

~~Exhibit 3~~

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

R E C E I V E D

OCT 26 2016

AT 8:30
WILLIAM T. WALSH
CLERK

<p>Q+ FOOD, LLC, et al., individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>MITSUBISHI FUSO TRUCK OF AMERICA, INC.,</p> <p style="text-align: center;">Defendant.</p>

No. 14-cv-06046-~~MAS~~-DEA

~~PROPOSED~~ ORDER PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT

Plaintiffs moved this Court for an Order preliminarily approving the parties' settlement, certifying a settlement class, appointing settlement class counsel, setting a hearing on the final approval of the settlement, and directing notice to the class (the "Motion"). Mitsubishi-Fuso Truck of America, Inc. ("MFTA") joined in Plaintiffs' request. Upon considering the Motion, the parties' Class Action Settlement Agreement and Release and all exhibits thereto (collectively, the "Settlement Agreement" or "Settlement"), the materials previously submitted in this case, the arguments of counsel, and other materials relevant to this matter, it is hereby **ORDERED** that:

[dkt. no. 50]

1. The Court grants preliminary approval of the Settlement based upon the terms set forth in the Settlement Agreement filed herewith.

~~Exhibit 3~~

2. The terms of the Settlement Agreement are sufficiently fair, reasonable, and adequate to allow dissemination of the Notice according to the Notice Plan.¹ This determination is not a final finding that the Settlement Agreement is fair, reasonable, and adequate, but instead is a determination that there is good cause to submit the proposed Settlement Agreement to Settlement Class Members and to hold a hearing concerning final approval of the proposed settlement, and ultimately approve the settlement.

3. The Parties have made a sufficient showing, under the provisions of Rule 23 of the Federal Rules of Civil Procedure, as applicable in the context of settlement classes, to establish reasonable cause, following Notice to members of the proposed Settlement Class, to hold a hearing to determine if a Class should be certified for settlement purposes only, consisting of persons who meet the following criteria:

All current and former owners and lessees of model year 2012-2016 Mitsubishi-Fuso Canter trucks (the "Subject Vehicles") who purchased or leased their Subject Vehicles in the United States.

Excluded from the Settlement Class are: (a) Persons who validly and timely exclude themselves from the settlement; (b) persons who have settled with, released, or otherwise had claims adjudicated on the merits against MFTA that are substantially similar to those alleged in this matter; wrongful death or property damage claims to property other than the Subject Vehicles, fixtures installed in the vehicles, or cargo transported in the vehicles, as a result of the defects alleged; (c) MFTA employees; (d) insurers or other providers of extended service contracts or warranties, and (e) Judge Arpert and his family.

If, for any reason, the proposed settlement is not approved, any order certifying a settlement class shall be vacated *nunc pro tunc* and the Litigation shall proceed as though the Settlement Class had never been certified, without prejudice to the Parties' rights to either request or oppose class certification for purposes of litigation.

¹ To the extent capitalized terms are not defined in this Order, they shall have the meaning set forth in the Settlement Agreement.

~~Exhibit 3~~

4. In making the findings set forth in Paragraph 3, the Court has exercised its discretion in conditionally certifying the Settlement Class on a nationwide basis. Named Plaintiffs Q+ Food LLC, Lawrence Barton d/b/a Legend Meats, LLC, Encore Piano & Organ Moving, LLC, All American Moving and Storage Delivery, LLC, and West Lumber & Building Supply Corp are designated as the Class Representatives.

5. The Court hereby appoints the following attorneys as counsel for the Settlement Class: James C. Shah and Natalie J. Finkelman Bennett of Shepherd, Finkelman, Miller & Shah, LLP (“Shepherd Finkelman”), Michael D. Donovan of Donovan Litigation Group, LLC (“DLG”), Robert W. Murphy of the Murphy Law Firm (“Murphy”) and Marc Goldich of Axler Goldich, LLC (“Axler Goldich”). Lead Class Counsel shall mean Shepherd Finkelman, DLG, Murphy and Axler Goldich. For purposes of these settlement proceedings, the Court finds that they are competent and capable of exercising their responsibility as Class Counsel.

6. This Court has both subject matter jurisdiction and personal jurisdiction as to this action and all Parties before it.

7. The Settlement Agreement is for settlement purposes only. Neither the fact of, any provision contained in, nor any action taken under the Settlement Agreement shall be construed as an admission of the validity of any claim or any factual allegation that was or could have been made by Plaintiffs and Settlement Class Members in the Action, or of any wrongdoing, fault, violation of law, or liability of any kind on the part of Defendant or the Released Persons. The Settlement Agreement shall not be offered or be admissible in evidence by or against Defendant or the Released Parties or cited or referred to in any other action or proceeding, except one (1) brought by or against the Parties to enforce or otherwise implement the terms of the Settlement Agreement, (2) involving any Plaintiff or Settlement Class Member

~~Exhibit 3~~

to support a defense of res judicata, collateral estoppel, release, or other theory of claim preclusion, issue preclusion, or similar defense, or (3) involving an attempt to enforce a stay of other litigation pursuant to the terms set forth in the Settlement Agreement and the Court's Order preliminarily approving the Settlement Agreement.

8. The Notice and provisions for disseminating notice substantially as described in and attached to the Settlement Agreement are hereby approved. The Court approves the Notice attached as Exhibit 1 to the Settlement Agreement, as well as the Claim Form, attached as Exhibit 2 to the Settlement Agreement. These materials (a) provide the best practicable notice, (b) are reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the action, the terms of the proposed settlement, and of their right to appear, object to, or exclude themselves from the proposed settlement, (c) are reasonable and constitute due, adequate, and sufficient notice to all persons entitled to receive notice, and (d) fully comply with federal law, the United States Constitution, and all other applicable laws.

9. Kurtzman Carson Consultants, LLC ("KCC"), selected pursuant to the terms of the Settlement Agreement, shall be responsible for providing notice of the proposed settlement to the Settlement Class Members in accordance with the provisions of the Settlement Agreement and as directed under the Class Action Fairness Act (28 U.S.C. § 1715). KCC's fees and costs will be paid from the Settlement Fund.

10. Pursuant to Section 1.28. of the Settlement Agreement, the Court orders Defendant to deposit US \$100,000.00 into the Settlement Fund within seven (7) calendar days of the entry of this Order to fund the Notice.

11. To comply with their obligations under the Settlement Agreement, the parties must obtain vehicle registration information for Settlement Class Members for the purpose of

~~Exhibit 3~~

disseminating notice of the proposed settlement to those persons and entities. MFTA and KCC are hereby authorized to obtain vehicle registration information concerning Settlement Class Members from IHS Automotive or a similar vendor for the sole purpose of providing notice to those persons and entities.

12. As soon as practicable after the Preliminary Approval of the Settlement, with the mailing to be substantially completed within thirty (30) days, KCC shall send to all previously identified Settlement Class Members via direct first-class mail a copy of the Notice. Within ten (10) days from the Preliminary Approval of the Settlement, KCC will make an informational settlement website available to the public, which website will include a copy of this order, the Notice, the Settlement Agreement, Claim Forms that may be downloaded and submitted online or by mail, and other important documents. Prior to the Fairness Hearing, KCC shall file a declaration with the Court, attesting to the measures undertaken to provide Notice to the Settlement Class and as directed by CAFA.

13. Anyone who wishes to be excluded from the Settlement Class must submit a written request for exclusion (as described in the Notice and Settlement Agreement) by sending it to KCC, by First-Class U.S. mail to the address provided in the Notice. Requests for exclusion must contain all information described in the Settlement Agreement. The envelope containing the Request for Exclusion must be postmarked not later than sixty (60) days before the date set for the Fairness Hearing in Paragraph 21, below; this date will not change if the Fairness Hearing is rescheduled. The Court shall rule on the validity of exclusions at the Fairness Hearing.

14. Anyone who falls within the Settlement Class definition and does not submit a Request for Exclusion in complete accordance with the deadlines and other specifications set forth in this Order and the Settlement Agreement shall remain a Settlement Class Member and

~~Exhibit 5~~

shall be bound by all proceedings, orders, and judgments of this Court pertaining to the Settlement Class.

15. Any Settlement Class Member who wishes to object to the proposed Settlement must send or file an objection with this Court. Objections must contain all information described in the Settlement Agreement. The envelope containing the Objection to the Settlement must be filed not later than sixty (60) days before the date set for the Fairness Hearing in Paragraph 21, below; this date will not change if the Fairness Hearing is rescheduled. Only Settlement Class Members may object to the Settlement. In addition to filing any Objection with this Court, such papers must be also sent to each of the following persons on the date of the filing:

JAMES C. SHAH
NATALIE FINKELMAN BENNETT
SHEPHERD, FINKELMAN, MILLER & SHAH, LLP
475 White Horse Pike
Collingswood, NJ 08107
Telephone: (856) 858-1770

MICHAEL D. DONOVAN
DONOVAN LITIGATION GROUP LLC
1055 Westlakes Drives, Suite 155 Berwyn, PA 19103
Telephone: (610) 647-6067

ROBERT W. MURPHY
MURPHY LAW FIRM
1212 S.E. 2nd Avenue
Fort Lauderdale, FL 33316
Telephone: (954) 763-8660

MARC A. GOLDICH
AXLER GOLDICH LLC
1650 Market Street, Suite 3600
Philadelphia, PA 19103
Telephone: 267.207.2920

ALEXANDER P. IMBERG
SQUIRE PATTON BOGGS (US) LLP
275 Battery Street, Suite 2600
San Francisco, CA 94111-34-92

~~Exhibit~~ 3

Telephone: (415) 954-0200

WILLIAM M. MCSWAIN
MICHAEL P. DALY
JENNIFER B. DEMPSEY
DRINKER BIDDLE & REATH LLP
One Logan Square, Suite 2000
Philadelphia, PA 19103-6996
Telephone: (215) 988-2700

16. Any Settlement Class Member who does not submit an Objection to the Settlement in complete accordance with this Order and the applicable provisions of the Settlement Agreement shall not be permitted to object to the settlement.

17. Any objecting Settlement Class Member may appear at the hearing on the fairness of the proposed settlement (the "Fairness Hearing") held by the Court, in person or by counsel, to show cause why the Settlement Agreement should not be approved as fair, reasonable and adequate, or to object to any petitions for attorney fees and reimbursement of litigation costs and expenses; provided, however, that the objecting Settlement Class Member must file with the Clerk of the Court, a notice of intention to appear at the Fairness Hearing (a "Notice of Intention to Appear") not later than sixty (60) days before the date set for the Fairness Hearing in Paragraph 21, below; this date will not change if the Fairness Hearing is rescheduled. The Notice of Intention to Appear must include all information and documents required by the Settlement Agreement. Any Settlement Class Member who does not provide a Notice of Intention to Appear in complete accordance with the deadlines and other specifications set forth in the Settlement Agreement, and who has not filed an Objection to the Settlement in complete accordance with the deadlines and other specifications set forth in the Settlement Agreement, will be barred from speaking or otherwise presenting any views at any Fairness Hearing.

~~Exhibit 3~~

18. KCC shall also have the obligations otherwise enumerated in the Settlement Agreement.

19. Class Counsel shall file with the Court their petition for payment of attorneys' fees and reimbursement of litigation costs and expenses no later than (14) days before the deadline for objecting to or requesting exclusion from the Settlement. This request shall be consistent with the provisions of Section 10 of the Settlement Agreement.

20. Fourteen (14) days prior to the date set for the Fairness Hearing, Plaintiffs shall file a motion for judgment and final approval of the Settlement. The parties shall file their briefs in support of settlement approval, as well as any supplemental briefs supporting Class Counsel's motion for attorneys' fees and reimbursement of litigation costs, at that time. The briefing shall include the parties' responses to any Objections, as well as a declaration setting forth the number of Settlement Class members who opted-out of the Settlement Class. Such briefing shall be served on any other attorneys who have entered an appearance in this proceeding, and on any member of the Settlement Class to whose Objection to the Settlement the memoranda or other briefing responds.

If any Settlement Class Members object or opt-out after Plaintiffs file the motion for final approval, the parties shall file supplemental briefing no later than seven (7) days prior to the date set for the Fairness Hearing, setting forth the parties' responses to such Objections and the number of opt-outs. If appropriate, the parties shall include supplemental briefing on Class Counsel's motion for attorney's fees at that time.

21. On Feb 9, ~~2016~~ ²⁰¹⁷ at 2:00 P m., the Court will hold the Fairness Hearing. It shall be held in Courtroom 6W of the United States District Court for the District of New Jersey, located at 402 East State Street Room 2020, Trenton, New Jersey 08608, which shall be set forth in the

~~Exhibit 3~~

Mailed Notice. The Fairness Hearing may be continued or rescheduled by the Court with notice to Class Counsel and Defense Counsel and to any objecting Settlement Class Member who has filed a Notice of Intention to Appear in accordance with Paragraph 17 of this Order. At the Fairness Hearing, or as soon thereafter as practicable, the Court will determine whether the proposed settlement is fair, reasonable, and adequate and should be approved by the Court. At the Fairness Hearing, the Court will also consider the amount of attorney fees and expenses that should be awarded to Class Counsel. If appropriate, the Court will issue a Final Order and Judgment memorializing its decision, in the form contemplated by the Settlement Agreement.

22. Pending further orders by this Court, all proceedings in this case shall be stayed, except for proceedings pursuant to this Order. A stay is warranted because it will conserve the parties' and various courts' resources, minimize interference with this Court's ability to rule on the proposed Settlement, and preserve the Settlement for a short period of time while class members receive notice and evaluate their options. A standstill of litigation will be efficient, promotes the public policy favoring settlement and aids resolution of claims on a nationwide basis, which is in the public interest.

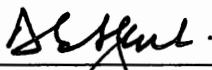
As directed in Paragraph 3, the nationwide class is provisionally certified, and all members of the Settlement Class under the jurisdiction of this Court are enjoined from commencing and thereafter prosecuting any action, suit, proceeding, claim, or cause of action (except those based on or relating to personal injury or wrongful death), in any jurisdiction or court against Defendant or the Released Parties relating to or arising out of the subject matter of this action until such time as the class is decertified or pursuant to further orders of this Court.

23. Class Counsel and Defense Counsel are authorized to establish other means necessary to effectuate the terms of the Settlement Agreement.

~~Exhibit 3~~

IT IS SO ORDERED.

Dated: Oct 20, 2016



Honorable Douglas A. Arpert
United States Magistrate Judge