

**In the United States District Court  
for the Central District of California**

***Vargas v. Ford Motor Co***

**Case No. 2:12-cv-08388-AB-FFM**

**AMENDMENT TO STIPULATION AND AGREEMENT OF SETTLEMENT**

This Amendment (“Amendment”) to the Stipulation and Agreement of Settlement (“Settlement Agreement”) is entered into by and among the named Plaintiffs Omar Vargas, Robert Bertone, Michelle Harris, Sharon Heberling, Kevin Klipfel, Andrea Klipfel, Maureen Cusick, Eric Dufour, Abigail Fisher, Christi Groshong, Virginia Otte, Tonya Patze, Lindsay Schmidt, Patricia Schwenker, and Patricia Soltesiz, Joshua Bruno, Jason Porterfield, and Jamie Porterfield (collectively, the “Named Plaintiffs” or “Class Representatives” or “Plaintiffs”), Defendant Ford Motor Company (“Ford”) (collectively, the “Settling Parties”), and Objectors Brenda Lott, Suzanne Lutz, Carlie Olivant, Gail Slomine, Philip Woloszyn (collectively, the “Lott Objectors”), and James “Jason” DeBolt (“Objector DeBolt”, and collectively with the Lott Objectors, the “Objectors”), by and through their respective counsel.

**RECITALS**

WHEREAS, on September 28, 2012, the action entitled *Omar Vargas v. Ford Motor Company* was filed in the United States District Court for the Central District of California (“*Vargas*”). The case was initially assigned to the Honorable Audrey B. Collins, given the case number 2:12-cv-08388, and subsequently transferred to the calendar of the Honorable André Birotte Jr.;

WHEREAS, the *Vargas* complaint alleged causes of action against Ford for violating California’s and Florida’s consumer protection laws, breach of express warranty, and breach of implied warranty under the Song-Beverly Consumer Warranty Act. The complaint alleged that the PowerShift Transmission (“Transmission” or “DPS6”) installed in certain model year Ford Fiesta and Ford Focus vehicles is dangerously defective. Plaintiffs allege that the Transmission slips, bucks, kicks, and jerks, resulting in sudden or delayed acceleration of the vehicle. In the Complaint, Plaintiffs sought certification of a nationwide class of current and former owners and lessees of vehicles equipped with such

transmissions;

WHEREAS, after multiple mediation sessions, Plaintiffs and Ford reached a nationwide class action settlement that the district court preliminarily approved on April 25, 2017. Following class notice mailed to nearly 2,000,000 Class Members, approximately 10,350 recipients of the class notice opted out, and fifteen Class Members, including the Objectors, objected. The Lott Objectors objected that Plaintiffs did not provide a valuation analysis of the Settlement, the benefits offered by the Settlement were inadequate, the qualifications for obtaining benefits were onerous, and the Arbitration Program (as that term is defined by the Settlement Agreement) would not benefit Ford consumers as much as individual litigation would, among other objections. Objector DeBolt objected to the scope of the release, the sufficiency of the benefits, the form of the notice, and the attorneys' fee request.

WHEREAS, the district court issued a Final Order and Judgment approving the Settlement Agreement, awarding attorneys' fees in full, and overruling all objections. Following appeals by the Objectors, a split Ninth Circuit panel issued a memorandum decision on September 13, 2019, vacating the Final Order and Judgment and remanding the matter for a "more searching inquiry" pursuant to *Allen v. Bedolla*, 787 F.3d 1218, 1224 (9th Cir. 2015), finding that the district court's order did not provide sufficient analysis for substantive appellate review.

WHEREAS, the Settling Parties and Objectors participated in a mediation on December 9, 2019, conducted by Professor Eric Green of Resolutions LLC, and, as a result of arms'-length negotiations, reached a settlement that resolves Objectors' objections, it is hereby agreed by Ford, by Plaintiffs, and by the Objectors as follows:

1. The Lott Objectors and Objector DeBolt shall withdraw their objections to the Settlement.
2. Ford and Plaintiffs acknowledge that the Lott Objectors and Objector DeBolt contributed substantially to the improvements to the Settlement contained in this Amendment. The Lott Objectors successfully pursued increased benefits for both present and former owners, and Objector DeBolt successfully pursued increased benefits for former owners.
3. Ford will not oppose a request by the Lott Objectors and by Objector DeBolt that it pay an award of attorney fees to their counsel, provided (a) the award does not exceed 1.2 times their verified,

reasonable lodestar, plus verified costs; (b) as to the Lott Objectors the award does not exceed \$348,004; and (c) as to Objector DeBolt the amount does not exceed \$98,340.

4. Ford will not oppose a request by the Lott Objectors and Objector DeBolt that it pay a service award of \$5,000 to each of the Lott Objectors and to Objector DeBolt.
5. References to “Approval Date” in Sections II.D.3, II.F, II.G, and II.N.1.c shall be replaced with references to the “Effective Date” as redefined in this Amendment.
6. Section I.R of the Settlement Agreement is amended to read as follows:

“Effective Date of Settlement” or “Effective Date” means the first business day after: (1) the Court enters the Final Order and Judgment, in all material respects similar to the form attached ~~hereto as Exhibit F~~ to the Amendment to Stipulation and Agreement of Settlement; and (2) all appellate rights with respect to the Final Order and Judgment have expired or have been exhausted in such a manner as to affirm the Final Order and Judgment. If any appeal has been taken from the Final Approval Order, the “Effective Date” means the date on which all appeals therefrom, including petitions for rehearing or reargument, petitions for rehearing en banc and petitions for a writ of certiorari or any other form of review, have been fully disposed of in a manner that affirms the Final Approval Order. An appeal that challenges only attorneys’ fees, costs, or service awards shall extend the Effective Date only with respect to such attorneys’ fees, costs, or service awards.

7. Section I.S of the Settlement Agreement is amended to read as follows:

The “Fairness Hearing” means the ~~final hearing, held after the Preliminary Approval Order is issued~~ in which the Court will determine whether this Settlement Agreement as amended should be finally approved as fair, reasonable, and adequate, and whether the proposed Final Order and Judgment should be entered, and if so, to determine the amount of attorneys’ fees and costs to be awarded to Class Counsel and Objectors’ counsel.

8. Section II.EE is added to immediately follow Section II.E.4.c.

**II.EE. Cash Payments For Customers Turned Away By Ford Dealers.**

1. A one-time cash payment of \$20 shall be paid to any Class Member who (a) has not received cash payments or Vehicle Discount Certificates under Sections II.B or II.C and (b) submits a declaration under penalty of perjury attesting that he or she experienced Transmission problems and sought relief within 7 years or 100,000 miles of delivery of the Class Vehicle to the first retail customer (whichever occurs first), that a Ford Dealer refused to make hardware or software repairs because the Dealer claimed there was nothing wrong with the vehicle, and that the Ford Dealer did not subsequently make hardware or software repairs. The declaration must identify the VIN of the Class

Vehicle, the Ford Dealer, and the date on which the Class Member was turned away to receive payment. A form for submitting such claims shall be made available to Class Members on the Settlement Website.

2. All claims for a cash payment under this section arising from a refused repair prior to the Effective Date must be submitted online or postmarked within 180 days of the Effective Date. For refused repairs that occur after the Effective Date, the claim for payment must be submitted online or postmarked within 180 days of the refused repair for which a cash payment is sought. Neither the Claims Administrator nor Ford shall have any obligation to pay any claims pursuant to Section II.EE that are not timely submitted.

3. If a class member receives a \$20 cash payment under this section and later makes a valid claim for a cash payment or Vehicle Discount Certificate under Sections II.B or II.C, the Claims Administrator shall deduct \$20 from the amount otherwise payable under Sections II.B or II.C.

Sections II.H, II.I, and II.K shall apply to claims made pursuant to this Section.

9. Section II.FF is added to the Settlement Agreement to immediately follow Section II.F.7:

**FF. Guaranteed Minimum Payment.**

1. Ford will pay a minimum sum of \$30,000,000 for the benefits provided for in Sections II.B, II.C, and II.EE of the Settlement (“Guaranteed Minimum Payout”).

2. Within thirty days after October 21, 2024, the Claims Administrator shall calculate and submit to Ford and Class Counsel the Total Payment Amount, which will be the sum of the total dollar value of all prepaid cards issued pursuant to Sections II.B, II.C, and II.EE, plus the total face value of all Vehicle Discount Certificates issued under Section II.C. If the Total Payment Amount is less than the Guaranteed Minimum Payout, that difference (“the Residue”) shall be distributed equally to each Class Member who submitted a valid claim under Sections II.B, II.C or II.EE or who received a payment from Ford after providing Notice of Intent to arbitrate pursuant to Section II.N.4. In the event the per capita amount of the residual payment would be less than \$5.00, the Residue shall be distributed only to Class Members who submitted a valid claim pursuant to Section II.C. If the per capita amount of the residual payment remains less than \$5.00, the Residue shall be distributed to a *cy pres* beneficiary to be determined jointly by Class Counsel and Ford.

3. Prior to distributing the residual payment, the Claims Administrator shall perform a reasonable search (via the National Change of Address Database) for a current name and/or address of all Class Members who are entitled to a residual payment.

4. If any dispute arises regarding Ford’s obligations to fulfill the Guaranteed Minimum Payout, and the parties cannot, after good faith negotiations, reach a resolution, the Settling Parties shall submit a joint report to the Court describing the

dispute, summarizing each party's positions. The Court shall make a final determination with respect to the dispute.

5. Payments to Class Members made pursuant to this section shall be made by prepaid cards as provided in Section II.K. The unused value of any prepaid cards issued pursuant to this section shall be distributed to the *cy pres* beneficiary designated by Ford and Plaintiffs.

10. Section II.N.1.b of the Settlement Agreement is deleted.

11. Section II.N.1.c of the Settlement Agreement is amended to read as follows:

Except as provided in Section II.N.1.e, as amended, Class Members who, prior to the Approval Effective Date, have sold their Class Vehicles or returned leased Class Vehicles will only be entitled to arbitration of claims for Vehicle Repurchases based in whole or in part on alleged defects in the PowerShift Transmission in those Class Vehicles if (1) the lemon law of the state where the Arbitration Claimant took delivery of the vehicle allows vehicle owners or lessees to pursue Vehicle Repurchase claims after they have sold or returned their vehicles; and (2) the request for Arbitration is filed before the expiration of the applicable state statute of limitations for such a claim or 180 days after the Approval Date, whichever is earlier.

~~Class Members who sell Class Vehicles or return leased Class Vehicles on or after the Approval Date will only be entitled to arbitration of claims for Vehicle Repurchases based in whole or in part on alleged defects in the PowerShift Transmission in those Class Vehicles if .1. the lemon law of the state where the Arbitration Claimant took delivery of the vehicle allows vehicle owners or lessees to pursue Vehicle Repurchase claims after they have sold or returned their vehicles; and .2. the request for Arbitration is filed before the expiration of the applicable state statute of limitations for such a claim or 180 days after the date on which the Class Member sold or returned the Class Vehicle, whichever is earlier.~~

12. Section II.N.1.d of the Settlement Agreement is amended to read as follows:

~~d. Extension of Statute of Limitations For Class Members Who Still Own or Lease Class Vehicles At The Time Of An Arbitration Hearing.~~

Regardless of the applicable state law governing the claims of an Arbitration Claimant ~~who still owns or leases a Class Vehicle as of the time of an Arbitration Hearing~~, the Statute of Limitations for a Vehicle Repurchase claim brought by such a Claimant that is based in whole or in part on alleged defects in the PowerShift Transmission shall be six (6) years after delivery of the Class Vehicle to the first retail purchaser, or 180 days after the Approval Effective Date, whichever is later.

13. Section II.N.1.e of the Settlement Agreement is amended to read as follows:

~~e. Vehicle Repurchase Permitted For Class Members Who Still Own or Lease Class Vehicles At The Time of an Arbitration Hearing, Even~~

When Not Available Under State Law.

Even if an Arbitration Claimant ~~who still owns or leases a Class Vehicle at the time of an Arbitration Hearing~~ is not entitled to a Vehicle Repurchase under the applicable lemon law, the Arbitrator may award a Vehicle Repurchase if the notice requirements and statute of limitations conditions established by this Agreement are satisfied and the following conditions are met:

- i. During the period when the Class Vehicle was owned or leased by the Arbitration Claimant and within 5 years or 60,000 miles of delivery of the vehicle to the first retail customer (whichever occurs first), the Class Vehicle was repaired on four (4) separate Service Visits and on each Service Visit the Claimant received a Transmission Hardware Replacement, and;
- ii. The transmission continues to malfunction (or, in the case of former owners or lessees, continued to malfunction at the time the vehicle was disposed of).

The requisite four Transmission Hardware Replacements may be for unrelated conditions or malfunctions.

14. Section II.N.1.g of the Settlement Agreement is amended to read as follows:

Except as provided in Section II.N.3, The Arbitrator's decision with respect to a Vehicle Repurchase shall be final and binding with no right of appeal by Ford. However, Arbitration Claimants who do not prevail on a claim for a Vehicle Repurchase are entitled to appeal the Arbitrator's award to an Appellate Arbitrator. The Arbitration Claimant seeking appeal must advance the entire cost of the appeal proceeding as set by the Appellate Arbitration Administrator. If the Arbitration Claimant prevails on appeal, Ford shall reimburse all fees and costs charged by the Appellate Arbitration Administrator. The Arbitration Claimant shall not be entitled to reimbursement of fees and costs if Ford prevails on appeal. No other appeals or requests for judicial review shall be allowed.

15. Section II.N.3 of the Settlement Agreement is amended to read as follows:

Except as provided in this Section, and notwithstanding any provision of state law to the contrary, the Arbitrator may not award civil penalties or punitive damages to any Arbitration Claimant. The Arbitrator may award a civil penalty if applicable state law permits a recovery of civil penalties and if the Claimant establishes that Ford (a) knew of its obligation under state law or this Settlement Agreement, as amended, to repurchase the Claimant's vehicle and, (b) prior to the Arbitrator's award, declined to do so after being provided with the Claimant's notice of intent to proceed to arbitration under Section II.N.4. Civil penalties cannot be awarded if Ford reasonably and in good faith believed that the facts did not require an offer to replace the vehicle or refund the lease payments. The award of civil penalties may not exceed the repurchase amount awarded



by the Arbitrator. Ford has the right to appeal any award of civil penalties to the Appellate Arbitrator at its own expense.

16. The first three lines of Section III.F are amended to read as follows:

If this Settlement Agreement, as amended, is finally approved by the Court, a Final Order and Judgment directing the entry of judgment pursuant to Fed. R. Civ. P. 54(b) shall be entered substantially in the form attached to the Amendment to Stipulation and Agreement of Settlement as Exhibit F, as follows:


17. Section IV.O is added to read as follows:

Ford and Plaintiffs shall jointly prepare an informational, single-page postcard advising Class Members that improvements have been made to the Settlement and referring them to the Settlement Website for details. Within 14 days of the Effective Date, the Claims Administrator shall mail the postcard, at Ford's expense, using the same mailing list used for the original class notice. Within 14 days of the Effective Date, Ford and Plaintiffs shall jointly develop a summary of the Settlement, including the new provisions, for inclusion on the Settlement Website.

18. Ford and Plaintiffs shall jointly develop amendments to the Exhibits to the Settlement Agreement, including the Rules of Arbitration, to the extent necessary to incorporate the terms of these Amendments.
19. In support of Plaintiffs' motion for final approval of the Settlement, as amended by this agreement, Ford will submit a declaration establishing what it has paid to date to repurchase vehicles owned by Class Members who gave notice of intent to arbitrate pursuant to Section II.N.4.

**IT IS SO AGREED.**

CAPSTONE LAW APC

By:   
Ryan H. Wu  
Class Counsel

Date: 1.24.2020

By: John Thomas Date: 1/29/2020  
John Thomas  
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**PUBLIC CITIZEN**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
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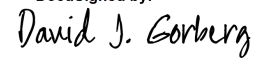
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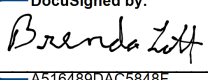
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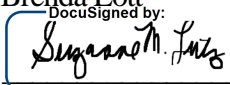
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James "Jason" DeBolt

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Omar Vargas

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Robert Bertone

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Patricia Soltesiz

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Lindsay Schmidt

Philip Woloszyn

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James "Jason" DeBolt

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Andrea Klipfel

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Philip Woloszyn

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James "Jason" DeBolt

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Omar Vargas

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Robert Bertone

By:  \_\_\_\_\_ Date: 1/24/2020  
Michelle Harris

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Sharon Heberling

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Kevin Klipfel

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Andrea Klipfel

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Maureen Cusick

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Tonya Patze

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Patricia Soltesiz

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Lindsay Schmidt

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By: \_\_\_\_\_ Date: \_\_\_\_\_  
Virginia Otte

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Patricia Schwenker

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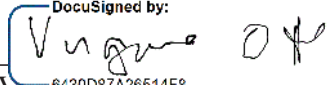
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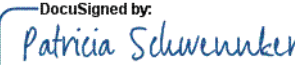
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Joshua Bruno

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Jason Porterfield

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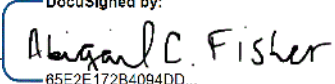
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Abigail C. Fisher

Date: 1/24/2020