**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

| | | |
|---|---|---|
| In re: NAVISTAR DIESEL ENGINE PRODUCTS LIABILITY LITIGATION | ) ) ) | Case No. 11 C 2496 MDL NO. 2223 |

**This Document Relates to: All Cases**

---

# MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

---

# TABLE OF CONTENTS

**PAGE**

# TABLE OF AUTHORITIES

**PAGE**

**CASES**

**RULES**

## I. Introduction

After extensive discovery and lengthy settlement negotiations, Plaintiffs have reached an agreement with Defendant Ford Motor Company ("Ford") to resolve this case. Plaintiffs now seek entry of an order that grants preliminary approval of the settlement agreement attached hereto as Exhibit 1 (the "Settlement"), certifies a provisional settlement class (the "Class"), approves the parties' proposed notice to the Class attached as Exhibit D to the Settlement, and directs that notice be given to Class members as proposed.

As set forth below, this Settlement provides significant compensation for damages suffered by Class members as a result of the alleged engine defects at issue in this lawsuit. This Settlement represents an excellent result for the Class, particularly in light of the risks, complexity, and delay associated with ongoing litigation, and the Court should therefore grant preliminary approval.

## II. Factual and Procedural Background

### A. Plaintiffs' Claims

Plaintiffs' Amended Master Class Action Complaint asserts claims for breach of express warranty, breach of implied warranty of merchantability, warranty unconscionablility, and violation of various consumer fraud and/or unfair competition statutes related to Ford's 6.0-liter PowerStroke diesel engine (the "6.0L Diesel"). (Doc. No. 233 ¶¶ 319–363.) Ford installed the 6.0L Diesel in numerous Ford model year 2003–2007 trucks and vans. (*Id.* ¶ 22 & n.2.) Plaintiffs allege that the 6.0L Diesel was defectively designed and that the defects caused the engines to break down and require repeated repairs. (*Id.* ¶¶ 22–48.) Plaintiffs allege that the root cause of the 6.0L Diesel's problems was a defective oil cooler and exhaust gas recirculation ("EGR") cooler design, which caused these engine components to fail prematurely, causing in turn other engine problems, including problems with the fuel injectors, the EGR valve, and the turbocharger. (*Id.* ¶¶ 79–81.)

Ford offered a 3-year/36,000 mile bumper-to-bumper warranty and a 5-year/100,000 mile engine warranty (the "New Vehicle Limited Warranty") on vehicles equipped with the 6.0L Diesel engine, which included a deductible for each repair visit within the 5-year/100,000 mile warranty period after the bumper-to-bumper warranty expired. (*Id.* ¶ 53.) Plaintiffs allege that Ford was aware of defects in the 6.0L Diesel before the engine ever went on sale, but that Ford concealed these defects from consumers and continued to conceal the engine's problems even as unprecedentedly high rates of warranty repair made clear how serious the problems were. (*Id.* ¶¶ 49–51.) Plaintiffs further allege that the warranty service Ford provided was inadequate and did not properly repair the engines, causing the same problems to recur both within the warranty period and after the New Vehicle Limited Warranty had expired. (*Id.* ¶¶ 39–43; 52–78.) Ford disputes these allegations.

**B. Procedural Background and Settlement Negotiations**

This proceeding includes several related actions which the Judicial Panel on Multidistrict Litigation ("JPML") transferred to this proceeding for pre-trial coordination. The first case, *Custom Underground, Inc. et al. v. Ford Motor Company*, was filed on January 8, 2010 in the Northern District of Illinois. On April 13, 2011, the JPML created these MDL proceedings, and the Panel has since transferred thirty-nine related actions to the MDL.

On July 29, 2011, Plaintiffs filed their consolidated Master Class Action Complaint. The parties continued participating in the extensive discovery that had begun in the *Custom Underground* case, including hundreds of discovery requests, Ford's production of over six million pages of documents, discovery from various third parties, the depositions of thirteen current and former Ford personnel, depositions of the named Plaintiffs, inspections of dozens of vehicles, temperature differential testing on various named Plaintiffs' vehicles, flow testing on various named

Plaintiffs' vehicles' oil coolers, and the depositions of two independent experts retained by Ford. (*See* Declaration of Michael A. Caddell ("Caddell Decl."), attached as Exhibit 2, ¶¶ 23–38.)

In late February and early March, 2012, Ford filed fourteen motions for summary judgment, seeking judgment as a matter of law on nearly all of the named Plaintiffs' claims. By agreement of the parties, the Court deferred Plaintiffs' responses to these motions pending settlement discussions. These settlement discussions proceeded in multiple, extensive, arms-length sessions with Judge Richard Neville participating in several of the discussions as a mediator. (Caddell Decl. ¶ 46.) The negotiations resulted in an agreement in principle to settle reached on August 24, 2012 and the execution of the final Settlement Agreement on November 1, 2012. (*Id.*)

## III. The Proposed Settlement and Release Terms

The principal terms of the Settlement are set forth below.

### A. Definition of the Settlement Class

The Settlement Class consists of:

> 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 model year 2003–2007 non-ambulance Ford vehicle sold or leased in the United States and equipped with a 6.0-liter Powerstroke diesel engine that received one or more repairs covered by Ford's New Vehicle Limited Warranty during the vehicle's first five years in service or 100,000 miles, whichever comes first, to a fuel injector; the EGR valve; the EGR cooler; the oil cooler; or the turbocharger.

(Ex. 1 at I.S.) The Class excludes persons who have previously settled and released their claims, including persons who owned ambulance vehicles equipped with the 6.0L Diesel, whose claims were previously settled and released in *Williams A. Ambulance, Inc. et al. v. Ford Motor Company*, Case No. 1:06-cv-776, in the United States District Court for the Eastern District of Texas. The Class also excludes any persons who, before November 1, 2012, have filed individual (*i.e.*, not class) lawsuits asserting causes of action based upon the 6.0L Diesel in a Class vehicle and have not

voluntarily dismissed such lawsuits without prejudice. Finally, the Class excludes all federal court judges who have presided over this case, their spouses, and anyone within three degrees of consanguinity from those judges and their spouses; all entities and natural persons who elect to exclude themselves from the Settlement Class; and all Ford employees, officers, directors, agents, and representatives and their family members.

**B. Settlement Consideration**

1. *Reimbursement for repairs during an extended warranty period.* The Settlement provides Class members partial reimbursement of their out-of-pocket costs for repeat repairs to certain components that occurred after the expiration of the original warranty, but before six years or 135,000 miles of vehicle service, whichever comes first (the "Extended Warranty Period"). (Ex. 1 at II.B–E.) Out-of-pocket expenses include amounts paid for parts and labor to repair the vehicles, as well as, for Class members who repaired their vehicles themselves, compensation for the reasonable value of the time spent. (*Id.* at I.N.) These expenses are covered for all class members who had a repair to the component within the warranty period and then required another repair to the same component during the Extended Warranty Period. (*Id.* at II.B–E.) In the case of oil cooler and EGR cooler repairs, the Settlement covers Class members' out-of-pocket expenses for Extended Warranty Period repairs to either or both of these components if the Class member had a warranty repair to either the oil cooler or the EGR cooler. (*Id.* at II.B.)

For oil coolers and EGR coolers, the Settlement provides for reimbursement: (1) up to $475 for a repair to the EGR cooler; (2) up to $525 for a repair to the oil cooler; and (3) up to $825 for a repair to both the EGR cooler and the oil cooler. (*Id.*) For fuel injector repairs, the Settlement provides for reimbursement up to $375 for a repair to a single injector and increases the reimbursement limit by $125 for each additional injector repaired. *Id.* at (II.C.) For repairs to the EGR valve, the Settlement provides for reimbursement up to $200 for each Extended Warranty

Period repair. (*Id.* at II.D.) For turbochargers, the Settlement provides for reimbursement up to $750 for each Extended Warranty Period repair. (*Id.* at II.E.)

2. *Reimbursement for Warranty Deductibles.* As an alternative to the offered reimbursement for Extended Warranty Period repairs, if a class Member had multiple repairs to a vehicle under the New Vehicle Limited Warranty, the Settlement offers a partial reimbursement of $50 for the second and each subsequent warranty deductible the Class member paid for the same Class vehicle, up to a limit of $200. (*Id.* at II.F.)

3. *No cap to valid claims.* Ford will pay all valid claims submitted, and the Settlement contains no cap on the amount of claims Ford will pay.

**C. Notice and Administration Costs**

Ford will pay all notice and administration costs. (*Id.* at II.H.) Promptly after final approval of the Settlement and resolution of any appeals (not including any appeals solely from an award of attorneys' fees), Ford will establish a claim center to receive and respond to claims from Class members, appointing a claims administrator to manage the process. (*Id.*) The claims administrator will mail notice of the settlement by first-class mail to each Class member's last known address as reflected in the records of R.L. Polk & Co., a provider of information to the automotive industry. (*Id.* at III.C.) If any notices are returned as undeliverable, the claims administrator will perform a reasonable search for a more current name and/or address and re-send the notice. (*Id.*) If the Settlement is approved, Class members wishing to submit claims can then submit their information, including documentation of the out-of-pocket expenses incurred. (*Id.* at II.G.2.) If Ford rejects any claims, Ford will have to advise the Class member of its reason for rejecting the claim and allow thirty days for the Class member to dispute the rejection or supply additional information. (*Id.* at II.G.4–5.) Kurtzman Carson Consultants will make a final, binding determination of any disputed claims. (*Id.*)

**D. Notice to Attorneys General**

Ford will provide and pay all of the costs of notice to the attorneys general of the relevant states according to the requirements of 28 U.S.C. § 1715. (*Id.* at III.B.)

**E. Opt-Outs**

If Class members collectively owning or leasing 5,000 or more Class vehicles exclude themselves from the Settlement, Ford will have the right to withdraw from the Settlement. (*Id.* at III.G.)

**F. Releases**

Once the Settlement becomes effective, Class members will release all claims against Ford, known or unknown, that Class members did assert or could have asserted against Ford in this or any action based upon the 6.0L Diesel engine in the Class vehicles. The release will run with the vehicle if the Class member sells the vehicle. (*Id.* at III.H.)

**G. Service Awards and Attorneys' Fees and Expenses**

Ford agrees not to oppose any attorneys' fee award up to $12,800,000 in fees and $1,250,000 in expenses. (*Id.* at II.I.) The amount of attorneys' fees ultimately awarded will be in the Court's discretion, and any appeal of the attorneys' fee award will not affect the validity or finality of the Settlement. (*Id.*; *see also id.* at III.G.4.) Ford will also not oppose an application for a total of $150,000 in service awards to be allocated by the Court among the named Plaintiffs. (*Id.* at II.J.) Ford will pay the attorneys' fees and service awards separately from and in addition to the other consideration agreed in the Settlement. (*Id.* at II.I–J.)

## IV. Preliminary approval should be granted.

### A. Class-action settlements are favored and should be preliminarily approved if they fall within the range of reasonableness.

Federal law recognizes an overriding public policy in favor of settlement of class actions. *Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996); *In re AT&T Mobility Wireless Data Servs. Sales*

*Tax Litig.*, 789 F. Supp. 2d 935, 958 (N.D. Ill. 2011). Federal Rule of Civil Procedure 23 provides that "[t]he claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval." FED. R. CIV. P. 23(e). Court approval is required to ensure that the parties gave adequate consideration to the rights of absent class members during settlement negotiations. *See AT&T Mobility*, 789 F. Supp. 2d at 958.

The approval of a class action settlement is committed to the Court's discretion. *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 652 (7th Cir. 2006). The first step of the approval process is a preliminary determination of whether the proposed settlement is "within the range of possible approval." *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir. 1982). The next step is the fairness hearing, at which the Court will "adduce all information necessary for the judge to rule intelligently on whether the proposed settlement is 'fair, reasonable, and adequate.'" *Id.*

In order to evaluate the fairness of a settlement, a district court must consider: (1) the strength of plaintiffs' case compared to the terms of the proposed settlement; (2) the likely complexity, length, and expense of the litigation; (3) the amount of opposition to settlement among affected parties; (4) the opinion of competent counsel; and (5) the stage of the proceedings and the amount of discovery completed at the time of settlement. *Synfuel*, 463 F.3d at 653 (*citing Isby*, 75 F.3d at 1199). Other factors that have been recognized include "the defendants' ability to pay," and "the presence of collusion." *Great Neck Capital Appreciation Inv. P'ship, L.P. v. PricewaterhouseCoopers, L.L.P.*, 212 F.R.D. 400, 409 (E.D. Wis. 2002).

In conducting this analysis, the Court should begin by quantifying "the net expected value of continued litigation to the class." *Synfuel*, 463 F.3d at 653 (*citing Reynolds v. Beneficial Nat'l Bank*, 288 F.3d 277, 284–85 (7th Cir. 2002).) The Seventh Circuit recognizes that this analysis cannot be conducted with a high degree of precision, but rather involves the court reviewing evidence that enables it to estimate possible outcomes and arrive at a "ballpark valuation." *Id.*

"Courts are entitled to rely on the opinion of competent Class Counsel that the settlement is fair, reasonable, and adequate, where Class Counsel are qualified, and where discovery and settlement negotiations are extensive and thorough." *In re Ky. Grilled Chicken Coupon Mktg. & Sales Practices Litig.*, 280 F.R.D. 364, 377 (N.D. Ill. 2011); *see also Hispanics United of DuPage County v. Village of Addison*, 988 F. Supp. 1130, 1150 (N.D. Ill. 1997) (holding that a "strong initial presumption of fairness attaches" where the settlement is a result of arm's length negotiations and plaintiffs' counsel is experienced and has engaged in adequate discovery).

### B. The Court should grant preliminary approval because the Settlement is within the range of possible approval.

All of the relevant factors support preliminary approval here. The Settlement is the product of hard-fought litigation and negotiations, and it provides real and expeditious compensation for significant expenses. Especially in light of the cost, complexity, and risks of further litigation, the Settlement represents an excellent result for the Class, and the Court should enter an order preliminarily approving the Settlement.[1]

#### 1. Factor One: The Settlement is fair considering the strength of Plaintiffs' case compared to the terms of the Settlement.

This factor strongly supports approval of the Settlement because the Settlement provides the Class with a significant package of relief compared to what Plaintiffs could likely recover in a favorable judgment in this litigation. This is an extremely complex case, involving millions of documents, difficult technical issues, and hundreds of thousands of vehicles throughout the country. (Caddell Decl. ¶¶ 20–45.) Plaintiffs have already taken or defended nearly 40 depositions and

[1] The Proposed Preliminary Approval Order, attached as Exhibit B to the Settlement, includes blank dates for various tasks triggered off the date on which this Court schedules a fairness hearing and the date on which this Court enters an order preliminarily approving the Settlement. Once the Court has entered a Preliminary Approval Order and selected the date for the fairness hearing, Plaintiffs and Ford propose to submit a Proposed Preliminary Approval Order with the dates filled in for the Court to enter.

worked extensively with experts to test engine parts and develop their theory of liability. (*Id.* ¶¶ 23–38.)

No class has yet been certified in this action, and Ford would have contested class certification, contending, among other things, that the size of the class and complexity of the issues present manageability concerns. Ford's summary judgment motions show that Ford will also argue that liability depends on individual issues, including whether each Class member properly maintained the vehicle, overloaded the engine, and/or improperly altered or modified the engine. (*See* Doc. Nos. 144–202.) In addition, Ford's summary judgment motions argue that the New Vehicle Limited Warranty limits its liability to repair or replacement of any malfunctioning engine components during the first 5 years/100,000 miles of vehicle service and that Ford met its warranty obligations when it performed warranty service on the Class vehicles and the vehicles were operable after the service. (*Id.*)

Despite these obstacles to Class recovery, the Settlement provides significant relief for the Class. Although the range of recovery varies based on the damages suffered by each Class member, the recoveries that will be owed to the named Plaintiffs, which are generally representative of those that other Class members should expect to recover, illustrate that the Settlement consideration is substantial. While the entitlement of each Class representative varies according to the warranty and post-warranty repairs performed on each representative's engine, and some Class representatives will receive no compensation for their claims because their engines did not suffer key warranty repairs or qualifying extended warranty repairs, it is notable that the average recovery for named Plaintiffs will be several hundred dollars per engine and that several named Plaintiffs will recover over $1,000. (Caddell Decl. ¶ 47.) Especially in light of Ford's asserted legal and factual defenses, this represents a remarkable result.

Despite Ford's argument that the New Vehicle Limited Warranty limits its liability, Plaintiffs have negotiated significant reimbursements for repairs performed after the warranty's expiration, as well as reimbursement of certain deductibles paid for in-warranty repairs. The Settlement relief thus compares favorably with the relief the Class could reasonably have expected from continued litigation and falls easily within the "range of possible approval." *Gautreaux*, 690 F.2d at 621 n.3.

**2. Factor Two: Trial would likely be complex, lengthy, and costly.**

Given the complex legal issues involved, litigating this case to its final conclusion (up to and including trial and any appeals), would be time-consuming and expensive. (Caddell Decl. ¶ 48.) The alleged engine defect is complex, involving the interactions between multiple engine components and several different types of engine malfunctions. (*Id.*) Extensive expert work, including additional destructive testing of the affected engine components, would be necessary to prepare the case for trial. (*Id.*) Distinguishing malfunctions caused by the defect from malfunctions caused by improper maintenance, extreme operating conditions, engine modifications, or other causes would also have been difficult and expensive, with Ford contesting causation. (*Id.*) Whether Ford's warranty repairs were adequate would have been a complex issue as well. (*See* Doc. Nos. 144–203.) Finally, this is a class action involving Plaintiffs throughout the United States. This geographic scope adds complexity related to the application of numerous states' warranty and consumer fraud laws.

### 3. Factor Three: Plaintiffs' Support for the Settlement

At the fairness hearing, the Court will consider any objections. Even at this preliminary approval stage, however, it is noteworthy that 13 of the named Plaintiffs have already submitted signed declarations supporting the Settlement.[2]

### 4. Factor Four: Numerous competent counsel support approval of the Settlement.

Counsel for Plaintiffs in this litigation include lawyers highly experienced in class action and automotive breach-of-warranty litigation. (*See* Caddell Decl. ¶¶ 7–13.) Plaintiffs' counsel are confident that they could succeed on the merits in this litigation but also recognize the defenses that Ford will raise and the limits to the damages that would be recoverable. While Plaintiffs' counsel believe that Ford breached the New Vehicle Limited Warranty by making inadequate repairs, counsel also recognize the difficulty and risks Plaintiffs would face were they to litigate these claims and have considered such difficulties and risks in deciding to recommend the Settlement. Finally, Plaintiffs' counsel acknowledge the reality that many of the Class vehicles have already been in service for almost a decade and that relief is needed sooner rather than later. Considering all of these factors, Plaintiffs' counsel wholeheartedly support the Settlement as an excellent result for the Class. (Caddell Decl. ¶¶ 47–51.)

### 5. Factor Five: The Settlement was proposed after extensive litigation and thorough discovery.

The parties have already conducted extensive discovery, giving both sides a thorough opportunity to evaluate the strengths and weaknesses of this case. Prior to this case, Lead MDL Counsel, Caddell & Chapman, and Mitchell Toups represented a class of persons who owned or

[2] *See* Declaration of Eugenia L. Boggero, attached as Exhibit 3; Declaration of Heather Gray, attached as Exhibit 4; Declaration of Susan Dewar, attached as Exhibit 5; Declaration of Fred Corigliano, attached as Exhibit 6; Declaration of Georjean Vogt, attached as Exhibit 7; Declaration of Phillip Marcum, attached as Exhibit 8; Declaration of Karl Strong, attached as Exhibit 9; Declaration John Prebish, attached as Exhibit 10; Declaration of John Barrett, attached as Exhibit 11; Declaration of Cecil Fulton, attached as Exhibit 12; Declaration of Anthony Mawyer, attached as Exhibit 13; Declaration of Steve Santilli, attached as Exhibit 14; Declaration of Scott Gray, attached as Exhibit 15.

leased ambulance vehicles equipped with the 6.0L Diesel. *See Williams A. Ambulance, Inc. v. Ford Motor Co.*, No. 06-cv-00776 (E.D. Tex.) (Caddell Decl. ¶ 21.) Thus, counsel had conducted some investigation regarding the alleged engine defects before the first action in these coordinated proceedings was even filed. (Caddell Decl. ¶ 22.) In these proceedings, the parties have engaged in extensive discovery, including Ford's production of over six million pages of documents, discovery from various third parties, the depositions of 13 Ford personnel, depositions of the named Plaintiffs, inspections of dozens of vehicles, temperature differential testing on various named Plaintiffs' vehicles, flow testing on various named Plaintiffs' vehicles' oil coolers, and two Ford expert depositions. (Caddell Decl. ¶ 23–38.) The factual record here is thus more than adequately developed to allow the parties to evaluate the case fairly.

**V. The proposed notice program satisfies Rule 23.**

Rule 23 requires that the Class receive "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." FED. R. CIV. P. 23. The notice program in the Settlement requires the claims administrator to send a detailed notice of the Settlement, in the form attached to the Settlement as Exhibit D, by first-class U.S. mail to each Class member at the Class member's last-known address. The claims administrator will use name and address information maintained by R.L. Polk & Co., which is in the business of providing such information to the automotive industry, and as to any notices that may be returned as undeliverable, the claims administrator will perform a reasonable search for a more current name and/or address and re-send the notice. This individual, direct-mail notice amply satisfies Rule 23. *See Brunson v. La.-Pac. Corp.*, 818 F. Supp. 2d 922, 926 (D.S.C. 2011) (approving notice program including direct-mail notice under Rule 23 and the Due Process Clause of the United States Constitution).

## VI. Certification of the Settlement Class is proper.

Approval of a settlement in a class action requires the Court to determine whether the proposed class is proper for settlement purposes. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 614 (1997). In order to be certified, a class must meet the four prerequisites in Rule 23(a) and one of three additional requirements in Rule 23(b). *Id.* at 614–15. The Rule 23(a) requirements are: (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of representation. FED. R. CIV. P. 23(a). The applicable Rule 23(b) prerequisite is Rule 23(b)(3), "issues of law and fact predominate over issues unique to individual class members, and maintaining the class action is the superior procedural vehicle." FED R. CIV. P. 23(b)(3). The Class here easily meets each requirement.

### A. Numerosity—Rule 23(a)(1)

The Class satisfies the numerosity requirement because the number of Class members renders joinder impracticable. Generally, joinder is impracticable in any class consisting of more than forty members. *Schmidt v. Smith & Wollensky LLC*, 268 F.R.D. 323, 326 (N.D. Ill. 2000). "Courts rely on common sense to determine whether an estimate of class size is reasonable." *Chavez v. Don Stoltzner Mason Contractor, Inc.*, 272 F.R.D. 450, 454 (N.D. Ill. 2010). Here, Ford has admitted that the Class consists of at least hundreds of thousands of members. (Doc. No. 114 at 98.) Numerosity is thus easily satisfied.

### B. Commonality—Rule 23(a)(2)

Commonality "requires that there be at least one question of law or fact common to the class." *Barragan v. Evanger's Dog & Cat Food Co., Inc.*, 259 F.R.D. 330, 334 (N.D. Ill. 2009) (citing *Rosario v. Livaditis*, 963 F.2d 1013, 1018 (7th Cir. 1992).) Commonality is satisfied here because all Class members are pursuing the common issues of whether the 6.0L Diesel engine is defective, whether Ford concealed the defect, and whether Ford failed to provide an adequate warranty repair for the engine. (Doc. No. 233 ¶ 310.) All claims stem from the same operative

facts—*i.e.*, Ford's sales of the 6.0L Diesel, the terms of the New Vehicle Limited Warranty, and Ford's warranty repair policies. (*Id.*)

**C. Typicality—Rule 23(a)(3)**

A plaintiff satisfies the typicality requirement by showing that its claims arise from the same event, practice, or course of conduct as the claims of other class members and that those claims are based on the same legal theory. *De La Fuente v. Stokely-Van Camp., Inc.*, 713 F.2d 225, 232 (7th Cir. 1983). In this case, Plaintiffs and the Class all assert the same facts and legal propositions in their efforts to recover damages they suffered caused by the same engine defects and repair policies. (Doc. No. 233 ¶ 311.)

**D. Adequacy of Representation—Rule 23(a)(4)**

In assessing the adequacy of the class representatives, the Court should inquire as to whether the individual "(1) has antagonistic or conflicting claims with other members of the class; (2) has sufficient interest in the outcome of the case to ensure vigorous advocacy; and (3) has counsel that is competent, qualified, experienced, and able to vigorously conduct the litigation. *Wahl v. Midland Credit Mgmt., Inc.*, 243 F.R.D. 291, 298 (N.D. Ill. 2007) (quotations omitted). Here, the Class Representatives have no claims antagonistic to or conflicting with other members of the Class. Each Class Representative owned or leased one or more Ford vehicles equipped with the 6.0L Diesel engine and experienced problems with the engine similar to other members of the Class. Furthermore, each Class Representative has cooperated with Class counsel during the litigation of this case and the negotiation of the Settlement. The Class Representatives have responded to written discovery requests, had their depositions taken and, in many cases, made their vehicles available for inspection and testing. Class counsel is competent, experienced, and has more than adequately protected the interests of the Class. (Caddell Decl. ¶¶ 3–19.) The adequacy requirement is therefore amply satisfied.

### E. Predominance—Rule 23(b)(3)

To meet the predominance requirement, there must be "substantial common issues" that outweigh any individual issues. *Arreola v. Godinez*, 546 F.3d 788, 801 (7th Cir. 2008). Here, common issues of law and fact predominate because the crux of all Class members' claims is whether the 6.0L Diesel engine is defective and whether Ford had an adequate repair for the engine. All of the Class vehicles have the same fundamental engine design, which was not materially changed during the 2003–2007 model years. (*See* Doc. No. 233 ¶ 78.) Furthermore, Plaintiffs allege that Ford established a common repair policy for the 6.0L Diesel, which Plaintiffs allege was no more than a "band-aid fix." (*Id.*) Thus, common liability issues regarding the existence of the defect, Ford's knowledge of the defect, and Ford's failure to offer any adequate repair of the defect predominate here.

Finally, Rule 23(b) requires plaintiffs to show that "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." FED R. CIV. P. 23(b)(3). A class action is a superior method to resolve this controversy because a single determination of the common issues at stake streamlines the litigation process for both the parties and the court system. *See Chavez*, 272 F.R.D. at 456. Given the extraordinary expense associated with prosecuting claims relating to the 6.0L Diesel engine, which is pointedly illustrated by the significant resources devoted to this matter, the vast majority of the Class is unlikely to receive any relief unless these claims are settled collectively in this class-action proceeding.

## VII. Conclusion

For the reasons stated above, the Court should certify the Class for Settlement purposes, grant preliminary approval of the Settlement, approve the form of the proposed Settlement notice, and order that notice of the Settlement be provided to the Class.

Dated: November 1, 2012

Respectfully submitted,

By: /s/ Michael A. Caddell

Michael A. Caddell
Cynthia B. Chapman
Cory S. Fein
Caddell & Chapman
1331 Lamar, Suite 1070
Houston TX 77010-3027
Telephone: (713) 751-0400
Facsimile: (713) 751-0906

**MDL LEAD COUNSEL FOR PLAINTIFFS**

**CERTIFICATE OF SERVICE**

I hereby certify that, on November 1, 2012, this document was filed electronically via the Court's ECF system and thereby served on all counsel of record.

/s/ Cynthia B. Chapman
Cynthia B. Chapman