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Class Counsel

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE

MYFORD TOUCH CONSUMER
LITIGATION

Case No. 3:13-cv-03072-EMC

**DECLARATION OF STEVE W. BERMAN
IN SUPPORT OF PLAINTIFFS' MOTION
FOR FINAL APPROVAL OF
SETTLEMENT**

Date: November 27, 2019
Time: 1:00 p.m.
Courtroom: 5, 17th Floor
Judge: Hon. Edward M. Chen

1 I, STEVE W. BERMAN, declare as follows:

2 1. I am an attorney duly licensed to practice law before this court. I am a member of
3 the Washington Bar, and I have been admitted to this court *pro hac vice*. I am the managing partner
4 of Hagens Berman Sobol Shapiro LLP (“Hagens Berman”). Based on personal knowledge or
5 discussions with counsel in my firm of the matters stated herein, if called upon, I could and would
6 competently testify thereto.

7 2. I am providing this Declaration in support of Plaintiffs’ Motion for Final Approval
8 of Class Action Settlement.

9 3. After the Court granted preliminary approval of the proposed Settlement in March
10 2019, ECF No. 526, the parties began to work with the Settlement Administrator, JND Class
11 Action Administration (“JND”), on executing the Notice Plan. More information on the execution
12 of Notice Plan can be found in the Declaration of the Settlement Administrator. Plaintiffs worked
13 closely with Ford’s counsel and the Settlement Administrator to design and test the Settlement
14 Website. Counsel for plaintiffs also closely monitored the weekly settlement statistics provided by
15 JND and worked with Ford to interpret the Settlement Agreement to ensure that the claims process
16 was fair and as streamlined as reasonably possible.¹

17 4. Counsel for Plaintiffs also undertook the following additional efforts to help raise
18 awareness of the Settlement and stimulate claims during the claims period:

19 (a) responded to each inquiry made by class members directly to the co-lead firms and
20 worked with the Settlement Administrator when possible to help facilitate the
21 completion of individual claims;

22 (b) prominently displayed information about the Settlement on the co-lead firm websites;

23 (c) monitored the Settlement Website and coordinated updates by the Settlement
24 Administrator to ensure timely and accurate information was displayed;

25
26 _____
27 ¹ For instance, the parties agreed that any option one claims that were deemed invalid due to a
28 lack of documentation showing proof of ownership (and could not be otherwise cured) could be
converted to valid option three claims where proof of ownership wasn’t necessary.

- 1 (d) issued a press release containing information about the Settlement and encouraging
- 2 visits to the Settlement Website;
- 3 (e) paid for Facebook advertising targeting those class members who had previously
- 4 contacted co-lead firms for updates on the litigation;
- 5 (f) conducted regular text and email campaign targeting those class members who had
- 6 previously contacted co-lead firms for updates on the litigation;
- 7 (g) regularly disseminated tweets via Twitter regarding the Settlement and encouraging
- 8 visits to the Settlement Website;
- 9 (h) created posts via LinkedIn regarding the Settlement and encouraging visits to the
- 10 Settlement Website;
- 11 (i) paid for publication of the Settlement on topclassactions.com for several weeks in
- 12 August and September 2019.²

13 5. Also as part of the notice efforts, the parties agreed to disseminate a second round of
14 notice after the Effective Date of Settlement, advising Class Members that the dealer-installed
15 software update was now available at no charge to them. ECF No. 526 at 11 n.5. A true and correct
16 copy of this second notice,³ is attached as Exhibit A to this Declaration. A true and correct copy of
17 the draft certificate that the parties have created for Class Members to present to dealerships is
18 attached as Exhibit B.

19 6. Plaintiffs' counsel has committed to paying for the second round of notice. ECF No.
20 515 at 3 n.2. Based on communications with the Settlement Administrator, I estimate that the cost
21 of this second notice will be approximately \$15,520 for the printing and \$104,000 for the postage
22 for a total of \$119,520. This sum was not yet available as of the date of Plaintiffs' fee petition, and
23 is therefore not included in the expenses chart on page 17 of that Motion (ECF. No. 527).

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26 ² [Topclassactions.com](http://topclassactions.com) is a popular website that provides information about class action
27 settlements and has an estimated 1.5 million monthly visitors. News of the settlement was also
included in the topclassactions.com newsletter, which has over 750,000 subscribers.

28 ³ The parties anticipate that the second notice will be sent as a single-panel postcard.

1 7. The deadline to submit valid claims was September 24, 2019. After this deadline
2 had passed the Settlement Administrator disclosed to the parties that a high percentage of option
3 one claims were deemed invalid because they lacked the required documentation showing proof of
4 ownership at time of repair.⁴ Class counsel worked with Ford's counsel to draft an easy-to-
5 understand deficiency letter instructing class members on how to cure their claims. For instance,
6 the parties emphasized in the letter that the Settlement Administrator would accept a wide variety
7 of documents as proof of ownership, and that class members could take pictures of these
8 documents from their phones and send any images directly to the Settlement Administrator to cure
9 their claims. The first batch of deficiency letters were mailed to class members in the second half
10 of October and some letters are still being mailed to class members. The parties also agreed to mail
11 a follow-up notice to those class members with deficient claims, reminding them of their cure
12 deadline and what steps they can still take to cure their claims. Attached as Ex. C are true and
13 correct copies of the postcard follow-up notice and email follow-up notice, which were
14 disseminated to class members on November 6, 2019, with additional reminders mailed the
15 following week. In light of this new correspondence, the curing period is still ongoing.

16 8. In addition, almost 55,000 claims were submitted on the last day of the claims
17 submission period. These consist of paper submissions seeking option one claims and were filed by
18 a single aggregator on behalf of a fleet operator. *See* JND Declaration. Of the almost 55,000
19 claims, only 7,173 are for class vehicles. It is my understanding that JND is currently working with
20 Ford's counsel, the aggregator and fleet operator to clarify the specific claims being sought and to
21 streamline the documentation requirements associated with each claim so they can be more
22 efficiently validated.

23 9. In light of the above, the parties are not in a position currently to provide the Court
24 with accurate statistics on the valid claims rate. But the parties will provide this information to the
25

26
27 ⁴ Those who filed option two and option three claims had more typical percentages of invalid
28 claims.

1 Court through a supplemental declaration on November 20, 2019, after the Settlement
2 Administrator has been able to process more of the claims and deficiency responses.

3 10. In response to the sole objection, ECF No. 536, Class Counsel have notified Ms.
4 Searles that, for the reasons outlined in Plaintiffs' Motion for Final Approval of Settlement,
5 Plaintiffs would be requesting that the Court overrule her objection. Class Counsel also sent via
6 registered mail a letter to Ms. Searles containing this information, as well as notification that the
7 fairness hearing had been rescheduled to November 27, 2019. Class Counsel will also send to Ms.
8 Searles via registered mail a copy of Plaintiffs' Motion for Final Approval and will instruct USPS
9 to deliver it to her registered address by November 12, 2019.

10 11. It is my understanding from the Settlement Administrator that it received a total of
11 278 unique exclusion requests regarding the settlement. Of these, 168 were valid, 6 invalid, and
12 104 are for non-class vehicles. These numbers do not appear to trigger Ford's option to withdraw
13 from the Settlement. *See* Feb. 2019 Stipulation & Agreement of Settlement (ECF 516-1) at 41.

14 12. Based upon my experience, and analysis of the claims and defenses asserted in this
15 litigation, I believe that the Settlement reached is fundamentally fair, adequate and reasonable and
16 that this Court should grant final approval of the Settlement.

17 I declare under penalty of perjury under the laws of the United States that the foregoing is
18 true and correct.

19
20 Executed this 7th day of November, 2019, at Seattle, Washington.

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22 s/ Steve W. Berman
23 STEVE W. BERMAN
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Exhibit A

FREE MyFord Touch Software Update Available Now!

The Court has approved the MyFord Touch Settlement Agreement. Pursuant to section (II)(A) of the settlement agreement, Ford will make the most current compatible update of the MyFord Touch (“MFT”) software – version 3.10 –available for free for all Members of the Settlement Class until **[6 months after Effective Date]**. If you are a member of the Settlement Class, and have not already updated to version 3.10, you can obtain this free software update in one of the following ways:

1. For most Class Vehicles, you can obtain the version 3.10 update by clicking the following link: www.-----.com. You will then be prompted to sign into your Ford or Lincoln account, and will receive instructions to install it on your vehicle. Please note that certain Class Vehicles are not compatible with the downloadable software update; owners or lessees of these vehicles will need to select the second option below.
2. You can bring your vehicle to any Authorized Ford Dealer, who will install the version 3.10 update at no cost to you. You may access a certificate entitling you to the update by clicking **here**, or by contacting the Settlement Administrator at (800) XXXXXXXX to request that they mail one to you. You do not need to bring the certificate to the dealer to receive the free update.

Ford has further agreed for one year after the installation of the update to address, at no cost to Settlement Class Members, any software problems that they may experience with the version 3.10 software update by confirming that the most current compatible update of the MFT software is correctly installed and working properly.

Please contact the Settlement Administrator at (800) XXXXXXXX or any Ford Authorized Dealer with any questions about obtaining the software update.

Exhibit B

Certificate for the Free Installation of MFT Software Version 3.10

Pursuant to the terms of the class action settlement reached in *In re MyFord Touch Consumer Litig.*, No. 3:13-cv-03072-EMC (N.D. Cal.), this certificate confirms that, under Customer Satisfaction Program ____, the vehicle bearing the VIN _____ is eligible to receive from an Authorized Ford or Lincoln Dealer, a free update of software version 3.10 until [6 MONTHS AFTER EFFECTIVE DATE].

Ford has also agreed that for one year after installation of the MFT software update, an Authorized Ford or Lincoln dealer will address, at no cost to Settlement Class Members, any software problems that they may experience with the version 3.10 software update by confirming that the most current compatible update of the MFT software (version 3.10 or later) is correctly installed and working properly.

Exhibit C

IMPORTANT REMINDER
REGARDING THE MYFORD
TOUCH CLASS ACTION
SETTLEMENT

**Your claim is incomplete and
your action is required to
complete your claim and receive
your settlement award.**

**You must act by
November __, 2019 or risk
forfeiting your settlement award**

Claimant ID:

<MAILER ID>

<Name>

<Address1>

<Address2>

<City>, <State> <Zip>

<Country>

Deadline to Act is November , 2019

Recently, you were mailed a Notice of Claim Decision that identified additional information needed to complete your claim. **If you do not submit this information your claim will be denied.**

Please refer to the Notice of Claim Decision for the information required to complete your claim. If you are being asked to show proof of ownership, you can use insurance records, DMV records, or service records. In some states, insurance and DMV records are available for you to access online.

You can take a picture of the required documentation and then send it via mail, email, or by uploading it at the Settlement Website.

MyFord Touch Class Action
c/o JND Legal Administration administrator@MyFordTouchClassAction.com
PO Box 91241 www.myfordtouchclassaction.com
Seattle, WA 98111

If you did not receive or no longer have the notice, you may request this information by contacting the Settlement Administrator by calling toll-free (833) 402-1732. If you have already submitted your additional information, please disregard this reminder.

Your additional documentation must be postmarked or received no later than November XX, 2019, or your claim may be denied.

**IMPORTANT REMINDER REGARDING THE
MYFORD TOUCH CLASS ACTION SETTLEMENT**

CLAIMANT ID: XXXZXXZZXZ

Your claim is incomplete and your action is required to complete your claim and receive your settlement award.

You must act by November __, 2019 or risk forfeiting your settlement award

Recently, you were mailed a Notice of Claim Decision that identified additional information needed to complete your claim. **If you do not submit this information your claim will be denied.**

Please refer to the Notice of Claim Decision for the information required to complete your claim. If you are being asked to show proof of ownership, you can use insurance records, DMV records, or service records. In some states, insurance and DMV records are available for you to access online.

You can take a picture of the required documentation and then send it via mail, email, or by uploading it at the Settlement Website.

MyFord Touch Class Action c/o JND Legal Administration PO Box 91241 Seattle, WA 98111	administrator@MyFordTouchClassAction.com www.myfordtouchclassaction.com
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If you did not receive or no longer have the notice, you may request this information by contacting the Settlement Administrator by calling toll-free (833) 402-1732. If you have already submitted your additional information, please disregard this reminder.

Your additional documentation must be postmarked or received no later than November __, 2019, or your claim may be denied.

To unsubscribe, please click on the following link: [unsubscribe](#)