



1.2 On March 31, 2005, the Court granted partial certification of a class of African-American customers of Ford Credit pursuant to Federal Rules of Civil Procedure 23(b)(2) and 23(c)(4) for the limited purpose of determining whether Ford Credit is liable under the ECOA, and, if so, for considering plaintiffs' request for declaratory and injunctive relief.

1.3 The Parties and their counsel recognize the risks and costs inherent in litigation. This Litigation is over 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.

1.4 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. Definitions

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

**2.1 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.*

**2.2 Buy Rate.** The minimum percentage rate which Ford Credit uses to accept assignment of a Contract from a dealer.

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

**2.4 Class Counsel.** Darnley D. Stewart of Bernstein Litowitz Berger & Grossman LLP in New York, New York; Clint W. Watkins of the Law Office of Clint Watkins in Brentwood, Tennessee; Michael E. Terry of Terry & Gore P.C. in Nashville, Tennessee; Wyman O. Gilmore of Gilmore Law Office in Grove Hill, Alabama; and Stuart T. Rossman of the National Consumer Law Center in Boston, Massachusetts.

**2.5 Class Members.** Subject to the exclusion set forth at ¶ 7 below, all Black and/or Hispanic consumers who have entered or will enter into a retail installment contract that was or that will be assigned to Ford Credit during the period January 1, 1990 through the Effective Date of this Settlement Agreement.

**2.6 Class Representatives.** Vincent E. Jackson, Henry Wilson, Connie Wilson, Karlton Sutton, Jacqueline Sutton, Raymond Whitley, Michael Waters, Jacqueline Waters, Adrian Oliva, and Jose Herrada.

**2.7 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.

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

**2.9 Court.** The United States District Court for the Southern District of New York.

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

**2.11 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 review of the Final Judgment is sought, the 46th day after entry of the Final Judgment without modification; (c) if an appeal or review of the Final Judgment is filed, the 46th day after (i) such Final Judgment is affirmed or the appeal or 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.

**2.12 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.

**2.13 Individual Plaintiffs.** Martha L. Edwards, Lou Cooper, and Demetris Chaney.

**2.14 Litigation.** The lawsuit pending in the Court styled, *Joyce Jones et al. v. Ford Motor Credit Company*, Case No. 00-CIV-8330 (RJH)(KNF).

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

**2.16 Parties.** The Class Representatives, on behalf of themselves and the Class Members, the Individual Plaintiffs, and Ford Credit.

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

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

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

**2.20 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 Ford Credit's standard Buy Rate.

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

### **3. 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. In addition, the firm of Bernstein Litowitz Berger & Grossmann LLP shall retain copies of all deposition transcripts and exhibits for a period of seven (7) years. Except as modified herein, the Confidentiality Consent Order entered on September 19, 2002 remains in full force and effect.

**4. 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 Ford Credit, Ford or any Ford or Ford Credit product or service, the Class Representatives, 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.

**5. Denial of Liability**

Ford Credit expressly denies any wrongdoing or liability. The Court has not made any finding of any unlawful discrimination resulting from Ford Credit's business practices, and Ford Credit believes that there is not 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.

## **6. Release of Claims**

**6.1 Class Representatives and Individual Plaintiffs.** The Class Representatives and Individual Plaintiffs consent to the dismissal of the Litigation with prejudice. The Class Representatives 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.

**6.2 Class Members.** The Class Representatives, on behalf of themselves and the Class Members, consent 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.

**6.3 Exclusions.** Notwithstanding the above, Class Members (excluding the Class Representatives) are not releasing any claims for monetary relief.

**6.4 Unknown Claims Released.** Class Representatives 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 6.1 or 6.2. 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 6.1 or 6.2, 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 6.1 or 6.2, whether or not concealed or hidden, without regard to subsequent discovery or existence of such different or additional facts.

## 7. Exclusion

The Parties agree that any reference in this Settlement Agreement to Ford Motor Credit Company or Ford Motor Company and their parents, subsidiaries, affiliates, agents, successors, assignors, assignees and/or assigns, and the release of claims made herein shall not include PRIMUS Automotive Financial Services, Inc., PRIMUS Financial Services, a division of Ford Motor Credit Company, or contracts assigned to Ford Credit 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 Kia Financial Services. The Parties and their respective counsel agree that this Settlement Agreement and any resulting dismissal of the claims in the Litigation will not have any claim preclusive or issue preclusive effect whatsoever in the case styled *Borlay v. PRIMUS Financial Services, Inc., et al.*, Case No. 02-0382, in the United States District Court for the Middle District of Tennessee, and the line of business currently done by Ford Credit in its own name, which is the subject of this Settlement Agreement, is not and shall not be involved in Borlay. It is the intention of the Parties and their respective counsel that this Litigation and Borlay be adjudicated separately.

## 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. The disclosure will also be included in Spanish in any Spanish translations of Contracts that Ford Credit produces and distributes to dealerships.

**8.3 Limit On Difference Between APR and Buy Rate.** No later than ten (10) days before Notice of the Settlement is provided to Class Members, Ford Credit shall elect, in its sole discretion, between the two following options and shall notify Class Counsel, in writing, which one of the two following options it will employ to limit the difference between the APR and Buy Rate on Contracts that it acquires or accepts for assignment, as provided below:

A) 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 71 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 72 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. If Ford Credit elects this limitation, it shall issue no less than 1,250,000 pre-approved firm offers of credit as set forth in Section 8.5 below; or

B) 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. If Ford Credit elects this limitation, it shall issue no less than 2,000,000 pre-approved firm offers of credit as set forth in Section 8.5 below.

**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, during the Term of the Settlement Agreement, Ford Credit or an affiliate will contribute \$2 million toward certain consumer assistance initiatives for the purpose of improving the education of and/or assisting consumers with respect to credit financing. Ford Credit shall pay no less than one-third of the total amount in each 12-month period during the Term of this

Agreement; provided, however, that contributions made during calendar year 2005 shall qualify as contributions during the first such 12-month period. Contribution recipients will be tax-exempt nonprofit organizations. Contributions will be distributed in proportionate amounts to organizations focused on Black and Hispanic outreach efforts. Plaintiffs will set forth a proposal for the distribution of the funds in writing for approval by Ford Credit and by the Court.

**8.5 Diversity Marketing Initiative.** Ford Credit will launch a Diversity Marketing Initiative (“DMI”) involving preapproved firm offers of credit to Black and Hispanic consumers (“DMI Preapprovals”). The objectives of the DMI include: (1) to provide consumer education to Class Members and other Black and Hispanic consumers by informing them of some Special Rate Programs for which they are eligible; and (2) to provide Class Members and other Black and Hispanic 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 Ford or Lincoln or Mercury vehicles, and other consumers who are reasonably believed to be Black or Hispanic (“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 and Hispanic marketing prospects, including marketing sources that identify Hispanics by surname. 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 and Hispanic consumers for purposes of the DMI constitute reasonably reliable means of identifying Class Members.

#### **8.5.2 Firm Offers of Credit**

If Ford Credit elects the limitation on the difference between the APR and Buy Rate set forth in Section 8.3 A), it will offer a minimum of 1,250,000 pre-approved firm offers of credit during the Term of this Agreement. If Ford Credit elects the limitation on the difference between the APR and Buy Rate set forth in Section 8.3 B), it will offer a minimum of 2,000,000 pre-approved firm offers of credit during the Term of this Agreement. Regardless of the option chosen, 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. 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 Program. 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. DMI preapprovals and related information provided to persons identified to be Hispanic at the time the IPC distribution list is created will be provided in both English and Spanish.

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 Representatives and Individual Plaintiffs.** Within thirty (30) days after the Effective Date, Ford Credit will make the following payments totaling \$125,000 to the Class Representatives 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:

Martha L. Edwards and Lou Cooper: \$15,000

Vincent E. Jackson: \$15,000

Demetris Chaney: \$15,000

Henry and Connie Wilson: \$15,000

Karlton and Jacqueline Sutton: \$15,000

Raymond Whitley: \$15,000

Michael and Jacqueline Waters: \$15,000

Adrian Oliva: \$10,000

Jose Herrada: \$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 Representatives suffered any monetary or other damages.

**9. Attorney Fees and Litigation Expenses and Reimbursements**

**9.1 Fees.** Class Counsel intend to request approval of attorney fees in an amount not to exceed Seven Million Seven Hundred Fifty Thousand (\$7,750,00.00) Dollars. Ford Credit will not oppose any such request and will pay any fees approved by the Court in an amount that does not exceed Seven Million Seven Hundred Fifty Thousand (\$7,750,00.00) 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 that does not exceed Seven Million Seven Hundred Fifty Thousand (\$7,750,00.00) Dollars.

**9.2 Litigation Expenses and Reimbursements.** Class Counsel intend to request approval from the Court for litigation expenses and litigation related reimbursements in an amount not to exceed Four Hundred Thousand (\$400,000.00) Dollars. Ford Credit will transfer funds payable to Class Counsel for such expenses and reimbursements related to this Litigation up to a maximum payment of Four Hundred Thousand (\$400,000.00) Dollars within thirty (30) days after the Effective Date.

**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 Representatives, 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' Third 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: (404) 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, FMCC will provide a certification to Class Counsel stating: (i) that FMCC 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 FMCC 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 \_\_\_\_\_, 2005.

**Class Counsel On Behalf of Class  
Members**

  
\_\_\_\_\_  
One of Their Attorneys

**Darrel D. Stewart  
Bernstein, Litowitz, Berger & Grossman LLP**

**Clint W. Watkins  
Law Offices of Clint Watkins**

**Michael E. Terry  
Terry & Gore**

**Wyman O. Gilmore  
Gilmore Law Office**

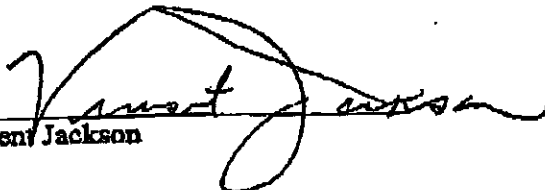
**Stuart T. Rossman  
National Consumer Law Center**

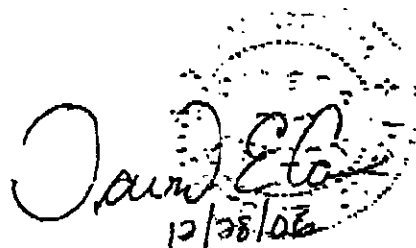
**On Behalf of Ford Motor Credit  
Company**

  
\_\_\_\_\_  
David Korman

**Executive Vice President &  
General Counsel**

**Signatures of the Class Representatives**

  
Vincent Jackson



Henry Wilson

Connie Wilson

Karlton Sutton

Jacqueline Sutton

Raymond Whitley

Michael Waters


Jacqueline Waters


Jose Herrada

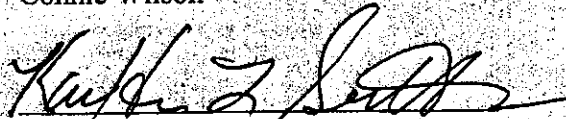
Adrian Oliva


**Signatures of the Class Representatives**

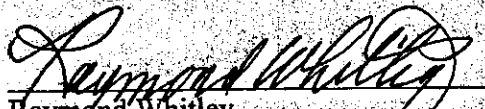
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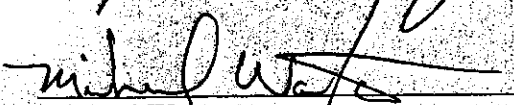
  
Henry Wilson

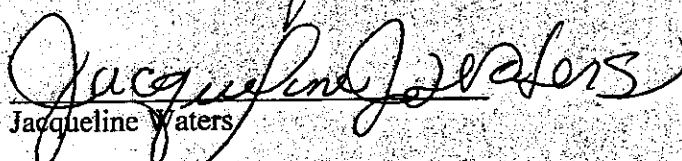
  
Connie Wilson

  
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Raymond Whitley

  
Michael Waters

  
Jacqueline Waters

Jose Herrada

Adrian Oliva

**Signatures of the Class Representatives**

\_\_\_\_\_  
Vincent Jackson

\_\_\_\_\_  
Henry Wilson

\_\_\_\_\_  
Connie Wilson

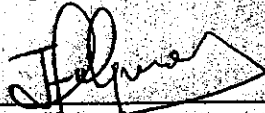
\_\_\_\_\_  
Karlton Sutton

\_\_\_\_\_  
Jacqueline Sutton

\_\_\_\_\_  
Raymond Whitley

\_\_\_\_\_  
Michael Waters

\_\_\_\_\_  
Jacqueline Waters

  
\_\_\_\_\_  
Jose Herrada

\_\_\_\_\_  
Adrian Oliva



**Signatures of the Class Representatives**

\_\_\_\_\_  
Vincent Jackson

\_\_\_\_\_  
Henry Wilson

\_\_\_\_\_  
Connie Wilson

\_\_\_\_\_  
Karlton Sutton

\_\_\_\_\_  
Jacqueline Sutton

\_\_\_\_\_  
Raymond Whitley

\_\_\_\_\_  
Michael Waters

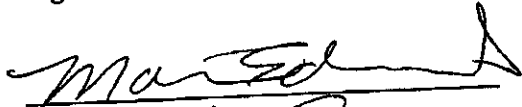
\_\_\_\_\_  
Jacqueline Waters

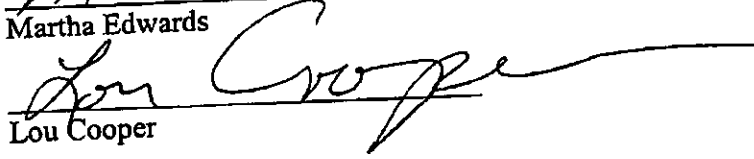
\_\_\_\_\_  
Jose Herrada



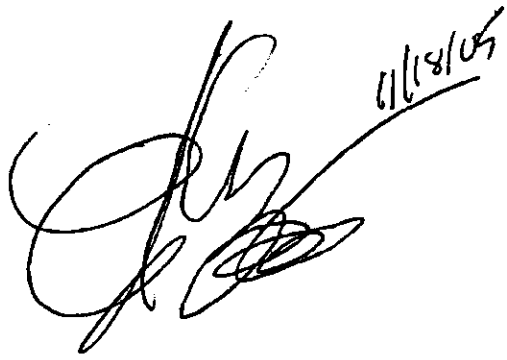
Adrian Oliva

**Signatures of the Individual Plaintiffs**

  
\_\_\_\_\_  
Martha Edwards

  
\_\_\_\_\_  
Lou Cooper

\_\_\_\_\_  
Demetris Chaney

 11/18/05

CHARLES J. NUNEZ  
Notary Public, State of New York  
No. 03-8167825  
Qualified in Bronx County  
Certificate Filed in New York County  
Commission Expires April 30, 2006

**Signatures of the Individual Plaintiffs**

\_\_\_\_\_  
Martha Edwards

\_\_\_\_\_  
Lou Cooper

*Demetris Chaney*  
Demetris Chaney