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22 UNITED STATES DISTRICT COURT
23 NORTHERN DISTRICT OF CALIFORNIA

SC

24 SALLY J. NETTLETON, THERESA)
25 THRUN, CAROL WILSON, DENNIS)
26 DOUGHERTY, HEATHER S. HARDEE,)
27 SPENCER WARE, GARY L. BUCK and)
28 THOMAS M. BUCKHEIT, individually, and)
on behalf of all others similarly situated,)

Case No.: 11 2953

CLASS ACTION COMPLAINT
DEMAND FOR JURY TRIAL

Plaintiffs,

v.

FORD MOTOR COMPANY, and DOES 1
through 100, inclusive,
Defendants.

1 Plaintiffs Sally J. Nettleton, Theresa Thrun, Carol Wilson, Dennis Dougherty, Heather S.
2 Hardee, Spencer Ware, Gary L. Buck, and Thomas M. Buckheit (collectively, "Plaintiffs"),
3 individually, and on behalf of all others similarly situated, allege against defendant Ford
4 Motor Company, and Ford's agents acting on its behalf concerning the allegations herein
5 (collectively, "Ford" or "Defendants"), upon personal knowledge as to themselves and their
6 own acts, and as to all other matters upon information and belief, based upon, *inter alia*, the
7 investigation made by the undersigned attorneys, as follows:
8

9 **INTRODUCTION**

10 1. This is a proposed class action brought by Plaintiffs on behalf of themselves and
11 all other consumers who purchased, in the United States, a model 2002 through model 2005 Ford
12 Explorer or Mercury Mountaineer, or model 2003 through 2005 Lincoln Aviator (collectively,
13 the "Ford Vehicles"). Plaintiffs and the proposed Class (defined below) are purchasers of a Ford
14 Vehicle, which, unknown to Plaintiffs and the Class at the time of purchase, contained a latent
15 defect that causes a body panel on the tailgate to crack during the life of the vehicle ("Cracked
16 Tailgate" or the "Cracked Tailgate Problem"). Ford's acts and omissions, including Ford
17 fraudulently concealing the Cracked Tailgate Problem in connection with its sale and delivery of
18 the Ford Vehicles violates, *inter alia*, the various consumer protection laws of the United States
19 and also constitutes common law fraud, breach of express warranty, and unjust enrichment.
20

21 2. As more fully set forth below, Defendants have made material misrepresentations
22 and concealed material information regarding the design defect that causes the Cracked Tailgate
23 Problem. Defendants intentionally misled the public so they could continue to sell the Ford
24 Vehicles and avoid the expense of repair or redesign of the Cracked Tailgate Problem.
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PARTIES

Plaintiffs

3. Plaintiff Nettleton is a natural person, citizen of California, and a resident in this District who purchased a Ford Vehicle and was damaged as a result.

4. Plaintiff Thrun is a natural person and citizen of Connecticut who purchased a Ford Vehicle and was damaged as a result.

5. Plaintiff Wilson is a natural person and citizen of Connecticut who purchased a Ford Vehicle and was damaged as a result.

6. Plaintiff Dougherty is a natural person and citizen of North Carolina who purchased a Ford Vehicle and was damaged as a result.

7. Plaintiff Hardee is a natural person and citizen of Texas who purchased a Ford Vehicle and was damaged as a result.

8. Plaintiff Ware is a natural person and citizen of New Jersey who purchased a Ford Vehicle and was damaged as a result.

9. Plaintiff Buck is a natural person and citizen of Tennessee who purchased a Ford Vehicle and was damaged as a result.

10. Plaintiff Buckheit is a natural person and citizen of New York who purchased a Ford Vehicle and was damaged as a result.

Defendants

11. Ford Motor Company ("Ford") is a corporation doing business in all fifty states (including the District of Columbia) and is organized under the laws of the State of Delaware, with its principal place of business in Dearborn, Michigan. Ford is registered to do business in the State of California. At all times relevant, Ford manufactured, sold, and purportedly

1 warranted, under the Ford, Lincoln, and Mercury brand names, the Ford Vehicles at issue. The
2 Ford Vehicles were sold throughout the United States during the Class Period (as defined
3 below).

4 12. The true names and capacities, whether individual, corporate, or otherwise, of
5 Defendants DOES 1 through 100 (“DOE Defendants”) are unknown to Plaintiffs, who therefore
6 sue such Defendants by fictitious names, and Plaintiffs will amend this Complaint to show their
7 true names and capacities when they have been ascertained.
8

9 13. Plaintiffs are informed and believe, and therefore allege, that all Defendants,
10 including the DOE Defendants, are in some way responsible for the matters complained of
11 herein.
12

13 JURISDICTION AND VENUE

14 14. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d),
15 because at least one class member is of diverse citizenship from one defendant, there are more
16 than 100 class members nationwide, and the aggregate amount in controversy exceeds
17 \$5,000,000.00.

18 15. The Court has personal jurisdiction over Ford because Ford has purposefully
19 availed itself of the privilege of conducting business activities in the State of California by
20 advertising and selling its manufactured vehicles (including the Ford Vehicles at issue) within
21 the State of California. Additionally, Ford has maintained systematic and continuous business
22 contacts with the State of California, and is registered to conduct business in this State.
23

24 16. Venue is proper in this District, pursuant to 28 U.S.C. § 1391, because a
25 substantial part of the acts or omissions giving rise to the claims brought herein occurred or
26 emanated within this District, and Ford has caused harm to plaintiff Nettleton and the other
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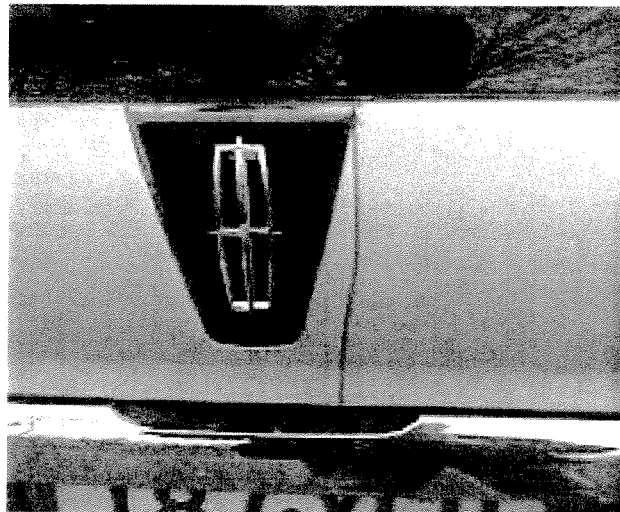
1 members of the Class residing in this District.

2 **OVERVIEW**

3 17. The action herein concerns Ford's failure to disclose a known, latent structural
4 defect to purchasers of its Ford Vehicles (as defined herein), and Ford's fraudulent refusal to
5 repair the same defect for owners of the Ford Vehicles.
6

7 18. At some point during the life of the Ford Vehicles, due to a design or
8 manufacturing flaw, moisture will collect behind the lower window panel of the tailgate. Over
9 time, and in varying weather conditions, the trapped water creates internal stress on the tailgate
10 resulting in a large discernible crack to the panel, immediately devaluing the Ford Vehicle.

11 19. As is clear from the photo in this paragraph, the cracked panel at issue
12 incorporates the handle for the tailgate glass (bottom center of photo, directly below the Lincoln
13 emblem). Moreover, the cracked panel is used to open and close the upper (glass) portion of the
14 tailgate. Therefore, in addition to the defect resulting in diminution of the vehicle's inherent
15 value, the Cracked Tailgate Problem also presents a safety hazard to anyone opening or closing
16 the tailgate:
17



1 Problem during the course of the vehicle's life; (ii) the defect might not exhibit itself until
2 after the warranty expired; and (iii) if the Cracked Tailgate Problem occurred after the
3 warranty period (or even within the warranty period), Ford would refuse to cover the cost of
4 repairing or replacing the defective part.

5
6 31. Indeed, Ford knew that even if it diligently investigated this widespread
7 problem, it could take years for Ford to: (i) determine why the Cracked Tailgate Problem
8 would occur; (ii) decide what steps should be taken to solve the Cracked Tailgate Problem; and
9 (iii) implement steps to resolve the defect.

10 32. Thus, Ford knew that for the indefinite future: (i) the risk that the Cracked
11 Tailgate Problem would manifest on thousands, if not tens of thousands, of the Ford Vehicles
12 was substantial; (ii) Ford's customers were unaware of the substantial risk; and (iii) Ford's
13 customers had a reasonable expectation that Ford would disclose any such risks prior to
14 selling the Ford Vehicles.

15
16 33. Despite such knowledge, Ford continued to manufacture, advertise, sell, and
17 purportedly warrant the Ford Vehicles as marketable and free from known defects.

18 34. Since discovery of the defect at issue in early-2002, Ford has repeatedly adjusted
19 its position on whether Ford is responsible for addressing the Cracked Tailgate Problem, in order
20 to avoid liability for the defect.

21
22 35. Initially, when customers suffered the Cracked Tailgate within the warranty
23 period, Ford asserted that the crack was caused by external forces and, thus, not covered under
24 Ford's new vehicle warranty. As noted above, Ford knew about the Cracked Tailgate Problem
25 (and the specific cause thereof) in early-2002. Therefore, by refusing to repair the Cracked
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1 Tailgates on any vehicles reporting the damage after early-2002, but before the expiration of the
2 warranty period, Ford was fraudulently rejecting valid warranty claims by members of the Class.

3 36. Indeed, plaintiff Thrun's valid warranty claim was specifically (and fraudulently)
4 rejected by Ford. In January 2003, plaintiff Thrun purchased a new 2003 Ford Explorer. The
5 Explorer included a 3-year (36,000 mile) new vehicle warranty issued by Ford. In or about
6 December 2005, Thrun noticed a crack in the vehicle's tailgate (*see* photo included in this
7 paragraph). On December 12, 2005, Thrun brought the car to the Ford dealership that sold her
8 the Explorer. In addition to scheduling a regular oil change, Thrun specifically requested that the
9 cracked tailgate be fixed under her then-current and effective warranty. Ford refused the request,
10 explaining that the cracked tailgate must have been caused by a rock or a snowball, and was not
11 a defect in the part, despite the fact that Ford was aware that hundreds (if not thousands) of
12 owners of Ford Vehicles were already complaining of substantially similar Cracked Tailgates.
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22 *Cracked Tailgate, Plaintiff Thrun's Vehicle*

23 37. Upon information and belief, at present, Ford will cover the defective part under
24 its 3-year new vehicle warranty, but not under any extended (Ford or non-Ford) warranties.
25 Obviously, however, the last new Ford Vehicle was sold in or about 2005, so any 3-year
26 warranty thereon has long-since expired, and Ford's recent empty acknowledgement of coverage
27

1 under the original 3-year warranty is meaningless. Basically, Ford has engaged in a liability
2 shell-game over the Cracked Tailgate Problem in order to avoid any responsibility for its Ford
3 Vehicles.

4 38. Moreover, except for the Ford Vehicles sold by Ford in Fall 2001 (prior to
5 discovery of the defect), Ford wantonly and willfully sold Ford Vehicles (and the new vehicle
6 warranties related thereto) to Plaintiffs and the Class with full knowledge that Ford had no
7 intention of covering the inevitable manifestation of the Cracked Tailgate Problem on those
8 vehicles.
9

10 **Named Plaintiffs' Allegations**

11 Sally Nettleton

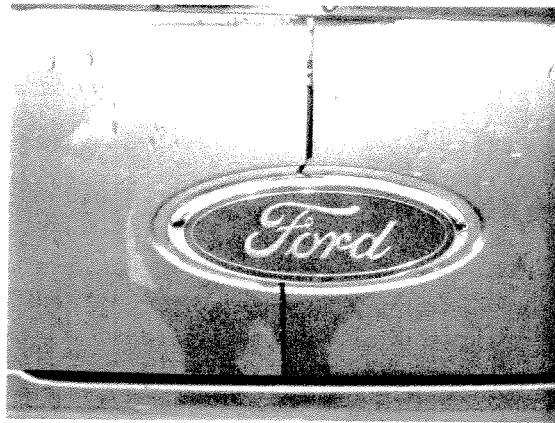
12 39. On or about November 28, 2003, plaintiff Nettleton purchased a used 2003 Ford
13 Explorer from a Ford dealership in California.
14

15 40. Unknown to plaintiff Nettleton at the time, 2003 Ford Explorers were subject to,
16 and would almost certainly experience during the life of the vehicle, the Cracked Tailgate
17 Problem.

18 41. By November 2003, Ford had specific knowledge that plaintiff Nettleton's
19 vehicle would likely experience the Cracked Tailgate Problem.
20

21 42. Despite this knowledge, Ford sold plaintiff Nettleton the Ford Vehicle, with the
22 then-current and effective Ford new vehicle warranty, without disclosing the vehicle's inherent
23 (and pre-existing) defect.

24 43. In or about February 2008, Plaintiff Nettleton observed the Cracked Tailgate on
25 her vehicle:
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Cracked Tailgate, Plaintiff Nettleton's Vehicle

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44. Upon discovering the damage, plaintiff Nettleton requested that Ford repair the Cracked Tailgate Problem on her vehicle, but Ford refused on the grounds that the Ford Vehicle was out of warranty.

45. As a result of the defect, the Cracked Tailgate presents a continuing safety hazard to plaintiff Nettleton and has resulted in the diminution of the Ford Vehicle's value.

Theresa Thrun

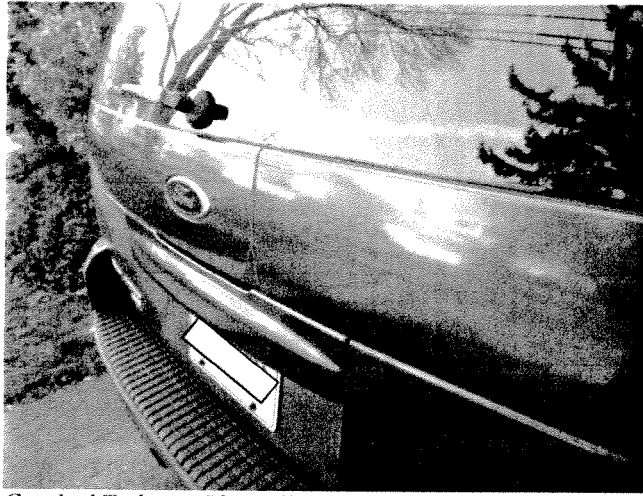
46. On or about January 10, 2003, plaintiff Thrun purchased a new 2003 Ford Explorer from a Ford dealership in Connecticut.

47. Unknown to plaintiff Thrun at the time, 2003 Ford Explorers were subject to, and would almost certainly experience during the life of the vehicle, the Cracked Tailgate Problem.

48. By January 2003, Ford had specific knowledge that plaintiff Thrun's vehicle would likely experience the Cracked Tailgate Problem.

49. Despite this knowledge, Ford sold plaintiff Thrun the new Ford Vehicle, and associated Ford new vehicle warranty, without disclosing the vehicle's inherent (and pre-existing) defect.

50. In or around late-Fall 2005, Plaintiff Thrun observed the Cracked Tailgate on her vehicle:



Cracked Tailgate, Plaintiff Thrun's Vehicle

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51. Upon discovering the damage, plaintiff Thrun requested that Ford repair the Cracked Tailgate Problem on her vehicle, but Ford refused on the grounds that Ford's new vehicle warranty, which was still in full-effect, did not cover this repair.

52. As a result of the defect, the Cracked Tailgate presents a continuing safety hazard to plaintiff Thrun and has resulted in the diminution of the Ford Vehicle's value.

Carol Wilson

53. On or about March 2006, plaintiff Wilson purchased a used 2004 Ford Explorer in Connecticut which, at the time of purchase, was still under Ford's new vehicle warranty and did not yet have a cracked tailgate.

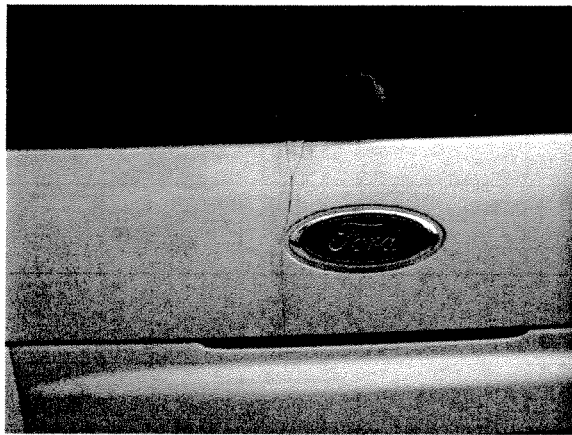
54. Unknown to plaintiff Wilson at the time, 2004 Ford Explorers were subject to, and would almost certainly experience during the life of the vehicle, the Cracked Tailgate Problem.

55. At the time plaintiff Wilson's vehicle was initially delivered by Ford, Ford had specific knowledge that plaintiff Wilson's vehicle would likely experience the Cracked Tailgate Problem.

1 62. By March 2004, Ford had specific knowledge that plaintiff Dougherty's vehicle
2 would likely experience the Cracked Tailgate Problem.

3 63. Despite this knowledge, Ford sold plaintiff Dougherty the Ford Vehicle, and
4 associated Ford new vehicle warranty, without disclosing the vehicle's inherent (and pre-
5 existing) defect.

6 64. In or about January 2010, Plaintiff Dougherty observed the Cracked Tailgate on
7 his vehicle:
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16 *Cracked Tailgate, Plaintiff Dougherty's Vehicle*

17 65. Upon discovering the damage, plaintiff Dougherty requested that Ford repair the
18 Cracked Tailgate Problem on his vehicle, but Ford refused on the grounds that the Ford Vehicle
19 was out of warranty.

20 66. As a result of the defect, the Cracked Tailgate presents a continuing safety hazard
21 to plaintiff Dougherty and has resulted in the diminution of the Ford Vehicle's value.

22 Heather S. Hardee

23 67. On or about April 7, 2010, plaintiff Hardee purchased a used 2004 Ford Explorer
24 in Texas which, at the time of purchase, did not yet have a cracked tailgate.

25 68. Unknown to plaintiff at the time, 2004 Ford Explorers were subject to, and would
26 almost certainly experience during the life of the vehicle, the Cracked Tailgate Problem.
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1 69. At the time plaintiff Hardee's vehicle was initially delivered by Ford, Ford had
2 specific knowledge that plaintiff Hardee's vehicle would likely experience the Cracked Tailgate
3 Problem.

4 70. Despite this knowledge, Ford sold plaintiff Hardee's Ford Vehicle to the original
5 owner, along with the associated Ford new vehicle warranty, without disclosing the vehicle's
6 inherent (and pre-existing) defect.

7 71. In or about January 2011, plaintiff Hardee observed the Cracked Tailgate on her
8 vehicle:
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16 *Cracked Tailgate, Heather Hardee*

17 72. Upon discovering the damage, plaintiff Hardee requested that Ford repair the
18 Cracked Tailgate Problem on her vehicle, but Ford refused.

19 73. As a result of the defect, the Cracked Tailgate presents a continuing safety hazard
20 to plaintiff Hardee and has resulted in the diminution of the Ford Vehicle's value.

21
22 Spencer Ware

23 74. On or about July 19, 2007, plaintiff Ware purchased a used 2004 Ford Explorer
24 from a Ford dealership in New Jersey.

25 75. Unknown to plaintiff Ware at the time, 2004 Ford Explorers were subject to, and
26 would almost certainly experience during the life of the vehicle, the Cracked Tailgate Problem.
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1 76. By July 2007, Ford had specific knowledge that plaintiff Ware's vehicle would
2 likely experience the Cracked Tailgate Problem.

3 77. Despite this knowledge, Ford sold plaintiff Ware the Ford Vehicle, along with an
4 extended vehicle warranty issued by Ford, without disclosing the vehicle's inherent (and pre-
5 existing) defect.

6 78. In or about January 2011, plaintiff Ware observed the Cracked Tailgate on his
7 vehicle:
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16 *Cracked Tailgate, Spencer Ware*

17 79. As a result of the defect, the Cracked Tailgate presents a continuing safety hazard
18 to plaintiff Ware and has resulted in the diminution of the Ford Vehicle's value.

19 Gary T. Buck

20 80. On or about September 21, 2004, plaintiff Buck purchased a new 2004 Ford
21 Explorer from a Ford dealership in Tennessee.

22 81. Unknown to plaintiff Buck at the time, 2004 Ford Explorers were subject to, and
23 would almost certainly experience during the life of the vehicle, the Cracked Tailgate Problem.
24

25 82. By September 2004, Ford had specific knowledge that plaintiff Buck's vehicle
26 would likely experience the Cracked Tailgate Problem.
27

1 83. Despite this knowledge, Ford sold plaintiff Buck the Ford Vehicle, and associated
2 Ford new vehicle warranty, without disclosing the vehicle's inherent (and pre-existing) defect.

3 84. Upon discovering the Cracked Tailgate in February 2011, plaintiff Buck informed
4 Ford about the damage. When Ford refused to repair the Cracked Tailgate at its expense,
5 plaintiff Buck paid to have the Cracked Tailgate repaired on his Ford Vehicle.
6

7 85. As a result of the defect and Fords' refusal to fix the Cracked Tailgate at its
8 expense, plaintiff Buck incurred the expense of repairing the Cracked Tailgate.

9 Thomas M. Buckheit

10 86. On or about August 18, 2004, plaintiff Buckheit purchased a new 2004 Ford
11 Explorer from a Ford dealership in New York.

12 87. Unknown to plaintiff Buckheit at the time, 2004 Ford Explorers were subject to,
13 and would almost certainly experience during the life of the vehicle, the Cracked Tailgate
14 Problem.
15

16 88. By August 2004, Ford had specific knowledge that plaintiff Buckheit's vehicle
17 would likely experience the Cracked Tailgate Problem.

18 89. Despite this knowledge, Ford sold plaintiff Buckheit the Ford Vehicle, and
19 associated Ford new vehicle warranty, without disclosing the vehicle's inherent (and pre-
20 existing) defect.
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1 **Consumer Allegations**

2 93. On various Internet forums including, but not limited to,
3 www.carcomplaints.com, www.automotiveforums.com, and www.townhall-talk.edmunds.com,
4 owners of Ford Vehicles throughout the United States consistently complain about their model
5 2002 through model 2005 Ford Explorer and Mercury Mountaineer, and model 2003 through
6 model 2005 Lincoln Aviator's (discussed herein as the Ford Vehicles) cracked tailgates
7 (discussed herein as the Cracked Tailgate Problem). As an example, the following Internet
8 forums contain well-over 1,000 reports, from around the United States, complaining of the
9 Cracked Tailgate Problem:
10

11 <http://townhall-talk.edmunds.com/direct/view/.eea73f3>;

12 <http://www.carcomplaints.com/Ford/Explorer/index.shtml>;

13 <http://www.aboutautomobile.com/Complaints/Explorer/Body>.

14 **CLASS ALLEGATIONS**

15 94. Plaintiffs bring this action on behalf of themselves and on behalf of all persons or
16 entities in the United States who are current or former owners of Ford Vehicles, as defined in this
17 Complaint.
18

19 95. The Class that Plaintiffs seek to represent is defined as follows:

20 All persons residing in the United States who purchased, not for
21 commercial resale or transfer, a Ford Vehicle (the "Class"). Excluded
22 from the Class are: (i) Defendants and their parent companies,
23 subsidiaries, affiliates, officers, directors, employees, legal representatives,
24 heirs, assigns, and co-conspirators; and (ii) any judges presiding over this
25 action and the members of his/her immediate family and judicial staff, and
26 any juror assigned to this action.

27 Plaintiffs reserve the right to amend the Class definitions if discovery and further investigation
28 reveal that the Class should be expanded or otherwise modified.

1 96. The members of the Class are so numerous that joinder of all members would be
2 impracticable. The proposed Class includes thousands (in not tens of thousands) of members.
3 The precise number of Class members can be ascertained by reviewing documents in Defendants'
4 possession, custody, or control.

5 97. The common questions of law and fact predominate over any questions affecting
6 only individual members of the Class. These common legal and factual questions, include, but
7 are not limited to the following:
8

- 9 (a) whether the Ford Vehicles are defective;
- 10 (b) whether the Ford Vehicles were defectively designed or manufactured;
- 11 (c) whether a latent defect causes the Cracked Tailgate Problem;
- 12 (d) whether and when Defendants knew that the latent defect would cause
13 the Cracked Tailgate Problem;
- 14 (e) whether Defendants knowingly failed to disclose the latent defect to
15 Plaintiffs and the Class with the intent that others rely upon such
16 concealment, suppression, or omission;
- 17 (f) whether Defendants had actual or imputed knowledge of the latent
18 defect but failed to disclose it to Plaintiffs and the Class;
- 19 (g) whether Defendants have a pattern and practice of attributing damages
20 claimed by Plaintiffs and members of the Class to reasons other than
21 the defect of the Cracked Tailgate;
- 22 (h) whether Defendants have a pattern and practice of denying Plaintiffs
23 and other Class member claims as "out of warranty," and not due to
24 the defect;
- 25 (i) whether Defendants violated various state consumer protection statutes;
- 26 (j) whether Defendants' conduct constitutes consumer fraud or common
27 law fraud;
- 28 (k) whether Defendants breached their express warranties (including extended
warranties);

- 1 (l) whether Defendants have been unjustly enriched;
- 2 (m) whether, as a result of Defendants' conduct, Plaintiffs and the Class have
- 3 suffered damages; and if so, the appropriate amount thereof; and
- 4 (n) whether, as a result of Defendants' misconduct, Plaintiffs and the Class
- 5 are entitled to equitable relief or other relief; and, if so, the nature and
- 6 extent of such relief.

7 98. The representative Plaintiffs' claims are typical of the claims of the members of

8 the Class. Plaintiffs and all other members of the Class have been injured by the same wrongful

9 practices in which Defendants have engaged. Plaintiffs' claims arise from the same practices

10 and course of conduct that give rise to the claims of the other members of the Class and are

11 based on the same legal theories.

12 99. Plaintiffs are representatives who will fully and adequately assert and protect the

13 interests of the Class, and have retained class counsel who are experienced and qualified in

14 prosecuting class actions. Neither Plaintiffs nor their attorneys have any interests which are

15 contrary to, or conflicting with, the Class.

16 100. A class action is superior to all other available methods for the fair and efficient

17 adjudication of this lawsuit, because individual litigation of the claims of all Class members is

18 economically unfeasible and procedurally impracticable. While the aggregate damages sustained

19 by the Class are well-into the millions of dollars, the individual damages incurred by each Class

20 member resulting from Defendant's wrongful conduct are likely too small to warrant the expense

21 of individual suits. The possibility of individual Class members prosecuting their own separate

22 claims is remote, and even if every Class member could afford individual litigation, the court

23 system would be unduly burdened by individual litigation of such identical cases. Plaintiffs

24 know of no difficulty to be encountered in the management of this action that would preclude its

25 maintenance as a class action. In addition, Ford has acted or refused to act on grounds generally

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1 applicable to Plaintiffs and the Class.

2 101. Plaintiffs do not anticipate any difficulty in the management of this litigation.

3 102. Defendants have, or have access to, contact information for the Class members,
4 which may be used for the purpose of providing notice of the pendency of this action.

5 **FRAUDULENT CONCEALMENT**

6 103. Plaintiffs repeat and reallege the allegations contained in the paragraphs above as
7 if fully set forth herein.

8 104. Throughout the Class period, Defendants affirmatively concealed from Plaintiffs
9 and the Class the defect described herein, *i.e.*, the Cracked Tailgate Problem.

10 105. Ford, through various devices and techniques of secrecy, affirmatively and
11 fraudulently concealed the existence of the Cracked Tailgate Problem from Plaintiffs and the
12 Class.
13

14 106. Specifically, as discussed in greater detail above, Ford knew about the existence
15 of the Cracked Tailgate Problem in early-2002. Despite knowledge of the defect, Ford continued
16 to manufacture, advertise, sell, and purportedly warrant the Ford Vehicles without disclosing the
17 Cracked Tailgate Problem.
18

19 107. Ford has repeatedly and expressly denied the existence of the Cracked Tailgate
20 problem to Plaintiffs and the Class. When Plaintiffs and the Class attempted to have Ford repair
21 or reimburse them for repairs to their Cracked Tailgates, Ford concealed that it was responsible
22 for the damage, which was, in fact, due to a known hidden defect in the Ford Vehicles. These
23 affirmative statements of denial concealed Ford's knowledge of the underlying problem from
24 Plaintiffs and the Class.
25

26 108. As such, the running of any statute of limitations has been suspended with respect
27

1 to any claims which Plaintiffs and the Class have sustained as a result of the unlawful scheme
2 and conspiracy alleged by virtue of the doctrine of fraudulent concealment. Plaintiffs and the
3 Class had no knowledge of any facts or information that would have prompted any Class
4 member to exercise reasonable diligence and investigate these allegations any earlier than as set
5 forth herein.
6

7 **COUNT ONE**
8 **Unlawful Business Acts and Practices in**
9 **Violation of California Business and Professions Code**
10 **Section 17200 et seq. on Behalf of Plaintiffs and the Class**

11 109. Plaintiffs repeat and re-allege the allegations contained in the paragraphs above as
12 if fully set forth herein.

13 110. Ford's practices as alleged in this complaint constitute unlawful, unfair, and
14 fraudulent business practices under the Unfair Competition Law ("UCL"), Bus. & Prof. Code §§
15 17200 et seq.

16 111. Ford committed unlawful business practices, *inter alia*, by:

- 17 a. Engaging in conduct, as alleged herein, that violates the Consumer Legal
18 Remedies Act ("CLRA"), Cal. Civ. Code §§ 1750 et seq.;
- 19 b. Engaging in conduct, as alleged herein, that violates the Magnuson-Moss
20 Warranty Act, 15 U.S.C. §§2301 et seq.; and
- 21 c. Engaging in conduct, as alleged herein, that breaches Ford's express warranties.

22 112. Ford committed unfair business practices, *inter alia*, by:

- 23 a. Engaging in conduct where the utility of such conduct, if any, is outweighed by
24 the gravity of the consequences to Plaintiffs and the Class;
- 25 b. Engaging in conduct that is immoral, unethical, oppressive, unscrupulous, or
26 substantially injurious to Plaintiffs and the Class;
27

1 c. Engaging in conduct that undermines or violates the stated policies underlying the
2 CLRA, Civ. Code §§ 1750 *et seq.*; the Magnuson-Moss Warranty Act, 15 U.S.C.
3 §§ 2301 *et seq.*; and the False Advertising Law, Cal. Bus. and Prof. Code §§
4 17500 *et seq.*, each of which seek to protect consumers against unfair business
5 practices and to promote a basic level of honesty and reliability in the marketplace
6 and, thus, provide a sufficient predicate for Plaintiffs' claims for unfair business
7 practices.
8

9 113. Ford committed fraudulent business practices by, *inter alia*, engaging in conduct
10 that deceived consumers acting reasonably under the circumstances. Specifically, Ford's
11 fraudulent practices include, but are not limited to:

- 12 a. Failing to disclose or concealing from Plaintiffs and the Class that Ford Vehicles
13 suffer from a defect that causes the tailgate to crack (*i.e.*, the Cracked Tailgate
14 Problem);
15
16 b. Advertising and representing that Ford's warranties would cover problems to Ford
17 Vehicles caused by manufacturing or design defects when, in fact, Ford's policy
18 and practice was not to cover the Cracked Tailgate Problem; and
19
20 c. Failing to disclose or concealing from Plaintiffs and the Class that Cracked
21 Tailgates are covered under express warranties;

22 114. Plaintiffs and the Class have suffered injury in fact and have lost money and
23 property as a result of Ford's unlawful, unfair, or fraudulent practices, in that, among other
24 things:

- 25 a. Plaintiffs and the Class would not have bought Ford Vehicles at the prices they
26 paid;
27

- 1 b. Ford Vehicles have a lower market value than they otherwise would have if not
2 for the Cracked Tailgate Problem;
- 3 c. Plaintiffs and the Class have paid for repairs and replacement parts that they
4 would not and should not have paid for;
- 5 d. Plaintiffs and the Class have sold their Ford Vehicles at diminished prices due to
6 the Cracked Tailgate Problem; and
- 7 e. Plaintiffs and the Class were denied their right to receive the Ford Vehicles free
8 from defects.

9
10 115. Plaintiffs and the Class reserve the right to allege other violations of law which
11 constitute other unlawful business acts or practices. Such conduct is ongoing and continues to
12 this date.

13
14 116. Plaintiffs, on behalf of themselves and the Class, seek money damages,
15 declaratory and injunctive relief, restitution, disgorgement of all monies obtained from the unfair
16 competition alleged herein, attorneys' fees, costs of suit, and other relief as appropriate.

17 **COUNT TWO**

18 **For Restitution, Injunctive Relief, and Declaratory Relief for Violations of the Consumer
19 Legal Remedies Act, Civil Code §1750 et seq. on Behalf of Plaintiffs and the Class**

20 117. Plaintiffs repeat and re-allege the allegations contained in the paragraphs above as
21 if fully set forth herein.

22 118. Ford has violated the Consumers Legal Remedies Act (CLRA), California Civil
23 Code §1750, et seq., by engaging in unfair methods of competition and unfair and deceptive acts
24 and practices in connections with transactions, specifically, the marketing and sale of Ford
25 Vehicles with a latent defect (the Cracked Tailgate Problem), of which Ford was aware, which
26 are intended to result and have resulted in the sale of goods and services to consumers. Plaintiffs
27

1 are consumers as defined by California Civil Code §1761(d). The subject products are goods
2 within the meaning of the CLRA.

3 119. In connection with the sale of Ford Vehicles to Plaintiffs and the Class, Ford
4 omitted material information about a known defect (the Cracked Tailgate Problem) that it was
5 legally obliged to disclose. Ford did not inform, and has never informed, Plaintiffs or the Class
6 that Ford Vehicles suffer from a defect that causes the tailgate to crack, leaving prominent
7 damage to the rear of the Ford Vehicle. Ford has also refused to repair the damage for which it
8 is wholly responsible.

9
10 120. The Cracked Tailgate Problem poses an unreasonable safety risk to Plaintiffs and
11 the Class. Ford had exclusive knowledge of the defect and actively concealed it from Plaintiffs
12 and the Class.

13
14 121. The existence of the Cracked Tailgate Problem in the Ford Vehicles is a fact that
15 a reasonable consumer deciding whether to purchase a Ford Vehicle would consider material.

16 122. Had Ford adequately disclosed material information about the Cracked Tailgate
17 Problem, no reasonable consumer (including Plaintiffs and the Class) would have purchased the
18 Ford Vehicles at issue.

19 123. As a result of Ford's refusal to repair the defect in the Ford Vehicles, or to honor
20 or extend the warranties associated therewith, Plaintiffs and the Class are entitled to injunctive
21 and equitable relief, restitution, and an order for the disgorgement of funds by which Ford was
22 unjustly enriched.

23
24 **COUNT THREE**
25 **For Violations of the Consumer Fraud and Deceptive Business Practices Act of Certain**
26 **Other States and the District of Columbia**

27 124. Plaintiffs repeat and reallege the allegations contained in the paragraphs above as
28

1 if fully set forth herein.

2 125. Defendants' conduct complained of herein constitutes acts, uses or employment
3 by Ford of unconscionable commercial practices, deception, fraud, false pretenses, false
4 promises, misrepresentations or knowing concealment, suppression, or omission of material facts
5 with the intent that Plaintiffs and the Class would rely upon such concealment, suppression, or
6 omission in connection with the sale, marketing, and advertisement of the Ford Vehicles.
7 Defendants' conduct herein is an unfair practice that has the capacity to, and did, deceive
8 consumers, as alleged herein.
9

10 126. All of the conduct alleged herein occurred in the course of Ford's business.
11 Ford's conduct is part of a pattern or generalized course of conduct repeated on tens of thousands
12 (if not hundreds of thousands) of occasions.
13

14 127. As a proximate result of Defendants' misrepresentations, Plaintiffs and the Class
15 have suffered an ascertainable loss and are entitled to relief, in an amount to be determined at
16 trial.

17 128. All fifty states and the District of Columbia have enacted statutes to protect
18 consumers against unfair, deceptive, or fraudulent business practices, unfair competition or false
19 advertising. At all relevant times, such statutes were in effect in each state or territory where
20 Ford does business.
21

22 129. Defendants' actions, as complained of herein, constitute unfair competition or
23 unfair, unconscionable, deceptive, or fraudulent acts or practices in violation of the various state
24 consumer protection statutes listed below:

25 (a) **Alabama:** Defendants have engaged in unfair competition or unfair or
26 deceptive acts or practices in violation of Ala. Code 8-19-1 *et seq.*;

27 (b) **Alaska:** Defendants have engaged in unfair competition or unfair or
28

1 deceptive acts or practices in violation of Alas. Code 45.50.471 *et seq.*;

2 (c) **Arizona:** Defendants have engaged in unfair competition or unfair or
3 deceptive acts or practices in violation of Ariz. Code 44-1522 *et seq.*;

4 (d) **Arkansas:** Defendants have engaged in unfair competition or unfair or
5 deceptive acts or practices in violation of Ark. Code 4-88-101 *et seq.*;

6 (e) **California:** Defendants have engaged in unfair competition or unfair or
7 unlawful or fraudulent or deceptive acts or practices in violation of the
8 California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.*,
9 the California False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et*
10 *seq.*, and the California Consumer Legal Remedies Act., Cal. Civ. Code
11 1750, *et seq.*;

12 (f) **Connecticut:** Defendants have engaged in unfair competition or unfair or
13 deceptive acts or practices in violation of Conn. Code 6-1-105 *et seq.*;

14 (g) **Colorado:** Defendants have engaged in unfair competition or unfair or
15 deceptive acts or practices in violation of Colo. Gen. Stat. 42-110b *et seq.*;

16 (h) **Delaware:** Defendants have engaged in unfair competition or unfair or
17 deceptive acts or practices in violation of 6 Del. Stat. Code 2511 *et seq.*;

18 (i) **District of Columbia:** Defendants have engaged in unfair competition or
19 unfair or deceptive acts or practices in violation of D.C. Code 28-3901 *et*
20 *seq.*;

21 (j) **Florida:** Defendants have engaged in unfair competition or unfair or
22 deceptive acts or practices in violation of Fla. Stat. 501.201 *et seq.*;

23 (k) **Georgia:** Defendants have engaged in unfair competition or unfair or
24 deceptive acts or practices in violation of Ga. Stat. 10-1-392 *et seq.*;

25 (l) **Hawaii:** Defendants have engaged in unfair competition or unfair or
26 deceptive acts or practices in violation of Haw. Rev. Stat. 480 *et seq.*;

27 (m) **Idaho:** Defendants have engaged in unfair competition or unfair or
28 deceptive acts or practices in violation of Idaho Code 48-601 *et seq.*;

(n) **Illinois:** Defendants have engaged in unfair competition or unfair or
deceptive acts or practices in violation of 815 ILCS 505/1 *et seq.*;

(o) **Indiana:** Defendants have engaged in unfair competition or unfair or
deceptive acts or practices in violation of Ind. Code Ann. 24-5-0.5-1 *et*
seq.;

1 (p) **Iowa:** Defendants have engaged in unfair competition or unfair or
2 deceptive acts or practices in violation of Iowa Code 714.1b *et seq.*;

3 (q) **Kansas:** Defendants have engaged in unfair competition or unfair or
4 deceptive acts or practices in violation of Kan. Stat. 50-623 *et seq.*;

5 (r) **Kentucky:** Defendants have engaged in unfair competition or unfair or
6 deceptive acts or practices in violation of Ky. Rev. Stat. 367.110 *et seq.*;

7 (s) **Louisiana:** Defendants have engaged in unfair competition or unfair or
8 deceptive acts or practices in violation of La. Rev. Stat. 51:1401 *et seq.*;

9 (t) **Maine:** Defendants have engaged in unfair competition or unfair or
10 deceptive acts or practices in violation of 5 Me. Rev. Stat. 207 *et seq.*;

11 (u) **Maryland:** Defendants have engaged in unfair competition or unfair or
12 deceptive acts or practices in violation of Md. Code, Corn. Law 13-101 *et*
13 *seq.*;

14 (v) **Massachusetts:** Defendants have engaged in unfair competition or unfair
15 or deceptive acts or practices in violation of Mass Gen. L. Ann. 93A *et*
16 *seq.*;

17 (w) **Michigan:** Defendants have engaged in unfair competition or unfair or
18 deceptive acts or practices in violation of Mich. Stat. 445.901 *et seq.*;

19 (x) **Minnesota:** Defendants have engaged in unfair competition or unfair or
20 deceptive acts or practices in violation of Minn. Stat. 325F.67 *et seq.*;

21 (y) **Mississippi:** Defendants have engaged in unfair competition or unfair or
22 deceptive acts or practices in violation of Miss. Code Ann. 75-24-1 *et seq.*;

23 (z) **Missouri:** Defendants have engaged in unfair competition or unfair or
24 deceptive acts or practices in violation of Mo. Rev. Stat. 407.010 *et seq.*;

25 (aa) **Montana:** Defendants have engaged in unfair competition or unfair or
26 deceptive acts or practices in violation of Mont. Code 30-14-101 *et seq.*;

27 (bb) **Nebraska:** Defendants have engaged in unfair competition or unfair or
28 deceptive acts or practices in violation of Neb. Rev. Stat. 59-1601 *et seq.*;

(cc) **Nevada:** Defendants have engaged in unfair competition or unfair or
deceptive acts or practices in violation of Nev. Rev. Stat. 598.0903 *et seq.*;

(dd) **New Hampshire:** Defendants have engaged in unfair competition or unfair
or deceptive acts or practices in violation of N.H. Rev. Stat. 358- A:1 *et*

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seq.;

- (ee) **New Mexico:** Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of N.M. Stat. Ann. 57-12-1 *et seq.*;
- (ff) **New Jersey:** Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of N.J. Stat. Ann. 56:8-1 *et seq.*;
- (gg) **New York:** Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of N.Y. Gen. Bus. Law 349 *et seq.*;
- (hh) **North Carolina:** Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of N.C. Gen. Stat. 75-1.1 *et seq.*;
- (ii) **North Dakota:** Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of N.D. Cent. Code 51-15-01 *et seq.*;
- (jj) **Ohio:** Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Ohio Rev. Code 1345.01 *et seq.*;
- (kk) **Oklahoma:** Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of 15 Okla. Stat. tit. 751 *et seq.*;
- (ll) **Oregon:** Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Or Rev. Stat. 646.605 *et seq.*;
- (mm) **Pennsylvania:** Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of 73 Pa. Stat. Ann. §§ 201-1 to -9.3 *et seq.*;
- (nn) **Rhode Island:** Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of R.I. Gen. Laws. 6-13.1-1 *et seq.*;
- (oo) **South Carolina:** Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of S.C. Code Laws 39-5-10 *et seq.*;
- (pp) **South Dakota:** Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of S.D. Code Laws 37-24-1 *et seq.*;

- 1 (qq) **Tennessee:** Defendants have engaged in unfair competition or unfair
2 or deceptive acts or practices in violation of Tenn. Code 47-18-101 *et*
3 *seq.*;
- 4 (rr) **Texas:** Defendants have engaged in unfair competition or unfair or
5 deceptive acts or practices in violation of Tex. Bus. Com. Code 17.41
6 *et seq.*;
- 7 (ss) **Utah:** Defendants have engaged in unfair competition or unfair or
8 deceptive acts or practices in violation of Utah Code Ann. 13-1-1 *et*
9 *seq.*;
- 10 (tt) **Vermont:** Defendants have engaged in unfair competition or unfair or
11 deceptive acts or practices in violation of 9 Vt. Stat. Ann. Tit. 2451 *et*
12 *seq.*;
- 13 (uu) **Virginia:** Defendants have engaged in unfair competition or unfair or
14 deceptive acts or practices in violation of Va. Code 59.1-196 *et seq.*;
- 15 (vv) **Washington:** Defendants have engaged in unfair competition or unfair
16 or deceptive acts or practices in violation of Wash. Rev. Code
17 19.86.010 *et seq.*;
- 18 (ww) **West Virginia:** Defendants have engaged in unfair competition or unfair or
19 deceptive acts or practices in violation of W. Va. Code 46A-6-101 *et seq.*;
- 20 (xx) **Wisconsin:** Defendants have engaged in unfair competition or unfair or
21 deceptive acts or practices in violation of Wis. Stat. 100.20 *et seq.*; and,
- 22 (yy) **Wyoming:** Defendants have engaged in unfair competition or unfair or
23 deceptive acts or practices in violation of Wyo. Stat. 40-12-101 *et seq.*;

24 130. Plaintiffs and the Class were injured by Defendants' conduct. As a direct and
25 proximate result of Defendants' unfair methods of competition and unfair or deceptive acts or
26 practices, Plaintiffs and the Class have suffered actual economic losses.

27 131. Defendants, through their acts of unlawful and unfair competition, have
28 wrongfully acquired money from Plaintiffs and the Class. Thus, Plaintiffs and the Class seek
both monetary damages and to enjoin Defendants from continuing to violate the law.

132. Such conduct is ongoing and continues to this date. Plaintiffs and the Class are

1 therefore entitled to the relief described herein.

2 133. Plaintiffs and the Class seek damages, together with appropriate exemplary
3 damages, attorneys' fees, and costs of suit pursuant to the state statutes alleged herein.

4 **COUNT FOUR**

5 **On Behalf Of A Nationwide Class Against Defendants**
6 **(Violations Of Magnuson-Moss Act (15 U.S.C. §§ 2301-2312) --Written Warranty)**

7
8 134. Plaintiffs repeat and re-allege the allegations contained in the paragraphs above as
9 if fully set forth herein.

10 135. Defendants' Ford Vehicles are "consumer products" as that term is defined by 15
11 U.S.C. § 2301(1).

12 136. Plaintiffs and the Class are "consumers" as that term is defined by 15
13 U.S.C. § 2301(3), and utilized the Ford Vehicles at issue for personal use and not specifically for
14 resale or other commercial purposes.

15 137. Defendants are "warrantor[s]" and "supplier[s]" as those terms are defined by 15
16 U.S.C. § 2301(4) and (5).

17 138. Defendants provided Plaintiffs and the Class with "written warranties" as that
18 term is defined by 15 U.S.C. § 2301(6).

19 139. In their capacity as a warrantor, and by the conduct described herein, any attempt
20 by Defendants to limit the express warranties in a manner that would exclude coverage of the
21 Defective Vehicles is unconscionable and any such effort to disclaim, or otherwise limit, liability
22 for the Ford Vehicles is null and void.

23 140. All jurisdictional prerequisites have been satisfied.

24 141. By Defendants' conduct as described herein, including Defendants' knowledge of
25
26
27

1 the Cracked Tailgate Problem and Ford's action, and inaction, in the face of that knowledge,
2 Defendants have failed to comply with their obligations under their written and implied
3 promises, warranties, and representations.

4 142. As a result of Defendants' breach of express warranties, Plaintiffs and the Class
5 are entitled to obtain damages, equitable relief, and attorneys' fees and costs pursuant to 15
6 U.S.C. § 2310.
7

8 **COUNT FIVE**

9 **On Behalf Of A Nationwide Class Against Defendants, And Alternatively, On Behalf Of**
10 **Each Sub-Class Against Defendants Pursuant To State Law**
11 **(Breach Of Express Warranty)**

12 143. Plaintiffs repeat and re-allege the allegations contained in the paragraphs above as
13 if fully set forth herein.

14 144. Plaintiffs seek to recover for Ford's breach of express warranty under the laws of
15 the State of California.

16 145. Ford warranted all of the Ford Vehicles against defects at a time when it knew
17 that these Ford Vehicles suffered from a serious defect and, nevertheless, continued to market
18 and sell the Ford Vehicles at issue with an express warranty.

19 146. Ford is obligated under the terms of its express warranty to repair the Cracked
20 Tailgate Problem occurring on the Ford Vehicles sold to Plaintiffs and the Class.

21 147. Ford has breached its express warranties, as set forth herein, by delivering the
22 Ford Vehicles in a condition which does not meet the warranty obligations undertaken by Ford
23 and by failing to repair the defect or defective parts inherent in the Ford Vehicles that caused (or
24 resulted in) the Cracked Tailgate Problem.
25

26 148. Ford has received sufficient and timely notice of the breaches of warranty alleged
27

1 herein. Despite this notice and Ford's knowledge, Ford refuses to honor its warranties, even
2 though it knows of the inherent defect in the Ford Vehicles.

3 149. In addition, Ford has received, upon information and belief, thousands (if not tens
4 of thousands) of complaints and other notices from its customers and employees nationwide,
5 advising it of the defect (*i.e.*, the Cracked Tailgate Problem) in the Ford Vehicles.
6

7 150. Ford has failed to provide to Plaintiffs or the Class a warranty replacement, or a
8 product that conforms to the qualities and characteristics that Ford expressly warranted when it
9 sold the Ford Vehicles.

10 151. As a result of Ford's breach of warranty, Plaintiffs and the Class have suffered
11 damages in an amount to be determined at trial.

12 152. Alternatively, Plaintiffs seek to recover for Ford's breach of express warranty
13 under the substantially similar laws of the states of purchase, specifically: Alaska, Arizona,
14 Arkansas, California, Connecticut, Colorado, Delaware, District of Columbia, Florida, Georgia,
15 Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland,
16 Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New
17 Hampshire, New Mexico, New Jersey, New York, North Carolina, North Dakota, Ohio,
18 Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota,
19 Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and
20 Wyoming.
21

22
23 **COUNT SIX**

24 **On Behalf Of A Nationwide Class Against Ford, And Alternatively, On Behalf Of Each**
25 **Sub-Class Against Ford Pursuant To State Law**
26 **(Unjust Enrichment)**

27 153. Plaintiffs repeat and re-allege the allegations contained in the paragraphs above as
28 if fully set forth herein.

1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, Plaintiffs request of this Court the following relief, on behalf of
3 themselves and the Class:

- 4 1. For an order certifying the proposed Class and appointing Plaintiffs and their counsel
5 to represent both;
- 6 2. For injunctive relief as pled, or as the Court may deem proper;
- 7 3. For declaratory relief as pled, or as the Court may deem proper;
- 8 4. For restitution, and all other forms of equitable-monetary relief as the Court may
9 deem proper;
- 10 5. For actual and punitive damages;
- 11 6. For specific performance under the express warranties;
- 12 7. For attorneys' fees and costs of suit, including expert-witness fees; and
- 13 8. For such other relief as the Court may deem just and proper.
- 14
- 15

16 **JURY DEMAND**

17 Plaintiffs demand a trial by jury on all issues so triable.

18

19 Dated: June 15, 2011

20 Respectfully Submitted,

21 MOSCONE EMBLIDGE & SATER LLP

22 By: 

23 SYLVIA SOKOL