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17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19 SAN FRANCISCO DIVISION

21 IN RE
22 MYFORD TOUCH CONSUMER
23 LITIGATION

No. 3-13-cv-3072-EMC
**JOINT CASE MANAGEMENT
STATEMENT**

Date: October 16, 2014
Time: 10:30 A.M.
Courtroom: 5, 17th Floor
Judge: Hon. Edward M. Chen

1 **I. INTRODUCTORY STATEMENT**

2 Pursuant to the Court's August 7, 2014 Order (Dkt. No. 110) and the Standing
3 Order for all Judges of the Northern District of California, counsel for the parties
4 respectfully submit this Updated Joint Case Management Statement. This is the sixth
5 Case Management Statement; five previous statements were filed with the Court on
6 October 3, 2013 (Dkt. No. 33); January 16, 2014 (Dkt. No. 58); April 17, 2014 (Dkt.
7 No. 82); June 5, 2014 (Dkt. No. 98); and August 7, 2014 (Dkt. No. 109). This
8 Updated Joint Case Management Statement is intended to inform the Court about the
9 status of the pleadings and discovery, and to advise the Court of issues to be presented
10 at the Case Management Conference scheduled for October 16, 2014 at 10:30 a.m.

11 **II. JOINT CASE MANAGEMENT STATEMENT**

12 **A. Motions**

13 On May 30, 2014, this Court ruled on Ford's motion to dismiss, granting it in
14 part and denying it in part (Dkt. No. 97). Following the Court's decision, Plaintiffs
15 elected not to amend their First Amended Complaint (FAC), and proceeded with their
16 prosecution of the action based on the surviving claims. On June 16, 2014, Plaintiff
17 Megan Raney-Aarons filed a notice of voluntarily dismissal (Dkt. No. 100). Ford
18 answered the FAC on July 18, 2014 (Dkt. No. 106).

19 **III. STATUS OF DISCOVERY**

20 As previously reported (*see* Dkt. No. 58), the parties participated in a Rule 26(f)
21 conference on November 26, 2013, and exchanged their initial disclosures pursuant to
22 Rule 26(a) on December 13, 2013.

23 **A. Production Agreements**

24 The parties have agreed upon the format of production, including reaching
25 agreement on Electronically Stored Information ("ESI") protocols. The parties have
26 also negotiated a general protective order, which this Court entered on May 16, 2014
27 (Dkt. No. 96). The parties are in the final phases of negotiating a second protective
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1 order that would pertain to “highly confidential information,” such as source code
2 data.

3 **B. Productions**

4 Ford has so far produced more than 2,816,550 pages of emails and documents
5 from 21 custodians and more than 271,000 pages of documents from other sources
6 such as Ford’s warranty reimbursement, customer contact and technical contact
7 databases. Ford has represented that it intends to continue its rolling document
8 production in response to Plaintiffs’ discovery requests, and it expects that further
9 production to be substantial as well. To date, Ford has made the following
10 productions:

- 11 • Documents pertaining to the named Plaintiffs’ vehicles and warranty
12 history (04/03/2014);
- 13 • Showroom brochures, owners’ manuals, and warranty guides
14 (04/15/2014);
- 15 • Additional showroom brochures, owners’ manuals, and warranty guides,
16 as well as print/video advertising (5/22/2014);
- 17 • Special Service Messages and Technical Service Bulletins (5/27/2014);
- 18 • Email and other documents maintained by Document Custodian J. Bragg
19 (5/30/2014);
- 20 • Email and other documents maintained by Document Custodian B. Krein
21 (6/5/2014);
- 22 • Email and other documents maintained by Document Custodian S.
23 Parsons (6/13/2014);
- 24 • Email and other documents maintained by Document Custodian R.
25 Englert (7/3/2014);
- 26 • Ford warranty reimbursement records/data (AWS reports) and technical
27 contacts (CQIS reports) (6/19/2014 and 7/16/2014);
- 28 • Email and other documents maintained by Document Custodians N.
Gabrielli and M. Schanerberger (7/22/2014);

- 1 • Email and other documents maintained by Document Custodians H. Ahmed; K. Christianson; H. Elzein; F. Frischmuth; M. Fromman; K. Goebel; J. Green (8/5/2014);
- 2
- 3 • Email and other documents maintained by Document Custodians J. Huling; C. Kopeika; S. Livernois; M. Moody; A. Philliben; M. Porter (8/15/2014);
- 4
- 5
- 6 • Email and other documents maintained by Document Custodians K. Williams and S. Talukder (9/4/2014);
- 7
- 8 • Re-production, in native format, of warranty reimbursement records (AWS reports) and technical contacts (CQIS reports) (9/24/2014); and
- 9 • Customer contacts to Ford Customer Service (FMC360 database) through May 1, 2013 (10/1/2014).
- 10

11 Since June 5, 2014, Plaintiffs have made four productions in response to Ford's
12 discovery requests (June 27, 2014, July 29, 2014, September 5, 2014, and October 7,
13 2014). Plaintiffs intend to make their fifth production on or before October 15, 2014,
14 and Plaintiffs will continue to make supplemental productions, if/as necessary. Non-
15 Party Microsoft Corporation also made a production on June 24, 2014, pursuant to a
16 subpoena Plaintiffs served on Microsoft on February 26, 2014.

17 On July 28, 2014, Plaintiff Avedisian served his Supplemental Responses and
18 Objections to Ford's First Set of Interrogatories. On that same date, Plaintiffs also
19 informed Ford that Plaintiffs Zuchowksi, Battle, and Ervin intend to serve
20 interrogatory responses as soon as practicable. Plaintiffs have stated that they intend
21 to produce these interrogatory responses by August 31, 2014. On August 25, 2014,
22 Plaintiff Ervin served his Supplemental Responses and Objections to Ford's First Set
23 of Interrogatories. Plaintiffs Zuchowski and Battle intend to serve their interrogatory
24 responses by October 31, 2014, or will move to withdraw from this litigation.

25 **C. Plaintiffs' Second Set of Requests for Production**

26 On February 26, 2014, Plaintiffs served Ford with a Second Set of Requests for
27 Production of Documents. The documents requested relate to press reports suggesting
28 that Ford will base its next generation of MFT systems on Blackberry's QNX

1 software, and include any communications with Blackberry regarding the Microsoft-
2 based MFT system, as well as any documents that reflect key differences in properties
3 between Blackberry's QNX and Microsoft's MFT systems.

4 On April 1, 2014, Ford served its Responses and Objections to Plaintiffs'
5 Second Set of Requests for Production of Documents. On May 27, 2014 Ford advised
6 Plaintiffs that it intended to stand on its objections of relevancy and burden, but that it
7 would make an effort to keep looking for responsive documents. Having reached an
8 impasse with respect to Ford's compliance with its discovery obligations concerning
9 Plaintiffs' Second Set of Requests for Production of Documents, on September 2,
10 2014, the parties, submitted a joint letter to the Court, outlining their respective
11 positions regarding those discovery requests (Dkt. No. 111). On September 10, 2014,
12 the Court issued an Order resolving the dispute (Dkt. No. 113). Pursuant to the
13 Court's September 10, 2014 Order, the parties further met and conferred regarding the
14 proper scope of Request for Production No. 82 (from Plaintiffs' Second Set of
15 Requests for Production of Documents) on September 19, 2014. Consistent with the
16 parties' discussion, Ford intends to respond to the revised request no later than
17 October 23, 2014. Ford has further agreed that the Court's September 10, 2014 Order
18 requires Ford to produce documents responsive to Requests for Production No. 83 and
19 84 as served.

20 **D. Plaintiffs' Third Set of Requests for Production**

21 On September 19, 2014, Plaintiffs served Ford with their Third Set of Requests
22 for Production of Documents. Plaintiffs' Third Set of Requests for Production seeks
23 five categories of documents regarding Ford's cost and pricing of the MFT system.
24 Ford's response to Plaintiffs' Third Set of Requests for Production is due by October
25 20, 2014.

1 **E. Vehicle Inspection Protocol**

2 The parties are in the final phases of negotiating a Vehicle Inspection Protocol
3 which shall apply to all Class Vehicles owned or leased by any Named Plaintiff in this
4 action at the time the Protocol is executed.

5 **F. Ford's Request to Inspect Plaintiffs' Peripheral Devices**

6 On August 20, 2014, Ford issued a Request for Production of Devices for
7 Inspection to Plaintiff Russ Rizzo, seeking production of Plaintiff Rizzo's peripheral
8 devices for Ford's inspection thereof. Plaintiff Rizzo served responses and objections
9 to Ford's request on September 5, 2014. In his response, Plaintiff Rizzo objected to
10 producing his peripheral devices to Ford on privacy, undue burden, overbreadth,
11 harassing, and privilege grounds, and did not produce the devices for inspection.

12 The parties have met and conferred, but they anticipate that this dispute may
13 require judicial resolution and intend to submit a further joint discovery letter to the
14 Court for its consideration and adjudication. The parties also may submit a joint letter
15 in which Plaintiffs seek a protective order pertaining to Ford's ability, or lack thereof,
16 to inspect Plaintiffs' peripheral devices in this litigation.

17 **IV. PROPOSED DISCOVERY AND TRIAL SCHEDULE**

18 The parties propose the following discovery and trial schedule:

19 The parties do not agree that Named Plaintiff-Specific Summary Judgment
20 Motions are permissible in this action.

21 Plaintiffs' Position: Plaintiffs note that paragraph No. 9 in the Court's Standing
22 Order states that, "Each party or side is limited to filing one summary judgment
23 motion. Any party wishing to exceed this limit must request leave of the Court." *See*
24 Civil Standing Order – General, U.S. District Judge Edward M. Chen at ¶ 9.
25 Accordingly, Plaintiffs believe multiple, successive Plaintiff-specific summary
26 judgment motions are impermissible and inappropriate, as well as an inefficient use of
27 judicial and litigant resources. Ford will have ample opportunity to include any such
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1 Plaintiff-specific issues in a single motion, which Plaintiffs believe should be filed
2 according to the schedule set forth below.

3 Ford's Position: Ford is not seeking "multiple, successive Plaintiff-specific
4 summary judgment motions;" rather, Ford is seeking the right to submit one motion
5 seeking summary judgment on named plaintiff-specific issues without prejudicing its
6 ability in the event that a class is certified to later file a second summary judgment
7 motion, if appropriate, on class-wide issues. Ford believes this approach would be
8 more efficient because resolution of a summary judgment motion focusing on named
9 plaintiff-specific issues could streamline the issues to be considered at class
10 certification by eliminating certain claims or state-specific proposed classes. Were a
11 class to be certified, Ford may have an additional basis to move for summary
12 judgment on a class-wide basis. Requiring Ford to include these arguments in a pre-
13 certification motion for summary judgment would prejudice Ford because a decision
14 on the merits before a decision on class certification could allow absent class members
15 to take advantage of a favorable resolution by remaining in the class, while avoiding
16 the risk of an unfavorable decision by opting out of the class.

EVENT	DATE/DEADLINE
Substantial Completion of Document Production	March 31, 2015
Privilege Logs Produced	On a rolling basis, but no later than 45 days after production is substantially complete
Deadline to Seek Leave to Amend Pleadings and/or Join Additional Parties	May 8, 2015
Fact Discovery Completion	October 9, 2015
Motion for Class Certification and Plaintiffs' Rule 26(a)(2) Class Certification Expert Disclosures/Reports	On or before October 16, 2015
Opposition to Motion for Class Certification and Defendant's Rule 26(a)(2) Class Certification Expert	Seven weeks after Plaintiffs file their opening class certification motion papers

1	Disclosures/Reports	
2	Reply in Support of Motion for Class Certification and Plaintiffs' Class Certification Rebuttal Expert Disclosures/Reports	Seven weeks after Ford files its opposition papers responding to Plaintiffs' opening class certification motion
3	Hearing on Motion for Class Certification	To be scheduled by the Court
4	Named Plaintiff-Specific Summary Judgment Motions, if permitted by the Court	On or before October 16, 2015
5	Named Plaintiff-Specific Summary Judgment Opposition, if Named Plaintiff-Specific Summary Judgment Motions are permitted by the Court	Four weeks after filing of motion
6	Named Plaintiff-Specific Summary Judgment Reply, if Named Plaintiff-Specific Summary Judgment Motions are permitted by the Court	Four weeks after filing of opposition
7	Hearing on Named Plaintiff-Specific Summary Judgment Motions, if Named Plaintiff-Specific Summary Judgment Motions are permitted by the Court	To be scheduled by the Court
8	Plaintiffs' Rule 26(a)(2) Expert Disclosures/Reports	To be scheduled following decision on class certification
9	Defendant's Rule 26(a)(2) Expert Disclosures/Reports	To be scheduled following decision on class certification
10	Plaintiffs' Rebuttal Expert Disclosures/Reports	To be scheduled following decision on class certification
11	Expert Discovery Complete	To be scheduled following decision on class certification
12	Summary Judgment (and <i>Daubert</i>) Motions	To be scheduled following decision on class certification
13	Summary Judgment (and <i>Daubert</i>) Oppositions	To be scheduled following decision on class certification
14	Summary Judgment (and <i>Daubert</i>) Replies	To be scheduled following decision on class certification
15	Preliminary Pretrial Conference	To be scheduled by the Court
16	Rule 26(a)(3) Disclosures	To be scheduled at the Preliminary Pretrial Conference
17	Motions <i>in Limine</i> and any Oppositions thereto	To be scheduled at the Preliminary Pretrial Conference
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ATTESTATION PURSUANT TO LOCAL RULE 5-1(i)(3)

I, Steve W. Berman, am the ECF User whose identification and password are being used to file the foregoing document. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that all signatories have concurred in this filing.

Dated: October 9, 2014

/s/Steve W. Berman

Steve W. Berman

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CERTIFICATE OF SERVICE

I hereby certify the on October 9, 2014, I electronically filed the foregoing document using the CM/ECF system which will send notification of such filing to the email addresses registered in the CM/ECF system, as denoted on the Electronic Mail Notice List, and I hereby certify that I have caused to be mailed a paper copy of the foregoing document via the United States Postal Service to the non-CM/ECF participants indicated on the Manual Notice List generated by the CM/ECF system.

Dated: October 9, 2014

/s/Steve W. Berman
Steve W. Berman