UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

BRANDON KOMMER on behalf of himself and all others similarly situated, Plaintiff, -against- FORD MOTOR COMPANY, Defendant.	Civil Action No.: 17-cv-296 LEK/DJS

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR (1) PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; (2) PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS; (3) APPOINTMENT OF CLASS COUNSEL; (4) APPROVAL OF AND DISSEMINATION OF CLASS NOTICE; AND (5) SETTING A HEARING FOR FINAL APPROVAL

DENLEA & CARTON LLP
2 WESTCHESTER PARK DR.
SUITE 410
WHITE PLAINS, NEW YORK 10604

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

PRELIMINARY STATEMENT

After nearly three years of hard fought litigation, Plaintiff is pleased to share with the Court his unopposed motion for preliminary approval of the parties' class action settlement. The parties' proposed resolution is the hallmark of a fair, adequate and reasonable compromise of sharply disputed claims, in which each side has been capably represented by zealous, well-informed counsel. After several months of negotiations, the parties engaged the services of a well-known mediator (David Geronemus of JAMS), who helped facilitate the parties' resolution and ensure a meaningful settlement for class members. As set forth in greater detail below, the parties' settlement amply satisfies the standards for preliminary approval in all respects. The Court should allow the parties to provide notice of the resolution to the Class, and should schedule a hearing for final approval of the settlement.

This action concerns Ford's F-Series line of trucks and its door latch mechanism's failure to latch during or after freezing temperatures. After repeatedly experiencing a frozen door latch in his Ford F-150 truck's doors, and frustrated by Ford's inability to provide him with a permanent fix, Plaintiff filed this consumer class action seeking to redress for himself, and other similarly situated consumers, the vehicle's defect. The parties' proposed resolution provides consumers with economic redress for the losses they have suffered, and Ford will continue to correct the problem at no cost to consumers through at least October 31, 2028.

As described more fully below, Ford will create a $5.3 million settlement fund from which: (i) consumers can recover their out-of-pocket costs associated with a door latch repair (up to $600 per consumer), and (ii) consumers who have merely been dissatisfied with the door latch's performance (but who have not incurred any out-of-pocket costs) can recover up to $10 per consumer. In addition, Ford has announced that it will continue to fix inoperative door latches at no cost to consumers through October 31, 2028. And more importantly, unlike other

"common fund" settlements in which unclaimed settlement proceeds revert to a Defendant, or are distributed to a *cy pres* recipient, here all of the money in the settlement fund (apart from notice and administration costs, attorneys fees and a service award to Mr. Kommer) will be distributed to Class Members. The parties' resolution is a fair, adequate and reasonable settlement and should be swiftly approved for publication to the Class.

PROCEDURAL BACKGROUND

Plaintiff filed his original Complaint against Ford on March 13, 2017, alleging that, under NY Gen. Bus. L. §§ 349 and 350, Ford affirmatively and by omission misrepresented the durability of its F-150 trucks in its advertisements. Plaintiff alleged a class action on behalf of himself and other New York purchasers or lessees of Ford F-150 trucks. On April 12, 2017, Ford moved to dismiss the Complaint. The Court granted Ford's motion on July 28, 2017, and dismissed Plaintiff's affirmative misrepresentation claim with prejudice, but granted Plaintiff leave to amend his failure to disclose claim. *See Kommer v. Ford Motor Co.*, 2017 U.S. Dist. LEXIS, 118335, 1:17-CV-296(LEK)(DJS) (N.D.N.Y. Jul. 28, 2017).

Plaintiff filed his First Amended Complaint on August 8, 2017, again alleging violations of NY Gen. Bus. L. §§ 349 and 350. Specifically, Mr. Kommer contended that Ford failed to disclose to consumers that Plaintiff's F-150 model has defective door latches and locks that fail to latch or unlatch properly during or after freezing temperatures. Plaintiff's First Amended Complaint alleged that Ford's issuance of a series of Technical Service Bulletins ("TSBs") to its dealers describing the problem of "inoperative door latches during or after freezing temperatures" and proposing a potential remedy for the defect, established that Ford was aware of the defect but failed to disclose it to current, former, or potential owners, purchasers, or lessees of these F-150 vehicles. The First Amended Complaint also alleged that a series of

Safety Recalls and Customer Satisfaction Programs initiated by Ford demonstrated its awareness of the problem and its inability to provide a meaningful fix.

On September 13, 2017, Ford moved to dismiss the First Amended Complaint on the basis that (i) Plaintiff had not adequately alleged that Ford knew of the defect when he bought his truck; and (ii) manufacturers should not have to disclose every potential defect to consumers at the point of sale.

On August 6, 2018, the Court denied Ford's motion, concluding that Mr. Kommer has adequately alleged that the 2015 TSB creates a plausible inference that Ford, the TSB's author, knew of the defects in Plaintiff's F-150 when Mr. Kommer purchased the truck. *See Kommer v. Ford Motor Co.*, 2018 U.S. Dist. LEXIS 131499, 1:17-CV-296(LEK)(DJS) (N.D.N.Y. Aug. 6, 2018). The Court further concluded that Plaintiff had plausibly pled that Ford had exclusive knowledge about the door lock and latch defects, which were only disclosed to Ford dealerships, and not to anyone outside the company. Finally, the Court rejected Ford's arguments that disclosing the door lock and latch defects would be unreasonably onerous and ineffective, and that the need for disclosure was obviated by Ford's warranty agreement. *Id.*

Following the Court's denial of the motion to dismiss, Ford answered the complaint. The parties then met and conferred regarding case management and discovery issues, submitted a joint proposed case management schedule, and exchanged mandatory disclosures. The parties appeared before the Hon. Magistrate Daniel J. Stewart for the initial Rule 16 conference, who then entered a case management order, and the parties began the discovery process. Both parties served document requests and interrogatories. The parties engaged in contentious discussions about the propriety of certain discovery demands, the terms of a protective order governing confidential information, and subsequently, the completeness of certain discovery responses.

Prior to reaching the settlement agreement, the parties had substantially completed written discovery. To date, the parties have propounded and responded to written discovery demands, and have produced in excess of 500,000 documents, along with initial disclosures and responses to interrogatories. In addition, Plaintiff was deposed on October 22, 2019.

Besides discovery, the parties engaged in other motion practice. On March 27, 2019, Plaintiff filed a motion seeking leave to file a second amended complaint proposing to add four additional plaintiffs who purchased Ford F-150 vehicles and experienced the same frozen door latch defects as Plaintiff Kommer. The motion sought to add claims under Indiana, Pennsylvania, Ohio, and Arkansas consumer law. Ford objected to the motion on the ground that this Court lacked personal jurisdiction over Ford for the claims of those plaintiffs. On June 19, 2019, Magistrate Judge Stewart denied Plaintiff's motion, agreeing that the Court lacked personal jurisdiction over the claims which the new plaintiffs sought to assert in this action. *Kommer v. Ford Motor Co.*, 2019 U.S. Dist. LEXIS 115018, 1:17-CV-296(LEK)(DJS) (N.D.N.Y. Jun. 19, 2019).

As deposition discovery was proceeding, the parties agreed to conduct mediation before a mutually acceptable mediator. The parties selected highly-regarded and experienced David Geronemus, Esq., under the auspices of JAMS, in New York City. Mr. Geronemus is widely recognized as one of the Country's most highly regarded mediators, as reflected by his selection by multiple peer and professional advisory groups (including Chambers USA, Super Lawyers and Best Lawyers) for his excellence in alternative dispute resolution proceedings. The in-person mediation, attended by the clients and their attorneys, was held on November 26, 2019. At the end of a lengthy, arduous day of back-and-forth arm's length negotiations, ably assisted

by Mediator Geronemus, the parties finally reached agreement on the key terms of the significant settlement presented herein for the Court's preliminary approval.

After nearly three years of hard-fought litigation, the parties have agreed to settle this complex consumer class action on a nationwide basis. (In connection with doing so, Plaintiff has filed a Second Amended Complaint to expand and define the scope of the settlement class to include each of the various Ford models that Plaintiff alleges is beset with an identical, common door latch defect). Plaintiff was prepared to litigate his claims through trial and appeal, and undertake further substantial discovery efforts against one of the world's largest automobile and truck manufacturers. Likewise, Ford was prepared to continue its aggressive defense against Plaintiff's claims at class certification and on the merits. Both parties, however, recognized the cost and risk of continuing litigation and the potential benefits of settlement, and after the extended and intensive arm's-length mediation in New York City on November 26, 2019, the parties were able to agree on a resolution to this action. A copy of the Stipulation and Agreement of Settlement ("Settlement Agreement" and "Settlement"), executed on March 5, 2020, is attached as Exhibit A to the accompanying Declaration of Jeffrey I. Carton in support of Plaintiff's unopposed preliminary approval motion ("Carton Decl.").[1]

As detailed below, the Court should preliminarily approve the Settlement Agreement, provisionally certify the class for settlement purposes, appoint undersigned counsel as Class Counsel, approve the proposed Short Form Class Notice and Long Form Class Notice, and order dissemination of Notice to the Class. The proposed settlement provides substantial benefits to

[1] The proposed Short Form and Long Form notices to settlement class members ("Notice") are attached as exhibits to the Settlement Agreement.

settlement class members, is fair, reasonable, and adequate, and satisfies the requirements under Federal Rule of Civil Procedure ("Rule") 23(e).

I. THE SETTLEMENT

Plaintiff and Defendant, by virtue of the foregoing, have conducted a thorough examination and investigation of the facts and law relating to the claims and defenses being prosecuted in this action. All of the terms of the Settlement Agreement are the result of extensive, adversarial, and arm's-length negotiations between experienced counsel for both sides.

A. Available Relief Under the Settlement and the Claims Process

1. The Settlement Class and Class Vehicles

As set forth in the Settlement Agreement, Plaintiff's counsel and Defendants' counsel negotiated a proposed Settlement Agreement that, if approved, will provide substantial benefits to the following Class:

> All entities and natural persons in the United States (including its Territories and the District of Columbia) who currently own or lease (or who in the past owned or leased) a Class Vehicle ("Settlement Class"). Excluded from the Settlement Class are: (1) all federal judges who have presided over this case and any members of their immediate families; (2) all entities and natural persons who delivered to Ford releases of all their claims; (3) Ford, its parents, subsidiaries, affiliates, officers, and directors; and (4) all entities and natural persons who submit a valid request for exclusion from the Settlement Class. "Class Vehicle(s)" means model year 2015-2018 Ford F-150 trucks and 2017-2018 Ford F-250, F-350, F-450, and F-550 trucks sold or leased in the United States, as well as model year 2019 Ford F-150, F-250, F-350, F-450, and F-550 trucks sold or leased in the United States that were built at Ford's Dearborn Assembly Plant before February 26, 2019, Ford's Kansas City Assembly Plant before March 4, 2019, Ford's Kentucky Assembly Plant before March 5, 2019, or Ford's Ohio Assembly Plant before March 11, 2019. (Carton Decl., Ex. 1 (Settlement)

Plaintiffs allege that each of the vehicles in the Settlement Class suffers from the same, common Door Latch defect such that there is a unity of interest and common nucleus of operative facts in aggregating these vehicles in a single settlement class.

2. The $5,300,000 Settlement Fund

The Settlement provides for Ford to pay a total of $5,300,000 in cash to settle the Litigation. Ford shall deposit the $5,300,000 in cash into a Qualified Settlement Fund ("QSF") which will fund the Settlement Fund. The Settlement Fund shall be used for the following purposes, as more fully described in the Settlement Agreement: (1) Reimbursement of Costs for Past Door Latch Repairs; (2) Reimbursement of Costs for Future Door Latch Repairs; (3) compensation for Dissatisfaction with Door Latch Performance; (4) Class Notice Costs; (5) Settlement Administration Costs; (6) residual payments to class members to the extent that there are residual amounts remaining; (7) Class Counsel's fees and expenses as the Court awards; and (8) a Service Award for the Named Plaintiff as the Court awards.

a. Reimbursement of Costs of Past Door Latch Repairs

Some owners or lessees of Class Vehicles who have experienced door latch issues on their affected Ford trucks have brought them into authorized Ford dealerships for servicing and have had repairs made under Ford's warranty programs at no direct cost to them for the repairs. In doing so, however, they may have incurred out-of-pocket towing charges or rental car charges in connection with those repairs. Likewise, other Settlement Class Members may have paid a service provider other than an authorized Ford dealer to perform a door latch repair, whether or not their Class Vehicles were or are still covered under a Ford warranty. The Settlement Agreement provides for reimbursement to such Settlement Class Members in connection with such repairs who provide adequate documentation of such costs in a properly completed and

timely claim filed with the Settlement Administrator. For a Settlement Class Member who has incurred such documented costs prior to the date of entry of the Preliminary Approval Order, that member may receive reimbursement of such out-of-pocket expenses, plus any associated rental car or towing charges, up to a maximum of $400 for all such Door Latch Repairs on a Class Vehicle.

b. Reimbursement of Costs of Future Door Latch Repairs

The Settlement Agreement also provides opportunities to reimburse Settlement Class Members for out-of-pocket costs incurred in connection with future Door Latch Repairs. Settlement Class Members who, between the date of entry of the Preliminary Approval Order and one year thereafter, submit a timely, valid claim with supporting documentation showing they paid a service provider to perform one or more Door Latch Repairs to their Class Vehicle or paid out-of-pocket expenses for towing or a car rental in connection with a Door Latch Repair to their Class Vehicle may receive reimbursement up to a maximum of $200 for all such Door Latch Repairs on their Class Vehicle. However, to be eligible for this reimbursement, Settlement Class Members must have first obtained a Door Latch Repair from an authorized Ford dealer under the most current Door Latch Service Program applicable to their Class Vehicle prior to obtaining the Door Latch Repair on which the claim for reimbursement is based. These programs provide a free repair under warranty through October 31, 2028, and this requirement is designed to ensure the Settlement Class Members obtain the most current repair for free before paying to obtain an additional repair.

c. Compensation for Dissatisfaction with Door Latch Performance

Settlement Class Members who timely submit a valid claim, attesting under penalty of perjury that prior to the date of entry of Preliminary Approval they experienced dissatisfaction

with Door Latch Performance, may receive a cash payment up to $10. Dissatisfaction with Door Latch Performance includes a Settlement Class Member experiencing at least one instance of door latch failure on their Class Vehicle such that the door does not open, does not close, or opens while driving, or having a concern that their Class Vehicle may in the future experience such door latch failure.

d. Residual Distribution

After conclusion of the claims process, any funds that would remain following payment of the Class Notice Costs, Settlement Administration Costs, any Court-awarded attorneys' fees and expenses and service award to the Named Plaintiff, and all valid claims for monetary compensation, will be distributed to all Original Owners or Lessees of a Class Vehicle that received one or more Door Latch Repairs as identified in Ford's Warranty Records and all Settlement Class Members who submitted a valid claim on a *per capita* basis. In the event the *per capita* amount of the residual payment would be less than five dollars, that amount will be distributed only to Settlement Class Members who submitted a valid claim. This provision ensures that the entire $5.3 million settlement fund benefits the Settlement Class, and that none of it reverts to Ford in the event of a low percentage of the Settlement Class submitting claims for monetary benefits.

e. Claims Review Process

In order to obtain payment for a claim for monetary compensation, a Settlement Class Member must submit a timely, adequately documented claim to the Settlement Administrator. Claims for reimbursement for Costs of Past Door Latch Repairs or for Compensation for Dissatisfaction with Door Latch Performance must be postmarked or submitted electronically within 210 days after the date of entry of the Preliminary Approval Order, while Claims for

reimbursement for Costs of Future Door Latch Repairs must be postmarked or submitted electronically within 210 days after the date of entry of the Preliminary Approval Order or within 30 days of the date of the repair, whichever is later.

The Settlement Administrator may reject any claim that does not include the required information or documentation, and reserves the right to investigate any claim by requesting additional documentation from any Settlement Class Member to determine the validity of a claim. If the Settlement Administrator rejects a claim, it will advise the Settlement Class Member of the reason(s) for the rejection and, if a claim is rejected due to missing information or documentation, will provide the Settlement Class Member 30 days to resubmit the claim along with additional information or documentation. Any claim which the Settlement Administrator determines is fraudulent will not be paid.

If a Settlement Class Member disputes either the Settlement Administrator's rejection of a claim or the amount to be reimbursed, the Settlement Class Member may appeal the Settlement Administrator's decision by submitting the claim, the decision, and an explanation of the Settlement Administrator's alleged error within 30 days of the postmark date on the envelope containing the Settlement Administrator's decision to an entity agreed upon by Class Counsel and Ford to make the final, binding determination of such appeal.

All claims determined by the Settlement Administrator to be eligible and timely filed shall be paid reasonably promptly after the conclusion of the claims process, including final resolution of disputed claims.

f. Attorneys' Fees and Expenses

Class Counsel agrees to file, and Ford agrees not to oppose, an application for an award of Attorneys' Fees and Expenses of not more than $1,300,000, covering the cost of all legal

services provided by Class Counsel in the past and future to the Named Plaintiff and the Settlement Class Members in connection with the Litigation, the Settlement, any appeal, and implementation of the Settlement Agreement. Class Counsel will submit a stand-alone fee application documenting the basis for and reasonableness of its fee/expense petition. Ultimately, however, the Court will have discretion to determine what amount of fees and expenses up to $1,300,000 shall be awarded.

g. Service Award for Named Plaintiff

Class Counsel will submit an application to the Court for a $7,500 Service Award for the Named Plaintiff. Ford agrees not to oppose this application. The Named Plaintiff has been closely involved in every step of the Litigation, including the pre-complaint investigation, the discovery process, and the settlement. The Named Plaintiff provided discovery materials, including videos demonstrating the Door Latch problem on his Class Vehicle, and was deposed by Ford. The Named Plaintiff also attended and participated in the full day mediation resulting in the successful settlement. He has expended considerable time and energy faithfully representing the Class in this Litigation, and should be rewarded for his exemplary service with this reasonable Service Award reflecting his contributions.

B. Notification to Settlement Class Members

The Settlement Agreement provides for a robust notice and administration plan. The Claims Administrator will provide direct Class Notice by first-class mail in substantially the same form as that attached as Exhibit 1 to the Settlement Agreement. The Class Notice will direct Settlement Class Members to the Settlement Website where they can access a claim form that they can submit online or via mail. The Settlement Administrator will use vehicle registration databases to identify the names and last known mailing addresses of Settlement

Class Members. The Settlement Administrator will re-send any returned notices if an address correction or forwarding address appears on a returned envelope. In addition to direct mail notification, notice will be published on a dedicated settlement website to be maintained by the Settlement Administrator. The Settlement Administrator is required to disseminate Class Notice within 120 days after entry of the Preliminary Approval Order. The Short Form Class Notice will also inform Settlement Class Members of the availability of the Current Door Latch Service Programs which, in part, have provided additional warranty coverage on the Door Latches for Class Vehicles through October 31, 2028. Ford also will maintain, at its own cost, separate from the Settlement Fund, a website that allows Settlement Class Members to identify the Door Latch Service Programs for which their Class Vehicle is eligible by entering its Vehicle Identification Number.

In addition, the Settlement Administrator is required to submit an affidavit to be filed with the Court attesting that Class Notice has been disseminated in a manner consistent with the terms of the Settlement Agreement, or as otherwise required by the Court.

Class Members are provided the right to opt out of or object to the Settlement. Furthermore, the Settlement Administrator will be required to file a declaration reporting names of all individuals who have submitted valid requests for exclusion.

Costs for administration of the proposed Settlement will be paid out of the Settlement Fund. Defendant will provide notice of the proposed Settlement to appropriate state and federal officials consistent with the Class Action Fairness Act, 28 U.S.C. § 1715 ("CAFA Notice"). In consideration of payment of the Settlement Fund, Defendant will obtain a release of any and all claims, demands, actions, causes of actions, and suits related to an alleged Door Latch

malfunction in a Class Vehicle, except for individual claims seeking damages for an alleged personal injury caused by an alleged Door Latch malfunction in a Class Vehicle.

II. LEGAL ANALYSIS

Before a settlement of a class action can be finally approved, the Court must determine that it is "fair, reasonable, and adequate." Rule 23 (e)(2); *see also In re Elec. Books Antitrust Litig.*, 639 Fed. Appx. 724, 726-27 (2d Cir. 2016). The Court must also "direct notice in a reasonable manner to all class members who would be bound by the proposal." Rule 23(e)(1).

However, "[i]n evaluating a proposed settlement for preliminary approval… the Court is required to determine only whether the proposed settlement discloses grounds to doubt its fairness or other obvious deficiencies such as unduly preferential treatment of class representatives or segments of the class, or excessive compensation of attorneys, and whether it appears to fall within the range of possible approval." *Mehling v. New York Life Ins. Co.*, 246 F.R.D. 467, 472 (E.D. Pa. 2007) (citations omitted). *See also In re Prudential Sec. Inc. Ltd. P'ships. Litig.*, 163 F.R.D. 200, 209 (S.D.N.Y. 1995) (preliminary approval should be granted if there are no grounds to doubt settlement's fairness or other obvious deficiencies) (quoting Fed. Jud. Ctr., Manual for Complex Litig., § 30.41, at 236-37 (3rd ed. 1995)). "In reviewing a proposed settlement for preliminary approval, rather than final approval, the Court need only determine whether the proposed settlement is possibly fair, adequate, and reasonable." *In re Take Two Interactive Secs. Litig.*, No. 06 Civ. 803 (RJS), 2010 U.S. Dist. LEXIS 143837, at *31 S.D.N.Y. June 29, 2010).

The law favors compromise and settlement of class action suits. *See Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F3d 96, 116 (2d Cir. 2005) (noting the "strong judicial policy in favor of settlements, particularly in the class action context") (quotations omitted). The approval

of a proposed class action settlement is a matter of discretion for the trial court. *See Maywalt v. Parker & Parsley Petroleum Co.*, 67 F.3d 1072, 1079 (2d Cir. 1998). In exercising this discretion, courts should give "proper deference to the private consensual decision of the parties." *Clark v. Ecolab, Inc.*, Nos. 07 Civ. 8623 (PAC), 04 Civ. 4488 (PAC), 06 Civ. 5672 (PAC), 2009 WL 6615729, at *3 (S.D.N.Y. Nov. 27, 2009) (citation omitted). "In evaluating the settlement, the Court should keep in mind the unique ability of class and defense counsel to assess the potential risks and rewards of litigation. *Clark*, 2009 WL 6615729, at *3 (quotations and citation omitted).

At the preliminary approval stage, the court's review is relatively lenient. *See, e.g., Bourlas v. Davis Law Assocs.*, 237 F.R.D. 345, 355 n.7 (E.D.N.Y. 2006). The court requires only an "initial evaluation" of the fairness of the proposed settlement on the basis of written submissions and an informal presentation by the settling parties. *Clark*, 2009 WL 615729, at *3 (citing Newberg § 11.25). Indeed, courts often grant preliminary approval without requiring a hearing or a court appearance. *See, e.g., Hernandez v. Merrill Lynch & Co.*, 11-cv-8472, 2012 U.S. Dist. LEXIS 165771, at *16 (S.D.N.Y. Nov. 15, 2012) (granting preliminary approval based on plaintiff's memorandum of law, attorney declaration, and exhibits); *Palacio v. E*TRADE Fin. Corp.*, 10-cv-4030, 2012 U.S. Dist. LEXIS 41886, at *10 (S.D.N.Y. Mar. 12, 2012)(same); *Reyes v. Altamarea Grp.*, LLC, 10-cv-6451, 2011 U.S. Dist. LEXIS 115982, at *9 (S.D.N.Y. June 3, 2011)(same). To grant preliminary approval, the court need only find that there is "'probable cause' to submit the [settlement] to class members and hold a full-scale hearing as to its fairness." *In re Traffic Executive Ass'n*, 627 F.2d 631, 634 (2d Cir. 1980). "Fairness is determined upon review of both the terms of the settlement agreement and the negotiating process that led to such agreement." *Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 184

(W.D.N.Y 2005). "A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery." *Wal-Mart Stores*, 396 F.3d at 116 (quotations omitted).

There are no "obvious deficiencies" in the proposed Settlement Agreement, nor any "grounds to doubt its fairness." The Settlement achieves what the Plaintiff set out to accomplish in this lawsuit. The standards for granting preliminary approval are readily satisfied. Plaintiff respectfully submits that this Settlement is fair, adequate, and reasonable; that the requirements for final approval will be satisfied; and that Class Members will be provided with notice in a manner that satisfies the requirements of due process and Rule 23(e). Therefore, this Court should enter the proposed Preliminary Approval Order attached as Exhibit 3 to the Settlement Agreement, which will: (i) grant preliminary approval of the proposed Settlement; (ii) conditionally certify the Settlement Class pursuant to Rule 23; (iii) schedule a Final Approval Hearing to consider final approval of the proposed Settlement; and (iv) direct that notice of the proposed Settlement and hearing be provided to Settlement Class Members in a manner consistent with the agreed-upon Notice Plan in the Settlement Agreement.

III. THE SETTLEMENT SHOULD BE PRELIMINARILY APPROVED

"[A] court determines the fairness of a settlement by looking at both the negotiating process leading to the settlement and the terms of the settlement itself.... In reviewing a proposed settlement for preliminary approval, rather than final approval, the Court need only determine whether the proposed settlement is possibly fair, adequate, and reasonable." *In re Take Two Interactive Secs. Litig.*, 2010 U.S. Dist. LEXIS 143837, at *31 (citations and quotations omitted).

District courts in the Second Circuit generally consider the nine factors set forth in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974) in determining whether to approve a class action settlement. The *Grinnell* factors are (1) the complexity, expense, and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the state of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendant to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation. *Grinnell*, 495 F.2d at 463. While courts are "not required to make a finding of fairness as to the underlying settlement at [preliminary approval], the *Grinnell* factors are instructive." *Slobodan Karic v. Major Auto. Cos.*, No. 09 CV 5708 (ENV), 2015 U.S. Dist, LEXIS 171730, at *24 (E.D.N.Y. Dec. 22, 2015).[2] At this stage, even brief consideration of the applicable *Grinnell* factors strongly weighs in favor of preliminarily approving the proposed Settlement Agreement, and demonstrates that the proposed Settlement is well within the reasonable range of approval to proceed.

A. Complexity, Expense, and Duration of the Case

The parties have already spent nearly three years litigating this matter. By reaching a favorable settlement prior to trial, the parties have avoided the prospect of engaging in protracted litigation over the course of several additional years, through trial and likely appeals. The proposed Settlement avoids incurring substantial costs in the face of significant risks to

[2] Clearly, some of these factors are not applicable at preliminary approval and cannot be weighed prior to dissemination of Class Notice.

Plaintiff's and Class Members' claims, and instead ensures an excellent recovery for the Settlement Class. Indeed, '[m]ost class actions are inherently complex and settlement avoids the costs, delays and multitude of other problems associated with them." *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 174 (S.D.N.Y. 2000), *aff'd sub. nom., D'Amato v. Deutsche Bank*, 236 F.3d 78 (2d Cir. 2001). This case is no exception. Extensive discovery and motion practice have already taken place over the previous nearly three years of litigation. The lawsuit involves complex legal and factual issues related to actual and potential freezing of door latches in more than 3 million Ford pick-up trucks spanning multiple model years and several models. The proposed Settlement makes both non-monetary and monetary relief available to Settlement Class Members in a prompt and efficient manner.

B. Reaction of the Class

This factor cannot be evaluated until Class Notice has been disseminated and the time for objections and exclusion requests has concluded. The Court need not address this issue at this time.

C. Stage of the Proceedings and Discovery Completed

The parties have conducted significant discovery and motion practice. The proper question is "whether counsel had an adequate appreciation of the merits of the case before negotiating." *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 537 (3d Cir. 2004). "The pretrial negotiations and discovery must be sufficiently adversarial that they are not designed to justify a settlement… [but] an aggressive effort to ferret out facts helpful to the prosecution of the suit." *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d at 176 (internal quotations omitted).

Here, the parties undertook substantial discovery efforts in the form of written discovery, document productions consisting of more than 500,000 documents, and the deposition of the Class Representative. The production of documents by Ford was significant, not only in its size but also for the contemporaneous accounts it provided concerning Ford's awareness of the door latch defect and its efforts to repair the same. In addition, following the completion of the successful mediation, the parties also conducted confirmatory discovery through which the size of the class was carefully ascertained, and Ford's representations regarding the low incidence rate at which warranty door latch repairs have been performed could be confirmed. The parties have a fully informed basis on which to support the merits of their settlement.

D. Litigation Risks (Factors 4-6)

Plaintiff faced real risks going forward with this case through trial and appeals. When weighing the risks of establishing liability and damages, the court "must only weigh the likelihood of success by the plaintiff class against the relief offered by the settlement." *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d at 177 (quotations omitted).

Class certification and a trial on the merits would involve significant risks to Plaintiff in part because of the parties' disputes regarding class members' experiences, if any, with freezing door latches on their Ford pick-up trucks, the possible cause of any frozen latch issues, and Class Members' responses to any freezing latch problems. The potential variations of Class Members' experiences could also significantly undermine Plaintiffs' ability to certify the proposed class. Moreover, after this lawsuit began, Ford implemented its own "recall" program to repair the door latch system on many of the Class Vehicles for free, and Ford provided additional warranty coverage on the Door Latches for Class Vehicles until October 31, 2028. These issues, among others, pose formidable hurdles for establishing liability and damages.

In contrast, the proposed Settlement achieves nationwide relief and provides certain and immediate non-monetary and monetary benefits to Settlement Class Members. Considering the risks of proceeding through trials and appeals and the prolonged nature of this litigation, these factors weigh in favor of preliminarily approving the proposed Settlement.

E. Ability of Defendant to Withstand A Larger Judgment

While Defendant is certainly able to withstand a larger judgment than the relief made available through the proposed Settlement, "defendant's ability to withstand a greater judgment, standing alone, does not suggest that the settlement is unfair." *In re Austrian and German Bank Holocaust Litigation*, 80 F. Supp.2d at 178 and n. 9. Under the Settlement, Defendant has committed to providing substantial non-monetary and monetary relief that directly addresses the claims alleged in the underlying litigation. Such relief through settlement eliminates the risk and difficulty of achieving it through uncertain and protracted litigation. This factor should be deemed neutral.

F. Range of Recovery Issues and Settlement Benefits Support the Settlement

Grinnell factors 8-9 are also satisfied for preliminary approval. The determination of whether a settlement amount is reasonable "does not involve the use of a 'mathematical equation yielding a particularized sum.'" *Frank*, 228 F.R.D. at 186 (quoting in re *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp.2d at 178). "Instead, 'there is a range of reasonableness with respect to a settlement – a range which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent to taking any litigation to completion.'" *Frank*, 228 F.R.D. at 186 (quoting *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972)).

The benefits offered through the proposed Settlement are generous and meaningful: they include notice of the availability of free repairs through October 28, 2028, as well as substantial monetary reimbursements *up to $600* for certain qualifying Settlement Class Members.

While the size of the Class is undoubtedly large, the actual number of Class Vehicles in which a defective door latch has manifested itself is remarkably small in comparison. Indeed, the confirmatory discovery exchanged between the parties reflects that less than three percent (3%) of the eligible Class Vehicles have been serviced by Ford for warranty repairs concerning the defective door latches. The fact that only a small fraction of the eligible Class Vehicles have been serviced for defective door latches, coupled with the fact that those repairs have been (and will remain) free of charge, strongly suggests that the number of Class Members who have incurred out-of-pocket expenses will be modest (in comparison to the aggregate size of the Class) and that the amount of the Settlement Fund is amply sufficient to support the anticipated number of claims to be submitted. Out of an abundance of caution, however, Plaintiff and Ford have agreed to distribute any remaining settlement funds that may exist to Class Members, such that no portion of the settlement reverts to Ford or is otherwise distributed to a non-Class Member such as a *cy pres* recipient in the event of a low claims rate. Given the attendant risks of litigation and expansion of relief to a nationwide Settlement Class, this settlement is an excellent result for the Class. These factors, along with the other *Grinnell* factors discussed above, favor preliminary approval of the proposed Settlement.

G. Procedural Fairness of the Settlement

Importantly, a settlement like this one, reached at arm's length by experienced counsel with the help of a third-party neutral, enjoys a "presumption that the settlement achieved meets the requirements of due process." *Johnson v. Brennan*, 10 Civ. 4712 CM, 2011 WL 4357376, at

*8 (S.D.N.Y. Sept. 16, 2011) (citation omitted); *see also In re Penthouse Executive Club Compensation Litig.*, No. 10 Civ. 1145 (KMW), 2013 WL 1828598, at *2 (S.D.N.Y. April 30, 2013) (granting preliminary approval, in part, based on the participation of neutral). Because the settlement, on its face, is "'fair, adequate, and reasonable, and not a product of collusion,'" *Frank*, 228 F.R.D. at 184 (quoting *Joel A. v. Giuliani*, 218 F.3d 132, 138-39 (2d Cir. 2000)), the Court should grant preliminary approval.

The Settlement was reached as a result of extensive, arm's-length negotiations between experienced class action counsel with the assistance of a well-respected, highly-experienced mediator, David Geronemus, who is well-versed in complex consumer class actions. A deal in principle was reached on November 26, 2019 only after numerous hours of hard-fought mediation efforts. The proposed Settlement also entailed continuous pre- and post-mediation negotiations between Class Counsel and Defense Counsel.

As discussed above, the parties have exchanged voluminous information in this case through the discovery process, and Plaintiff has conducted an extensive investigation into his claims, which has confirmed that the proposed Settlement is fair and reasonable to Settlement Class Members. Moreover, Class Counsel, who are members of a very experienced, capable law firm with decades of experience in consumer class action lawsuits, believe the Settlement is firmly in the best interest of Plaintiff and the Class. Preliminary approval should be granted.

IV. CLASS CERTIFICATION IS APPROPRIATE FOR SETTLEMENT PURPOSES

The Supreme Court and various circuit courts have recognized that the benefits of a proposed settlement of a class action can be realized only through the certification of a settlement class. *See Amchem Prods. v. Windsor*, 521 U.S. 591, 620 (1997); *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 574 F.3d 29, 35 (2d Cir. 2009). As a result, in the context of certifying

a class for settlement purposes, the Court's scrutiny of the Rule 23 factors is more generously applied to ensure that the proposed settlement benefits being provided to the class members constitutes a fair and reasonable resolution of the claims being prosecuted. See, e.g., *Yim v. Carey Limousine NY, Inc.*, No. 14CV5883WFKJO, 2016 WL 1389598, at *5 (E.D.N.Y. Apr. 7, 2016), *Danieli v. Int'l Bus. Machines Corp.*, No. 08 CV 3688(SHS), 2009 WL 6583144, at *5 (S.D.N.Y. Nov. 16, 2009). As such, Plaintiff seeks the conditional certification of the Settlement Class set forth above in the Settlement Agreement.

"For the Court to certify a class, the plaintiffs must satisfy all of the requirements of Rule 23(a), and one of the requirements of Rule 23(b)." *See Amchem*, 521 U.S. at 620. The four requirements of Rule 23(a) are numerosity, commonality, typicality, and adequacy. Plaintiff also seeks certification of the Settlement Class pursuant to Rule 23(b)(3), which provides that certification is appropriate where "the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Rule 23(b)(3). As discussed below, these requirements are met for purposes of settlement in this case.

A. Numerosity

The numerosity requirement is satisfied when the class is "so numerous that joinder of all members is impracticable." Rule 23(a)(1); *see also In re Take Two*, 2010 U.S. Dist. LEXIS 143837, at *18. "Impracticable does not mean impossible." *Robidous v. Celani*, 987 F.2d 931, 935 (2d Cir. 1993). "Precise calculation of the number of class members is not required before certifying a class; in fact, numbers in excess of forty generally satisfy the numerosity requirement." *In re Take Two*, 2010 U.S. Dist. LEXIS 143837 at **18-19. Indeed, this Court

has held that "numerosity is presumed at a level of 40 members." *Eldred v. Comforce Corp.*, No. 3:08-CV-1171, 2010 U.S. Dist. LEXIS 18260 at *43 (N.D.N.Y. Mar. 2, 2010)(Kahn, J.)(citing *Consol. Rail Corp. v. Town of Hyde Park*, 47 F.3d473, 483 (2d Cir. 1995)). Here more than 3 million Class Vehicles have been distributed for sale or lease throughout the United States. Numerosity is therefore easily satisfied.

B. Commonality

Rule 23(a)(2) requires that there be "questions of law or fact common to the class." Rule 23(a)(2). The Supreme Court has stated that Rule 23(a)(2)'s commonality requirement is satisfied where the plaintiff asserts claims that "depend upon a common contention" that is "of such a nature that is capable of classwide resolution – which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Both the majority and dissenting opinions in that case agreed that "for purposes of Rule 23(a)(2) even a single common question will do." *Id.* at 358; *accord, Lizondro-Garcia v. Kefi LLC*, 300 F.R.D. 169, 175 (S.D.N.Y. 2014) ("Even a single common legal or factual question will suffice.").

In this case, there are a number of common questions of law and fact, such as whether the Door Latches on the Class Vehicles are defective, whether Defendant had a duty to disclose this alleged Defect to Plaintiff and putative Class Members, and whether the Defect is a safety risk. Commonality is readily satisfied. *See, e.g. In re Volkswagen "Clean Diesel" Mktg. Sales Practices & Prod. Liab. Litig.*, No. MDL 2672 CRB (JSC), 2016 WL 4010049 (N.D. Cal., Jul. 26, 2016) ("the common questions of fact are (1) Volkswagen's fraudulent scheme to deceive state and federal regulatory authorities by installing in its 2.0 liter diesel engine vehicles, the defect device designed; and (2) Volkswagen's false and misleading marketing campaign that

misrepresented and omitted the true nature of the Eligible Vehicles 'clean' diesel engine system. Without class certification, individual Class Members would be forced to separately litigate the same issues of law and fact from Volkswagen's use of the defect device and Volkswagen's alleged common course of conduct.") ; *Rosen v. J.M. Auto, Inc.*, 270 F.R.D. 675, 681 (S.D. Fla. 2009) ("critical issue of whether the [airbag occupant classification system] in [class vehicles] was defective is common to all putetive class members").

C. Typicality

Rule 23(a)(3) requires that a representative plaintiff's claims be "typical" of those of other class members. "Plaintiffs' claims are typical if they arise from the same event or practice or course of conduct that gives rise to the claims of other class members and his or her claims are based on the same legal theory." *In re Prudential*, 163 F.R.D. at 207-08. Here, all of Plaintiff's claims arise out of the same alleged conduct involving Defendant's design, manufacture, and sale of the allegedly defective Class Vehicles (and its alleged failure to disclose material facts). Mr. Kommer's experience with a frozen door latch is neither unique, nor atypical.

For instance, multiple online car forums detail the continuous and unresolved problems that truck owners have had with the door latches in Ford's 2015, 2016, and 2017 F-150s.

- One 2015 F-150 SuperCab owner complained: "Whenever it's cold out, we're talking 20°F and below, the door will not latch when closed."
- Another F-150 owner wrote: "I woke up this morning to below freezing temps. This is the second time I had this type of problem, my doors and locks weren't opening or unlocking."
- The same problems continued with 2016 F-150 owners. One owner despaired "I have a 2016 F150 Sport. So the first hard freeze here in the NW, and I open my truck door, and it wont [sic] latch shut. I cycled the locks, I even used the keypad on the driver side, still no latch. I went and got a hair dryer, finally it latched. Did it the next morning too, so I went back to the dealer."

- A fourth owner lamented "I got a 2016 XLT SuperCab and the last 2 mornings it was 12° and 1° and the door wouldn't stay closed. I had to get the WD40 out and slam the door pretty hard to go to work.

Plaintiff's claims, as with those of the putative Class, involve the defective door latch system in the Class Vehicles. Typicality is met.

D. Adequacy of Representation

The final requirement of Rule 23(a) is that "the representative part[y] will fairly and adequately protect the interests of the class." Rule 23(a)(4). In *Flag*, the Second Circuit explained that "[a]dequacy entails inquiry as to whether: 1) plaintiff's interests are antagonistic to the interest of other members of the class; and 2) plaintiff's attorneys are qualified, experienced and able to conduct the litigation." 574 F.3d at 35 (quotations omitted); *Skykes v. Mel S. Harris & Assocs. LLC*, 780 F.3d 70, 90 (2d Cir. 2015) (citation omitted) (same). Here, the Class Representative is adequate in that he purchased or leased one of the Class Vehicles and has alleged injury in the same manner as putative Class Members based on the same alleged underlying Defect. Plaintiff has actively participated in the investigation of his case; he has fully cooperated in discovery by producing relevant information and documents. Plaintiff has been deposed by Defendant. Moreover, Plaintiff attended and actively participated in the full day mediation with David Geronemus in New York City on November 26, 2019 which successfully concluded by reaching the terms of the settlement. The Class Representative has been in constant communication with his attorneys over the course of the litigation. The Class Representative has exercised great diligence in protecting the interests of Class Members.

With respect to the adequacy of Plaintiff's counsel, they have dedicated considerable time and resources to the prosecution of this Action. Plaintiff's counsel have tenaciously litigated this Action over the course of several years. The attorneys at Denlea & Carton LLP

who have worked on this action are highly-skilled class action practitioners, and have decades of experience litigating complex consumer class action lawsuits, including class actions on behalf of vehicle owners and lessees asserting claims for design and manufacturing defects. The hours and efforts they put forth prosecuting this action will be provided in greater detail in connection with the application for attorneys' fees that will be submitted in advance of the Final Fairness Hearing. For these reasons, Plaintiff's counsel respectfully request to be appointed as Class Counsel for purposes of the proposed Settlement.

E. Predominance and Superiority Are Met

Plaintiff seeks to certify the proposed Settlement Class under Rule 23(b)(3), which has two components: predominance and superiority. *See* Rule 23(b)(3). "The predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem*, 521 U.S. at 623. Pursuant to this inquiry, "plaintiffs [must] establish the existence of legal and factual issues common to class members, …they must also show that those common issues predominate for certification pursuant to Rule 23(b)(3)." *In re Take Two*, 2010 U.S. Dist. LEXIS 143837, at *25-26. When assessing predominance and superiority, the court may consider that the class will be certified for settlement purposes only and that a showing of manageability at trial is not required. *See, e.g., Amchem*, 521 U.S. at 618 ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, see Fed. Rule Civ. Proc. 23(b)(3)(D), for the proposal is that there be no trial.").

Plaintiff must demonstrate that "the issues in the class action that are subject to generalized proof, and thus applicable to the class as a whole…predominate over those issues that are subject only to individualized proof." *Cordes & Co. Fin. Servs., Inc. v. A.G. Edwards &*

Sons, Inc., 502 F.3d 91, 108 (2d Cir. 2007). The essential inquiry is whether "[l]iability can be determined on a class-wide basis, even when there are some individualized damage issues." *Marriott v. County of Montgomery*, 227 F.R.D. 159, 173 (N.D.N.Y. 2005) (quoting *In re Visa Check/MasterMoney Antitrust Litig.*, 280 F.3d 124, 139 (2d Cir. 2001)).

"[T]he class action device [is] superior to other methods available for a fair and efficient adjudication of the controversy." *Green v. Wolf Corp.*, 406 F.2d 291, 301 (2d Cir. 1968); *Amchem*, 521 U.S. at 618. Rule 23(b)(3) provides a non-exhaustive list of factors to be considered when making this determination. These factors include: (i) the class members' interests in individually controlling the prosecution or defense of separate actions; (ii) the extent and nature of any litigation concerning the controversy already begun by or against class members; (iii) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (iv) the likely difficulties in managing a class action. *Amchem*, 521 U.S. at 615-16 (citing Rule 23(b)(3)).

Here, there are numerous common questions of law and fact that predominate over any questions that may affect individual Class Members. For example, were this case to proceed, the primary issue would be whether Defendant is liable to the Class under the claims pled in the lawsuit based on the alleged existence of a uniform Defect and nondisclosure or concealment of that Defect. Plaintiff asserts that the alleged Door Latch defect is common to every Class Vehicle based on the common design and location of that component across Class Vehicles, *See, e.g., Espinosa v. Ahearn (In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539 (9th Cir. 2019) (*en banc)* (in MDL against automakers regarding alleged misrepresentation about their vehicles' fuel economy, district court properly certified a nationwide settlement class applying California law because the court properly found that common issues predominated; neither the inclusion of used

car purchases in the class nor variations in state law defeated predominance). The main individual issue is the amount of an individual's damages. Accordingly, predominance is easily satisfied.

The second prong of Rule 23(b)(3) – that a class action be superior to other available methods for the fair and efficient adjudication of the controversy – is also readily met. The class mechanism provides Settlement Class Members in this case with the ability to efficiently resolve their underlying claims and, through the proposed Settlement, provides prompt, predictable, and certain relief. Moreover, proceeding as a class action will achieve economies of scale for the Class members and conserve judicial resources by adjudicating common issues of fact and law rather than having to preside over numerous individualized trials, especially trials in which each individual's damages may be modest. See, e.g. *Augustin v. Jablonsky*, 461 F.3d 219, 299 (2d Cir. 2006) ("class status here is not only the superior means, but probably the only feasible [way]…to establish liability and perhaps damages.")

In sum, because the requirements of Rule 23(a) and Rule 23(b)(3) are satisfied, certification of the proposed Settlement Class is appropriate.

V. THE COURT SHOULD APPROVE THE NOTICE PLAN

Under Rule 23(e), class members who would be bound by a settlement are entitled to reasonable notice of it before the settlement is ultimately approved by the Court. *See* Fed. Jud. Ctr., *Manual for Complex Litig. Fourth*, § 30.212 (2004). And because Plaintiff here seeks certification of the Settlement Class under Rule 23(b)(3), "the court must direct notice in a reasonable manner to all class members who would be bound by the proposal." *Berkson v. Gogo, LLC*, 147 F. Supp. 3d 123, 130 (E.D.N.Y. 2015) (citing Rule 23(c)(2)(B)).

The Class Notice proposed in this case is the best notice practicable under the circumstances for reaching all Settlement Class Members. Names and addresses for Settlement Class Members will be compiled from vehicle registration databases and provided to the Settlement Administrator. The Settlement Administrator will then administer direct notice to Settlement Class Members by first-class mail and forward any Notices that are returned where a corrected or forwarding address appears on the returned envelope. Notice will also be published on a dedicated website maintained by the Settlement Administrator.

Finally, the substance of the proposed Class Notice – which is attached to the Settlement Agreement – will provide a comprehensive explanation of the Settlement in simple, non-legalistic terms, as well as inform Settlement Class Members of their ability to request exclusion and object to the proposed Settlement. Accordingly, Plaintiff respectfully requests that the Court approve and order dissemination of the Class Notice.

VI. A FINAL APPROVAL HEARING SHOULD BE SCHEDULED

Finally, the Court should schedule a final fairness hearing to decide whether to grant final approval to the Settlement, address Class Counsel's request for attorney's fees and reimbursement of expenses (which will be subject to a separate motion in accordance with the proposed schedule, and support with adequate documentation) and a service award for the Class Representative, and determine whether to dismiss this action with prejudice. *See Manual for Complex Litig. Fourth*, § 30.44 (2004). Plaintiff respectfully requests that the final approval hearing be scheduled for a date convenient for the Court's calendar and not earlier than 210 days after entry of the Preliminary Approval Order consistent with the proposed Settlement Agreement. This period will allow sufficient time for the Settlement Administrator to obtain the names and addresses of Settlement Class Members from the state departments of motor vehicles,

for the Settlement Class Members to review the Class Notice and decide whether to opt-out, object, and/or file a claim, and for the Parties to respond to any objections in advance of the Final Approval Hearing.

VII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Court should enter an Order (1) preliminarily approving the Settlement; (2) conditionally certifying the class for settlement purposes; (3) appointing Denlea & Carton LLP as Class Counsel; (4) approving and directing dissemination of the Class Notice; and (5) scheduling a final approval hearing. A proposed order is submitted herewith as Exhibit C to the Settlement Agreement

Dated: March 5, 2020

By: /s/ Jeffrey I. Carton

DENLEA & CARTON LLP
Jeffrey I. Carton
Robert J. Berg
jcarton@denleacarton.com
rberg@denleacarton.com
2 Westchester Park Drive
Suite 410
White Plains, New York 10604
Telephone: 914-331-0100
Facsimile: 914-331-0105

Attorneys for Plaintiff
Brandon Kommer

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed using this Court's CM/ECF notification service, which sent notification of such filing to all counsel of record on March 5, 2020.

/s/ Jeffrey I. Carton
Jeffrey I. Carton