from Mike regarding hearing date for 9 th
02-26-19	0.5	Email from Kirkpatrick with Myers decision for J8 letter and discussion
03-8-19	0.2	Review J28 letter and Response email from Kirkpatrick
10-5-19	1.5	Discussion with all clients regarding 9 th vacating settlement and status and email
10-5-19	0.3	Conference call with Paul Russel and follow up email to Kirkpatrick
10-10-19	0.2	Exchange of emails with Russel Paul and review of stipulated orders
11-15-19	0.2	review email from Kirkpatrick re mediation
11-19-19	0.2	email to Cathy Kern regarding mediation

11-19-19	0.3	Review mediation statement, sign and email to Kirkpatrick
11-21-19	1.2	Conference with Paul Russel in my office.
11-21-19	0.2	email to co-counsel regarding discussion with Paul and request that we appear no matter what Ford's position is
11-21-19	0.2	Call to Russel Paul agreeing to appear
12-4-19	0.3	Review of Ford's mediation statement
12-4-19	0.3	Review of Plaintiffs class counsel mediation statement
12-4-19	0.2	Exchange of emails with co-counsel regarding fords med statement
12-5-19	0.2	Exchange of emails from class counsel for scheduled conf call tomorrow.
12-6-19	0.6	Pre mediation phone call with opposing counsel
12-8-19	2.0	Review mediation statements
12-8-19	2.0	Travel to Boston For Mediation
12-9-19	7.5	Mediation
12-11-19	2.0	Travel back to PHL
12-12-19	0.3	Term sheet review from co- counsel and Lenart Krista
12-13-19	0.2	Email from Ryan Wu with open items to discuss
12-16-19	0.3	Exchange of Email from co-counsel and class counsel re mediation
12-18-19	0.5	Teleconf with parties
12-19-19	2.0	Spoke to all objectors regarding proposed settlement via phone
12-20-19	0.2	Review of order and letter from class member from court

Total Hour 133.20 hours

EXHIBIT B

DAVID J. GORBERG & ASSOCIATES, P.C.

DAVID J. GORBERG[†]
LAURA L. WOLFE[‡]
COURTNEY L. SOFIA*
DANIEL B. UNGER[§]

*MEMBER OF PA AND NJ BARS
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Time Records Report Vargas vs. Ford – Emma Robison

8-30-17	4.5	Research and start writing brief for objection
8-30-17	4.2	Exchange emails with Kirkpatrick, research, and write various portions for objection
8-31-17	6.7	Exchange of emails with Kirkpatrick and compiling of records for objection and further research on various issues for objection
9-5-17	2.0	Exchange of emails with co counsel finalizing objection
9-29-17	8.0	Travel from PHL to LAX (ER), review material for oral argument
10-2-17	1.5	Attend hearing (ER)
10-3-17	8.0	Travel back to PHL from LAX

TOTAL FOR EMMA - 34.90 HOURS

EXHIBIT C

<u>DATE</u>	<u>DESCRIPTION</u>	<u>CHARGE</u>
4/28/17	Nancy Gray - attending hearing	\$800.00
9/16/17	Nancy Gray - filing ecf	\$2,175.00
10/1/17	Washington to LAX - MK	\$373.96
10/1/17	Omni Hotel for ER and MK for 2 nights	\$1,666.00
10/16/17	Courier charge by Nancy Gray	\$35.75
11/14/17	Appeal Cost	\$505.00
11/15/17	Courier charge by Nancy Gray	\$28.60
6/1/18	Courier charge by Nancy Gray	\$38.50
3/4/19	Southwest Air - Mike to Apeal Arg	\$458.96
4/9/19	Westin Pasadena - djg	\$200.50
4/9/19	Westin Pasadena - MK	\$184.99
4/9/19	Uber	\$11.20
4/9/19	Uber	\$12.62
4/2/19	ECF filing ED PA - Motion to Quash	\$47.00
4/2/19	American Airlines - djg	\$793.60
4/7/19	Uber - Mike	\$44.27
4/8/19	Uber - Mike	\$43.45
12/9/19	Uber - Mike	\$53.92
12/9/19	Hotel 2 rooms - Intercontinental	\$482.66
12/7/19	Air to Boston - djg	\$594.60
12/7/19	Air to Boston - MK	\$196.60
12/8/19	Uber for djg to airport	\$39.94
Total		\$8,787.12

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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA—WESTERN DIVISION

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

13 Plaintiffs,

14 v.

15 FORD MOTOR COMPANY,

16 Defendant.
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18
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21

Case No. 2:12-cv-08388-AB-FFMx
Hon. Judge André Birotte Jr.

**[PROPOSED] ORDER GRANTING
LOTT GROUP'S MOTION FOR
ATTORNEYS' FEES, COSTS, AND
APPROVAL OF SERVICE
PAYMENTS**

ORDER

On February 28, 2020, at 10:00 a.m., this Court conducted a hearing on the Lott Group's Motion for Attorneys' Fees, Costs, and Approval of Service Payments. Having carefully considered the papers, evidence, and arguments presented, the Court finds and orders as follows:

1. Former Objectors Brenda Lott, Suzanne Lutz, Carlie Olivant, Gail Slomine, and Philip Woloszyn (the Lott Group) seek attorneys' fees in the amount of \$339,216.60 and expenses of \$8,787.12, and service payments of \$5,000 for each of the five members of the Lott Group. Ford has agreed to make such payments if approved by the Court. Although authorized by the parties' agreement, the payments sought by the Lott Group require court approval under Rule 23(e)(5)(B)(i) because they will be made in connection with the withdrawal of the Lott Group's objections. Further, Rule 23(h) requires a court to review the fees and costs sought to ensure that they are fair and proper.

2. The Court finds that the payments sought by the Lott Group are justified because the efforts of the Lott Group resulted in material changes to the settlement that substantially benefit the class.

3. The Court finds that the payments Ford has agreed to make to the Lott Group were separately negotiated after an agreement in principle was reached to improve the terms of the settlement agreement, and payments by Ford to the Lott

1 Group will not diminish the benefits available to the class under the improved
2 settlement agreement because those benefits are uncapped.

3 4. The Court finds that the attorneys' fees requested are reasonable under
4 the lodestar method for calculating fees, and they are a small fraction of the
5 increased value of the settlement resulting from the amendments.

6 5. The Court finds that application of a multiplier of 1.2 on the lodestar
7 of \$282,680.50 is appropriate based on the outstanding results achieved, the
8 litigation risk, and the additional hours counsel has worked since the agreement on
9 fees was reached.

10 6. The Court finds that the out-of-pocket expenses for which
11 reimbursement is sought were reasonably incurred.

12 7. The Court finds that the members of the Lott Group should receive
13 service payments of \$5,000 each for undertaking the risk of objecting to the original
14 settlement agreement and pursuing an appeal to advance the interests of the class.

15 8. The Court therefore **GRANTS** the Lott Group's Motion for Attorneys'
16 Fees, Costs, and Approval of Service Payments and orders Defendant to pay counsel
17 for the Lott Group the total fee award of \$339,216.60 and reimbursable expenses of
18 \$8,787.12. Defendant shall also make service payments in the amount of \$5,000 to
19 each of the five members of the Lott Group.
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1 **IT IS SO ORDERED.**

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3 Dated: _____

Hon. André Birotte, Jr.
U.S. District Judge