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

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

**This Document Relates to: All Cases**

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

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Plaintiffs[1] file this Motion for Final Approval of their Settlement with Ford Motor Co. ("Ford").[2] Because the Settlement represents an excellent result for the Class, the Court should grant final approval.

## I. INTRODUCTION

The fruit of over three years of hard-fought litigation, this Settlement is a remarkable result for the Class. Despite Ford's significant, and vigorously asserted, defenses, Plaintiffs have achieved recovery of 40–50% of the full value of their claims. (*See* Declaration of Professor William Rubenstein ("Rubenstein Decl."), attached as Ex. 1, at ¶ 28.) What is more, Class Members will receive this benefit now, through a simple claims process requiring only limited proof of causation, and without subtracting any attorneys' fees or litigation expenses (which Ford will pay separately) from the recovery. It is not surprising, then, that Professor William Rubenstein, author of NEWBERG ON CLASS ACTIONS, describes it as "a terrific settlement." (*Id.* ¶ 1.)

The factors that the Seventh Circuit considers in evaluating class action settlements all support approval here:

> First, the Settlement will provide the Class value at least equal to, and likely greater than, the net expected value of the litigation. (Rubenstein Decl. ¶¶ 1, 33.)
>
> Second, continued litigation would be complex, lengthy, and expensive.

[1] Plaintiffs are Custom Underground, Inc., John Barrett, Scott and Heather Gray, Frank Brown Towing, Inc., Cecil and Tressie Fulton, Karl Strong, Dinonno Enterprises, Inc., d/b/a Cutting Edge Concrete Cutting, Charles Clark, Georgean Vogt, John Prebish, Steve Santilli, Anthony Mawyer, Gena Boggero, Carl Atwell, Phillip Marcum, and James Hutton.

[2] Plaintiffs earlier filed their Motion for Attorneys' Fees, Expenses and Service Awards, (Dkt. 256), and their Response to Objections, (Dkt. 272), in support of the Settlement. Plaintiffs incorporate those documents and their supporting memoranda and exhibits by reference as though fully set forth here and also attach the Declaration of Professor Geoffrey P. Miller, which is submitted in support of Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards. (Ex. 5.)

> Third, Class Members, including all Named Plaintiffs, overwhelmingly support the Settlement.
>
> Fourth, well-respected and experienced Class Counsel support the Settlement; and
>
> Fifth, the Settlement is the product of full discovery, contentious litigation and motion practice, and arm's length, hard-fought negotiations presided over by Judge Richard Neville. (*See* Declaration of Richard Neville ("Neville Decl."), attached as Ex. 3 (commenting on the arm's length and contentious negotiations preceding the Settlement).)

The Court should therefore find that the Settlement is fair, reasonable, and adequate, certify the Class for settlement purposes, and grant final approval.

## II. FACTUAL AND PROCEDURAL BACKGROUND

### A. Plaintiffs' Allegations

This case concerns the allegedly defective design and manufacture of Ford's 6.0-liter PowerStroke diesel engine (the "6.0L Diesel"). (Dkt. 233 ¶¶ 319–363.) Ford installed the 6.0L Diesel in numerous Ford model year 2003–2007 trucks and vans. (*Id.* ¶ 22.) Plaintiffs allege that the 6.0L Diesel was defectively designed and that the defect 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 yr/36,000 mile bumper-to-bumper warranty and a 5 yr/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 engine-related repair visit within the 5 yr/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 it began selling vehicles equipped with the defective engine, 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.)

Plaintiffs bring claims on behalf of a class of all persons in the United States who purchased or leased a non-ambulance Ford vehicle sold or leased in the United States and equipped with a 6.0L Diesel engine that received one or more New Vehicle Limited Warranty repairs to a fuel injector, the EGR valve, the EGR cooler, the oil cooler, or the turbo charger (the "Class"). Plaintiffs bring 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. (*Id.* ¶¶ 319–363.)

**B. The Litigation**

This case originated from the *Custom Underground, Inc. v. Ford Motor Co.* action, which was filed in this Court on January 8, 2010. (Declaration of Michael A. Caddell in Support of Motion for Final Approval ("Caddell Decl."), attached as Ex. 1, ¶ 27.) Following more than 16 months of litigation, including briefing on Ford's Motion to Dismiss and Plaintiffs' Motion for Class Certification in the *Custom Underground* case, the Judicial Panel on Multidistrict Litigation (the "MDL Panel") created this MDL proceeding. (Dkt. 1.)

Since the creation of the MDL, the MDL Panel has transferred 39 total actions, involving numerous firms representing the Plaintiffs in the various actions (together, "MDL Counsel"). (*See* Dkts. 227–28.) This Court appointed Caddell & Chapman as Lead MDL Counsel on May

19, 2011. (Dkt. 14; Ex. 1, Caddell Decl. ¶ 27.) On July 29, 2011, Plaintiffs filed their consolidated Master Class Action Complaint. (Dkt. 60.) Ford declined to file a Motion to Dismiss and instead filed an Answer. (Dkt 88.) Plaintiffs filed a Motion to Deem Allegations Admitted, arguing that Ford's Answer failed to adequately admit or deny Plaintiffs' allegations. (Dkt. 92.) Rather than respond to Plaintiffs' Motion, Ford conceded and agreed to file an Amended Answer, (Dkt. 100), admitting many of the detailed factual allegations in the Master Class Action Complaint, resulting in the withdrawal of Plaintiffs' Motion. (Dkt. 103.)

Discovery, which had begun in the *Custom Underground* case, continued in the MDL, including serving and answering 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 and destructive testing on various named Plaintiffs' vehicles' oil coolers, and the depositions of two independent experts retained by Ford. (Ex. 1, Caddell Decl. ¶¶ 31–42, 45–46.) In October 2011, Ford issued a subpoena to Neal Technologies, Inc., the employer of one of Plaintiffs' critical liability experts. Understanding that forcing Mr. Neal to disclose his company's confidential information would result in his withdrawal as an expert witness in this litigation, Plaintiffs and Neal Technologies filed detailed and well-supported motions to quash the subpoena. (*See* Dkts. 111, 129.) After full briefing and a hearing, the Court granted the motions to quash. (Dkt. 132.)

In late February and early March, 2012, Ford filed a motion to compel arbitration as to two Plaintiffs, (Dkt. 196), and fourteen motions for summary judgment, seeking judgment as a matter of law on nearly all of the named Plaintiffs' claims. (Dkts. 144–203.) Plaintiffs responded to the motion to compel arbitration, (Dkt. 206), and, following an agreed stay of

Plaintiffs' response deadline to allow settlement discussions to proceed, Plaintiffs' responses to the summary judgment motions were to be filed on September 14, 2012. (Dkt. 225.) In order to be prepared to meet the Court's deadline, notwithstanding settlement discussions, MDL Counsel was required to coordinate and prepare nearly complete responses to these motions before the Settlement Agreement was reached. (Ex. 1, Caddell Decl. ¶52.) This effort required briefing all legal issues, preparing separate responses to each motion's statement of uncontroverted facts and a lengthy common statement of undisputed facts, and working with experts to rebut Ford's 14 expert declarations. (*Id.*) While ultimately never filed due to settlement in the matter, the substance of these responses was discussed during the course of mediation to persuade Ford to settle this matter on favorable terms. (*Id.*) On August 28, 2012, the Court stayed all deadlines pending the parties' anticipated motion for settlement approval. (Dkt. 226.)

**C. The Settlement**

The parties negotiated the Settlement commencing with several in-person meetings of counsel in Houston, Washington, D.C., and Chicago, and culminating in multiple in-person mediation sessions with Judge Richard Neville. (Ex. 1, Caddell Decl. ¶ 54; Ex. 3, Neville Decl. ¶¶ 5–9.) The first session with Judge Neville took place in Chicago on May 8–9, 2012. (Ex. 1, Caddell Decl. ¶ 54; Ex. 3, Neville Decl. ¶ 5.) At this initial two-day mediation with Judge Neville, the parties discussed and reached agreement on only the terms of the Class recovery and the service awards for Class Representatives, deferring the question of attorneys' fees and expenses to a second mediation session on June 19, 2012, in Chicago with Judge Neville—this mediation session proved to be hard-fought, contentious and unsuccessful. (Ex. 1, Caddell Decl. ¶¶ 54–55; Ex. 3, Neville Decl. ¶¶ 8–9.) After a second unsuccessful, contentious fee mediation session on July 23 in Chicago (with Judge Neville) and multiple follow-up discussions facilitated by Judge Neville, the parties finally reached an agreement on attorneys' fees and expenses to be

paid by Ford. (Ex. 1, Caddell Decl. ¶ 55; Ex. 3, Neville Decl. ¶ 9.) With this agreement in place, the parties entered into a settlement in principle on August 24, 2012, and executed the final Settlement Agreement on November 1, 2012. (Ex. 1, Caddell Decl. ¶ 55; Ex. 3, Neville Decl. ¶¶ 8–9.)

The Settlement provides Class Members roughly 50% 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. 6, Settlement Agreement at II.B-E; *see* Declaration of Paul Taylor ("Taylor Decl."), Dkt. 256-8, ¶ 12; Ex. 1, Caddell Decl. ¶ 59.) Out-of-pocket expenses include amounts paid for parts and labor to repair the vehicles, including at non-Ford repair facilities and, for Class Members who repaired their vehicles themselves, compensation for the reasonable value of the time spent. (Ex. 6, Settlement Agreement 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.) These amounts represent approximately 50% of the average out-of-pocket costs that the Class Representatives and absent Class Members incurred for the covered repairs. (*See* Dkt. 256-8, Taylor Decl. ¶ 12; Ex. 1, Caddell Decl. ¶ 59.)

The Class consists of approximately 1.1 million members,[3] the current and former owners and lessees of 656,076 vehicles that had qualifying warranty repairs to a component covered by the Settlement. (Dkt. 256-8, Taylor Decl. ¶ 6.) The chart below shows the number of vehicles that underwent a warranty repair to each covered component. To the extent the owners of these vehicles incurred out-of-pocket expenses for additional repairs to the same component during the Extended Warranty Period, they would be eligible for extended-warranty repair reimbursements under the Settlement.[4]

| **Component** | **EGR and/or Oil Cooler** | **Fuel Injector** | **EGR Valve** | **Turbo Charger** | **Any of the 5 Components** |
|---|---|---|---|---|---|
| Number of Eligible Vehicles (that had repair to the listed component during the 5 yr/100k warranty period) | 243,825 | 312,860 | 412,401 | 307,602 | 656,076 |

Plaintiffs' expert, Ken Neal, whose expertise with respect to the 6.0L Diesel engine has been recognized in multiple industry publications, estimates that engines that have undergone these repairs under warranty are likely to require a repeat repair during the 6 yr/135,000 mile Extended Warranty Period as shown in the chart below:

[3] (*See* Ford Mem. at 6.)
[4] (Dkt. 256-8, Taylor Decl. ¶ 6.) Note that some vehicles had warranty repairs to more than one covered component.

| Component | EGR and/or Oil Cooler | Fuel Injector | EGR Valve | Turbo Charger |
|---|---|---|---|---|
| Estimated frequency of required repeat Extended Warranty Period repair | 20–30% | 15–25% | 15–25% | 5% |

(Declaration of Ken Neal ("Neal Decl."), attached as Ex. 4, at 3–4.)[5]

As an alternative to the offered reimbursement for Extended Warranty Period repairs, if a Class Member had multiple engine-related 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. (Ex. 6, Settlement Agreement at II.F.) Ford estimates that approximately 250,000 vehicles (or almost 40% of the Class Vehicles) received two or more engine warranty repairs subject to the $100 deductible. (Dkt. 271 at 6.)

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

**D. Release**

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, including its dealers and affiliates, in this or any action based upon the 6.0L Diesel engine in the Class Vehicles. Of course, the release only applies to persons whose engines received a

[5] A survey of the Class Representatives' engines showed that of the 20 engines that had EGR valve repairs under warranty, three, or 15%, also had EGR valve repairs during the extended warranty period. Of the 25 engines that had at least one fuel injector repair or replacement under warranty, 11, or 44%, also had at least one fuel injector repaired or replaced during the extended warranty period. Of the 15 engines that had either an EGR cooler, an oil cooler, or both replaced or repaired under the warranty, four, or 26.67%, also had either an EGR cooler, an oil cooler, or both repaired or replaced during the extended warranty period. Of the 17 engines that had repairs to or replacement of the turbo charger under warranty, three, or 17.65%, also had turbo charger repairs during the extended warranty period. (Ex. 1, Caddell Decl. ¶ 57.) While this is not a scientific survey or a statistically significant sample, the Class Representatives' experience is consistent with and supports Mr. Neal's estimates.

warranty repair within the 5 yr/100,000 mile limits to a fuel injector, the EGR valve, the EGR cooler, the oil cooler, or the turbo charger. (Ex. 6, Settlement Agreement at I.S.) Persons whose engines received no warranty repair to a covered component are not Class Members and will not release their claims. (*Id.*) Also, persons who have filed individual suits are also excluded from the Class and will not release their claims. (*Id.*) The scope of the release is further limited to the engine, which has been the subject of this litigation. (*Id.* at I.P.) Any claims not based on the 6.0 L Diesel engine are not released.

**E. Attorneys' Fees, Expenses, and Service Awards**

Ford agreed not to oppose any attorneys' fee and expense award up to $12,800,000 in fees and $1,250,000 in expenses. (*Id.* at II.I.) Ford also agreed not to oppose an application for a total of $150,000 in service awards to be awarded in the Court's discretion and 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.) Plaintiffs submitted their application for these attorneys' fees, expenses, and service awards on April 10, 2013. (Dkt. 256.) In addition, Professor Geoffrey P. Miller has submitted a declaration detailing the reasonableness of Plaintiffs' application. (*See* Ex. 5.)

**F. Class Notice**

Ford has mailed over 1.1 million notices, in the form approved by the Court, to Class Members. (*See* Ford Mem. at 6–7.)

**G. Notice to Attorneys General**

Ford has provided notice to the attorneys general of the relevant states according to the requirements of 28 U.S.C. § 1715. (*Id.* at 7.) No attorneys general object to the Settlement. (*Id.*)

## H. Opt-Outs and Objections

Of the approximately 1.1 million potential Class Members who received the Notice, only 1,176 Class Members (for claims relating to 3,601 vehicles), or 0.1% of the Class, have elected to opt out. (*See* Declaration of Linda Webster ("Webster Decl."), Ex. 1 to Ford's Mem. in Supp. of Final Approval, filed concurrently herewith ("Ford Mem."), at ¶ 15.) As of May 14, 2013, only six persons, many of whom failed to meet the Preliminary Approval Order requirements for properly filed objections (and several of whom appear not to be Class Members), have actually objected to the Settlement.[6] (*See* Dkt. 272 at 1; Dkt. 272-1 at 1–2.)

## I. Claims Process

Following final approval, Class Members will download a claim form via the Settlement website at www.dieselsettlement.com. Class Members must submit their VINs and proof of the out-of-pocket expenses for which reimbursement is sought, including the mileage on the Class Vehicle at the time of the repair. (Ex. 6, Settlement Agreement at II.G.2.) Where Ford has the information, Ford will inform the Class Members via the claim-form generation process of qualifying Warranty Repairs making the vehicle eligible for partial reimbursement for repeat repairs during the Extended Warranty Period. (*Id.*) Class Members who have independent proof of qualifying Warranty Repairs may also submit this information to show their eligibility for Extended Warranty Period partial reimbursements. (*Id.*) Class Members can show that their engine problems were not caused by improper maintenance, misuse, or alteration simply by attesting that they properly used and maintained their vehicles. (*Id.*)

[6] This count of filed objections was current as of the filing of Plaintiffs' Response to Objections. (*See* Dkt. 272.) Plaintiffs understand that the clerk has received additional letters and comments on the Settlement which had not been entered on the docket sheet when Plaintiffs' Response to Objections was due. (*See* Dkt. 275.) Plaintiffs will supplement their Response to Objections to the extent any response may be necessary on or before May 20, 2013, as ordered by the Court. (*Id.*)

## III. ARGUMENT AND AUTHORITIES

### A. The Court should grant Final Approval.

Courts favor class-action settlements and will approve a proposed settlement when it is fair, reasonable, and adequate when viewed in its entirety. *In re Mexico Money Transfer Litig.*, 164 F. Supp. 2d 1002, 1014 (N.D. Ill. 2000) (citing *Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996)). In evaluating a class settlement, courts recognize that the "essence of settlement is compromise," and thus settlement will not represent a total win for either side. *Id.* (quoting *Isby*, 75 F.3d at 1196). Accordingly, courts need not determine that the parties' settlement is the best possible deal, or that class members will recover as much from a settlement as they might have recovered at trial. *Id.*

In order to evaluate the fairness, reasonableness, and adequacy of a settlement, a district court must consider:

(1) The strength of plaintiffs' case compared to the amount of defendants' settlement offer;

(2) An assessment of the likely complexity, length, and expense of the litigation;

(3) An evaluation of 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 Technologies, Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006) (citing *Isby*, 75 F.3d at 1199). Another recognized factors is whether the settlement is an arm's length agreement. *See Great Neck Capital Appreciation Inv. P'ship, L.P. v. PricewaterhouseCoopers, L.L.P.*, 212 F.R.D. 400, 409 (E.D. Wis. 2002) (citing *EEOC v. Hiram Walker & Sons, Inc.*, 768 F.2d 884, 889 (7th Cir. 1985)).

"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).

**1. The Settlement consideration is fair in light of the strengths and weaknesses of Plaintiffs' claims.**

The most important factor is the strength of the plaintiffs' case balanced against the amount of the settlement. *Synfuel*, 463 F.3d at 653. In analyzing this factor, the court may quantify "the net expected value of continued litigation to the class." *Id.* (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.* In so doing, the court considers the facts in the light most favorable to the settlement. *Isby*, 75 F.3d at 1199.

**a. The Settlement provides Plaintiffs 40–50% of the full value of their claims**.

Here, the Settlement's partial reimbursements will cover half of qualifying deductible payments and approximately half of the average cost of repairs to the covered components during the extended warranty period. (Dkt. 256-8, Taylor Decl. ¶ 12; Ex. 2, Rubenstein Decl. ¶ 22–23.) The average recovery for named Plaintiffs will be $547.02 per engine, and several named Plaintiffs will recover over $1,000. (Ex. 1, Caddell Decl. ¶ 56.) These recoveries average about 50% of the Named Plaintiffs' qualifying out-of-pocket expenses, which is consistent with

the rates of recovery expected for the Class on average. (Ex. 2, Rubenstein Decl. ¶ 23); *see also Vought v. Bank of Am., N.A.*, No. 10-cv-2052, 2012 WL 4754723, at *12 (C.D. Ill. Oct. 4, 2012) ("presum[ing] that the facts claimed by the [two] named plaintiffs [were] in fact representative of the class" in order to come up with a "rough estimate" of the benefits of a settlement).

Taking into account the time and mileage limits of the warranty extension provided in the Settlement, Plaintiffs' expert, Professor William Rubenstein, estimates the Settlement recovery at approximately 42.5% of the value of each Plaintiff's full claim. (Ex. 2, Rubenstein Decl. ¶¶ 1, 20, 28.) To the extent any value can be ascribed to ancillary claims such as consequential damages or diminution in value, the fact that Ford will pay all attorneys' fees and expenses separately from the Class's recovery provides ancillary benefits that at least offset any such deficit. (Ex. 2, Rubenstein Decl. ¶ 28.) Thus "it is fair to estimate that the settlement delivers between 40–50% of the claims' value to the class." (*Id.*) Especially in light of the real risk of non-recovery if this case were to proceed to trial, this represents a remarkable result for the class. *See Schulte*, 805 F. Supp. 2d at 583 (holding that settlement fund representing approximately 10% of class's maximum recovery was fair, reasonable, and adequate).

Moreover, the settlement structure, which ties each Class Member's monetary recovery to whether and to what extent each Class Member incurred qualifying deductible payments or repair expenses for covered components during an extended warranty period, ensures that this consideration is apportioned fairly among the Class. *See Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 589 (N.D. Ill. 2011) (finding settlement fair, reasonable, and adequate where "allocation of benefits is appropriately tailored to the facts and law at issue"). While all Class Members receive a legal entitlement to reimbursement for qualifying repairs, of course Class Members who did not suffer damages for qualifying post-warranty repairs and had no qualifying

deductible payments will not receive reimbursement. (*See* Ex. 2, Rubenstein Decl. ¶ 37 ("That the warranty may not have assisted them if their engine did not go bad during its extended time period does not mean that they received no benefit; it simply means that they did not need to utilize the benefit they did receive because they suffered no harm.")) This is an inherent feature of extended warranty-type settlements, which numerous Courts have approved as offering fair, reasonable, and adequate relief to the class. *See, e.g., In re Lawnmower Engine Horsepower Mktg. & Sales Practices Litig.*, 733 F. Supp. 2d 997, 1021 (granting motion for final approval of settlement including extended warranty benefits for owners of lawnmower engines); *Lundell v. Dell, Inc.*, No. 05-cv-3970, 2006 WL 3507938, at *5 (N.D. Cal. Dec. 5, 2006) (granting final approval to settlement offering reimbursement of out-of-pocket expenses and limited one-year extended warranty for qualifying repairs as providing "exceptional" benefits to the class).[7]

Underscoring the settlement structure's fairness, all named Plaintiffs, including those who had no qualifying deductible payments or extended-warranty period repair expenses and thus will receive no reimbursements, support the Settlement. (Dkt. 238-2 ¶ 7 (Clark); Dkt. 236-17 ¶ 7 (Mawyer); Dkt. 236-13 ¶ 7 (Strong)); *see Uhl v. Thoroughbred Tech. & Telecomm., Inc.*, 309 F.3d 978, 986 (7th Cir. 2002) (approving settlement as fair, adequate, and reasonable where differences in compensation to class members were tailored to damages and class representatives had incentive to represent both more and less compensated class members).

**b. The Settlement benefits equal or exceed Plaintiffs' net expected benefits from continued litigation.**

The Seventh Circuit has suggested that district courts may quantify the net expected value of litigation, for purposes of assessing a class-action settlement's value, by "estimating the range of possible outcomes and ascribing a probability to each point on the range." *Reynolds v.*

[7] *See also* Dkt. 272 at 8–12, which Plaintiffs incorporate by reference as though fully set forth here.

*Beneficial Nat'l Bank*, 288 F.3d 277, 284–85 (7th Cir. 2002).[8] These outcomes may then be discounted to present value using a reasonable interest rate. *Id.*

Here, Plaintiffs faced significant risks from further litigation. While there have been a substantial volume of consumer complaints regarding the 2003–2007 6.0L Diesel engine, proving that these could be tied to a single design defect would have been challenging and expensive. (*See* Ex. 5, Miller Decl. ¶ 22.) Plaintiffs also would have had to prove that Ford had knowledge of the defect and concealed it, or that Ford failed to adequately repair engines presented to its dealers for warranty repairs, which would also have presented demanding challenges. (*Id.*)

And even if Plaintiffs had cleared these threshold liability hurdles, they would have faced many more obstacles to recovery, most critically class certification, *Daubert*, causation, and standing and other affirmative defenses. Ford had filed 14 summary judgment motions, seeking judgment as a matter of law on nearly all of the Named Plaintiffs' claims, and a motion to compel arbitration as to two Plaintiffs. (Dkts. 196, 144–203.) If Plaintiffs had prevailed on all of these motions, they would next have faced the problem of certifying a class involving numerous potential manageability issues, including variations in state law and potential individual issues regarding causation, among other issues. (*See* Ex. 2, Rubenstein Decl. ¶ 30; Ex. 5, Miller Decl. ¶ 23.)

Plaintiffs would then have needed to survive *Daubert* motions challenging their experts' qualifications and, of course, prevail at trial. (*See* Ex. 2, Rubenstein Decl. ¶¶ 30–31.) And if

[8] *Reynolds* concerned a settlement reached in circumstances suggesting possible collusion or a "reverse auction" in which one group of lawyers may have had an incentive to offer to settle the case for less than its true value. *See Reynolds*, 288 F.3d at 282–83. The *Reynolds* court found that "in the suspicious circumstances that we have recited the judge should have made a greater effort (he made none) to quantify the net expected value of continued litigation to the class." *Id.* at 284. Here, by contrast, the Settlement was negotiated in contentious, arm's-length mediation sessions with Judge Richard Neville, (Ex. 3, Neville Decl., *passim*), and is thus entitled to a "strong initial presumption of fairness." *Hispanics United*, 988 F. Supp. at 1150.

Plaintiffs had won on the liability phase at trial, a substantial portion of the Class might still have been precluded from recovery through a claims process that could have required them to submit their vehicles for inspection and/or to submit maintenance records. (*Id.* ¶ 27 (observing that some claims process would have followed any judgment "since each vehicle suffered particularized problems and each class member would have had to identify those problems to claim from the settlement").) Even in the context of complex litigation, which always involves a substantial degree of risk, the complexity of this case was such that it "posed unusual risks at the outset." (Ex. 5, Miller Decl. ¶ 25.) Indeed, Professor Miller concluded that in light of all these risks, he would have advised Plaintiffs' counsel against taking the case. (*Id.* ¶ 25.)

Professor Rubenstein has quantified some of the most salient litigation risks in the form suggested by the Seventh Circuit in *Reynolds*, as summarized in the following table:

**Expected Values of Different Outcomes**

| **Possible Outcome** | **Average Claim's Value at This Outcome** | **Likelihood of This Outcome** | **Average Claim's Expected Value at This Outcome** |
|---|---|---|---|
| Winning Liability No Causation Problems | 1 (High) | 5% | .050 |
| Win Liability, 1/3 Class Has Causation Problems | .67 (Medium) | 50% | .335 |
| Lose *Daubert* | .1 (Low) | 12% | .012 |
| Lose Certification | 0 (Zero) | 33% | 0 |
| **Net Expected Value** | | 100% | .397 |

(Ex. 2, Rubenstein Decl. ¶ 31.) Assuming that the chance of a "home-run" 100% recovery is low (5%), that 1/3 of the Class would face causation problems in a 50% likely "medium" recovery scenario, and that there are 12% and 33% chances, respectively, that the Class might recover little or nothing because of *Daubert* or class certification problems, Professor Rubenstein concludes that the net expected value of this litigation to the Class is .397. (*Id.*) Discounting this figure to a present value of .371 and subtracting the result from the .425 value that Professor Rubenstein calculated for the Settlement shows that the value of this Settlement is actually about 15% **greater** than the net expected value to the Class from further litigation. (*Id.* ¶¶ 1, 31.) This is indeed a "terrific" result. (*Id.* ¶ 1.)

**c. The Settlement is fair in light of results in similar cases.**

Comparison of the recovery achieved here to the settlement in the Ambulance Case reinforces that the Settlement is an excellent result for the Class. Several key differences distinguish the Ambulance Case plaintiffs' claims from Plaintiffs' claims here. (*See* Ex. 2, Rubenstein Decl. ¶ 35.) The ambulance class was significantly smaller (about 10,000 vs. approximately 1.1 million). (*Id.*) Also, in the Ambulance Case, the plaintiffs were ambulance companies who had bought vehicles with special "ambulance prep" packages that Ford expressly represented to be suitable for the high mileage, extensive idling, and exacting reliability requirements of ambulance usage. (*Id.*) And the ambulance companies, being in the business of owning and operating diesel engines, generally had fastidious maintenance practices and records, lessening causation problems. (*Id.*) Despite these differences making the Ambulance claims significantly stronger, the time and mileage limits in this Settlement are almost as long as those agreed in the Ambulance Cases, and the differences in the claims' relative strength accounts for differences in the available reimbursement amounts. (*Id.*)

Viewed as a whole, the Settlement achieves real and immediate relief for Class Members that is squarely within the range of, and likely better than, probable trial outcomes. (Ex. 2, Rubenstein Decl. ¶¶ 1, 33.) The first factor thus weighs strongly in favor of settlement. *See Schulte*, 805 F. Supp. 2d at 584 (approving settlement that "provides immediate value to the Class Members that is well within the range of—and may in fact significantly exceed—their expected recovery from proceeding at trial").

**2. Settlement avoids what would likely be a long, complex, and expensive trial.**

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. (Ex. 1, Caddell Decl. ¶ 60.) The alleged engine defect is complex, involving the interactions between multiple engine components and several different types of engine malfunctions. (*Id.*) Extensive additional 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 failure to properly repair the engine's inherent defects versus 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* Dkts. 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. The second factor thus also supports approval. *See Schulte*, 805 F. Supp. 2d at 586 (holding that this factor favored approval where class certification and summary judgment were likely to be hotly contested); *see also In re AT&T Mobility Wireless Data Servs. Litig.*, 789 F. Supp. 2d 935, 964 (N.D. Ill. 2011) (holding that "the likely complexity, length, and expense of continuing litigation strongly support approving the Settlement").

**3. Class Member reaction to the Settlement has been overwhelmingly positive.**

Reaction to the Class Notice has been robust and positive. More than 13,000 calls came into the toll-free number that Ford established, as well as 3,600 calls to Class Counsel's toll-free number and hundreds who called or emailed MDL Lead Counsel directly with questions or comments about the Settlement. (*See* Webster Decl., Ex. 1 to Ford Mem., at ¶ 4; Ex. 1, Caddell Decl. ¶ 66.) Since the Notice was sent, Plaintiffs' Counsel has spent substantial time responding to such inquiries. Attorneys and staff members at Caddell & Chapman and other members of the Plaintiffs' Steering Committee responded to the calls and emails and addressed the Class Members' questions. (*Id.* ¶¶ 65–69.) Especially in light of this high level of awareness and interest among the Class, it is remarkable that only a handful of persons have filed objections to the Settlement. (*See* Dkt. 272 at 1.)[9] More common are supportive reactions, such as that of Jerome and Connie Walker, who wrote that they were "very happy to receive" the Class Notice, and stated:

> We would ask the court to really consider finding in favor of this Class action lawsuit. We would feel vindicated if the lawsuit favors the members of this class action.

(Dkt. 263 at 2; *see also* Ex. 5, Miller Decl. ¶ 32 (opining that "[t]he reaction of the class provides additional comfort for the conclusion that the class obtains real and substantial benefit from this Settlement").

MDL Lead Counsel received numerous letters commenting favorably on the Settlement. For example, one commenter responded enthusiastically: "Thank God somebody's getting around to doing something about it!" (*See* Letter from Seth C. to Michael Caddell (Received March 8, 2013), attached as Ex. A to Ex. 1, Caddell Decl.) Another wrote gratefully: "I cannot express how glad this cowgirl is to see some resolution and or compensations being awarded for

[9] *See* note 6, *supra.*

owners of this **nightmarish engine design**." (Letter from Terry P. to Michael Caddell (Feb. 23, 2013), attached as Ex. B to Ex. 1, Caddell Decl. (emphasis in original).) A Class Member who had suffered from "repeat and chronic problems" with his Ford 6.0L Diesel wrote, "If I never see a dollar of reimbursement out of this, I'll take comfort in knowing someone will. Go get'em guys!" (Letter from Larry H. to Michael Caddell (Received March 4, 2013), attached as Ex. C to Ex. 1, Caddell Decl.; *see also* Email from Robert B. to Cory Fein (Feb. 28, 2013), attached as Ex. D. to Ex. 1, Caddell Decl. ("Thank you Cory and keep up a good fight for those that need your service.")) All of the Named Plaintiffs also support the Settlement. (*See* Dkt. 236-7 ¶ 7 (Boggero); Dkt. 236-8 ¶ 7 (Heather Gray); Dkt. 236-9 ¶ 7 (Custom Underground); Dkt. 236-10 ¶ 7 (Frank Brown Towing, Inc.); Dkt. 236-11 ¶ 7 (Vogt); Dkt. 236-12 ¶ 7 (Marcum); Dkt. 236-13 ¶ 7 (Strong); Dkt. 236-14 ¶ 7 (Prebish); Dkt. 236-15 ¶ 7 (Barrett); Dkt. 236-16 ¶ 7 (Fulton); Dkt. 236-17 ¶ 7 (Mawyer); Dkt. 236-18 ¶ 7 (Santilli); Dkt. 236-19 ¶ 7 (Scott Gray); Dkt. 238-1 ¶ 7 (Hutton); Dkt. 238-2 ¶ 7 (Clark); Dkt. 239-1 ¶ 7 (Atwell); Dkt. 239-2 ¶ 7 (DiNonno).) Moreover, out of the total Class of approximately 1.1 million, only 1,176 Class Members, or 0.1%, have opted out. (*See* Webster Decl., Ex. 1 to Ford Mem., at ¶ 15.) This reaction indicates overwhelming support among the Class. *See In re AT&T Mobility Wireless Data Servs. Sales Tax Litig.*, 789 F. Supp. 2d 935, 965 (N.D. Ill. 2011) ("[The millions of] Class Members have filed only 10 objections with specific arguments. Such a remarkably low level of opposition supports the settlement.")

**4. Competent counsel support the Settlement.**

This Settlement has the support of competent counsel. MDL Lead Counsel, Caddell & Chapman, has served as lead counsel in numerous complex, nationwide class actions like this one and is therefore able to describe in detail why this Settlement is "an excellent result for the Class." (Ex. 1, Caddell Decl. ¶¶ 3–16; 56-63.) Professor Geoffrey Miller, a well-respected

expert in the empirical study of class action litigation, calls Caddell & Chapman "among the finest class action lawyers I have encountered in more than a quarter century of work in this area." (Ex. 5, Miller Decl. ¶ 29.) The other lawyers representing the Class—all of whom support the Settlement—are also experienced class action lawyers. (*See* Dkts. 7-1–7-16; *see also* Dkts. 256-9–256-53.) Accordingly, Professor Rubenstein finds that "[a] number of leading national class action law firms with significant class action experience, including Named Plaintiffs' Lead Counsel, Caddell & Chapman," support the settlement. (Ex. 2, Rubenstein Decl. ¶ 17[4].) This factor therefore also supports the Settlement. *See Great Neck Capital*, 212 F.R.D. 400, 410 (E.D. Wisc. 2002) ("The opinion of competent counsel weighs in favor of approval of a settlement.")

**5. The Settlement was the product of full discovery and hard-fought litigation and negotiations.**

This Settlement was based on a fully developed record. Prior to this case, MDL Lead Counsel, Caddell & Chapman, and Weller, Green, Toups & Terrell represented a class of persons who owned or 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.); (Ex. 1, Caddell Decl. ¶ 26.) Thus, counsel had conducted some investigation regarding the alleged engine defects before the first action in these coordinated proceedings was even filed. (*See* Ex. 1, Caddell Decl. ¶ 26.) In these proceedings, the parties have engaged in extensive discovery, including serving and responding to hundreds of discovery requests, reviewing over six million pages of documents, preparing for and taking or defending almost 40 depositions, inspecting dozens of vehicles, conducting temperature differential testing on various Named Plaintiffs' vehicles, and conducting flow testing on various Named Plaintiffs' vehicles' oil coolers. (Ex. 1, Caddell Decl. ¶¶ 31–42, 45–46.) Plaintiffs also worked extensively with experts to develop detailed facts in

support of their contentions. (*Id*. ¶ 44.) In addition, Ford had filed, and Plaintiffs had prepared nearly complete responses to, 14 motions for summary judgment. (*See* Dkts. 144–203; Ex. 1, Caddell Decl. ¶ 52.) This work gave both sides more than ample information to fairly gauge the value of this case.

In addition, the settlement negotiations were vigorously contested. Judge Richard Neville presided over a two-day mediation session that took place on May 8–9, 2012, in Chicago, which he describes as "adversarial," involving detailed, forceful, and persuasive arguments advanced by both sides. (Ex. 3, Neville Decl. ¶¶ 5–7; *see also* Ex. 2, Rubenstein Decl. ¶ 13 (noting that "[t]he litigation was adversarial"); Ex. 5, Miller Decl. ¶ 28 ("The procedural context indicates that Class Counsel fought hard to achieve the maximum possible value for the class.").) Thus, this factor also favors approval of the Settlement. *See Hispanics United*, 988 F. Supp. at 1170–71 (finding that "the advanced stage of the proceedings weighs heavily in favor of approving the settlement").

Finally, additional factors that courts sometimes consider also point toward approval. This Settlement raises none of the "red flags" that the Manual for Complex Litigation identifies as signs of potential problems in class action settlements. (*See* Ex. 2, Rubenstein Decl. ¶ 37.) And there is no hint of collusion: to the contrary, this settlement was arrived at by contentious, arm's length negotiations before Judge Neville, an experienced mediator. (Ex. 3, Neville Decl., *passism*; Ex. 2, Rubenstein Decl. ¶ 37; Ex. 1, Caddell Decl. ¶¶ 54–55); *see Great Neck*, 212 F.R.D. at 410 ("A strong presumption of fairness attaches to a settlement agreement when it is the result of this type of negotiation.") The Court should therefore find that the settlement is fair, reasonable, and adequate.

**B. The notice plan satisfies Due Process and has been successfully implemented.**

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 approved by the Court, which Ford has now successfully implemented, fulfills these requirements. Ford's agent mailed the Notice to over 1.1 million current and former owners of Class Vehicles and re-sent the Notice to those whose mailings were returned with forwarding addresses, or for whom Ford's agent was able to identify a corrected address. (*See* Ford Mem. at 6–7.) 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). Demonstrating the Notice program's effectiveness, the toll-free number established to respond to questions about the Settlement received over 3,600 calls from Class Members. (Ex. 1, Caddell Decl. ¶ 66.) A separate toll-free number that Ford established received over 13,000 calls. (*See* Webster Decl., Ex. 1 to Ford Mem., at ¶ 4.) This robust response demonstrates that Class Members received and took note of the Notice.

**C. The scope of the release is appropriate.**

Courts within the Seventh Circuit recognize that "[a]llowing for the broad release of related claims is in accord with the general policy in favor of the settlement of class litigation." *Smith v. Sprint Commc'n Co.*, No. 99-cv-3844, 2003 WL 103010, at *2 (N.D. Ill. Jan. 10, 2003). A settlement may release all claims based on the "identical factual predicate" as the litigated claims. *Williams v. Gen. Elec. Capital Auto Lease, Inc.*, 159 F.3d 266, 273 (7th Cir. 1998). Thus, there is no requirement that every released claim recieve independent compensation or have been actually litigated; rather, the overall settlement compensation is adequate consideration for a broad release. *See Smith*, 2003 WL 103010, at *1 (holding that "a class

settlement can provide for the broad release of claims, including claims not stated in the complaint").

Here, the Release applies only to persons whose engines received a warranty repair within the 5 yr/100,000 mile limits to a covered component. (Ex. 6, Settlement Agreement at I.S.) Because Ford sold approximately 1 million vehicles equipped with the 6.0L Diesel engine, only 656,076 of which are included in the class, this limitation means that several hundred thousand engines not covered by the Class definition will not release any claims. The scope of the release is further limited in accordance with the "identical factual predicate" doctrine to the engine—*i.e.*, the factual predicate of this litigation. (*Id.* at I.P.) Any claims not based on the 6.0L Diesel engine are not released. (*See id.* (releasing only claims "that were or could have been asserted by the Settlement Class Members . . . based upon the 6.0L engine in the Class Vehicles").

Similar releases are common in class-action litigation and routinely approved by courts within the Seventh Circuit. *See In re Synthroid Mktg. Litig.*, 110 F. Supp. 2d 676, 679 (N.D. Ill. 2000), *aff'd* 264 F.3d 712, 716 (7th Cir. 2001) (approving a settlement of $87.4 million in exchange for a release of all "claims associated with fraud and anticompetitive behavior as regards the substitutability of equivalent thyroid medicines"); *Schulte*, 2012 WL 2254197, at *1 (approving release of all claims "that result from, arise out of, are based upon, or related in any way to the conduct, omissions, duties, or matters alleged in the Complaints, including claims related . . . in any way, upon the use of a Fifth Third Debit Card . . . "). Indeed, the Seventh Circuit approved an even broader release in *Oswald v. McGarr*, 620 F.2d 1190 (7th Cir. 1980). In *Oswald*, the Seventh Circuit rejected intervenors' objection that a settlement of engine-related claims should not release transmission-related claims as well, holding that "it is entirely proper

for the offer to include a release for claims not yet adjudicated." *Id.* at 1198. The release here is significantly narrower than the release approved in *Oswald*, because it is limited to claims "based on the 6.0L engine," *i.e.*, claims based on the same factual predicate as the litigated claims. (Ex. 6, Settlement Agreement at I.P.)[10]

Because the Settlement release is limited to claims based on the "identical factual predicate" as the litigated claims and serves the interests of finality and of encouraging settlement, the Court should approve the release. *Schulte*, 2012 WL 2254197, at *1; *see also Mangone v. First USA Bank*, 206 F.R.D. 222, 230 (S.D. Ill. 2001) (approving broad release, observing that "[t]here is nothing unusual or unfair about Defendants' interest in finality and their desire to be released from Class Members' claims").

**D. 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.

[10] In addition, any concern regarding potential prejudice to the Class from a broad release here is mitigated by the fact that, except for claims already filed or tolled by the rules of *American Pipe* (to the extent they apply in the relevant jurisdictions), the statue of limitations has likely expired on the bulk of claims that could have been litigated related to the Class engines, the vast majority of which would have been sold before the end of 2007.

**1. 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, the Class consists of approximately 1.1 million persons. (*See* Ford Mem. at 6.) Numerosity is thus easily satisfied.

**2. 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. (Dkt. 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.*)

**3. 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. (Dkt. 233 ¶ 311.)

**4. 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. (*See* Dkt. 236-7 (Boggero); Dkt. 236-8 (Heather Gray); Dkt. 236-9 (Custom Underground); Dkt. 236-10 (Frank Brown Towing, Inc.); Dkt. 236-11 (Vogt); Dkt. 236-12 (Marcum); Dkt. 236-13 (Strong); Dkt. 236-14 (Prebish); Dkt. 236-15 (Barrett); Dkt. 236-16 (Fulton); Dkt. 236-17 (Mawyer); Dkt. 236-18 (Santilli); Dkt. 236-19 (Scott Gray); Dkt. 238-1 (Hutton); Dkt. 238-2 (Clark); Dkt. 239-1 (Atwell); Dkt. 239-2 (DiNonno).) Class Counsel is competent, experienced, and has more than adequately protected the interests of the Class. (Ex. 1, Caddell Decl. ¶¶ 3–25; Dkts. 256-9–256-53; Dkts. 7-1–7-16; Ex. 2, Rubenstein Decl. ¶ 17[4]; Ex. 5, Miller Decl. ¶ 29.) The adequacy requirement is therefore amply satisfied.

**5. 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* Dkt. 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.

## IV. CONCLUSION

For the reasons stated above, the Court should grant final approval of the Settlement.

Dated: May 15, 2013

Respectfully submitted,

By: /s/ Michael A. Caddell

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**CERTIFICATE OF SERVICE**

I hereby certify that, on May 15, 2013, 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