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I. INTRODUCTION

After extensive discovery followed by lengthy settlement negotiations, Plaintiffs (hereafter “Plaintiffs” or “Class Representatives”) have reached an agreement with Defendant Ford Motor Co. (“Ford”) to resolve this case. Plaintiffs and Ford now seek entry of an order that grants preliminary approval of the “Settlement Agreement” (a copy of which is attached hereto as Exhibit 1), certifies a provisional Settlement Class, approves the Parties’ proposed notice to the Class, and directs that notice be given to Class Members as proposed.

As fully set forth below, this Settlement provides genuine and valuable relief to Class Members, and that relief addresses and compensates precisely the problems Class Members experienced with their ambulances. The benefits are not mere tokens, but substantive and meaningful, formulated to compensate Plaintiffs for their damages and to ensure the proper functioning of vehicles vital not only to Plaintiffs’ businesses, but also to public safety. To that end, prompt approval of the Settlement is key because not only are the ambulances at issue aging and moving toward the need for repair, but they are critical to the health and welfare of citizens. Simply put, everyone wants and needs properly functioning ambulances, and this Settlement directly addresses those goals.

II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiffs’ Claims

In this class action, Plaintiffs assert causes of action on behalf of themselves and others similarly situated for the sale of certain Ford ambulance chassis with allegedly defective diesel engines. *See* Dkt. 64, Third Amended Class Action Complaint. The Plaintiff Class includes all entities and natural persons in the United States (including the District of Columbia) who currently

own or lease (or who in the past owned or leased) ambulances with ambulance prep package 47A containing a model year 2003-2007 Ford F-Series or E-Series chassis equipped with a 6.0-liter diesel engine (the “Class Vehicles”). *Id.* Plaintiffs alleged causes of action against Ford for products liability—defective design, negligence, and breach of express and implied warranties. *Id.* Specifically, Plaintiffs asserted that the 6.0 liter diesel engine in Ford vehicles equipped as ambulances contained defects that resulted in poor air conditioning and engine performance, difficulty in starting the engine, and engine stalling. *Id.*

B. Procedural Background and Settlement Negotiations

This case was commenced against Ford by Williams A. Ambulance, Inc. and two related ambulance companies, which asserted claims arising out of the defective 6.0-liter diesel engines in their ambulances. February 17, 2009 Declaration of Michael A. Caddell (“Caddell Decl.”) ¶ 15. Plaintiffs amended their pleadings to add several additional ambulance companies from multiple states which had been experiencing the same problems with the engines in their Ford ambulance chassis. *Id.* As news of the litigation spread throughout the emergency-medical-services community, several additional ambulance companies retained Plaintiffs’ Counsel to seek recovery from Ford for their damages caused by the allegedly defective engines. *Id.*

For purposes of conducting discovery, Plaintiffs’ counsel narrowed the pleadings to five Class Representatives: (1) the original interrelated East Texas Plaintiffs, Williams A. Ambulance, Inc., Stat Services of Jefferson County A, L.L.P., and Stat Services of Jasper County A, L.L.P. (collectively “Williams”); (2) Southark EMS, LLC; (3) Buncombe County, a body corporate and politic, d/b/a Buncombe County Emergency Medical Services; (4) Eastern Area Prehospital Services;

and (5) Jefferson County Emergency Medical Service. These five entities are collectively referred to herein as "Class Representatives." *Id.* ¶ 24.

The parties engaged in significant motion practice, wherein Ford challenged the factual allegations and legal theories Plaintiffs asserted. *Id.* ¶ 25. Ford filed a Motion to Dismiss or in the Alternative for More Definite Statement. *Id.* In response, the Parties negotiated an agreement whereby Plaintiffs would amend their pleadings to address certain alleged defects in Plaintiffs' Complaint. *Id.* The Parties were also able to reach an agreement on multiple issues regarding which legal claims were viable in which states. *Id.* Some disputed issues remained but a ruling on the motion was stayed.

Plaintiffs engaged in extensive discovery including: (1) taking the depositions of two key Ford personnel with knowledge of the engine defects and Ford's attempts to understand the defects and how to repair them; (2) obtaining and reviewing pleadings and other documents from litigation involving the engine defects between Ford and its engine supplier; (3) obtaining and reviewing millions of documents from Ford via document requests; (4) obtaining and reviewing documents from dozens of ambulance owners; (5) interviewing owners of several ambulance companies; and (6) consulting with several mechanics, all of whom have extensive experience with the alleged engine defects and attempted repairs. *Id.* ¶ 26. Plaintiffs also prepared and produced mechanics and other employees of the Class Representatives for depositions. *Id.*

In May 2008, the parties commenced settlement negotiations on behalf of the Class. *Id.* ¶ 27. The initial settlement meeting in Houston was followed by extensive and often contentious settlement negotiations, including in-person negotiations between Plaintiffs' and Defendant's counsel in Detroit and Washington, D.C., as well as numerous conference calls and email exchanges

of draft settlement term sheets and draft settlement agreements over an eight month period. *Id.* During the course of these negotiations, Plaintiffs' Counsel sought input from the putative Class Representatives as well as other ambulance companies. *Id.* ¶ 28.

After much negotiation, the parties agreed to a term sheet setting forth the basic terms of the settlement on December 18, 2008. *Id.* ¶ 29. After agreeing to the term sheet, the Parties negotiated an agreement regarding the payment of attorneys' fees and expenses which was reached on January 13, 2008. *Id.* ¶ 30. The Parties then engaged in extensive additional negotiation resulting in the execution of the final Settlement Agreement attached hereto as Exhibit 1. February 17, 2009
Id.

III. THE PROPOSED SETTLEMENT AND RELEASE TERMS

A summary of the principal terms of the Stipulation of Settlement (the "Settlement Agreement"), which is attached hereto as Exhibit "A," 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 the District of Columbia) who currently own or lease (or who in the past owned or leased) ambulances with ambulance prep package 47A containing a model year 2003-2007 Ford F-Series or E-Series chassis equipped with a 6.0-liter diesel engine (the "Class Vehicles").

Specifically excluded from the Settlement Class are: (a) all federal court judges who have presided over this case and their spouses and anyone within three degrees of consanguinity from those judges and their spouses; (b) all persons who elect to exclude themselves from the Settlement Class; (c) all persons who have previously executed and delivered to Ford Motor Company releases of all their

claims; and (d) Defendant's employees, officers, directors, agents, and representatives and their family members. Ex. A at 8.

B. Consideration Provided to Settlement Class

1. Warranty Extension on Engine/Powertrain to 120,000 miles

Ford will extend the coverage period of the 60-month/100,000-mile limited written repair-or-replace warranty that covers the engine components in the Class Vehicles to 72 months/120,000 miles (whichever comes first). Ex. A at 11. The extension to this warranty will run with the vehicles to subsequent owners or purchasers. *Id.*

2. Warranty Extension for Covered Components to 150,000 miles

Each "Covered Component"—fuel injectors, EGR valve, A/C compressor, or turbo charger—that received two or more repairs or replacements under the original 60-month/100,000 mile powertrain warranty will receive extended warranty coverage for up to 72 months/150,000 miles (whichever comes first) that will cover the cost of repairing or replacing that component. *Id.* at 11-12. For purposes of this benefit, two repairs or replacements of any of the fuel injectors will qualify all eight fuel injectors in that engine for the extended warranty coverage. *Id.*

3. Reimbursement for Past Repairs

Ford will establish a claims process by which Settlement Class Members can seek reimbursement for out-of-pocket expenses incurred during the Engine 120,000 mile warranty and the Covered Component 150,000 mile warranty described in Subsections 1 and 2 above. *Id.* at 15. "Out-of-pocket expenses" includes the expenses and labor charges incurred (including the reasonable value of in-house labor performed) during the extended warranty period to obtain the otherwise-warranted repair. *Id.* at 6-7.

4. Reimbursement for Engine Replacement

If, within the first 72 months after the vehicle is placed in service, it is established that the entire engine in the vehicle must be replaced due to a malfunction caused by a defect, as opposed to customer abuse, improper maintenance, or normal wear and tear, Ford will pay (or, if such engine replacement has already occurred, reimburse) 100% of the out-of-pocket expenses of an engine replacement that occurs prior to 120,000 miles, 50% of such expenses of an engine replacement that occurs between 120,000 and 135,000 miles, and 25% of such expenses of an engine replacement that occurs between 135,000 and 150,000 miles. *Id.* at 12-13.

5. Reimbursement for Towing Charges

For each unit that has incurred towing costs more than twice during the original 60-month/100,000 mile engine warranty period due to engine malfunction, Ford will reimburse the actually incurred, reasonable costs of the third and all subsequent tows for that particular unit that occurred during that period. *Id.* at 13. The Settlement Class Member will have the burden of presenting satisfactory proof of eligibility for, and amount of, this benefit. *Id.*

6. Reimbursement for Deductibles

For each unit that has incurred \$100 deductibles under the 60-month/100,000 engine warranty more than twice due to engine malfunction, Ford will reimburse the costs of the third and all subsequent deductibles paid for that particular unit under that warranty. *Id.* at 14.

7. Enhanced Maintenance Package

a. Instructional DVD

Ford will send each Settlement Class Member, free of charge, an instructional DVD entitled “Ford 6.0L Power Stroke Diesel Maintenance Special Operating Circumstances,” which explains the necessary maintenance procedures for ambulances containing 6.0 liter diesel engines. *Id.* at 10.

b. Hour meter

Ford will offer to install, free of charge at a Settlement Class Member’s request, an hour meter in each Class Vehicle that does not currently have one. *Id.*

c. Computer Adjustment

Ford will offer to implement, free of charge at a Settlement Class Member’s request, a previously established computer adjustment to improve the performance of the air conditioning system on each Class Vehicle that has not already received this adjustment. *Id.*

d. Assistance from Ford when Ford dealerships have difficulty making repairs—Service Hotline

Settlement Class Members who have concerns about the assistance they are receiving concerning their Class Vehicles from authorized Ford dealers may obtain assistance from a special ambulance contact within Ford’s technical assistance facility. *Id.* at 11.

Ford will send each Settlement Class Member a communication describing all benefits of the Settlement and how they may be obtained, and instruct Settlement Class Members to insert this communication into the Owners’ Manual of their vehicle and to provide it to any subsequent purchasers of the vehicle. *Id.*

C. Disputes

Disputes concerning Settlement Class Members' entitlement to benefits under the Settlement will be resolved by BBB Auto Line, pursuant to the procedures described in Ford's warranty information booklet. Any decision by BBB Auto Line/other dispute resolution service shall be binding upon all Parties. *Id.* at 17.

D. Ford Has Agreed to Pay, Subject to the Court's Approval, Fees, Costs, and Incentive Award

Attorneys' fees, litigation expenses, and incentive awards to the Class Representatives shall be paid by Ford in addition to the relief set forth herein and shall not diminish that relief in any way. Ford has agreed to pay, upon the Court's approval, fees and expenses of \$3,600,000.¹ *Id.* at 18. The amount of attorneys' fees and expenses awarded shall not affect the validity or finality of the Settlement. *Id.* at 19. The attorneys' fee application will be filed in conjunction with Plaintiff's request for Final Approval.

Ford will also pay, again subject to the Court's approval, a \$35,000 incentive award, to be allocated by the Court among each Named Plaintiff identified in the Third Amended Complaint. Ex. A at 19-20.

E. Release

In exchange for the consideration outlined above, the Settlement Class Members will release all claims or causes of actions of any kind (including all claims for damages, penalties, statutory

¹ In negotiating the agreement regarding attorneys' fees and expenses, Plaintiffs' counsel tabulated an approximate "lodestar" value of the work done in this matter by the attorneys and paralegals who worked on this matter. Based on the current billing rates of these attorneys and paralegals working on this case (which were based on the prevailing market rate commanded by lawyers and paralegals of similar skill, experience, and reputation in the relevant community) and the time expended (including an estimate of the reasonable amount of time that will be expended in the future), Plaintiffs' counsel calculated that the agreed amount of \$3.6 million, which includes both attorneys' fees and all incurred expenses, would result in a fee multiplier of less than 2.0. Caddell Decl. ¶ 31.

relief or injunctive relief) that were or could have been asserted by the Settlement Class Members against Ford and all suppliers to Ford based on the 6.0 liter diesel engines in the Class Vehicles. *Id.* at 29-30. The settlement benefits will run with the vehicle if the Settlement Class Member sells the vehicle. *Id.* Settlement Class Members who sell a Class Vehicle will be instructed to inform subsequent purchasers of the Settlement. *Id.* at 11.

F. Opt-Outs

If Settlement Class Members collectively owning/leasing 200 or more Class Vehicles opt-out of the Settlement, Ford will have the right to withdraw from the Settlement. Ex. A at 28-29. Counsel for Plaintiffs acknowledge that they believe this Settlement Agreement is in the best interests of all of their clients and the Class, and will counsel them not to opt out. Caddell Decl. ¶ 33. Counsel for Plaintiffs further acknowledge that they believe they are ethically prohibited from representing any client or other entity that opts out of this Settlement. *Id.*

G. Notice and Administration Costs

Ford will mail, by first class mail, at its expense, a class notice in a form attached as Exhibit D to the Settlement Agreement to the last known address of all class members for which Ford has an address. Ex. A at 23. If any Notices are returned as undeliverable, Ford will perform a reasonable search for a more current name and/or address and re-send the Notice. *Id.* A press release regarding the Settlement will also be sent to multiple EMS and/or ambulance industry organizations and publications. Caddell Decl. ¶ 35.

IV. PRELIMINARY APPROVAL SHOULD BE GRANTED

A. A Class Action Settlement is Favored and Should be Preliminarily Approved if it Falls Within the Range of Reasonableness

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). 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); *see also* Alba Conte & Herbert Newberg, *NEWBERG ON CLASS ACTIONS* § 11.41 (4th ed. 2002) (“The compromise of complex litigation is encouraged by the courts and favored by public policy.”).

“Approval of a class action settlement involves a two-step process. First, the Court makes a preliminary fairness evaluation of the proposed terms of settlement submitted by counsel. Second, if the Court determines that the settlement is fair, the Court directs that notice pursuant to Rule 23(c) be given to the class members of a formal fairness hearing, at which arguments and evidence may be presented in support of and in opposition to the settlement.” *McNamara v. Bre-X Minerals Ltd.*, 214 F.R.D. 424, 426 (E.D. Tex. 2002).

B. Certification of the Settlement Class Is Proper

Approval of a settlement in a class action requires the Court to determine if the proposed class is proper for settlement purposes. *Id.* A class, in order to be certified, must meet the four prerequisites in Rule 23(a) and one of three additional requirements in Rule 23(b). *Id.* at 428 (citing Rule 23; *Mullen v. Treasure Chest Casino, LLC*, 186 F.3d 620, 623 (5th Cir. 1999); and *Castano v. Am. Tobacco Co.*, 84 F.3d 734, 740 (5th Cir. 1996)).

The Rule 23(a) prerequisites are: (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of representation. *McNamara*, 214 F.R.D. at 428 (citing *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591 (1997)). The Rule 23(b) prerequisite applicable to Plaintiffs in the present case is Rule 23(b)(3), “issues of law and fact predominate issues unique to individual class members, and maintaining the class action is the superior procedural vehicle.” FED. R. CIV. P. 23(b)(3). The present Settlement Class easily meets each of these elements.

1. Numerosity - Rule 23(a)(1)

The Settlement Class easily satisfies the numerosity requirement because the number of Class Members renders joinder impracticable. Generally, joinder is presumptively impractical in any class consisting of more than forty members. *Mullen*, 186 F.3d at 624; *Cox v. Am. Cast Iron Pipe Co.*, 784 F.2d 1546, 1553 (11th Cir. 1986). A plaintiff may satisfy the numerosity requirement by providing a reasonable estimate of the number of purported class members. *In re Badger Mountain Irr. Dist. Sec. Litig.*, 143 F.R.D. 693, 696 (W.D. Wash. 1992). A district court may make common sense assumptions to support a finding of numerosity. *Evans v. U.S. Pipe & Foundry*, 696 F.2d 925, 930 (11th Cir. 1983).

The present Settlement Class includes several thousand ambulance operators spread throughout the United States. Caddell Decl. ¶ 16. Plaintiffs’ Counsel alone represents more than forty Class Members (who collectively own over 500 ambulances) and Plaintiffs know of at least one hundred more Class Members, both from their investigation and from their review of documents produced by Ford in this litigation. *Id.* Ford’s ambulance chassis with the 6.0-liter diesel engine was one of the most common chassis used in the manufacture of ambulances during the class period. *Id.* Numerosity is easily satisfied based on the number of Class Members.

Furthermore, another factor supporting a finding of numerosity is the geographical dispersion of the class. *Mullen*, 186 F.3d at 624 (citing *Zeidman v. J. Ray McDermott & Co.*, 651 F.2d 1030, 1038 (5th Cir. 1981)). Because this case involves ambulance companies with ambulances spread throughout the country, the geographical dispersion further supports a finding of numerosity in this case.

2. Commonality - Rule 23(a)(2)

“The test for commonality is not demanding and is met ‘where there is at least one issue, the resolution of which will affect all or a significant number of the putative class members.’” *Mullen*, 186 F.3d at 625 (citing *Lightbourn v. County of El Paso*, 118 F.3d 421, 426 (5th Cir. 1997)). Commonality is satisfied here because all Class Members are pursuing the common issue of whether the 6.0-liter diesel engines in their Ford ambulance chassis are defective. Caddell Decl. ¶ 17. All claims stem from the same operative facts—those being Ford’s production of ambulance chassis with an allegedly defective 6.0-liter diesel engine. *Id.*

3. Typicality - Rule 23(a)(3)

“Like commonality, the test for typicality is not demanding. It ‘focuses on the similarity between the named plaintiffs’ legal and remedial theories and the theories of those whom they purport to represent.’” *Mullen*, 186 F.3d at 625 (citing *Lightbourn*, 118 F.3d at 426). In the present case, the Class Representatives and the absent Class Members are all asserting the same theories in their efforts to recover damages they suffered caused by the same engine defects. Caddell Decl. ¶ 17.

4. Adequacy of Representation - Rule 23(a)(4)

Differences between Class Representative and absent Class Members render the Class Representatives inadequate “only if those differences create conflicts between the named plaintiffs’

interests and the class members' interests." *Mullen*, 186 F.3d at 625-26. In the present case, Williams, Southark, Buncombe County, Eastern Area, and Jefferson County constitute adequate Class Representatives as they have no claims antagonistic to other Settlement Class Members. Caddell Decl. ¶ 18. Each Class Representative owns, or has owned, ambulances built on Ford chassis with the 6.0-liter diesel engine, and has experienced problems with the engines similar to the other members of the Class. *Id.* ¶ 19. Further, each Class Representative has cooperated with Class Counsel during the litigation of this case and the negotiation of the Settlement. *Id.* ¶ 20. Class Representatives have responded to written discovery requests and provided voluminous documentation regarding their ambulances, the malfunctions they have experienced, and their ambulance repair history. *Id.* The Class Representatives have also made their ambulances available to Ford for inspection and have each been deposed in this case. *Id.*

Class Counsel is competent, experienced, and has more than adequately protected the interests of all Class Members. Filed herewith are the Declarations of Michael A. Caddell and Mitchell A. Toups setting forth their respective firm's vast experience and expertise.

5. Common Issues Predominate and a Class Action is Superior to Other Methods for Adjudicating the Controversy- Rule 23(b)(3)

In order for common issues to predominate, they "must constitute a significant part of the individual cases." *Mullen*, 186 F.3d at 626. In the present case, common issues of law and fact clearly predominate over issues unique to individual Class Members. The defective engines at issue in this case were all supplied to Ford by Navistar and all have the same or similar defects. Caddell Decl. ¶ 21. Due to the nature of the common defect in the engines at issue in this case, the

predominating issues in this case are common issues regarding the existence of the defect, the nature of the defect, Ford's inability to repair the defect, and Ford's liability. *Id.*

A class action is a superior means to resolve these common disputes. Because of the thousands of companies throughout the country that own, or owned, thousands of ambulances built on the Ford chassis with the 6.0-liter diesel engine, a class action is the superior way to resolve these common disputes rather than having hundreds of individual lawsuits. The Class Members—all of whom require rapid relief due to the aging of their ambulances and the public's need that they reliably operate—have expressed no interest in prosecuting their individual cases separately, which would needlessly increase the expense of pursuing these claims and lead to duplicative efforts. *Id.* ¶ 22. There is no other significant litigation already underway concerning this same controversy, and it is desirable to concentrate the litigation of the similar claims of ambulance operators throughout the country in this one forum. *Id.* ¶ 23.

C. The Settlement Meets Each Element for Preliminary Approval

In deciding whether to grant preliminary approval to a settlement agreement, issue notice to the class, and proceed with a fairness hearing, a district court must determine that “the proposed settlement [1] appears to be the product of serious, informed, non-collusive negotiations, [2] has no obvious deficiencies, [3] does not improperly grant preferential treatment to class representatives or segments of the class, and [4] falls within the range of possible judicial approval.” *In re Shell Oil Refinery*, 155 F.R.D. 552, 555 (E.D. La. 1993) (citing MANUAL FOR COMPLEX LITIGATION, SECOND § 30.44 (1985); Herbert B. Newberg & Alba Conte, NEWBERG ON CLASS ACTIONS, §§ 11.24-11.25 (3d ed. 1992); and *In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 212 (5th Cir. 1981)). The proposed Settlement meets each of these four criteria, as discussed below.

1. The Proposed Settlement is the Product of Serious, Informed, Non-Collusive Negotiations

Plaintiffs' Counsel represent numerous ambulance companies who have provided a significant amount of input to Plaintiffs' Counsel in the litigation of this case and the negotiation of the Settlement. *See* Caddell Decl. ¶¶ 16, 20, and 28. Plaintiffs' Counsel have conducted extensive discovery and research to ensure that all negotiations were informed. Caddell Decl. ¶ 26. At all times, Plaintiffs' Counsel's negotiations with Ford have been at arms'-length and non-collusive. *Id.* ¶ 27. Plaintiffs' Counsel believe in the merits of their case and were willing and able to litigate these claims in the event Ford failed to agree to a significant and valuable settlement agreement. *Id.* ¶ 35.

The Settlement was arrived at after extensive settlement negotiations over a period of eight months, including in-person settlement negotiations between Plaintiffs' and Defendant's counsel in Detroit, Houston, and Washington D.C., as well as multiple conference calls and email exchanges of draft settlement term sheets and draft settlement agreements. *Id.* ¶ 27.

As further described below, the Settlement Agreement was agreed to after considering all key factors, including the range of judgment amounts that would likely be obtained by Class Members, the risk that judgments could be reversed or delayed by appeals, the time that would be required to litigate this case through trial and appeal, the unavailability of certain relief (including future warranty extensions) via litigation, the benefits to Class Members of obtaining the relief for these engines without delay, the public's need for reliable ambulance transportation, the Defendant's net worth, and the Defendant's financial situation at the time the settlement terms were agreed upon. *Id.* ¶ 36.

2. The Proposed Settlement Has No Obvious Deficiencies

The Settlement provides a wide variety of genuine and valuable consideration to ambulance owners and addresses exactly the problems at the heart of Plaintiffs' claims. There are no deficiencies.

3. The Proposed Settlement Does Not Improperly Grant Preferential Treatment to Class Representatives or Segments of the Class

Other than a modest incentive award in recognition of their participation in this litigation, the Settlement accords no special treatment whatsoever to the Class representatives. Rather, it provides fixed categories of relief based upon the age of, and number of miles on, vehicles owned by all Class members. *See* Ex. A, ¶¶ II, C, D, and E. It provides consideration to those who have incurred repair expenses in the past as well as those who will incur expenses in the future. *Id.* The relief is based on qualifications that must be met by individual ambulance units so it neither favors large nor small ambulance companies. *Id.* Because the Settlement provides relief based on the damages actually suffered, those who experienced more significant engine malfunctions are able to recover more under the Settlement. Thus all segments of the Class are treated fairly.

4. The Proposed Settlement Falls Within the Range of Possible Judicial Approval

Although the Court is only making a preliminary evaluation of the Settlement at this point in the case, and thus must only evaluate the four criteria cited above, the Court can look to the factors that it will consider at the final fairness hearing to make a preliminary assessment as to whether the Settlement falls within the range of possible approval. The Fifth Circuit has cited the following six factors as those which a district court should take into consideration when evaluating a proposed class action settlement for final approval:

- (1) the existence of fraud or collusion behind the settlement;
- (2) the complexity, expense, and likely duration of the litigation;
- (3) the stage of the proceedings and the amount of discovery completed;
- (4) the probability of plaintiffs' success on the merits;
- (5) the range of possible recovery; and
- (6) the opinions of the class counsel, class representatives, and the absent class members.

Reed v. Gen. Motors Corp., 703 F.2d 170, 172 (5th Cir. 1983) (citing *Parker v. Anderson*, 667 F.2d 1204, 1209 (5th Cir. 1982) and *Pettway v. Am. Cast Iron Pipe Co.*, 576 F.2d 1157 (5th Cir. 1978)); see also *In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 217 (5th Cir. 1981). While preliminary approval of the Settlement does not necessitate a full and detailed analysis of these factors, a preliminary evaluation of these factors supports a finding that the Proposed Settlement falls within the range of possible judicial approval.

(a) Factor One: The existence of fraud or collusion behind the settlement

As stated above, there was no fraud or collusion whatsoever involved in the negotiation of the Settlement. See Caddell Decl. ¶ 27.

(b) Factor Two: The complexity, expense, and likely duration of the litigation

Given the high-stakes nature of this case, continued litigation (up to and including trial and any appeals) will be extremely complex, expensive, and lengthy. *Id.* ¶ 37. The litigation involves thousands of ambulances owned by hundreds of ambulance companies spread throughout the country. *Id.* The nature of the engine defects is complex, involving multiple engine components and manifesting in several different types of engine malfunctions. *Id.* Distinguishing malfunctions

caused by the defect from malfunctions caused by improper maintenance or other causes would have been difficult and expensive, with Defendant contesting causation. *Id.* Proof of damages caused by the defects would have been similarly complex. *Id.* Litigation would have been further complicated by Ford's limited warranty which purports to disclaim all implied warranties and to limit Plaintiffs' remedies to having Ford repair, replace, or adjust the defective components. *Id.* In order to recover additional remedies, Plaintiffs would have to demonstrate that Ford was unable to repair the defects and thus that the limited remedy failed of its essential purpose. *Id.* Ford's inability to repair the defects would have been a complex issue contested by Ford were this case to be litigated rather than settled. *Id.* Finally, this is a class action involving Plaintiffs from throughout the United States, which adds considerable complexity due to issues involving the potential applicability of the laws of different states. *Id.*

(c) *Factor Three: The stage of the proceedings and the amount of discovery completed*

The Parties are in the late stages of these proceedings and a significant amount of discovery has been completed. *See* Caddell Decl. ¶ 24-27. This litigation commenced with the filing of an original petition in the District Court of Jefferson County, Texas on November 3, 2006. Dkt. 1A. Ford removed the case to this Court on December 4, 2006. Dkt. 1. Plaintiffs amended their pleadings to refine their allegations, respond to legal challenges asserted by Ford, and add additional Plaintiffs to the case. Dkt. 30, 38, and 64. Plaintiffs conducted significant investigation, including reviewing documents from multiple ambulance owners and mechanics, and reviewing pleadings from litigation between Ford and Ford's supplier which manufactured the engine at issue. Caddell Decl. ¶ 26. Plaintiffs also conducted significant discovery, including deposing two key Ford

representatives with knowledge of the defects, reviewing millions of documents produced by Ford in response to Plaintiffs' production requests, and producing many witnesses for deposition. *Id.*

(d) Factor Four: The probability of plaintiffs' success on the merits

Plaintiffs are confident that they could succeed on the merits in this litigation, but recognize the defenses that will be raised by Ford and the limits of the damages that would be recoverable. Plaintiffs also acknowledge the reality that safe and reliable ambulances are needed by the public sooner rather than later. As discussed above, Ford's limited warranty purports to disclaim implied warranties and limit Plaintiffs' remedies to having Ford repair, replace, or adjust the defective components. Ford will argue that it never refused to provide the repairs its warranty required it to provide and thus that Plaintiff has no cognizable claim for any additional remedies. While Plaintiffs believe they could overcome Ford's position by arguing that Ford was unable to properly make these repairs, Plaintiffs recognize the difficulties they would face were they to litigate these claims and considered such difficulties when deciding to enter into the Settlement Agreement with Ford.

(e) Factor Five: The range of possible recovery

The range of possible recovery strongly supports approval of this Settlement because it provides the Class with a significant package of relief compared to what Plaintiffs could possibly recover in a favorable judgment in this litigation. The consideration provided under the Settlement is substantial. Plaintiffs negotiated for meaningful relief in multiple categories, including significant extensions of Ford's warranty to cover future repairs and engine replacements, reimbursement of expenses incurred for prior repairs and engine replacements, reimbursement for certain towing charges and deductibles, and additional relief to help Class Members get better performance from their engines.

Although the range of recovery for each Class Member varies based on the damages suffered by each particular Class Member, generally speaking, it is true that even were a Plaintiff to overcome all the legal and factual defenses raised by Ford, the Plaintiff would not be able to recover much more than it will recover via this Settlement. Additionally, there are components of the Settlement Agreement (most notably, the significant warranty extension) that would likely not be recoverable by a Plaintiff via a litigated judgment.

(f) Factor Six: The opinions of the class counsel, class representatives, and the absent class members

Class Counsel and at least four of the Class Representatives support the Settlement. Caddell Decl. ¶ 39. Plaintiffs' Counsel are unaware of any opposition from absent Class Members and anticipate that, once the Settlement is preliminarily approved and notice is given to all Class Members, the support for the Settlement will far outweigh any opposition. *Id.*

D. The Proposed Notice Program Satisfies Rule 23

The notice program requires Ford to send a detailed notice of the Settlement, in the form attached hereto as Exhibit C, by first-class U.S. mail to each Class Member at its last-known address. Ex. A at 23. Ford maintains up-to-date records of the Class Members through its Owner Warranty records and, for Notices returned to Ford as undeliverable, Ford has agreed to perform a reasonable search for a more current name and/or address and re-send the Notice. *Id.* Accordingly, Plaintiffs believe that most, if not all, of the Class Members will receive notice via direct mail. Caddell Decl. ¶ 40. Additionally, Plaintiffs will circulate the Notice to various ambulance and/or emergency medical service publications and industry organizations and make the Notice available on Caddell & Chapman's website. *Id.*

V. CONCLUSION

Based on the foregoing reasons, Plaintiffs respectfully request that the Court grant this Motion for Preliminary Approval of Proposed Settlement, provisionally certify the Class as defined herein, approve the Parties' proposed Notice to the Class and direct that Notice be disseminated to the Class as proposed, and schedule a hearing for final approval of the Settlement, Plaintiffs' Counsel's fee application, and the Class Representatives' proposed incentive payments.

Respectfully submitted,

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