

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE**

EDWIN BORLAY and LARRY MITCHELL,)	Class Action
on behalf of themselves and all others)	No. 3-02-0382
similarly situated,)	
)	
Plaintiffs,)	Judge Trauger
)	Magistrate Judge Griffin
)	
v.)	
)	
PRIMUS AUTOMOTIVE FINANCIAL)	
SERVICES, INC., a New York corporation,)	
PRIMUS FINANCIAL SERVICES, a division)	
of Ford Motor Credit Company,)	
)	
Defendants.)	

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the Class Representative, on behalf of himself and the Class Members, the Individual Plaintiffs, and Ford Motor Credit Company (“Ford Credit”).¹

1. Introduction

1.1 This Litigation was filed on April 16, 2002, challenging what the Plaintiffs referred to as Defendant’s “mark-up policy” as being in violation of the Equal Credit Opportunity Act, 15 U.S.C. § 1691 *et seq.* (the "ECOA"). Defendant has denied and continues to deny all of Plaintiffs’ allegations and further contends that class certification is improper given the individualized nature of these transactions and the involvement of independent dealers, among other grounds.

¹ The automobile financing business previously conducted by Primus Automotive Financial Services, Inc. and Primus Financial Services, a division of Ford Motor Credit Company, has been absorbed into Ford Motor Credit Company, a Delaware corporation, and is no longer being operated as a separate corporation or separate division.

1.2 On January 18, 2005 the Court granted certification of a class of African-American customers pursuant to Federal Rules of Civil Procedure 23 (b)(2) and 23 (c)(4) for the purpose of determining liability under the ECOA, and, if so, for considering Plaintiffs' request for declaratory and injunctive relief.

1.3 The case went to trial in March 2005 and at the conclusion of trial the Court announced its intention to enter judgment for Plaintiffs. On March 16, 2005 the Court ordered the Parties to mediation on the issue of remedy.

1.4 The Parties attended formal mediation before retired U.S. Magistrate Edward Infante in San Francisco in July 2005 and reported to the Court in August 2005 that they had not reached an agreement.

1.5 In November 2005 a Settlement Agreement was filed in the U.S. District Court for the Southern District of New York in *Joyce Jones et al. v. Ford Motor Credit Company*, Case No. 00-CIV-8330. *Jones* is a related case that essentially brought the same claims raised in this case against Ford Motor Credit Company. This Settlement Agreement is designed to be consistent with the *Jones* settlement.

1.6 This Litigation is four years old and has been expensive and time consuming. In the interest of avoiding the expense, delay, inconvenience, and risk of further litigation in the trial and appellate courts, the Parties desire to resolve the dispute and to fully, finally and forever resolve, discharge and settle the Litigation.

1.7 The Parties intend to seek the entry of the Preliminary Approval Order attached hereto as Exhibit 1 approving this Settlement Agreement. The Parties' agreement is based on the representations, mutual promises, obligations, and good and valuable consideration set forth in this Settlement Agreement.

2. **Party Defendant and Litigation Settled**

The Defendants in this action are PRIMUS Automotive Financial Services, Inc., and Ford Motor Credit Company doing business under the trade names PRIMUS Financial Services, Mazda American Credit, Jaguar Credit, Land Rover Capital Group, Subaru American Credit, American Suzuki Automotive Credit, and/or Kia Financial Services. This injunctive relief included in this settlement applies only to contracts assigned to Ford Credit under the trade names PRIMUS Financial Services, Mazda American Credit, Jaguar Credit, Land Rover Capital Group, Subaru American Credit, American Suzuki Automotive Credit, and/or Kia Financial Services. Ford Credit does not currently do business under the three preceding trade names and did not at the time of trial.

3. **Definitions**

As used in this Settlement Agreement, the terms set forth in this section in boldface type will have the following meanings:

3.1 Annual Percentage Rate or “APR.” The measure of the cost of credit, expressed as a yearly rate, as defined in Regulation Z, 12 C.F.R. Part 226, implementing the Truth in Lending Act, 15 U.S.C. § 1601, *et seq.*

3.2 Buy Rate. The minimum percentage rate that Ford Credit uses to accept assignment of a Contract from a dealer.

3.3 Class Complaint. The Amended Complaint to be filed by Plaintiffs in this Litigation upon approval of the Court, in the form attached as Exhibit 2.

3.4 Class Counsel. Clint W. Watkins of the Law Office of Clint Watkins, Brentwood, Tennessee; Michael E. Terry of Terry & Gore, Nashville, Tennessee; Wyman O. Gilmore and John Barney of Gilmore Law Office, Grove Hill, Alabama; Stuart T. Rossman of

the National Consumer Law Center, Boston, Massachusetts; and John Crowder and R. Edwin Lamberth of Cunningham, Bounds, Crowder, Brown & Breedlove, Mobile Alabama.

3.5 Class Members. All Black consumers who have entered or will enter into a retail installment contract that was or that will be assigned to Ford Motor Credit Company doing business as PRIMUS Automotive Financial Services, PRIMUS Financial Services, Mazda American Credit, Land Rover Capital Group, Jaguar Credit, Subaru American Credit, American Suzuki Automotive Credit, or Kia Financial Services during the period January 1, 1990 to the Effective Date of this Settlement Agreement.

3.6 Class Representative. Edwin Borlay is the sole Class Representative due to the death of former Class Representative Larry Mitchell.

3.7 Confidential Information. All documents and things produced as discovery materials by the Parties or any third party or any of the Parties' expert witnesses, during the course of this Litigation, including, without limitation, all deal jackets, contract information, customer information, electronic data, data dictionaries, dealer bulletins, credit information, account information, marketing materials, internal memoranda and other communications, audio recordings, and all reproductions of these discovery materials, whether photocopies, scanned copies, electronic copies, and printouts or copies created by any other method of reproduction. Notwithstanding the above, all documents and information described in this paragraph that were filed in the public record during the course of this Litigation, unless filed under seal, shall not be deemed Confidential Information.

3.8 Contract. A motor vehicle retail installment sale contract between a motor vehicle dealership and a vehicle purchaser.

3.9 Court. The United States District Court for the Middle District of Tennessee.

3.10 ECOA. Equal Credit Opportunity Act, 15 USC § 1691 *et seq.*, and its implementing Regulation B, 12 C.F.R. Part 202.

3.11 Effective Date. The last to occur of the following: (a) if no objection and no appeal are filed to the Settlement, the 46th day after entry of the Final Judgment without modification; (b) if an objection is filed and no appeal or petition for review of the Final Judgment is sought, the 46th day after entry of the Final Judgment without modification; (c) if an appeal or petition for review of the Final Judgment is filed, the 46th day after (i) such Final Judgment is affirmed or the appeal or petition for review is dismissed or denied, provided that the Final Judgment is not reversed or modified by an appellate court other than changes to formatting of the documents or to any typographical errors in them, unless the Parties agree in writing that the changes are not material and (ii) such Final Judgment is no longer subject to further judicial review in any court.

3.12 Final Judgment. The Final Judgment and Order of Dismissal With Prejudice to be rendered by the Court consistent with this Settlement Agreement in the form attached as Exhibit 3.

3.13 Individual Plaintiffs. Valerie McSterling and the Estate of former Class Representative Larry Mitchell, deceased.

3.14 Litigation. The lawsuit pending in the Court styled, *Edwin Borlay, et al. v. Primus Automotive Financial Services, Inc. et al.*, Case No. 3-02-0382.

3.15 Notice. The Notice of Proposed Class Action Settlement in the form attached as Exhibit A to the Preliminary Approval Order.

3.16 Parties. (1) The Class Representative, on behalf of himself and the Class Members; (2) The Individual Plaintiffs; and (3) Ford Motor Credit Company as described in Section 2.

3.17 Preliminary Approval Order. The Order of Preliminary Approval of Settlement in the form attached as Exhibit 1.

3.18 Settlement. The full and final compromise, settlement and dismissal of the Litigation consistent with the terms of this Settlement Agreement.

3.19 Settlement Agreement. This document including the text and exhibits of this Settlement Agreement, which has been signed by the Class Representative, the Individual Plaintiffs, Class Counsel and Ford Credit or its counsel.

3.20 Special Rate Programs. Rate programs available from time to time for the purchase of new or used automobiles in which the APR is less than or equal to the standard Buy Rate.

3.21 Term. Unless otherwise specified, this Settlement Agreement is effective for a three (3) year period beginning on the Effective Date.

4. Return of Confidential Information and Other Discovery

The Parties, on behalf of themselves, their counsel, and their expert witnesses and consultants as well as others retained by them, acknowledge that during the course of the Litigation, they have received Confidential Information. Not later than thirty (30) days after the Effective Date, the Parties and their counsel will discard all Confidential Information produced to them by the opposing side and will certify under oath that they and their expert witnesses and consultants do not retain any copies or summaries or compilations or indices of such information. Within the same time period, the Parties and their counsel will identify the expert witnesses, outside consultants and any other individuals or entities to whom such Confidential Information was given, and will advise those persons of this requirement and will ensure their

compliance with it. The Parties and their counsel also will not use such Confidential Information learned or obtained in this Litigation for any other purpose. Notwithstanding the above, all documents and information described in this paragraph that were filed in the public record (unless under seal) during the course of this Litigation will not be subject to the provisions of this paragraph.

5. Non-Disparagement

The Parties and their respective counsel agree to refrain from disparaging each other publicly or in the media regarding any issue related to this Litigation. The Parties and their respective counsel agree to refrain from taking any action designed to harm the public perception of Defendants, or Defendant's product or service, the Class Representative, the Individual Plaintiffs or Class Counsel regarding any issue related to this Litigation, except the Parties may provide sworn testimony if required by compulsory process initiated by an independent third party.

6. Denial of Liability

Ford Credit expressly denies any wrongdoing or liability. The Court has not made any formal finding of any unlawful discrimination resulting from Ford Credit's business practices, and Ford Credit believes that there is no basis for any finding of liability against Ford Credit based on any of the liability theories alleged in the Litigation. This Settlement Agreement represents the compromise of disputed claims. It reflects the Parties' recognition that continued litigation of these claims would severely burden all concerned and would require a massive commitment of time, resources, and money. The Settlement Agreement does not constitute, is not intended to constitute, and shall not under any circumstances be deemed to constitute, an admission by any Party as to the merits, validity, or accuracy, or lack thereof, of any of the

allegations or claims in this litigation. The Settlement Agreement does not constitute a waiver of any defenses that Ford Credit may be entitled to assert in this Litigation or any future or other litigation.

7. Release of Claims

7.1 Class Representative and Individual Plaintiffs. The Class Representative and Individual Plaintiffs consent to the dismissal of the Litigation with prejudice. The Class Representative and Individual Plaintiffs also forever release, waive, discharge and agree to the dismissal of, with prejudice, all claims that have been made, or could have been made, in this Litigation against Ford Credit (defined here to include all of its parents, subsidiaries, affiliates, agents, successors, assignors, assignees and/or assigns), under the ECOA or any other federal or state statute, local ordinance, or any common law theory, including all claims for monetary, equitable, declaratory, injunctive, or any other form of relief.

7.2 Class Members. The Class Representative, on behalf of himself and the Class Members, consents to the dismissal of the Litigation with prejudice. The Class Members also forever release, waive, discharge and agree to the dismissal of, with prejudice:

A) all claims, whether known or unknown, suspected or unsuspected, under the law of any jurisdiction, for equitable, declaratory and/or injunctive relief that have been made, or could have been made in this Litigation against Ford Credit (defined here to include all of its parents, subsidiaries, affiliates, agents, successors, assignors, assignees and/or assigns) under the ECOA that arise in whole or in part out of the business practices challenged in the Complaint and that arose or will arise on or before the Effective Date; and

B) all race and ethnic status discrimination claims, whether known or unknown, suspected or unsuspected, under the law of any jurisdiction, for equitable, declaratory

and/or injunctive relief that have been made, or could have been made in this Litigation against Ford Credit (defined here to include all of its parents, subsidiaries, affiliates, agents, successors, assignors, assignees and/or assigns) under any federal or state statute, local ordinance, or any common law theory, that arise in whole or in part out of the business practices challenged in the Complaint and that arose or will arise on or before the Effective Date.

7.3 Exclusions. Notwithstanding the above, Class Members (excluding the Class Representative and the Individual Plaintiffs) are not releasing any claims for monetary relief.

7.4 Unknown Claims Released. Class Representative and Class Members each waive and release any and all provisions, rights, and benefits conferred either (a) by section 1542 of the California Civil Code, or (b) by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to section 1542 of the California Civil Code, with respect to the claims released pursuant to paragraphs 7.1 or 7.2. Section 1542 of the California Civil Code reads:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Each Class Representative and Class Member may hereafter discover facts other than or different from those that he knows or believes to be true with respect to the subject matter of the claims released pursuant to the terms of paragraphs 7.1 or 7.2, but each of those individuals expressly agrees that, upon entry of the Final Judgment contemplated by this Settlement Agreement, he or she has fully, finally, and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, contingent or noncontingent claim with respect to the claims

released pursuant to paragraph 7.1 or 7.2, whether or not concealed or hidden, without regard to subsequent discovery or existence of such different or additional facts.

8. Classwide Settlement Relief

8.1 Commitment to ECOA Principles. Ford Credit restates its long-standing commitment to the principles embodied in the ECOA.

8.2 Contract Disclosure. Unless otherwise prohibited by law, within 180 days of the Effective Date and throughout the Term, Ford Credit will include a disclosure in all Contract forms it produces and distributes to dealerships substantially similar to the following:

The Annual Percentage Rate may be negotiated with the Seller. The Seller may assign this contract and may retain its right to receive a portion of the Finance Charge.

The disclosure will be set forth in bold font, 10 point type, on the front side of the contract, near the customer's signature line. In states where prior regulatory review and/or approval is required to implement changes to contract forms, Ford Credit will implement this disclosure in the form and manner approved by such regulator within the later of 365 days after the Effective Date or 90 days after receipt of approval from such regulator.

8.3 Limits On Difference Between APR and Buy Rate. Within 60 days of the Effective Date of this Settlement Agreement and thereafter during the Term of the Settlement Agreement, Ford Credit will not acquire any Contract or accept for assignment any Contract with a term of 60 months or less if the APR is more than two and one-half percentage points (2.5%) above the Buy Rate; and Ford Credit will not acquire any Contract or accept for assignment any Contract with a term of greater than 60 months up to and including 72 months if the APR is more than two percentage points (2.0%) above the Buy Rate; and Ford Credit will not acquire any Contract or accept for assignment any Contract with a term equal to or greater than 73 months if

the APR is more than one and one-half of a percentage point (1.5%) above the Buy Rate. Minimal bona-fide errors on an irregular basis will not be deemed a violation of this Settlement Agreement. Ford Credit will implement reasonable procedures designed to promptly correct any such errors that are discovered.

8.4 Consumer Education and Assistance Programs. Ford Credit represents that it is active in promoting the education of consumers about credit financing. To further such efforts, within ninety (90) days of the Effective Date, Ford Credit or an affiliate will contribute One Hundred Fifty Thousand Dollars (\$150,000.00) toward certain consumer assistance initiatives for the purpose of improving the education of and/or assisting consumers with respect to credit financing. Subject to Court approval, contribution recipients will be the Rainbow/PUSH coalition and the National Urban League, divided equally. If the Court does not approve such recipients, the Parties will agree on other recipients and submit them for Court approval.

8.5 Diversity Marketing Initiative. Ford Credit will launch a Diversity Marketing Initiative (“DMI”) involving preapproved firm offers of credit to Black consumers (“DMI Preapprovals”). The objectives of the DMI include: (1) to provide consumer education to Class Members and other Black consumers by informing them of some Special Rate Programs for which they are eligible; and (2) to provide Class Members and other Black consumers information to facilitate comparison shopping and/or to allow them to consummate a Special Rate Program Contract with a dealership that can assign the Contract to Ford Credit.

8.5.1 Identified Class Members

Within forty-five (45) days after the Effective Date, Class Counsel will provide Ford Credit with the drivers license race coding database and race coding methodology that Class

Counsel used in this Litigation and identify which of the persons in that database they identify as likely to be Class Members. Ford Credit will use that information, which it may supplement with other available marketing sources, to identify additional Class Members, current or former owners of Mazda, Land Rover or Jaguar vehicles, and other consumers who are reasonably believed to be Black (“Identified Preapproval Candidates” or “IPCs”). Without limiting Ford Credit’s discretion to choose the marketing sources it deems to be the most effective, Class Counsel will suggest at least two examples of available marketing sources with the capability to identify Black marketing prospects. Ford Credit is specifically authorized by the court to use the Class Counsel List along with other available marketing sources to identify IPCs in connection with the DMI. Ford Credit will use the Class Counsel List and any other information about the identity of IPCs exclusively for the purpose of the DMI and will not use such information for any other purpose, except that Ford Credit may share it with its parents, affiliates, or subsidiaries, to the extent permitted by federal or state law. By agreeing to use this information for the purpose of DMI, Ford Credit is not in any way conceding that the means used by Class Counsel to identify Class Members or any marketing sources used to identify Black consumers for purposes of the DMI constitute reasonably reliable means of identifying Class Members.

8.5.2 Firm Offers of Credit

Ford Credit will offer a minimum of 200,000 pre-approved firm offers of credit during the Term of this Agreement. Ford Credit shall make good faith efforts to issue the offers during the Term of this Settlement Agreement. However, if Ford Credit is unable, during the Term of the Settlement Agreement, to issue the total number of such pre-approved firm offers of credit required by this Agreement, Ford Credit will continue to make good faith efforts to issue such pre-approved firm offers of credit thereafter until the total number of pre-approved firm offers of

credit required by this Agreement is issued. Screening of IPCs for issuance of the DMI preapprovals is subject to Ford Credit's normal credit screening parameters, which may change from time to time. Preapproved customers must meet Ford Credit's credit risk criteria for the acquisition of Contracts in place at the time of the particular offering. Ford Credit may exclude IPCs from this DMI based on characteristics such as, but not limited to, prior bankruptcy, prior vehicle repossession, too few rated tradelines, prior chargeoff, existing past due trade line, consumer statement that appears in credit bureau records, and past due vehicle credit. Ford Credit may also implement procedures designed to limit the issuance of multiple offers to the same individual in any given time period.

IPCs receiving the DMI preapprovals will be advised that they are preapproved for credit up to a specified dollar amount for the purchase of a new or, if applicable, used vehicle at any dealership with which Ford Credit does business. The DMI preapproval will specify that the recipient is preapproved with respect to vehicle financing at a participating dealership for a period of not less than 30 days. Accompanying the DMI preapprovals will be information communicating the current availability of one or more Special Rate Programs. There is no obligation to reference all or any Special Rate Program in such communications. The IPCs do not need to receive the DMI preapprovals simultaneously nor must their DMI preapproval offers include the same dollar amount or reference the same Special Rate Program or all vehicles available. The DMI preapprovals will be nontransferable.

The DMI preapproval offers may be contingent on conditions, including but not limited to: the IPC's presentation of a preapproval certificate to a participating dealership; the IPC's signature on the certificate together with valid proof of identity; and compliance with the parameters of the DMI preapproval offer regarding, among other things, dollar limits, rate,

monthly term, and other disclosed criteria, or material change in circumstances such as the filing of a new bankruptcy.

Class Counsel and the Class Members agree that (1) the DMI does not violate ECOA or any other state or federal statute or regulation prohibiting discrimination on the basis of race or ethnicity or any other statute, regulation or common law, and (2) they are estopped from contending in any future litigation that the DMI violates the ECOA or any other state or federal statute or regulation prohibiting discrimination on the basis of race or ethnicity or any other statute, regulation or common law.

8.6 Payments to Class Representative and Individual Plaintiffs. Within thirty (30) days after the Effective Date, Ford Credit will make the following payments to the Class Representative and Individual Plaintiffs as follows. These payments shall be based on the plaintiffs' respective level of participation in the Litigation including, but not limited to, whether or not his or her deposition was taken, and the extent to which the individual participated at the trial of this cause:

Edwin Borlay: \$20,000.

The Estate of Larry Mitchell: \$10,000.

Valerie McSterling: \$10,000.

Ford Credit's agreement to make this payment shall in no way be construed as an admission by Ford Credit that the Class Representative or Individual Plaintiffs suffered any monetary or other damages.

9. Attorney Fees and Litigation Expenses and Reimbursements

9.1 Fees. Class Counsel intend to request approval of attorneys' fees and litigation-related reimbursements in an amount not to exceed an aggregate amount of Two Million Four

Hundred Fifty Thousand (\$2,450,000.00) Dollars. Ford Credit will not oppose any such request and will pay any fees and litigation-related reimbursements approved by the Court in an amount that does not exceed Two Million Four Hundred Fifty Thousand (\$2,450,000.00) Dollars within thirty (30) days after the Effective Date. Provided that no modifications of substance are made to the Settlement Agreement or Exhibits, Ford Credit will also not appeal any approval of fees and litigation-related reimbursements that does not exceed Two Million Four Hundred Fifty Thousand (\$2,450,000.00) Dollars.

10. Dismissal of Litigation

Promptly after execution of this Settlement Agreement, the Parties will submit this Settlement Agreement to the Court for approval and apply to the Court for entry of the Preliminary Approval Order. In connection with that submission, Ford Credit, the Class Representative, and the Class Members stipulate to entry of the following orders:

10.1 Amendment of Complaint. Entry of an Order allowing an amendment of the pleadings to include Plaintiffs' Fifth Amended Complaint in the form attached as Exhibit 2.

10.2 Order Preliminarily Approving Settlement. Entry of the Preliminary Approval Order, in the form attached as Exhibit 1, granting preliminary approval of the Settlement Agreement and setting a fairness hearing for final approval, with provisions for notice by publication. All costs associated with the notice shall be paid by Ford Credit.

10.3 Order of Final Approval of the Settlement. Entry of the Final Judgment granting final approval of the Settlement Agreement without substantive modification and dismissal of the Litigation with prejudice, in the form set forth in Exhibit 3.

10.4 Modification of Orders. It is a condition to Ford Credit's performance of this Settlement Agreement that these Orders be entered without substantive modification.

11. Exception for Compliance with Legislative/Regulatory Requirements

If any state or federal legislative or regulatory body or agency adopts legislation, regulations, or rules that govern the pricing or disclosure components of the credit transactions that are included within the terms of this Settlement Agreement, Ford Credit must still comply with the terms of this Settlement Agreement unless such compliance would conflict with any such legislation, regulations, or rules. In such event, Ford Credit's compliance with such legislation, regulations, or rules shall be deemed to constitute satisfaction of the relevant terms of the Settlement Agreement; provided that, regardless of the terms of any such legislation, regulations, or rules, Ford Credit will not acquire any Contract during the term of the Settlement Agreement that contains an APR for which the difference between the Buy Rate and the APR is greater than permitted by Section 8.3 of the Settlement Agreement.

12. Notices

Any communication, verification or notice sent by Class Counsel or a party in connection with this Settlement Agreement shall be effected by facsimile and overnight courier as follows:

To Plaintiffs:

National Consumer Law Center
Attn: Stuart T. Rossman
77 Summer Street, 10th Floor
Boston, MA 02110-1006
Fax: (617) 542-8028

To Ford Credit:

Mr. David Korman
Ford Motor Credit Company
MD 7350
Dearborn, MI 48126-6044
Fax: (313)248-8380

With a Copy To:

Mr. Thomas M. Byrne
Sutherland Asbill & Brennan, LLP
999 Peachtree Street, N.E.
Atlanta, Georgia 30309-3996
Fax (414) 853-8806

13. Miscellaneous

13.1 Entire Agreement. This Settlement Agreement contains the entire agreement between the parties and supersedes all prior understandings, agreements, or writings regarding the subject matter of this Settlement Agreement.

13.2 No Liability by Ford Credit. The Settlement Agreement does not constitute, is not intended to constitute, and will not under any circumstances be deemed to constitute, an admission by either party as to the merits, validity, or accuracy, or lack thereof, of any of the allegations or claims in this Litigation. The Settlement Agreement does not constitute a waiver of any defenses or affirmative defenses Ford Credit may be entitled to assert in any future or other litigation, including the applicable statute of limitations.

13.3 Invalidity. If the Settlement Agreement does not become effective, or is limited or modified by any court, or is deemed null and void for any other reason, nothing in this Settlement Agreement will be deemed to waive any of the objections and defenses of Ford Credit (including its objections to class certification) and neither this Settlement Agreement nor any related proceedings relating to its approval will be admissible in any court regarding the propriety of class certification or any other issue that is the subject of this Litigation.

In the event any court disapproves or sets aside this Settlement Agreement or any material part for any reason, or holds that it will not enter or give effect to the Final Judgment without modification, or holds that the entry of the Final Judgment or any material part should be overturned or modified in any material way, then:

(A) If all Parties do not agree jointly to appeal such ruling, this Settlement Agreement will become null and void, and the Litigation will continue, and the Parties stipulate to a joint motion (i) that any and all orders entered pursuant to this Settlement Agreement be

vacated, including, without limitation, any order permitting the amending of the complaint, and (ii) that any and all dismissals pursuant to this Settlement Agreement will be vacated; or

(B) if the Parties do agree to jointly appeal such ruling and if the Final Judgment or its equivalent in all material respects is not in effect after the termination of all proceedings arising out of such appeal, this Settlement Agreement will become null and void, and the Litigation will continue, and the Parties stipulate to a joint motion (i) that any and all orders entered pursuant to this Settlement Agreement be vacated, including, without limitation, any order permitting the amending of the, and (ii) that any and all dismissals pursuant to this Settlement Agreement will be vacated.

13.4 Amendment. This Settlement Agreement may be amended or modified only by a written instrument signed by all Parties or their successors in interest or their counsel.

13.5 Signatures. The Parties and their counsel may sign separate copies of this Settlement Agreement, which together will constitute one agreement. Each person executing this Settlement Agreement warrants that such person has the full authority to do so. In addition, signature by facsimile will constitute sufficient execution of this Settlement Agreement.

13.6 Best Efforts. The Parties agree that the terms of the Settlement Agreement reflect a good faith settlement of disputed claims. Class Counsel considers the Settlement to be fair and reasonable and will use their best efforts to seek approval of the Settlement Agreement by the Court.

14. Annual Certification

On written request, made annually, by Class Counsel, on or before the annual anniversary date of the Effective Date during the term of this Settlement Agreement, Ford Credit will provide a certification to Class Counsel stating: (i) that Ford Credit has paid all payments due under this

Settlement Agreement, (ii) the number of DMI preapprovals since the Effective Date, a sample copy of which will be attached, (iii) that all contract forms produced and distributed by Ford Credit to dealerships included a disclosure complying with Section 8.2, along with a sample copy, and (iv) that all contracts acquired during the previous year comply with the limit on the difference between the APR and Buy Rate expressed in Section 8.3.

Approved as of _____, 2006.

**Class Counsel On Behalf of Class
Members**

On Behalf of Defendant

One of Their Attorneys

David Korman

Clint W. Watkins
Law Offices of Clint Watkins

Executive Vice President &
General Counsel

Michael E. Terry
Terry & Gore

Wyman O. Gilmore
John Barney
Gilmore Law Office

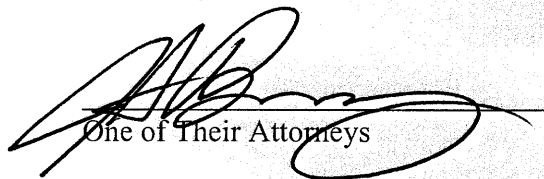
Stuart T. Rossman
National Consumer Law Center

John Crowder
Edwin Lamberth
Cunningham Bounds Crowder Brown and Breedlove

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Approved as of Nov. 7, 2006.

**Class Counsel On Behalf of Class
Members**



One of Their Attorneys

Clint W. Watkins
Law Offices of Clint Watkins

Michael E. Terry
Terry & Gore

Wyman O. Gilmore
John Barney
Gilmore Law Office

Stuart T. Rossman
National Consumer Law Center

John Crowder
Edwin Lamberth
Cunningham Bounds Crowder Brown and Breedlove

On Behalf of Defendant

David Korman

Executive Vice President &
General Counsel

Signature of the Class Representative

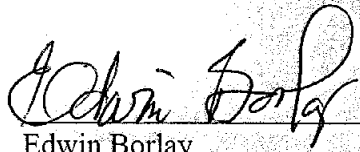
Edwin Borlay

Signature of the Individual Plaintiffs

Valerie McSterling

Estate of Larry Mitchell
By: Jan Dunning, Administrator

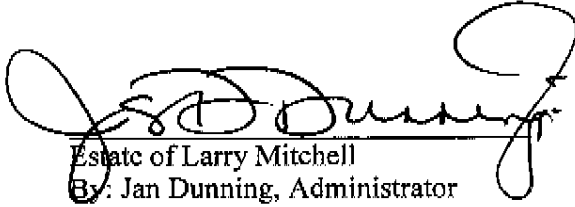
Signature of the Class Representative

A handwritten signature in cursive script, appearing to read "Edwin Borlay", written over a horizontal line.

Edwin Borlay

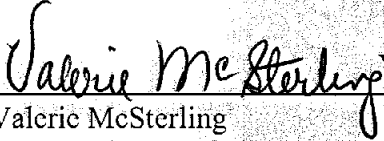
Signature of the Individual Plaintiffs

Valerie McSterling



Estate of Larry Mitchell
By: Jan Dunning, Administrator

Signature of the Individual Plaintiffs



Valerie McSterling

Estate of Larry Mitchell
By: Jan Dunning, Administrator

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Approved as of _____, 2006.

**Class Counsel On Behalf of Class
Members**

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National Consumer Law Center

John Crowder
Edwin Lamberth
Cunningham Bounds Crowder Brown and Breedlove

On Behalf of Defendant



David Korman

Executive Vice President &
General Counsel