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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **FOR THE COUNTY OF SAN FRANCISCO**  
**UNLIMITED JURISDICTION**

11 COORDINATION PROCEEDING SPECIAL )  
TITLE (Cal. R. Ct. 1550(b)) )

Judicial Council Coordination  
Proceeding Nos. No. 4298 and 4303

12 )  
13 AUTOMOBILE ANTITRUST CASES I, II )

CJC-03-004298 and CJC-03-004303

**CLASS ACTION**

14 \_\_\_\_\_ )  
15 This document relates to: )  
16 All Actions )

**PLAINTIFFS' REPLY IN SUPPORT OF  
(1) MOTION FOR FINAL APPROVAL OF  
SETTLEMENT WITH FORD CANADA;  
AND (2) MOTION FOR AN AWARD OF  
ATTORNEYS' FEES, REIMBURSEMENT  
OF EXPENSES, AND PAYMENT OF  
SERVICE AWARDS**

Date: October 5, 2022

Time: 10:00 a.m.

Dept: 306

Judge: Honorable Anne-Christine Massullo

Date Complaint Filed: October 6, 2003  
(Consolidated Amended Class Action  
Complaint)

1 **I. INTRODUCTION**

2 Plaintiffs submit this reply memorandum in support of their (1) motion for final approval of the  
3 proposed Settlement Agreement between Plaintiffs and Defendant Ford Motor Company of Canada,  
4 Limited (“Ford Canada”), which this Court preliminarily approved on June 23, 2022; and (2) motion  
5 for an award of attorneys’ fees, reimbursement of expenses, and payment of service awards. This reply  
6 is supported by the Declaration of Brian Devery of A.B. Data, Ltd. (“Devery Declaration” or “Devery  
7 Decl.”) and the Reply Declaration of Todd A. Seaver (“Reply Seaver Decl.”), both filed concurrently  
8 herewith.

9 **II. UPDATE ON NOTICE AND CLAIMS PROCESS**

10 **A. The Notice Plan Is Complete, Resulting in Over Four Million Postcard Notices**  
11 **Mailed to Class Members**

12 The Court-appointed notice and claims administrator, A.B. Data, Ltd., (“Settlement  
13 Administrator”) successfully carried out each component of the Court-approved notice plan within the  
14 timeframe set forth in the Court’s Preliminary Approval Order, as revised by the Stipulation and Order  
15 dated August 23, 2022. The notice plan was comprehensive and multifaceted, including direct mailed  
16 notice, email notice, internet advertising, print media, and earned media (i.e., press release).

17 **Direct Mailed Notice.** Direct mailed notice is the gold standard of class action notice. Here, the  
18 Settlement Administrator worked with IHS Markit, the leading provider of automotive industry data, to  
19 obtain over 5 million address records for potential Class Members. Devery Decl. ¶ 7. After data  
20 processing and deduplication efforts, the Settlement Administrator mailed 3,978,914 Postcard Notices  
21 to potential Class Members based on the IHS Markit data. *Id.* ¶¶ 8, 11, 15. The Settlement  
22 Administrator further mailed an additional 3,515 potential Class Members based on mailing lists for  
23 fleet buyers and lists of those who filed claims in prior settlements in this case. *Id.* ¶¶ 5, 6, 14.

24 **Emailed Notice.** In addition to mailed notice, the Settlement Administrator was able to obtain  
25 from IHS Markit email addresses for 1,342,105 potential Class Members. The Settlement Administrator  
26 emailed the Short-Form Notice to these addresses, of which over 800,000 were successfully sent and  
27 not bounced back. Devery Decl. ¶¶ 9-10, 12-13.

1           **Internet Advertising.** The robust digital media campaign placed advertisements regarding the  
2 settlement across premium websites, digital networks, social media, and through sponsored Google  
3 search listings. Devery Decl. ¶¶ 19, 21, 22. The digital campaign was more successful than anticipated,  
4 resulting in over 325 million impressions. *Id.* ¶ 20.

5           **Print Media.** The Settlement Administrator placed the Short-Form Notice in People magazine  
6 and in 31 leading regional newspapers across California, to reach those Class Members who prefer to  
7 receive content via traditional print media. Devery Decl. ¶¶ 23-24.

8           **Earned Media.** The Settlement Administrator also issued the content of the Short-Form Notice  
9 in a press release, in both English and Spanish, with the goal of being picked up by additional news  
10 outlets. Devery Decl. ¶ 25.

11           **Settlement Website.** The Settlement Administrator created and employed an informative and  
12 easy-to-use website for the Settlement, where Class Members can obtain information about the  
13 Settlement, including by viewing the Long-Form Notice and key Court documents. The settlement  
14 website also facilitated online claims filing through a straightforward process. Nearly 300,000 unique  
15 visitors have viewed the settlement website. Devery Decl. ¶¶ 26-28.

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17           **B.       The Claims Process Is Well Underway, With Tens of Thousands of Claims Having  
                  Been Filed**

18           The notice campaign has been a resounding success. In the few short weeks since the claims  
19 filing period began, over 65,000 claims have been filed by Class Members, representing 71,189 vehicle  
20 purchases or leases. Devery Decl. ¶ 31. Plaintiffs’ counsel expect to see substantial additional claims in  
21 the remaining three months of the claims filing period, which ends December 31, 2022. *See id.*

22           **C.       Only Two Objections Have Been Submitted**

23           Of the approximately four million Class Members, only two have submitted objections by the  
24 September 12, 2022 deadline: Tony R. (“Objection No. 1”) and Troy S. (“Objection No. 2”). These  
25 objections are attached as Exhibits J and K, respectively, to the Devery Declaration.  
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1 **III. ARGUMENT**

2 **A. The Class’s Response to the Settlement and Fee Motion Has Been Overwhelmingly**  
3 **Positive**

4 Generally, settlement agreements are presumed fair when: “(1) the settlement is reached  
5 through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and  
6 the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) *the percentage of*  
7 *objectors is small.” Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996), *as modified*  
8 (Sept. 30, 1996) (emphasis added).

9 “[T]he absence of a large number of objections to a proposed class action settlement raises a  
10 strong presumption that the terms of a proposed class settlement action are favorable to the class  
11 members.” *Nat’l Rural Telecomm. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004).  
12 *See also Jimenez v. Allstate Ins. Co.*, No. LA CV10-08486 JAK (FFMx), 2021 WL 4316961, at \*8  
13 (C.D. Cal. Sept. 16, 2021) (“A low proportion of opts outs and objections indicates that the class  
14 generally approves of the settlement.”) (citation and internal quotation marks omitted).

15 Here, out of the nearly four million Postcard Notices sent to Class Members, only two Class  
16 Members objected to the Settlement. The percentage of the Class objecting to the Settlement is only  
17 0.00005%, a minute fraction of the Class, which is an indication that the Class approves of the  
18 Settlement.

19 Moreover, instead of objecting, Class Members have actively filed claims at a rapid pace. In  
20 just the first few weeks of the claims filing period, over 65,000 claims have been filed by Class  
21 Members, representing over 71,000 eligible vehicle purchases or leases. This exceeds the 45,000  
22 minimum vehicle level included in the Settlement Agreement. *See* Settlement Agreement (filed as  
23 Ex. A to the Decl. of Todd A. Seaver in Supp. of Pltfs.’ Mot. for Preliminary Approval of Settlement,  
24 filed on April 6, 2022) ¶ 21.

25 Finally, the claims process is far from complete, and Plaintiffs expect additional claims will  
26 continue to come in over the next three months. Indeed, none of the claims to date have been filed by  
27 fleet purchasers. In the Settlement Administrator’s experience, claimants such as fleet purchasers are  
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1 more likely to file claims toward the end of the claims filing period. In each of the prior settlements in  
2 this case, fleet purchasers filed claims. Thus, Plaintiffs expect a significant volume of claims will be  
3 filed in the remaining months of the claims filing period.

4 **B. The Two Objections Should Be Overruled**

5 Plaintiffs appreciate the feedback provided by the two Class Members who filed objections to  
6 the Settlement.<sup>1</sup> However, none of the comments made by the objecting Class Members weigh against  
7 granting final approval to the Settlement and the Fee Motion.

8 **1. Objection No. 1 (Tony R.) Should Be Overruled**

9 Tony R. objects to the Settlement primarily on the basis that he “did not personally observe any  
10 evidence of market manipulation.” He further states that “[t]he dealer at the time offered incentives  
11 typical for new car sales, and my purchase price was less than MSRP.” For these reasons, Tony R.  
12 believes that “the plaintiffs and their attorneys are engaging in a frivolous and unbased class action.”

13 Tony R. further objects on the grounds that “these class action lawsuits further erode the  
14 financial positions of the Defendant corporations and the logical and reasonable response for the  
15 corporation would be to raise future prices to account for potential future liabilities.” Tony R.  
16 concludes that “[c]onsumers like myself will likely be presented with higher vehicle prices in the  
17 future due to the greedy lawyers bringing these lawsuits.”

18 None of Tony R.’s arguments undercuts the fairness, reasonableness, or adequacy of the  
19 Settlement or the appropriateness of Plaintiffs’ fee request.

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23 <sup>1</sup> The two objections are Exhibits J (Objection No. 1) and K (Objection No. 2) to the Devery  
24 Declaration. To maintain the objectors’ privacy, their identifying information is not revealed in this  
25 Reply and it is redacted from Exhibits J and K to the Devery Declaration. The Chambers copies and  
26 the copies served on Defendants are unredacted. If the Court directs, Plaintiffs will move to seal in  
27 support of the redactions. *See* Lee Smalley Edmon & Curtis E.A. Karnow, *California Practice Guide: Civil Procedure Before Trial* ¶ 9:416.1 (2022) (“Many, if not most, motions to seal are unnecessary because the judge does not need to review the confidential material in order to decide the underlying motion. In such cases, simply file the redacted document in the public file and explain the redaction in, e.g., the accompanying memorandum of points and authorities.”). *See also* Seaver Decl. ¶ 4.

1 First, that Tony R. did not personally observe any anticompetitive conduct when he purchased  
2 his vehicle is of no moment. It is not surprising that Tony R. was unaware of the alleged misconduct,  
3 given that the key meetings at the heart of Plaintiffs’ alleged conspiracy were held in secret in Canada.

4 Second, even though Tony R. may have paid less than MSRP, that does not mean the  
5 conspiracy Plaintiffs alleged was baseless or that the conspiracy had no effect. According to Plaintiffs’  
6 expert economists, all consumers—including Tony R.—would have paid less absent the alleged  
7 conspiracy, no matter the price the consumer was able to negotiate with the dealer.

8 This lawsuit was far from frivolous. In a lengthy and detailed opinion, after examining  
9 voluminous evidence, the Court of Appeal held that a reasonable juror could conclude that Ford  
10 Canada and other automakers conspired to choke off lower-priced Canadian vehicles from being  
11 supplied to the U.S. market, including California. *In re Auto. Antitrust Cases I & II*, 1 Cal. App. 5th  
12 127 (2016). This Court further made pretrial rulings consistent with the conclusion that Plaintiffs’ case  
13 should be decided by a jury. In short, frivolous antitrust cases do not make it to the trial stage.

14 Third, Tony R.’s concern about the financial position of the defendant corporations is  
15 misplaced.<sup>2</sup> The fairness, reasonableness, and adequacy of this class action Settlement is judged from  
16 the vantage point of the Class, not whether the Defendant will suffer any ill effects. Moreover, Tony  
17 R.’s objection misses a key point: Plaintiffs’ alleged conspiracy already resulted in higher prices paid  
18 by consumers during the Class Period *and* higher profits for the defendant corporations. The  
19 Settlement is a compromise, which is meant to provide fair, reasonable, and adequate compensation  
20 for Class Members who paid higher prices. The Settlement does not amount to a full disgorgement of  
21 the defendant corporations’ ill-gotten gains.

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25 <sup>2</sup> Arguably, Tony R.’s comments here regarding the defendant corporations financial position and  
26 alleged higher future prices do not amount to a specific objection regarding *this* Settlement, but appear  
27 to be just a general comment about class actions in general. We have nonetheless addressed each of his  
28 arguments.

1                   **2.       Objection No. 2 (Troy S.) Should Be Overruled**

2           Troy S. makes the following objections: (1) he is concerned about how notice is carried out  
3 with respect to members of the United States military, and objects to the notice only to the extent it  
4 was not reliably disseminated to servicemembers, noting that he is a former member of the military  
5 and asserts he did not receive notice of the two *prior* settlements in this litigation; (2) he objects that  
6 the settlement amount is not high enough in part because the overcharge amounts estimated by  
7 Plaintiffs' expert economist are too low; and (3) he objects to the requested attorneys' fee, asserting  
8 that Plaintiffs' counsel should be awarded no more than a 20% fee, including costs, because he claims  
9 he was not made aware of the prior settlements in this case and Plaintiffs' counsel's requested fee  
10 percentage is too high compared to the percentage of damages Class Members will recover.

11           None of Troy S.'s arguments diminishes the fairness, reasonableness, and adequacy of the  
12 Settlement and the appropriateness of Plaintiffs' fee request. First, this Court approved, and the  
13 Settlement Administrator carried out, a robust, multifaceted notification plan. As noted, nearly four  
14 million Postcard Notices were mailed to Class Members. Devery Decl. ¶¶ 14-15. Given that the Class  
15 Period began over 20 years ago, locating Class Members required an extensive effort by the  
16 Settlement Administrator. And, the notice plan was a success. Over 65,000 Class Members have  
17 already filed claims. *Id.* ¶ 31. And, indeed, Troy S. himself received the Postcard Notice in the mail.  
18 Contrary to Troy S.'s complaints, publication in local papers and via the internet were not the only  
19 components of the notice plan. The publication efforts supplemented the extensive direct mailed notice  
20 campaign to provide more than adequate notice to the Class.<sup>3</sup> *Id.* ¶¶ 19-28.

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23           <sup>3</sup> As to Troy S.'s claim that he did not receive notice of the prior settlements in this case, that objection  
24 is not relevant to the fairness, reasonableness, or adequacy of the Ford Canada Settlement here. In any  
25 event, the notice plans for the prior settlements were approved by this Court or the federal MDL Court,  
26 as applicable, as providing the best notice practicable under the circumstances. Direct mailed notice  
27 was not possible in those prior settlements due to the much larger class sizes in those settlements (the  
28 Toyota/CADA Settlements covered car purchasers in 20+ states, and the GM Canada Settlement  
covered car purchasers in five states), which made mailed notice economically infeasible. Further, car  
purchaser address data was not as readily available a decade ago as compared to today.

1 With regard to Troy S.'s concern about mailed notice to military servicemembers, the Devery  
2 Declaration describes the standard steps that were taken in this notice program to ensure military  
3 servicemembers are accounted for and included in the dissemination of mailed notice. *See* Devery  
4 Dec. ¶ 11 (describing standard steps to ensure military servicemembers receive mailed notice).

5 As to Troy S.'s complaint that he did not have enough time to review the case before  
6 submitting his objection, it is unclear why he did not receive his notice until September 7, 2022. The  
7 Settlement Administrator completed mailed notice on August 24, 2022, and indeed, the record  
8 indicates that Troy S.'s notice was mailed on August 23, 2022. In any case, Class Members only need  
9 to be provided with a reasonable amount of time to review information regarding the Settlement,  
10 particularly the Long-Form Notice, to enable a Class Member to formulate an objection, if desired. It  
11 is not necessary to provide each Class Member with time to review all aspects of the case. For a  
12 complex, multi-decade antitrust litigation such as this one, it could take months to review all the  
13 pleadings, motions, and evidence submitted by the parties in the past 19 years. Instead, the Court  
14 approved the Long-Form Notice, which contains sufficient information to adequately inform each  
15 Class Member of the nature of the case, the Settlement reached, and the options available for each  
16 Class Member to consider. The purpose of the Long-Form Notice is to relay the information a Class  
17 Member needs to make informed decisions, in plain English, and within a reasonable amount of time.  
18 That Troy S. was able to successfully formulate an objection by the deadline evidences that the time  
19 period provided in the Court-approved notice plan was sufficient.

20 In any event, Plaintiffs' counsel has reached out to Troy S. directly via both phone and email to  
21 address the questions Troy S. states he has about the Settlement and the litigation, and through those  
22 communications have shared information with Troy S. regarding mailed notice to military  
23 servicemembers and the date that Troy S.'s notice was in fact mailed. Seaver Decl. ¶ 5.<sup>4</sup> Indeed, both

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25 <sup>4</sup> As noted in the Devery Declaration, in the case of potential Class Members currently serving in the  
26 United States Armed Forces, mail sent to military addresses are forwarded internally by the service  
27 branch where potential Class Members are enlisted. Devery Decl. ¶ 11. For those military personnel  
28 residing off base, it is the responsibility of the potential Class Member to file a change of address with  
the United States Postal Service, in which case the address will be updated. *Id.*

1 Plaintiffs' counsel and the Settlement Administrator have fielded numerous calls regarding the  
2 Settlement and answered Class Members' questions. Seaver Decl. ¶ 3; *see also* Devery Decl. ¶ 29.  
3 During those calls, Class Members have expressed overwhelmingly positive views regarding the  
4 Settlement. Seaver Decl. ¶ 3.

5 Second, although Troy S. may believe that the overcharges estimated by Plaintiffs' experts are  
6 too low, Plaintiffs' expert analysis has been subjected to all manner of testing through the crucible of  
7 this litigation, through depositions of Plaintiffs' experts, criticisms lodged by defendants' numerous  
8 experts, and through *Daubert/Sargon* motions. Defendants, of course, contend that Class Members  
9 were not overcharged. Whether Class Members were overcharged at all, and if so to what degree, were  
10 issues that were to be decided by a jury. The Settlement Amount here reflects the positions of the  
11 parties and their experts and the risks both sides faced. The judgment of the parties as to the  
12 appropriate Settlement Amount, reached through arm's-length negotiation under the watchful  
13 guidance of the mediator, Judge Infante, should be given due credit here.

14 Third, the Court should reject Troy S.'s objection that Plaintiffs' request for a fee award equal  
15 to one-third of the Settlement Fund is unreasonably high, and his request that Plaintiffs' counsel  
16 should only receive a 20% fee, including costs. As set forth in Plaintiffs' Motion for An Award of  
17 Attorneys' Fees and Reimbursement of Expenses, as a matter of law the California Supreme Court has  
18 already determined that a 33.3 percent fee award is reasonable in cases such as this. *UFCW & Emp'rs*  
19 *Ben. Trust v. Sutter Health*, No. CGC-14-538451, 2021 WL 5027180, at \* 6 n.20 (Cal. Super. Ct. San  
20 Francisco Cty. Aug. 27, 2021); *Ha v. Google, Inc.*, No. 116cv290847, 2018 WL 1052448, at \*2 (Cal.  
21 Super. Ct. Feb. 7, 2018); *Thomas v. Universal Home Care, Inc.*, No. BC600623, 2018 WL 1751693, at  
22 \*5 (Cal. Super. Ct. L.A. Cty. Jan. 11, 2018); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11  
23 (2008); *Marine v. Giltner Inc.*, No. BC587123, 2017 WL 6888559, at \*4 (Cal. Super. Ct. L.A. Cty.  
24 Sept. 19, 2017). Moreover, Troy S.'s objection does not recognize or take into account the extensive  
25 efforts of Plaintiffs' counsel to litigate this complex case for 19 years to the eve of trial. The fact that  
26 there is a \$82 million all-cash Settlement up for approval at all is a testament to Plaintiffs' counsel's  
27 efforts and skill overcoming the numerous obstacles this case has faced in the past two decades. This  
28

1 was not a quick settlement representing a windfall for Plaintiffs' counsel. Plaintiffs' counsel never  
2 gave up on this case, and they continued to zealously advocate on behalf of the Class until the end.  
3 Plaintiffs' counsel's efforts more than justify the 33.3% fee requested.<sup>5</sup>

4 **IV. CONCLUSION**

5 For the foregoing reasons, Plaintiffs respectfully submit that the Court should overrule the two  
6 objections, grant Plaintiffs' motion for final approval of the Ford Canada Settlement and grant  
7 Plaintiffs' motion for an award of attorneys' fees, reimbursement of expenses, and payment of service  
8 awards

9 Dated: September 23, 2022

Respectfully submitted,

10 **BERMAN TABACCO**

11  
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24 \_\_\_\_\_  
25 <sup>5</sup> Finally, Troy S.'s questions or concerns about California vehicle emissions standards and the role  
26 they played in the case do not take away from the fairness, reasonableness, or adequacy of the  
27 Settlement. Whether and to what extent California emissions standards had any effect on Ford  
28 Canada's liability or the damages sought was a contentious issue, even on the eve of trial. What's  
important for settlement approval is that the parties were fully aware of the arguments and evidence on  
each side of this issue, and they negotiated the Settlement with that knowledge and at arm's-length.

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