

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE

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TUESDAY, THE 30th

JUSTICE RAIKES

DAY OF JANUARY, 2018

BETWEEN:

RICHARD MARCHAND and KENNETH MORTIER

Plaintiffs

—and—

FORD MOTOR COMPANY and FORD MOTOR COMPANY OF CANADA LTD.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the Plaintiffs in this action for, *inter alia*, an order certifying this action as a class proceeding in part and for settlement purposes only; approving the Settlement Agreement and the Approval Notices; setting the Opt-Out Deadline; discontinuing the claims of the Plaintiff Richard Marchand asserted in respect of the Excluded Vehicles; and approving honorarium payments to the Plaintiffs was heard this day at the Ontario Superior Court of Justice, 245 Windsor Avenue, Windsor, Ontario;

ON READING the materials filed, including the Settlement Agreement, and on hearing the submissions of Class Counsel and counsel for the Defendants:

1. **THIS COURT DECLARES** that, except to the extent they are modified by this Order, the definitions set out in the Settlement Agreement, attached hereto as **Schedule "A"**, apply to and are incorporated into this Order.

2. **THIS COURT ORDERS** that the claims asserted by the Plaintiff Richard Marchand, on his own behalf and on behalf of all current and former owners and lessees of the Excluded Vehicles, are hereby discontinued on a without costs and without prejudice basis.

3. **THIS COURT ORDERS** that this action is hereby certified as a class proceeding for settlement purposes only for the National Settlement Class defined as:

All persons resident in a Canadian province or territory, except for persons resident in the province of Quebec, who currently own or lease, or who in the past owned or leased, a model year 2011-2015 Ford Explorer that was sold or leased in any province or territory of Canada, excluding:

(a) Ford's employees, officers, directors, agents, and representatives, and their family members;

(b) Presiding judges and Class Counsel;

(c) all persons who have previously executed and delivered a release or releases in favour of Ford US and / or Ford of Canada of claims relating to the presence of Exhaust Odour in a Class Vehicle;

(d) all persons (a) who commenced one or more individual proceedings asserting claims of any nature relating to the alleged presence of Exhaust Odour in a Class Vehicle (including a lawsuit or a proceeding under CAMVAP) and (b) who did not or does not voluntarily dismiss or discontinue such proceeding with prejudice prior to the Opt-Out Deadline; and

(e) all those otherwise in the National Settlement Class that properly opt out of the National Settlement Class.

4. **THIS COURT ORDERS** that Kenneth Mortier is hereby appointed the representative plaintiff for the National Settlement Class.

5. **THIS COURT ORDERS** that the following issue is common to the National Settlement Class for certification for settlement purposes only:

Did the Class Vehicles, or any of them, contain a defect which caused exhaust odour to enter the passenger compartment?

6. **THIS COURT DECLARES** that the Settlement is fair, reasonable, and in the best interests of the Class.

7. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to section 29 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.

8. **THIS COURT DECLARES** that this Order will become effective only if and when the Settlement Agreement is also approved by the Superior Court of Québec in the Québec Action. If the Superior Court of Québec does not approve the Settlement Agreement, this Order will be null and void.

9. **THIS COURT ORDERS** that the Settlement Agreement shall be implemented in accordance with its terms.

10. **THIS COURT ORDERS** that all provisions of the Settlement Agreement (including its Recitals and Definitions) form part of this Order and are valid and binding on the Plaintiffs, Class Members, and Defendants, including persons who are minors or under a disability, as defined in the *Rules of Civil Procedure* (the "Rules").

11. **THIS COURT ORDERS** that the need for service or notice of this Order or any further or subsequent steps in this Action on the Office of the Children's Lawyer or the Public Guardian and Trustee, as well as other requirements in Rule 7 of the Rules, are hereby dispensed with.

12. **THIS COURT ORDERS** that the form and content of the Approval Notices, substantially in the form attached as **Schedule "B"** (Short Form) and **Schedule "C"** (Long Form), are approved.

13. **THIS COURT ORDERS** that the Approval Notices shall be distributed by the settlement Administrator in the manner described in the Notice Plan for Approval Notice attached as **Schedule "D"**.

14. **THIS COURT ORDERS** that the newspaper publication of the short-form Approval Notice, as described in **Schedule "D"** hereto, shall occur on February 17, 2018 (for newspapers with Saturday editions) or the next available publication date (for newspapers which do not have Saturday editions).

15. **THIS COURT ORDERS** that the direct emailing and mailing of the short-form and long-form Approval Notices, the Claim Form, and the Opt-Out Form as described in **Schedule "D"** hereto, shall occur on or before February 16, 2018.

16. **THIS COURT DECLARES** that the Approval Notices and the Notice Plan for Approval Notice constitute fair and reasonable notice to the National Settlement Class and to all current and former owners and lessees of the Excluded Vehicles of the approval of the Settlement, and of the right of National Settlement Class Members to opt-out of the Settlement, and of procedures by which National Settlement Class Members may make a claim for benefits under the Settlement, and to satisfy the requirements of sections 19 and 29 of the *Class Proceedings Act, 1992*.

17. **THIS COURT ORDERS** that any person who wishes to exclude him, her, or itself from the Settlement must do so by submitting to the Settlement Administrator an Opt-Out Form, together with the information required by the Opt-Out Form, postmarked on or before April 17, 2018 (the "Opt-Out Deadline").

18. **THIS COURT ORDERS** that any person who validly excludes him, her or itself from the Settlement in accordance with paragraph 17 of this Order is not bound by the Settlement Agreement and shall no longer participate or have the opportunity in the future to participate in the Settlement.

19. **THIS COURT ORDERS** that any person who is a member of the National Settlement Class and who does not validly exclude him, her, or itself from the Settlement in accordance with paragraph 15 of this Order on or prior to the Opt-Out Deadline will be bound by the Settlement Agreement,

including the releases contained therein, and may not exclude him, her, or itself from the Settlement in the future, whether or not a claim for benefits under the Settlement Agreement is submitted by that person.

20. **THIS COURT ORDERS** that the form and content of the Claim Form, substantially in the form attached as **Schedule "E"** is approved.

21. **THIS COURT ORDERS** that the form and content of the Opt-Out Form, substantially in the form attached as **Schedule "F"** is approved.

22. **THIS COURT ORDERS** that the release of the Released Claims in accordance with Section 5 of the Settlement Agreement is approved and that the Released Claims of all Settlement Class Members, whether known or unknown, suspected or unsuspected, that they had, now have or, absent this Settlement Agreement, may in the future have had against the Releasees are hereby released and forever extinguished.

23. **THIS COURT ORDERS** that the Settlement Administrator, RicePoint Administration Inc., shall administer the Settlement in accordance with the Settlement Agreement.

24. **THIS COURT ORDERS** that the Settlement Administrator shall provide Class Counsel, who shall provide it to the Court, a report at the conclusion of the administration of the claims process, accounting for all monies it has administered under the Settlement, and detailing all monies it has distributed to Eligible Claimants.

25. **THIS COURT ORDERS** that if the Settlement Agreement is terminated in accordance with its terms, then, without restricting the application of the provisions of the Settlement Agreement:

(a) this Order shall be set aside and be of no further force or effect; and

- (b) all negotiations, statements and proceedings relating to the Settlement Agreement shall be deemed to be without prejudice to the rights of the Parties, and the Parties shall be deemed to be resorted to their respective positions existing immediately before the Settlement Agreement was executed.

26. **THIS COURT ORDERS AND ADJUDGES** that, upon the occurrence of the Effective Date, this Action shall be and is hereby dismissed without costs and with prejudice, except as to personal injury claims, if any, of National Settlement Class Members which claims are not included in this proceeding and are not barred by this Order.

27. **THIS COURT DECLARES** that the Parties may by written agreement, and without further notice to the National Settlement Class or order of the Court, amend, modify or expand the terms and provisions of the Settlement Agreement, provided that any such changes are consistent with this Order and do not limit the rights of the members of the National Settlement Class under the Settlement Agreement.

28. **THIS COURT ORDERS** that honorarium payments in the amount of \$5,000 to each of the Plaintiffs are hereby approved.

29. **THIS COURT DECLARES** that Counsel Fees payable to Class Counsel will be either negotiated and submitted for approval or determined by this Court in accordance with Section 10.2 of the Settlement Agreement.



The Honourable Justice Russell Raikes

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| ENTERED AT WINDESOR |
| In Book No. <u>29</u> |
| re Document No. <u>244</u> |
| on <u>MAR 02 2018</u> |
| by <u>R</u> |