

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

JEFFREY A. LONG, <i>et al.</i>)	CASE NO. CV-2018-01-0004
)	
Plaintiffs,)	JUDGE TAMMY O'BRIEN
v.)	
)	
FALLS MOTOR CITY, INC.)	
Defendant.)	
)	

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by and between Jeffrey E. Long, Johnathan G. Harrison, Sarah E. Harrison, and Byron Foxx, hereinafter (“Plaintiffs”), individually and on behalf of all members of a certain class and Defendant Falls Motor City, Inc. (“Defendant”), subject to approval by the Court.

Definitions

As used in this Settlement Agreement, the following terms shall have the following meanings:

1. Claims Administrator means American Legal Claim Services, LLC.
2. Class Action means the civil action originally styled *Jeffrey Long v. Falls Motor City, Inc.* filed in the Summit County, Ohio, Court of Common Pleas, Case No. CV-2018-01-0004.
3. Class Counsel means Ronald I. Frederick, Michael L. Berler, and Frederick & Berler, L.L.C.
4. Class Notice means the Notice to Class of Proposed Settlement of Class Action to be given to the Settlement Class pursuant to the terms of the Preliminary Approval Order. The Class Notice shall be substantially in the form attached as an exhibit to this Settlement

Agreement. The only Class Notice that will be provided to the Settlement Class is that agreed upon by the Parties and approved by the Court.

5. Defendant means Falls Motor City, Inc. ("FMC").

6. Effective Date means either (a) if no appeal is filed from the Order of Final Approval and Final Judgment, the expiration date of the time for the filing of notice of any appeal from the Order of Final Approval and Final Judgment entered by this Court or (b) if an appeal is filed from the Order of Final Approval and Final Judgment, the latest of (i) the date of final affirmance of the Order of Final Approval and Final Judgment; (ii) the expiration of the time for a petition for writ of certiorari or memorandum in support of jurisdiction to review the Order and, if the certiorari is granted or jurisdiction taken, the date of final affirmance of the Order of Final Approval and Final Judgment following review pursuant to that grant; or (iii) the date of final dismissal of any appeal from the Order of Final Approval and Final Judgment or the final dismissal of any proceeding on certiorari to review the Order of Final Approval and Final Judgment.

7. Participating Class Member means all persons who are a member of the Settlement Class except for those persons who have validly requested exclusion from the settlement as provided in this Settlement Agreement and the Class Notice.

8. Monies Available for Settlement means the maximum amount of monies Defendant can be obligated to pay in exchange for the release of all Settled Claims by the Participating Class Members and shall include: (i) the sum of \$125.00 per transaction to each class member in the form a check; (ii) a certificate issued by Defendant for each transaction that may be redeemed for either, \$500 off the purchase of a vehicle, or 20% off of the purchase of parts or service; (iii) the amount of attorneys' fees and costs awarded to Class Counsel by the

Court; and (iv) the Incentive Payment of \$5,000 to Jeffery Long, The Harrisons and Byron Foxx and (v) Defendant will pay court costs and the cost of notice and administration. Notwithstanding any other provision of this Settlement Agreement, in no event shall the Monies Available to be distributed to the class members exceed the sum of Four Hundred Thousand Dollars (\$460,250.00).

9. Implementation Schedule means the dates agreed upon by counsel for the Parties and approved by the Court for implementing the Settlement Agreement. The Implementation Schedule is set forth as an exhibit to this Settlement Agreement.

10. Notice Plan means the plan for the provision of due notice to all Class Members under this Settlement Agreement.

11. Class Representatives means Jeffrey E. Long, Johnathan G. Harrison, Sarah E. Harrison, and Byron Foxx.

12. Parties means the Class Representatives and Defendant.

13. Released Parties means (i) Defendant; (ii) past or present subsidiaries, divisions, affiliates, parents, successors or assigns of Defendant; and (iii) past or present officers, directors, members, shareholders, partners, agents, employees, advisors, insurers, attorneys, representatives, trustees, heirs, executors, administrators, and predecessors or successors or assigns of any of the foregoing.

14. Settled Claims, with respect to the Class Representatives, means any alleged failure of Defendant or any of the Released Parties to comply with any federal, state, or local law or any other law, rule, or regulation that have been, could have been, or should have been asserted by the Class Representatives in connection with or related to FMC's advertising a

vehicle for a specific price and/or with a dealer discount and then selling the vehicle above the advertised price and/or without the promised discount.

15. Settlement Agreement means this Agreement and all exhibits attached to it.

16. Settlement Award means the award that each Participating Class Member who does not timely opt out shall receive as described in Paragraph 33 of this Settlement Agreement and Release in the event that the Court approves the Settlement Agreement, the final approval order is not reversed on appeal, and no more than 1% of potential Participating Class Members timely indicate a desire to opt out.

17. Settlement Class means all people who, during the period January 2, 2016 to January 2, 2018 purchased and/or leased a vehicle from FMC, where they were charged a price over the advertised price and/or did not receive the advertised discount.

18. Settlement Fairness Hearing means the hearing to be requested by the Parties and conducted by the Court, following appropriate notice to the Settlement Class and an opportunity for members of the Settlement Class to exclude themselves from participation in the Settlement Class and the proposed settlement or to object to the proposed settlement, at which hearing the Parties will move the Court to approve the fairness, reasonableness and adequacy of the terms and conditions of the proposed settlement and this Settlement Agreement and to enter an Order of Final Approval and Final Judgment.

19. Incentive Payment means a payment to Class Representatives, in the amount of Five Thousand Dollars (\$5,000.00) each to Jeffrey E. Long, (Johnathan G. Harrison and Sarah E. Harrison combined), and Byron Foxx, for a total of \$15,000.00.

Recitals

20. On January 16, 2018, Plaintiffs filed a putative class action against FMC against Defendant Falls Motor City, Inc. ("FMC") for violations of Ohio's Administrative Code and Ohio's Consumer Sales Practices Act ("CSPA").

21. On August 10, 2021, September 14, 2021, October 19, 2021, and April 18, 2022, the Parties participated in mediations before James McMonagle, an experienced mediator selected jointly by the Parties to conduct a mediation. At the conclusion of the mediations, the Parties reached a settlement subject to Court approval.

22. Class Counsel and counsel for Defendant have investigated the facts relating to the claims alleged and have made a thorough study of the legal principles applicable to the claims asserted against Defendant. Counsel for the Parties agree that there are numerous issues of fact and disputed legal issues relating to the claims sought to be asserted in the Class Action. Based upon the investigation and taking into account the sharply contested legal and factual issues involved; the expense and time necessary to prosecute the Class Action through trial; the risks, uncertainty and costs of further prosecution, including the novel issues of law present in this case with respect to the certain claims and defenses raised by the Parties; and the uncertainties of complex litigation and the relative benefits conferred upon the Settlement Class and the Class Representatives pursuant to this Settlement Agreement; Class Counsel has concluded that a settlement with Defendant on the terms set forth in this Settlement Agreement is fair, reasonable, adequate and in the best interests of the Class Representatives and the Settlement Class.

23. Defendant has asserted defenses to the claims alleged in the Class Action and expressly denies each of the claims asserted against it and any and all liability arising out of the

conduct and facts alleged in the Class Action. Defendant nevertheless desires to settle the Class Action. Defendant has concluded that further defense of the Class Action would be protracted and expensive. Defendant has expended substantial amounts of time, energy and resources and, unless this settlement is made, will continue to expend substantial amounts of time, energy and resources to the defense of the claims asserted in the Class Action. Defendant has, therefore, agreed to settle in the manner and upon the terms set forth in this Settlement Agreement in order to put to rest the claims that were or could have been asserted on behalf of the Settlement Class.

NOW THEREFORE, IT IS HEREBY AGREED, BY AND BETWEEN the undersigned, that the Class Action shall be settled, subject to the approval of the Court, upon and pursuant to the following terms and conditions:

Basic Settlement Terms

24. For settlement purposes only, the Parties agree that the Settlement Class may be certified in the Class Action, pursuant to Rule 23 of the Ohio Rules of Civil Procedure.

25. It is hereby agreed, by and between the Class Representatives and Defendant, through their respective counsel of record, and subject to the approval of the Court, in consideration of the benefits inuring to the Parties hereto, and without admission of any liability or wrongdoing whatsoever by Defendant, that upon entry of the Order of Final Approval and Final Judgment: (a) the Class Representatives shall be deemed to have fully, finally and forever released and discharged the Released Parties from any and all Settled Claims; and (b) the Participating Class members shall be deemed to have fully, finally and forever released and forever discharged the Released Parties from any and all Settled Claims.

26. Notwithstanding any other provision of this Settlement Agreement, this Agreement is intended by the Parties to be a general release and a covenant not to sue as to the

Class Representative, which extinguishes all claims and precludes any attempt by the Class Representatives to file or continue prosecution of a lawsuit, or arbitration, or otherwise pursue an individual claim for relief with any local, state or federal agency against the Released Parties regarding any Settled Claims which occurred prior to the entry of the Order of Final Approval and Final Judgment.

27. The Settled Claims, as defined in Paragraph 14, include any unknown claims that the Class Representatives does not know or suspect to exist in his favor at the time of the release which, if known by him, might have affected his settlement with, and release of, the Released Parties or might have affected his decision not to object to this Settlement. The Class Representatives may hereafter discover facts in addition to or different from those that he now knows or believes to be true with respect to the subject matter of the Settled Claims, but upon the Effective Date, they shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever settled and released any and all of the Settled Claims.

28. Notwithstanding any other provision of this Settlement Agreement, this Agreement is intended by the Parties to be a release and a covenant not to sue as to the Participating Class Members which extinguishes all Settled Claims and precludes any attempt by the Participating Class Members to file or continue prosecution of a lawsuit or arbitration or otherwise pursue an individual claim for relief with any local, state, or federal agency against the Released Parties with respect to the Settled Claims regarding any matter, incident, or thing which occurred prior to the entry of the Order of Final Approval and Final Judgment.

29. The Settled Claims, as defined by Paragraph 14, include any unknown claims that any of the Participating Class Members do not know or suspect to exist in their favor at the time of the release which, if known by them, might have affected their settlement with, and release of,

the Released Parties or might have affected their decision not to object to this Settlement related to the claims made in the Second Amended Complaint. Each of the Participating Class Members may hereafter discover facts in addition to or different from those they now know or believe to be true with respect to the subject matter of the Settled Claims, but upon the Effective Date, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever settled and released any and all of the Settled Claims.

30. The Monies Available for Settlement shall, in the aggregate, be no more than the maximum total amount (i.e. \$860,250.00) Defendant can be required to pay under this Settlement Agreement with the exception of cost of notice and administration and court costs. Payments from the Monies Available for Settlement shall be made for (a) the attorneys' fees, costs, and expenses to Class Counsel awarded by the Court; and (b) the Incentive Payment. Once the payments designated above have been made or awarded, to the extent any funds remain from the Monies Available for Settlement, the Claims Administrator shall make a *cy pres* contribution of any remaining funds equally to [The Northeast Ohio Black Health Coalition and The National Association of Consumer Advocates.

31. Subject to Court approval and for purposes of effectuating this Settlement Agreement, the following amounts shall be paid from the Monies Available for Settlement:

a. Class Counsel. Contemporaneously with filing a Motion for Final Approval, Class Counsel shall apply to the Court for a distribution from the Monies Available for Settlement of fees, costs and expenses. Class Counsel intends to seek four hundred thousand dollars of the Monies Available for Settlement (\$400,000.00). Defendant agrees not to oppose any application or motion by Class Counsel for attorneys' fees, costs, and expenses. In the event the Court awards a lesser amount of

fees and costs than that for which Class Counsel applies, the Settlement Agreement shall remain in full force and effect and be binding upon the Parties. The payment approved by the Court pursuant to this subparagraph (a) shall constitute full satisfaction of Defendant's and/or any of the Released Parties' obligations to pay amounts to any person, attorney, or law firm for attorneys' fees, expenses or costs incurred on behalf of the Class Representatives and/or the Settlement Class, and shall relieve the Released Parties from any other claims or liability to any other attorney or law firm for any attorneys' fees, expenses, and/or costs to which any of them may claim to be entitled on behalf of the Class Representatives and/or the Settlement Class. Class Counsel shall be solely and legally responsible to pay any and all applicable taxes on the payment made pursuant to this subparagraph and agrees to indemnify and hold harmless Defendant from any claim or liability for taxes, penalties, or interest for which Class Counsel is responsible as a result of the payment or any allocation of the payment made pursuant to this subparagraph. Payment of fees and costs pursuant to this paragraph and as approved by the Court shall not be made until after thirty days from the Effective Date. A Form 1099 shall be provided to Class Counsel for the payment made pursuant to this subparagraph.

b. Incentive Payment. Contemporaneously with filing a Motion for Final Approval, Class Counsel shall apply to the Court for a distribution from the Monies Available Incentive Payments in the amount of Five Thousand Dollars (\$5,000.00) each to Class Representatives Jeffrey E. Long, (Johnathan G. Harrison and Sarah E. Harrison combined), and Byron Foxx, for a total of \$15,000.00. Defendant agrees not to oppose any application or motion by Class Counsel for the Incentive Payments. In

the event the Court awards a lesser amount than that for which Class Counsel applies, the Settlement Agreement shall remain in full force and effect and be binding upon the Parties. Class Representatives shall be solely and legally responsible to pay any and all applicable taxes on the payment made pursuant to this subparagraph and agrees to indemnify and hold harmless Defendant from any claim or liability for taxes, penalties, or interest for which Class Representatives are responsible as a result of the payment or any allocation of the payment made pursuant to this subparagraph. Payment of the Incentive Payments pursuant to this paragraph and as approved by the Court shall not be made until after thirty days from the Effective Date. A Form 1099 shall be provided to Class Representatives for the payment made pursuant to this subparagraph.

32. Solely for purposes of effectuating this Settlement Agreement and in exchange for the release of Settled Claims by the Participating Class Members, a Participating Class Member who does not timely opt-out will receive a cash payment of \$125.00 dollars for each transaction entered and a non-transferrable, one-time use Discount Certificate to use at FMC, valued at (1) \$500 toward the purchase of any vehicle or (2) twenty percent (20%) off any purchase of parts or service up to total of \$500. The Discount Certificate can only be used once, but can be combined with any coupon or other promotion and shall be valid for a period of twelve months from the date of distribution.

33. FMC shall be responsible for paying the Claims Administrator for the costs incurred by and fees charged by the Claims Administrator, including, without limitation, costs and fees for sending Class Notice, tracking opt outs, and distributing the Settlement Award to the Participating Class Members and Class Representatives. FMC's obligation to pay the Claims Administrator's costs and fees is separate and distinct from FMC's obligation to tender the

Monies Available for Settlement. The Parties agree to cooperate in the settlement administration process and to make all reasonable efforts to control and minimize the costs and expenses incurred in the administration of the settlement.

34. All eligibility and Settlement Award determinations for Participating Class Members shall be based on pertinent records or information provided by Defendant at Defendant's cost. The Claims Administrator shall make a determination based on all of the information provided.

35. In no event shall there be any distribution of Settlement Funds or Coupons to any Participating Class Member until fourteen days after the Effective Date have expired.

36. Defendant's payment (through the Claims Administrator) of Settlement Awards to Participating Class Members; payment of the fees, costs and expenses of claims administration; and payment of fees, costs, and expenses to Class Counsel shall constitute full and complete discharge of the entire obligation of Defendant under this Settlement Agreement.

37. No person shall have any claim against Defendant or any of the Released Parties, the Class Representatives, the Settlement Class, Class Counsel, Defendant's Counsel, or the Claims Administrator based on distributions or payments made in accordance with this Settlement Agreement. This Agreement creates no rights in nor confers any benefits upon anyone not specifically named in the Agreement as receiving benefits thereunder.

38. If this Settlement Agreement is not approved in full, or is terminated, rescinded, canceled, or fails to become effective for any reason, and the Effective Date does not occur, then Defendant has no obligation to make any payments provided for in this Settlement Agreement.

39. As part of this Settlement Agreement, Defendant shall not be required to enter into any consent decree, nor shall Defendant be required to agree to any provision for injunctive

or prospective relief. The Class Representatives agree and acknowledge that the relief provided by this Settlement Agreement is fair and complete and that imposition of injunctive or prospective relief is neither necessary nor required.

40. Defendant, at its sole and independent discretion, shall have the right, but not the obligation, to revoke and rescind this Settlement Agreement if requests for exclusion (opt-out) from the proposed settlement are validly and timely filed by 1% or more members of the Settlement Class. If the Defendant exercises this option, all of Defendant's obligations under this Settlement Agreement shall cease to be of any force or effect; this Settlement Agreement and any orders entered in connection with the settlement (including certification of the Settlement Class) shall be vacated, rescinded, canceled and annulled; and the Parties shall return to the status quo as if the Parties had not entered into this Settlement Agreement. In addition, in such event, the Agreement and all negotiations, court orders and proceedings relating thereto shall be without prejudice to the rights of any and all Parties, and all evidence relating to the Settlement Agreement and all negotiations shall not be admissible or discoverable in the Class Action or otherwise. The Parties expressly agree that Defendant's agreement to enter into this Settlement Agreement and/or joinder or consent to any motion for certification of the Settlement Class cannot be used as, and is not, evidence of any admission that any class is otherwise certifiable in this case or that Defendant has waived or abandoned any argument in opposition to any motion to certify any class in this case in the event that—for any reason whatsoever, including but not limited to Defendant's exercise of its rights under this Paragraph—the Effective Date should not occur. Defendant shall exercise its rights under this paragraph, if at all, on the date specified in the Implementation Schedule by giving notice of such exercise to Class Counsel.

41. The Class Representatives and Defendant agree that the Implementation Schedule shall govern implementation of the Settlement Agreement, and that the dates set forth in the Implementation Schedule shall only be modified based on (1) the mutual consent of counsel for the Parties, (2) delays due to the Court's schedule, or (3) by Order of the Court.

Class Notice and Settlement Fairness Hearing

42. As part of this Settlement Agreement, the Parties agree to the following procedures for obtaining the Court's preliminary approval of the Settlement Agreement, notifying the Settlement Class, obtaining final Court approval of the Settlement Agreement and processing the Settlement Awards:

a. Class Counsel shall request a hearing date before the Court for preliminary approval of the Settlement Agreement. In conjunction with this request, Class Counsel shall submit, and Defendant will support, a motion for preliminary approval attaching this Settlement Agreement and supporting papers, which shall set forth the terms of this Settlement Agreement and will include proposed forms of all notices and other documents as attached hereto necessary to implement the Settlement Agreement. Class Counsel must file the motion for preliminary approval on or before June 14, 2022.

b. Solely for purposes of this Settlement Agreement, the Parties will request that the Court enter a Preliminary Order, preliminarily approving the proposed settlement, and setting a date for the Settlement Fairness Hearing. The Preliminary Order shall provide for notice of the Settlement Agreement and related matters to be given to the Settlement Class as specified herein.

c. Notice of the settlement shall be provided to the Settlement Class only as set forth herein. Objections to the settlement and/or requests for exclusion from the

Settlement Class, if any, shall be made using the procedures set forth below. The Parties believe and agree that the proposed procedures for Class Notice, which requires notice to be sent by First Class mail, provide the best practicable notice in a reasonable manner to the Settlement Class.

i. The Claims Administrator shall be responsible, as directed by the Court, for preparing, printing, and mailing to all members of the Settlement Class identified in Paragraph 17 the Class Notice attached as an exhibit to this Settlement Agreement. The Claims Administrator shall also be responsible, as directed by the Court, for preparing and publishing the Class Notice attached as an exhibit to this Settlement Agreement, as set forth and in the manner described in Paragraph 42(c)(ii) below.

ii. Class Members Who Are To Receive Direct Mail Notice: No later than the date specified in the Implementation Schedule, the Claims Administrator shall send a copy of the Class Notice in the form attached hereto to all members of the Settlement Class. Such Class Notice shall be sent via First Class regular U.S. mail, postage prepaid, using the most current mailing address information available as provided to the Claims Administrator by Defendant. In order to provide the best notice practicable, any Class Notice returned to the Claims Administrator as non-delivered before the deadline set forth in the Implementation Schedule for Class Members to mail Claim Forms shall be sent to the forwarding address affixed thereto. If no forwarding address is provided for a Class Notice that is returned as non-delivered, then such Class Notice will be resent by the

Claims Administrator after the address is updated through a computer search. The undelivered Class Notices will be resent within five business days after the Claims Administrator receives notice that the Class Notice was undeliverable. In the event the procedures in this paragraph are followed, Defendant shall be deemed to have satisfied its obligation to provide Class Notice to members of the Settlement Class. If an intended recipient does not receive the Class Notice, the intended recipient shall nevertheless be bound by all terms of the Settlement Agreement and the Order of Final Approval and Final Judgment. The objection and opt-out deadlines shall not be extended for members of the Settlement Class whose original notices are re-mailed pursuant to this paragraph.

iii. The Class Notice shall provide that those members of the Settlement Class who wish to object to the settlement file with the Court and serve on Class Counsel and Defendant's counsel a written statement of objection, ("Notice of Objection"), on or before the date set forth in the Implementation Schedule. The Clerk of Court's time stamp shall be the exclusive means of determining whether a Notice of Objection is timely. The Notice of Objection must, in the form of a declaration signed by hand under penalty of perjury, state (a) the full name, address, and telephone number of the person objecting; and (b) the basis for the objection. Members of the Settlement Class who fail to make objections in the manner specified above shall be deemed to have waived any objections and shall be

foreclosed from making any objection (whether by appeal or otherwise) to the Settlement Agreement.

iv. The Class Notice shall provide that members of the Settlement Class who wish to exclude themselves from the settlement must submit a written statement requesting exclusion from the class postmarked on or before the date specified in the Implementation Schedule. Such written request for exclusion must be signed by hand and must state the full name, address, and telephone number of the person requesting exclusion. Members of the Settlement Class are free to consult counsel regarding the opt-out option. However, the opt-out must be personally signed by the member of the Settlement Class who seeks to opt-out. No member of the Settlement Class may opt-out by a request to opt-out signed by an actual or purported agent or attorney acting on behalf of the member of the Settlement Class unless that class member has been adjudicated to be incompetent or unless the purported agent or attorney is a duly appointed and authorized representative of the estate of the class member. No opt-out request may be made on behalf of a group of members of the Settlement Class. Each member of the Settlement Class who does not submit an opt-out request in compliance with this paragraph shall be a Participating Class Member. The opt-out request must be sent by mail to the Claims Administrator and must be postmarked on or before the date specified in the Implementation Schedule. The date of the postmark on the return mailing envelope shall be the exclusive means used to determine whether a request

for exclusion has been timely submitted. Any member of the Settlement Class who requests exclusion (opts-out of the settlement) will not be entitled to any Settlement Award and will not be bound by the Settlement Agreement or have any right to object, appeal, or comment thereon. Members of the Settlement Class who fail to submit a valid, timely, and properly completed request for exclusion on or before the date specified in the Implementation Schedule shall be bound by all terms of the Settlement Agreement and the Order of Final Approval and Final Judgment, regardless of whether they otherwise have requested exclusion from the settlement. No later than seventy (70) days after the mailing of Class Notice, the Claims Administrator shall provide counsel for the Parties with a complete list of all members of the Settlement Class who have validly and timely requested exclusion (opted-out) from the settlement.

d. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage members of the Settlement Class to (i) submit written objections to the settlement or requests for exclusion from the settlement or (ii) appeal from the Order of Final Approval and Final Judgment.

e. Upon expiration of the deadline for requesting exclusion from the settlement as set forth in the Implementation Schedule, a Settlement Fairness Hearing shall be conducted to determine final approval of the settlement along with the amounts properly payable attorneys' fees and costs. Upon final approval of the settlement by the Court at or after the Settlement Fairness Hearing, the Parties shall present the Order of Final Approval and Final Judgment to the Court for its approval and entry. After entry

of the Order of Final Approval and Final Judgment, the Court shall have continuing jurisdiction for purposes of addressing settlement administration matters.

f. The Claims Administrator, subject to Court approval, shall be responsible for receiving and reviewing the opt-out requests submitted by members of the Settlement Class and for determining eligibility for payment. All Participating Class Members will be eligible to receive a Settlement Award. Administration of the settlement shall be completed on or before the date specified in the Implementation Schedule. Upon completion of administration of the settlement, the Claims Administrator shall provide written certification of such completion to the Court, Class Counsel and counsel for Defendant.

g. The Claims Administrator, subject to Court approval, shall be responsible for distributing the Monies Available for Settlement. Within thirty (30) days of the Effective Date, FMC shall tender four hundred thousand dollars (\$465,250.00) to the Claims Administrator for distribution consistent with this Settlement Agreement and the Court's Order.

h. All of Defendant's own attorneys' fees and legal costs and expenses incurred in the Class Action shall be borne by Defendant from Defendant's funds and not from the Monies Available for Settlement.

i. In the event (i) the Court does not enter the Order for Preliminary Approval of the proposed settlement following the Motion for Preliminary Approval; (ii) the Court does not finally approve the proposed settlement; (iii) the Court does not enter the Order of Final Approval and Final Judgment in a form the same as, or substantially similar to, the one submitted by the Parties; or (iv) the settlement does not

become final for any other reason, this Settlement Agreement shall be null and void and any order or judgment entered by the Court in furtherance of this settlement shall be treated as void *ab initio* and all of Defendant's obligations under this Settlement Agreement shall cease to be of any force or effect; this Settlement Agreement and any orders entered in connection with the settlement (including certification of the Settlement Class) shall be vacated, rescinded, canceled and annulled; and the Parties shall return to the status quo as if the Parties had not entered into this Settlement Agreement. In addition, in such event, the Agreement and all negotiations, court orders and proceedings relating thereto shall be without prejudice to the rights of any and all Parties, and all evidence relating to the Settlement Agreement and all negotiations shall not be admissible or discoverable in the Class Action or otherwise. The Parties expressly agree that Defendant's agreement to enter into this Settlement Agreement and/or joinder or consent to any motion for certification of the Settlement Class cannot be used as, and is not, evidence of any admission that any class is otherwise certifiable in this case or that Defendant has waived or abandoned any argument in opposition to any motion to certify any class in this case in the event that, for any reason whatsoever, the Effective Date should not occur.

j. The Claims Administrator shall keep counsel for the Parties apprised of all Settlement Awards made under the Settlement Agreement and upon completion of the administration of the settlement, the Claims Administrator shall provide written notice of such completion to counsel for the Parties.

43. Defendant and the Released Parties deny any and all claims asserted or that could have been asserted on behalf of the Settlement Class and deny all wrongdoing whatsoever. This

Settlement Agreement is not a concession or admission and shall not be used against Defendant or any of the Released Parties as an admission or indication with respect to any claim of any fault, concession, or omission by Defendant or any of the Released Parties. Whether or not the Settlement Agreement is finally approved, neither the Settlement Agreement, nor any document, statement, proceeding, or conduct related to this Settlement Agreement, nor any reports or accounts thereof, shall in any event be:

a. construed as, offered or admitted in evidence as, received as, or deemed to be, evidence of a presumption, concession, indication, or admission by Defendant or any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage; or

b. disclosed or referred to, or offered or received in evidence, in any further proceeding in the Class Action, or any other civil, criminal, or administrative action or proceeding against Defendant or any of the Released Parties except for purposes of settling this Class Action pursuant to this Settlement Agreement or establishing that the settlement herein has occurred. The limitations set forth in this paragraph do not apply to use and/or disclosure in order for a Party to enforce this Settlement Agreement or any terms therein or to establish that such a settlement has occurred; or

c. construed as, offered or admitted in evidence as, received as, or deemed to be, evidence of a presumption, concession, indication, or admission by Defendant or any of the Released Parties.

44. The terms of this Settlement Agreement include the terms set forth in any of the attached exhibits, which are incorporated by reference as though fully set forth herein. The exhibits to this Settlement Agreement are an integral part of the Settlement Agreement. Unless

specifically provided otherwise in the exhibits to this Settlement Agreement, in the event of any conflict between the Settlement Agreement and the exhibits, including the Implementation Schedule, the terms of the Settlement Agreement shall control.

45. No later than seventy (70) days after the mailing of Class Notice, the Claims Administrator shall provide to Class Counsel and counsel for Defendant a declaration setting forth the total number of members of the Settlement Class who filed valid, timely, and properly completed requests for opt-out or exclusion from the Class Action. The Claims Administrator shall provide to Class Counsel and counsel for Defendant a final declaration on these matters and certifying completion of the Claims Administrator's responsibilities, as set forth herein and as agreed by the Parties and Claims Administrator, within forty-five (45) days of the Effective Date of the Settlement or such other later date as the Court or the Parties may agree upon.

46. The Parties agree to hold all proceedings in the Class Action, except such proceedings as may be necessary to implement and complete the Settlement Agreement, in abeyance pending the Settlement Fairness Hearing to be conducted by the Court.

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

48. This Settlement Agreement and any attached exhibits constitute the entire agreement between the Parties, and no oral or written representations, warranties or inducements have been made to any Party concerning this Settlement Agreement or its exhibits other than the representations, warranties and covenants contained and memorialized in such documents.

49. Counsel for the Parties warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement

Agreement to effectuate the terms hereof, and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties and their respective counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement Agreement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement Agreement, the Parties may seek the assistance of the Court to resolve such disagreement, but only after first complying with the provisions of Paragraph 56. The person signing this Settlement Agreement on behalf of Defendant represents and warrants that he is authorized to sign this Settlement Agreement on behalf of Defendant.

50. This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Released Parties, the Parties, and Participating Class Members, as previously defined, except that the discount certificates described in Paragraph 32 shall be non-transferable.

51. All terms of this Settlement Agreement and the exhibits hereto shall be governed by and interpreted according to the laws of the State of Ohio.

52. This Settlement Agreement may be executed in one or more counterparts and by facsimile. All executed copies of this Settlement Agreement, and photocopies thereof (including facsimile copies of the signature pages), shall have the same force and effect and shall be legally binding and enforceable as the original.

53. The Parties believe the terms of the settlement as set forth in this Settlement Agreement are fair, adequate and reasonable and have arrived at this Settlement Agreement after

arms-length negotiations and with the assistance of James McMonagle, an experienced mediator, taking into account all relevant factors, present and potential.

54. Each of the Parties has cooperated in the drafting and preparation of this Settlement Agreement. Hence, in any construction or interpretation of this Settlement Agreement, the same shall not be construed against any of the Parties.

55. The Class Representatives agree to sign this Settlement Agreement and by signing this Settlement Agreement are bound by the terms herein stated, and further agree not to request to be excluded from the Settlement Class and agree not to object to any of the terms of this Settlement Agreement. Non-compliance by the Class Representatives with this paragraph shall be void and of no force or effect. Any such request for exclusion or objection shall therefore be void and of no force or effect.

56. In the event of any dispute between the Parties regarding the terms of this Settlement Agreement, the Parties will, prior to seeking any judicial resolution, submit the dispute to James McMonagle for mediation and facilitated resolution. Mr. McMonagle's fees for any such mediation shall be split 50/50 by the Parties.

By: 
Jeffrey Long (Jun 14, 2022 14:10 EDT)
Jeffrey E. Long

By: _____
Jonathan G. Harrison

By: _____
Sarah E. Harrison

By: _____
Byron Foxx

*Plaintiffs and Class Representatives on
behalf of a class of similarly situated persons*

FREDERICK & BERLER, L.L.C.

By: _____
Ronald I. Frederick (0063609)

Counsel for Plaintiffs

FALLS MOTOR CITY, INC.

By: _____
_____, President

Defendant

WESTON HURD LLP

By: _____
Matthew C. Miller (0084977)

Counsel for Defendant

By: _____
Jeffrey E. Long

By:  _____
Jonathan G. Harrison (Jun 14, 2022 13:24 EDT)

By: _____
Sarah E. Harrison

By: _____
Byron Foxx

*Plaintiffs and Class Representatives on
behalf of a class of similarly situated persons*

FREDERICK & BERLER, L.L.C.

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Matthew C. Miller (0084977)

Counsel for Defendant

By: _____
Jeffrey E. Long

By: _____
Jonathan G. Harrison

By: ^{SH} _____
Sarah Harrison (Jun 14, 2022 15:20 EDT)
Sarah E. Harrison

By: _____
Byron Foxx

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Matthew C. Miller (0084977)

Counsel for Defendant

By: _____
Jeffrey E. Long

By: _____
Jonathan G. Harrison

By: _____
Sarah E. Harrison

By: 
Byron Foxx (Jul 14, 2022 15:35 EDT)
Byron Foxx

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