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8 UNITED STATES DISTRICT COURT
 9 SOUTHERN DISTRICT OF CALIFORNIA

11 BRADLEY CARICOFÉ, SHAWN
 12 THIBODEAUX, JULIE
 THIBODEAUX, KENNETH
 13 HUNNEL, AND LEANNE
 HUNNEL, individually, and on
 14 behalf of a class of similarly situated
 individuals,
 15 Plaintiffs,
 16
 v.
 17 FORD MOTOR COMPANY, a
 18 Delaware corporation,
 19 Defendant.

Case No.: **'23CV1012 TWR AHG**

**CLASS ACTION COMPLAINT
FOR:**

- (1) Violation of California’s Consumer Legal Remedies Act (“CLRA”)
- (2) Violation of California’s Unfair Competition Law
- (3) Breach of Express Warranty under California Law
- (4) Breach of Implied Warranty under the Song-Beverly Consumer Warranty Act
- (5) Breach of Implied Warranty under California Law
- (6) Breach of Express Warranty under Maryland Law
- (7) Breach of Implied Warranty under Maryland Law
- (8) Violations of the Maryland Consumer Protection Act
- (9) Breach of Express Warranty (Tex. Bus. & Com. Code §§ 2.313 & 2A.210)
- (10) Breach of The Implied Warranty of Merchantability (Tex. Bus. & Com. Code §§ 2.314 and 2A.212)
- (11) Violations of the Texas Deceptive Trade Practices Act – Consumer Protection Act, (Texas Bus. & Com. Code § 17.41, *et seq.*)

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- (12) Breach of Express Warranty under the Magnuson-Moss Warranty Act
- (13) Breach of Implied Warranty under the Magnuson-Moss Warranty Act
- (14) Fraudulent Concealment/Omission
- (15) Unjust Enrichment

DEMAND FOR JURY TRIAL

1 manufactured, and/or installed rear subframe assemblies result in these failures.

2 6. The Rear Subframe Defect presents a significant safety hazard. If the
3 rear axle horizontal mounting bolt fractures, drivers are unable maintain steering,
4 braking, and speed control. The Rear Subframe Defect endangers drivers,
5 pedestrians, and other vehicles because it makes accidents wherein the vehicle
6 strikes a person, animal, or object in the roadway more likely, and sometimes
7 entirely unavoidable, due to the loss of control experienced by the driver as a
8 result. For this reason, Class Members have consistently reported fear of driving
9 their Class Vehicles.

10 7. Defendant sold the Class Vehicles with a 3-year/36,000-mile New
11 Vehicle Limited Warranty (“NVLW”) that purports to cover the rear subframe
12 assemblies. However, owners and lessees have often complained that their Rear
13 Subframe assemblies requiring repair or replacement are refused a sufficient
14 repair, even when within the warranty period. This is evidenced through Class
15 Member complaints to the National Highway Traffic Safety Administration
16 (“NHTSA”), which demonstrate that Defendant’s authorized dealerships are
17 repairing Rear Subframe assemblies with ineffective software updates.

18 8. The Rear Subframe Defect is inherent in each Class Vehicle and was
19 present at the time of sale or lease.

20 9. Defendant was aware in at least 2019, and likely several years prior,
21 that the Class Vehicles required a four bolt rear subframe assembly (with two rear
22 axle mounting bolts) as evidenced by its presale design and testing of the newly
23 re-designed 2020 Ford Explorer ST, the specs for which—tested and designed by
24 Ford itself—required the four bolt rear subframe assembly (with two rear axle
25 mounting bolts) on all higher horsepower and torque-rated vehicles, *i.e.* the Class
26 Vehicles. Ultimately, Ford implemented the four bolt subframe in only a small
27 subset of the 2020 Ford Explorer STs with higher horsepower and torque ratings,
28 the rollout for which immediately preceded the Class Vehicles. On information

1 and belief, Ford willfully substituted the unsafe rear subframe assembly (with one
2 rear axle mounting bolt) for the safer-as-designed four bolt assembly due to supply
3 chain issues beginning in 2020 as a result of the Covid-19 pandemic.

4 10. Accordingly, discovery will show that, since the beginning of 2020,
5 Defendant has known that the Class Vehicles' rear subframe assemblies were
6 defective and would need frequent repair, prematurely fail, require frequent
7 replacement, including replacements just outside of warranty, that the replacement
8 rear subframe assemblies installed would be equally as defective as the originals,
9 and that the rear subframe assemblies would cause the symptoms of the Rear
10 Subframe Defect described above (rear axle horizontal mounting bolt fracturing
11 or otherwise failing, the driveshaft disconnecting; the rear differential dropping;
12 various components such as suspension, driveshaft assembly, and exhaust system
13 failing) yet Defendant continued to equip the Class Vehicles with defective rear
14 subframe assemblies. Moreover, Defendant not only refused to disclose the
15 alleged Rear Subframe Defect to consumers, they also actively concealed, and
16 continue to conceal, their knowledge concerning the Rear Subframe Defect.

17 11. Defendant undertook affirmative measures to conceal rear subframe
18 assembly failures and other malfunctions through, *inter alia*, Technical Service
19 Bulletins ("TSB") issued to authorized repair facilities only and not provided to
20 owners or lessees.

21 12. Defendant had superior and/or exclusive knowledge of material facts
22 regarding the Rear Subframe Defect due to its pre-production testing, design
23 failure mode analysis, aggregate part sales, consumer complaints about the Rear
24 Subframe Defect to Defendant's dealers--who are its agents for vehicle repairs--
25 customer complaints made directly to Ford, dealer audits, aggregate warranty
26 information, consumer complaints to, and resulting notice from, NHTSA, early
27 consumer complaints on websites and internet forums, dealership repair orders,
28 among other internal sources of information about the problem.

1 13. The Rear Subframe Defect is material because, *inter alia*, it poses a
2 safety concern. As attested by Class Members in complaints to the National
3 Highway Traffic Safety Administration (“NHTSA”), and to other online forums,
4 the rear axle horizontal mounting bolt can suddenly fail, causing total loss of
5 control of the Class Vehicle while driving, including the inability to maintain
6 steering, braking, speed control, and responsiveness to safety threats, as well as
7 greatly increased risk of collision.

8 14. Defendant’s failure to disclose the Rear Subframe Defect has caused
9 Plaintiffs and putative class members to lose the use of their vehicles and/or incur
10 costly repairs that have conferred an unjust substantial benefit upon Defendant.

11 15. Discovery will show that, in an effort to conceal the Rear Subframe
12 Defect, Defendant has instructed dealers to tell consumers their vehicles are
13 “operating normally” or “operating as intended” when they are not, or to give
14 excuses for sub-par performance such as the rear subframe bolt fracturing. This is
15 a common practice in the automotive industry. By denying the existence of a
16 defect, manufacturers can play on the consumers’ lack of technical expertise and
17 avoid implementing potentially costly fixes for years, or at least until the vehicles
18 are out of warranty. When remedial measures are taken, they are often through the
19 issuance of service bulletins provided to dealers only that are narrowly crafted and
20 underinclusive, as occurred here and set forth *infra*.

21 16. Had Defendant disclosed the Rear Subframe Defect, Plaintiffs and
22 Class Members would not have purchased or leased the Class Vehicles, would
23 have paid less for them, or would have required Defendant to replace, or pay for
24 the replacement of, the defective rear subframe assemblies with a non-defective
25 version before their warranty periods expired.

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1 **THE PARTIES**

2 **Plaintiff Bradley Caricofe**

3 17. Plaintiff Caricofe is a Virginia citizen residing in Woodbridge,
4 Virginia.

5 18. In or around August 2021, Plaintiff Caricofe purchased a new 2021
6 Ford Explorer ST from Waldorf Ford, an authorized Ford dealership located in
7 Waldorf, Maryland.

8 19. Plaintiff Caricofe purchased his vehicle primarily for personal,
9 family, or household use.

10 20. Safety, reliability, and quality of the vehicle and its components were
11 important factors in Plaintiff Caricofe’s decision to purchase his vehicle. Before
12 making his purchase, Plaintiff Caricofe researched the 2021 Ford Explorer ST
13 online, by “Googling” the vehicle and looking up crash test reports. Additionally,
14 Plaintiff Caricofe did significant research in 2019, when purchasing the then newly
15 designed Ford Explorer, the 2020 Ford Explorer ST. However, although the 2020
16 model had the correct, safe four-bolt rear subframe, thereby reinforcing his belief
17 that the 2021 model he then purchased was safe, Plaintiff Caricofe would come to
18 learn that was not the case.

19 21. At the dealership, Plaintiff Caricofe also reviewed the vehicle’s
20 Monroney Sticker or “window sticker,” which listed official information about
21 the vehicle. Plaintiff Caricofe also discussed the safety features of the vehicle
22 with dealership personnel, who made no reference to the Rear Subframe Defect.
23 Plaintiff Caricofe believed that the 2021 Ford Explorer ST would be a safe and
24 reliable vehicle.

25 22. Defendant’s omissions were material to Plaintiff Caricofe. Had
26 Defendant disclosed its knowledge of the Rear Subframe Defect before he
27 purchased his vehicle, Plaintiff Caricofe would have seen and been aware of the
28 disclosures. Furthermore, had he known of the Rear Subframe Defect, Plaintiff

1 Caricofe would not have purchased his vehicle.

2 23. In early 2022, Plaintiff Caricofe discovered that his Class Vehicle was
3 built with a deficient rear subframe that is prone to failure at the bolt joining the
4 frame and differential. Subsequently, he was advised via written correspondence
5 from Ford, that there was a recall issued for this problem. Thereafter, in early 2023,
6 Plaintiff Caricofe brought his vehicle to Koons Woodbridge Ford, an authorized
7 Ford dealer located in Woodbridge, Virginia, for repair pursuant to the recall.
8 However, the recall repair consisted only of a software update to engage the
9 parking brake and prevent rollaway. As this repair did nothing to address the safety
10 risk of the rear subframe failing while the Class Vehicle is in motion, Plaintiff
11 Caricofe continues to fear for his safety. He has requested replacement of the rear
12 subframe with a frame that is not defective from the Ford-authorized dealer
13 multiple times but has been continually refused. Indeed, the dealership has
14 informed Plaintiff Caricofe that Ford has no fix for this issue. Plaintiff Caricofe's
15 rear subframe assembly continues to present a safety risk and be defective.

16 24. Despite bringing his vehicle to a Ford dealership—Ford's authorized
17 agent for repairs—Plaintiff Caricofe has not received a permanent repair under
18 warranty, and his vehicle continues to exhibit the Rear Subframe Defect.

19 25. As a result of the Rear Subframe Defect, Plaintiff Caricofe has lost
20 confidence in the ability of his Class Vehicle to provide safe and reliable
21 transportation for ordinary and advertised purposes. Further, Plaintiff Caricofe
22 will be unable to rely on the Class Vehicles' advertising or labeling in the future,
23 and so will not purchase or lease another Class Vehicle, although he would like to
24 do so.

25 26. At all times, Plaintiff Caricofe, like all Class Members, has driven his
26 vehicle in a manner both foreseeable and in which it was intended to be used.

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1 **Plaintiffs Shawn and Julie Thibodeaux**

2 27. Plaintiffs Shawn and Julie Thibodeaux (“Thibodeaux”) are Texas
3 citizens residing in Katy, Texas.

4 28. In or around February 2022, Plaintiffs Thibodeaux purchased a new
5 2022 Ford Explorer ST from Mac Haik Ford, an authorized Ford dealership
6 located in Houston, Texas.

7 29. Plaintiffs Thibodeaux purchase their vehicle for personal, family, or
8 household use.

9 30. Safety, reliability, and quality of the vehicle and its components were
10 important factors in Plaintiffs Thibodeaux’s decision to purchase their vehicle.
11 Before making their purchase, Plaintiffs Thibodeaux test drove a Ford Explorer
12 ST and reviewed the Mac Haik Ford dealership website. At the dealership,
13 Plaintiffs Thibodeaux also reviewed the vehicle’s Monroney Sticker or “window
14 sticker,” which listed official information about the vehicle. Dealership personnel
15 made no reference to the Rear Subframe Defect. Plaintiff Thibodeaux believed
16 that the 2022 Ford Explorer ST would be a safe and reliable vehicle.

17 31. Defendant’s omissions were material to Plaintiffs Thibodeaux. Had
18 Defendant disclosed its knowledge of the Rear Subframe Defect before they
19 purchased their vehicle, Plaintiffs Thibodeaux would have seen and been aware of
20 the disclosures. Furthermore, had they known of the Rear Subframe Defect,
21 Plaintiffs Thibodeaux would not have purchased their vehicle.

22 32. In late 2022, Plaintiffs Thibodeaux discovered that their vehicle was
23 built with a deficient rear subframe via written correspondence from Ford that
24 there was a recall issued for this problem. Immediately thereafter, on or around
25 September 30, 2022, Plaintiffs brought their vehicle to Ryan Ford, an authorized
26 Ford dealer located in Sealy, Texas, for repair pursuant to the recall. However, the
27 recall repair consisted only of a software update to engage the parking brake and
28 prevent rollaway. As this repair did nothing to address the safety risk of the rear

1 subframe failing while the Class Vehicle is in motion, Plaintiffs Thibodeaux
2 continue to fear for their safety. Plaintiffs Thibodeaux’s rear subframe assembly
3 continues to present a safety risk and be defective.

4 33. Despite bringing their vehicle to a Ford dealership—Ford’s
5 authorized agent for repairs—Plaintiffs Thibodeaux have not received a
6 permanent repair under warranty, and their vehicle continues to exhibit the Rear
7 Subframe Defect.

8 34. As a result of the Rear Subframe Defect, Plaintiffs Thibodeaux have
9 lost confidence in the ability of their Class Vehicle to provide safe and reliable
10 transportation for ordinary and advertised purposes. Further, Plaintiffs
11 Thibodeaux will be unable to rely on the Class Vehicles’ advertising or labeling
12 in the future, and so will not purchase or lease another Class Vehicle, although
13 they would like to do so.

14 35. At all times, Plaintiffs Thibodeaux, like all Class Members, have
15 driven their vehicle in a manner both foreseeable and in which it was intended to
16 be used.

17 **Plaintiffs Kenneth and Leanne Hunnel**

18 36. Plaintiffs Kenneth and Leanne Hunnel (“Hunnel”) are California
19 citizens residing in Sun City, California.

20 37. In or around May 2021, Plaintiffs Hunnel purchased a new 2021 Ford
21 Explorer ST from Ken Grody Ford, an authorized Ford dealership located in
22 Carlsbad, California.

23 38. Plaintiffs Hunnel purchased their vehicle primarily for personal,
24 family, or household use.

25 39. Safety, reliability, and quality of the vehicle and its components were
26 important factors in Plaintiffs Hunnel’s decision to purchase their vehicle. Before
27 making their purchase, Plaintiffs Hunnel researched the 2021 Ford Explorer ST
28 online, by “Googling” the vehicle and reviewing the Ford website along with

1 various automotive websites and forums. At the dealership, Plaintiffs Hunnel also
2 reviewed the vehicle’s Monroney Sticker or “window sticker,” which listed
3 official information about the vehicle. Dealership personnel made no reference to
4 the Rear Subframe Defect. Plaintiffs Hunnel believed that the 2021 Ford Explorer
5 ST would be a safe and reliable vehicle.

6 40. Defendant’s omissions were material to Plaintiffs Hunnel. Had
7 Defendant disclosed its knowledge of the Rear Subframe Defect before they
8 purchased their vehicle, Plaintiffs Hunnel would have seen and been aware of the
9 disclosures. Furthermore, had they known of the Rear Subframe Defect, Plaintiffs
10 Hunnel would not have purchased their vehicle.

11 41. Around late 2021 or early 2022, Plaintiffs Hunnel brought their
12 vehicle to an authorized Ford dealer (Lake Elsinore Ford in Lake Elsinore,
13 California) for repair pursuant to the Rear Subframe Defect recall. However, the
14 recall repair consisted only of a software update to engage the parking brake and
15 prevent rollaway. As this repair did nothing to address the safety risk of the rear
16 subframe failing while the Class Vehicle is in motion, Plaintiffs Hunnel continue
17 to fear for their safety. Plaintiff Ken Hunnel has requested replacement of the rear
18 subframe with a frame that is not defective from the Ford-authorized dealer but
19 dealership personnel have told them that they are not authorized to replace the rear
20 subframe. Plaintiffs Hunnel’s rear subframe assembly continues to present a safety
21 risk and be defective.

22 42. Despite bringing their vehicle to a Ford dealership—Ford’s
23 authorized agent for repairs—Plaintiffs Hunnel have not received a permanent
24 repair under warranty, and their vehicle continues to exhibit the Rear Subframe
25 Defect.

26 43. As a result of the Rear Subframe Defect, Plaintiffs Hunnel have lost
27 confidence in the ability of their Class Vehicle to provide safe and reliable
28 transportation for ordinary and advertised purposes. Further, Plaintiffs Hunnel will

1 be unable to rely on the Class Vehicles' advertising or labeling in the future, and
2 so will not purchase or lease another Class Vehicle, although they would like to
3 do so.

4 44. At all times, Plaintiffs Hunnel, like all Class Members, have driven
5 their vehicle in a manner both foreseeable and in which it was intended to be used.

6 **Defendant Ford Motor Company**

7 45. Defendant Ford Motor Company is a corporation organized and in
8 existence under the laws of the State of Delaware and registered to do business in
9 the states of Delaware, California, Maryland and Virginia. Ford is headquartered
10 in Dearborn, Michigan.

11 46. Ford is responsible for manufacturing, sales, marketing, service,
12 distribution, import, and export of Ford branded products, including vehicles and
13 parts, in the United States. Ford is also the warrantor and distributor of Ford
14 vehicles, including the Class Vehicles, throughout the United States.

15 47. In order to sell vehicles to the general public, Ford enters into
16 agreements with authorized dealerships who engage in retail sales with consumers
17 such as Plaintiffs. In return for the exclusive right to sell new Ford-branded
18 vehicles, authorized dealerships are also permitted to service and repair these
19 vehicles under the warranties Ford provides directly to consumers who purchased
20 new vehicles from the authorized dealerships. All service and repair at an
21 authorized dealership is completed according to Ford instructions, issued through
22 service manuals, TSBs, and other documents. Per the agreements between Ford
23 and the authorized dealers, consumers such Plaintiffs are able to receive services
24 under Ford's issued warranty at dealer locations that are convenient to them. These
25 agreements provide Ford with a significant amount of control over the actions of
26 the authorized dealerships. For example, on information and belief, Ford
27 employees are appointed as managers for particular regions of the United States
28 and their responsibilities include managing the day-to-day operations of the

1 dealerships located within their regions.

2 48. Discovery will show that Ford also developed and disseminated the
3 owner's manual and warranty booklets, advertisements, and other promotional
4 material relating to the Class Vehicles.

5 JURISDICTION

6 49. This is a class action.

7 50. Members of the proposed Class number more than 100 and at least
8 one plaintiff and one defendant are citizens of different states.

9 51. There are at least 100 members in the proposed class, and the
10 aggregate claims of individual Class Members exceed \$5,000,000.00 in value,
11 exclusive of interest and costs.

12 52. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(d).

13 53. This Court has personal jurisdiction over Plaintiffs because Plaintiffs
14 submit to this Court's jurisdiction. This Court has personal jurisdiction over
15 Defendant because Ford conducts substantial business in this District and discovery
16 will show that significant conduct involving Defendant giving rise to the Complaint
17 took place in this District.

18 VENUE

19 54. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because
20 the conduct giving rise to this lawsuit occurred here and Defendant is subject to
21 personal jurisdiction here by conducting business within the State of California.
22 Plaintiffs' counsel's Declaration of Venue, to the extent required under California
23 Civil Code section 1780(d), is attached hereto as **Exhibit 1**.

24 FACTUAL ALLEGATIONS

25 55. Defendant designed, manufactured, distributed, marketed, sold,
26 and/or leased the Class Vehicles. Defendant sold, directly or indirectly, through
27 dealers and other retail outlets, thousands of Class Vehicles in California and
28 nationwide. Defendant warrants and services the Class Vehicles through their

1 nationwide network of authorized dealers and service providers.

2 56. Defendant provided all purchasers or lessees of the Class Vehicles
3 with the NVLW. The terms of this warranty are non-negotiable and Defendant
4 exercises sole authority in determining whether and to what extent a particular
5 repair is covered under the warranties it offers.

6 57. The NVLW provided by Ford includes basic bumper to bumper
7 warranty coverage, and states, in relevant part:

8 Your NEW VEHICLE LIMITED WARRANTY gives you specific
9 legal rights. You may have other rights that vary from state to state.
Under your New Vehicle Limited Warranty if:

- 10 - your Ford vehicle is properly operated and maintained, and
11 - was taken to a Ford dealership for a warranted repair during the
12 warranty period,

13 then authorized Ford Motor Company dealers will, without charge,
14 repair, replace, or adjust all parts on your vehicle that malfunction or
15 fail during normal use during the applicable coverage period due to a
manufacturing defect in factory-supplied materials or factory
workmanship.

16 58. The subframe is the structure below the frame that supports the axle,
17 suspension, and powertrain. The subframe performs a critical role in the stability
18 and the ride quality which are central to vehicle dynamics and safety. “The
19 subframe is a critical element between the road loads and the passenger
20 compartment. It acts as a mount structure for the suspension and it reacts to vehicle
21 travel on corners, on bumps, and acceleration and braking.”¹

22 59. In 2020, Ford released an all-new performance-oriented trim of its
23 popular Ford Explorer SUV, the 2020 Ford Explorer ST. The Ford Explorer ST
24 was a ground-up redesign from the base Ford Explorer, including body, chassis,
25 and motor changes. Specifically, the rear subframe in the Ford Explorer ST was

26 _____
27 ¹ Aluminum Extruders Council, “Subframes & Engine Cradles” available at:
28 <https://aec.org/page/subframes-engine-cradles#:~:text=The%20subframe%20is%20the%20structure,axle%2C%20suspension%2C%20and%20powertrain> (last accessed, Mar. 8, 2023)

1 designed to be connected to the rear differential using four bolts, including two
2 rear axle horizontal mounting bolts. Meanwhile, the base Ford Explorer and some
3 other trims of the Ford Explorer have a similar subframe assembly that is held with
4 three bolts, which includes only one rear axle horizontal mounting bolt, due to its
5 lower horsepower and torque rating. Figures One and Two below depict the four-
6 bolt assembly with the two rear axle horizontal mounting bolts. Figures Three and
7 Four below depict the three-bolt assembly with the one rear axle mounting bolt.



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18 Fig. 1 – Rear Subframe Assembly with Two Rear Axle Mounting Bolts



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28 Fig. 2 – Close Up of Two Rear Axle Mounting Bolts in Fig. 1, as

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Attached to Vehicle



Fig. 3 – Rear Subframe Assembly with One Rear Axle Mounting Bolt



Fig. 4 – Close Up of One Rear Axle Mounting Bolt in Fig. 3, as Attached to Vehicle

60. Discovery will show that Defendant used the weaker, one rear mounting bolt rear subframe assembly for the Class Vehicles, despite the design and safety protocols put in place for the higher horsepower and torque ratings of the Class Vehicle that required a rear subframe that allowed for four bolts total, including two rear axle horizontal mounting bolts, to be used to connect it to the rear differential. The Class Vehicles' rear subframe assemblies are defective because they are insufficient to withstand the higher horsepower and torque ratings

1 of the Class Vehicles and, as such, are designed, manufactured, and/or installed in
2 a manner that causes the single rear bolt to fracture and/or otherwise fail, thereby
3 causing the rear differential to suddenly drop, which may lead to the unexpected
4 destruction of a broad array of suspension, driveshaft assembly, and exhaust
5 system components.

6 61. Discovery will show that all Class Vehicles' Rear Subframe
7 Assemblies are designed, manufactured, and installed by Defendant in substantially
8 the same manner.

9 62. Discovery will confirm that the Rear Subframe Defect in all Class
10 Vehicles is caused by improperly designed, manufactured, and/or installed Rear
11 Subframe Assemblies in the Class Vehicles.

12 63. The Rear Subframe Defect is inherent in, and the same for, all Class
13 Vehicles.

14 64. Discovery will show that Defendant was aware of material facts
15 regarding the Rear Subframe Defect, in particular as a result of pre-production
16 testing, manufacturing quality control audits, and early post-sale complaints by
17 consumers who purchased the Class Vehicles and experienced the Rear Subframe
18 Defect. Despite this knowledge, Defendant failed to disclose the Rear Subframe
19 Defect and its associated safety risk to consumers. As a result of this failure,
20 Plaintiffs and Class Members have been damaged.

21 **The Rear Subframe Defect Poses an Unreasonable Safety Hazard**

22 65. The Rear Subframe Defect poses an unreasonable safety hazard. The
23 Rear Subframe Defect can cause drivers to lose of control of their Class Vehicles
24 while driving, which in turn increases the likelihood of collision with pedestrians,
25 animals, inanimate objects, and road hazards.

26 66. Federal law requires automakers like Defendant to be in close contact
27 with NHTSA regarding potential automobile defects, and imposes a legal
28 requirement (backed by criminal penalties) compelling the confidential disclosure

1 of defects and related data by automakers to NHTSA, including field reports,
2 customer complaints, and warranty data. *See TREAD Act*, Pub. L. No. 106-414,
3 114 Stat.1800 (2000).

4 67. Automakers have a legal obligation to identify and report emerging
5 safety-related defects to NHTSA under the Early Warning Report requirements.
6 *Id.* Similarly, automakers monitor NHTSA databases for consumer complaints
7 regarding their automobiles as part of their ongoing obligation to identify potential
8 defects in their vehicles, including those which are safety related. *Id.* Thus,
9 Defendant knew or should have known of the many complaints about the Rear
10 Subframe Defect logged by NHTSA Office of Defects Investigation (ODI). The
11 content, consistency, and disproportionate number of those complaints alerted, or
12 should have alerted, Defendant to the Rear Subframe Defect.

13 68. With respect solely to the Class Vehicles, the following are but a few
14 examples of the many complaints concerning the Rear Subframe Defect which are
15 available through NHTSA's website, www.safercar.gov. Many of the complaints
16 reveal that Defendant, through its network of dealers and repair technicians, have
17 been made aware of the Rear Subframe Defect. In addition, the complaints indicate
18 that despite having knowledge of the Rear Subframe Defect and even armed with
19 knowledge of the exact vehicles affected, Defendant often refused to diagnose the
20 defect or otherwise attempt to repair it while Class Vehicles were still under
21 warranty. (Spelling and grammar mistakes remain as found in the original):

22 **2020 Ford Explorer ST**

23 a. **DATE OF INCIDENT:** June 23, 2022

24 **DATE COMPLAINT FILED:** June 23, 2022

25 **NHTSA/ODI ID:** 11470689

26 **SUMMARY:** The contact owns a 2020 Ford Explorer. The contact
27 received notification of NHTSA Campaign Number: 22V255000
28 (Power Train) and the fix stated that the dealer would update the

1 electronic parking brake software but not replace the bolts. The
2 contact was concerned that an update would not fix the issue as the
3 failure was with the bolts. The contact had not experienced a failure.
4 The contact stated that he called the dealer and it was confirmed that
5 the remedy was to update the electronic parking brake software. The
6 manufacturer was contacted and confirmed the remedy and a case was
7 opened. The manufacturer offered no further assistance. Parts
8 distribution disconnect.

9 b. **DATE OF INCIDENT:** June 17, 2022

10 **DATE COMPLAINT FILED:** June 17, 2022

11 **NHTSA/ODI ID:** 11469737

12 **SUMMARY:** Feedback on Manufacturer Recall Number 22S27,
13 NHTSA Recall 22V255 Allowing Ford to reprogram the powertrain
14 control unit (ECU) on this vehicle so that the vehicle applies the
15 emergency brake whenever the vehicle is placed in park in order to
16 prevent the vehicle from rolling away if/when this one bolt breaks on
17 the rear differential is NOT sufficient. The 2020 MY Ford Explorer
18 ST/Plantium models have two bolts attaching the rear differential to
19 the rear subframe. The equivalent 2020-2022 Lincoln Aviator also
20 has two bolts on this part. The issue is that Ford ran out of the correct
21 rear subframe parts and substituted a part for a lower powered
22 powertrain, or this was a cost cutting measure gone bad. Cross
23 referencing Ford's own parts numbers with the VIN shows the
24 incorrect rear subframe installed at the factory. NHTSA should
25 require Ford to properly and securely attach the rear differential to
26 the rear subframe of the vehicle to prevent this issue. Allowing a
27 workaround, use of parking brake to prevent rollaway, is not ok.
28 Additionally, the equivalent police interceptor is obtaining the correct

1 rear subframe as part of the manufacture defect resolution. Why
2 wouldn't the others receive the same fix?

3 **2021 Ford Explorer ST**

4 c. **DATE OF INCIDENT:** October 3, 2022

5 **DATE COMPLAINT FILED:** November 9, 2022

6 **NHTSA/ODI ID:** 11492971

7 **SUMMARY:** Rear subframe bolt bushing broke. (See existing recall
8 for the rear subframe bolt breaking). This vehicle had recall
9 performed which actually didn't address the engineering shortfall
10 from Ford using the wrong, lighter duty, subframe on the ST model.
11 This subframe only has one bolt holding the rear diff to the subframe.
12 The 2020 model had two bolts, as do all MY of the Lincoln Aviator.
13 While Ford is fixing this under warranty, using the same subframe
14 will not fix this issue. Result will be that the bolt may break or the
15 bushing may fail. A broken bolt will result in the drive shaft
16 disconnecting while driving, loss of acceleration, potential wreck
17 from drive shaft hitting ground at speed.

18 d. **DATE OF INCIDENT:** August 2, 2022

19 **DATE COMPLAINT FILED:** October 27, 2022

20 **NHTSA/ODI ID:** 11491173

21 **SUMMARY:** Numerous times no response when pushing gas pedal
22 no acceleration when vehicle is in electric and switching to gas. This
23 a Hybrid vehicle. I can't let my wife drive it. No warning lights come
24 on. The recall for rear end states if the bolt fails the drive shaft and
25 rear axles could move out of alignment and cause an accidentyet
26 they refuse to replace it.

27 e. **DATE OF INCIDENT:** February 25, 2021

28 **DATE COMPLAINT FILED:** September 23, 2022

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NHTSA/ODI ID: 11485961

SUMMARY: My Explorer ST has the issue of having the incorrect rear subframe for the high-performance engine with only one bolt holding the differential to the rear subframe. I have talked to all of the Ford dealerships in my area. They said that this is a problem, but Ford has not provided a solution or any timeframe to fix this major issue. Another example of Ford not caring about their customers and putting profits ahead of safety. Why did they think that they could get away with installing incorrect parts for the four-cylinder engine on a vehicle that develops substantially higher HP and torque. This is my first and last Ford product I will ever buy. Why doesn't the NHTSA force Ford to fix this potentially dangerous issue.

f. **DATE OF INCIDENT:** August 23, 2022

DATE COMPLAINT FILED: August 27, 2022

NHTSA/ODI ID: 11481543

SUMMARY: I recently had the recall addressed at my local Ford dealer, Performance Ford in Randolph, NJ. Ford is only allowing dealerships to reprogram the parking break to engage whenever the vehicle is placed in park. If the axle bolt were to shear, it would disengage, allowing the vehicle to roll in park. This remedy does not adequately address the underlying issue- which was the fact that Ford's Chicago mfg facility used a part designed for the 4-cyl engine power train, not the 4 bolt design required in the Police Interceptor and Explorer ST versions. The police version will be getting the parts upgraded while consumers are left with a band-aid solution. NHTSA should force Ford to address the issue- which is an inadequate bolt configuration for the HP/Torque output of performance version Explorers. This is a safety hazard as the bolt can snap while in use,

1 disconnecting the drive axle from the rear differential.

2 **2022 Ford Explorer ST**

3 g. **DATE OF INCIDENT:** April 19, 2022

4 **DATE COMPLAINT FILED:** April 23, 2022

5 **NHTSA/ODI ID:** 11461908

6 **SUMMARY:** This is my second submission. I will continue to
7 submit to attempt to have NHTSA find out why FORD will only offer
8 a software tweak to fix a very dangerous physical issue with all 20-
9 22 Ford Explorers. Ford provided Advance Notice 22S27 to dealers
10 dated 4/19/22 advising them to STOP delivery of any in stock
11 Explorer due to a possible bolt fracture on the rear subframe which if
12 cracked will disable the vehicle. Their "fix" is a software update that
13 will reduce power to avoid acceleration which will put stress on the
14 bolt. Ford decided to remove the second bolt from all the Explorers
15 which subsequently will put stress on the one bolt they left intact.
16 Ford needs to recall and put that bolt back on the subframe as the
17 vehicle was originally designed to have. Please, please address this
18 issue with Ford to make them fix the physical issue!

19 h. **DATE OF INCIDENT:** April 20, 2022

20 **DATE COMPLAINT FILED:** April 20, 2022

21 **NHTSA/ODI ID:** 11461576

22 **SUMMARY:** Ford released a bulletin - 22S27- to all dealers to
23 immediately stop demo/delivery for all new Explorers in stock as of
24 4/19/22. At issue is a possibility of a fractured bolt that causes the
25 differential to separate and cause "severe vibration" rendering the
26 vehicle disabled. No fix was mentioned other than a software update
27 possibly by the end of June 22 (2d qtr). This is serious if dealers are
28 told to stop delivery! I just got mine in the beginning of April. Ford

1 needs to step up and address this to ALL owners and not just dealers.
2 It appears that Ford is waiting for failure of the parts before allowing
3 any repairs. So far, only software is mentioned which supposedly
4 throttles the engine to avoid putting stress on the rear end. This of
5 course does NOT address the physical issue with a fractured bolt.
6 Apparently, Ford redesigned the differential to use only one bolt vs
7 two they had used earlier. Please pursue this as soon as possible with
8 Ford to make them put out an emergency recall to resolve this very
9 serious defect in manufacturing. Normally, recalls are for something
10 that can be addressed eventually based on reported issues. However,
11 there have not been that many incidents. For Ford to issue this notice
12 to dealers indicates the seriousness or expected seriousness. Thank you
13 for your attention!

14 **Customer Complaints on Third-Party Websites**

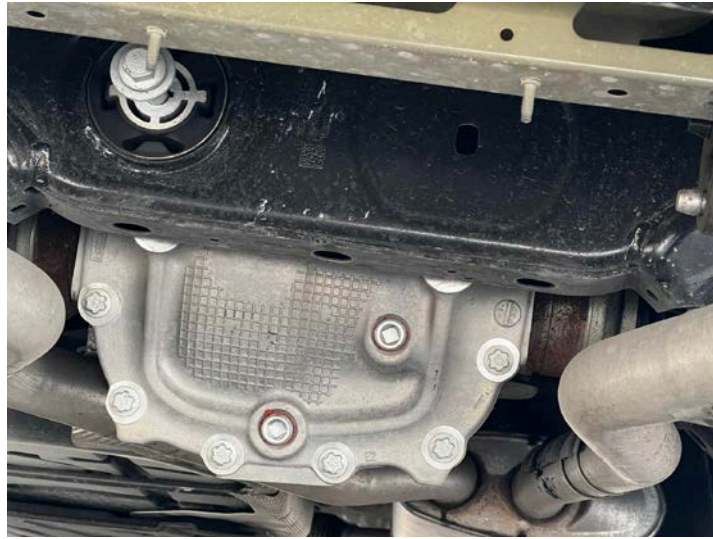
15 69. Similarly, complaints posted by consumers in internet forums
16 demonstrate that the defect is widespread and dangerous and that it can manifest
17 without warning and/or suitable repair. The complaints also indicate Defendant's
18 awareness of the problems with the Rear Subframe and how potentially dangerous
19 the defect is for consumers, not only to the extent such complaints reference
20 contact with authorized dealerships and Defendant itself, but also because Ford
21 employs staff to monitor the perception of the brand. The following are a sample
22 of consumer complaints (spelling and grammar mistakes remain as found in the
23 original):

24 70. On the "Ford Explorer ST Forum" group on facebook.com, a
25 consumer of a Ford Explorer ST posted the following, along with pictures:

26 Heard a loud thud, some grinding and got out to take a picture,
27 welcome to the 3 bolt club I guess. Checked and clear enough it
28 snapped when I was turning left at a stop so thankfully was not going

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fast.



71. On the “Ford Explorer ST Forum” group on facebook.com, two consumers of Ford Explorer ST vehicles had the following exchange:

Consumer 1: Ours has broken twice within 15k miles

Consumer 2: was it replaced with the proper 4 bolt or just with the same 3 bolt one?

Consumer 1: same 3 bolt

Consumer 1: it was at the ford dealership for 45 days waiting on

1 parts

2 72. On the “Ford Explorer ST Forum” group on facebook.com, four
3 consumers of Ford Explorer ST vehicles had the following exchange:

4 Consumer 1: So, the dealer “fixed” my differential bolt recall with a
5 computer update. Tell the computer what to do if it happens. But
6 now my emergency brake is on every time I start. Is there a way to
7 turn it off?

8 Consumer 2: Not without reprogramming...which will put strain on
9 that single diff bolt if you are parked on an incline and forget to
10 manually set it...so that will put you right back where you started.
11 Several of my dealer clients said this ‘fix’ still doesn’t cure the
12 potential problem under hard acceleration. Ask Tyler about the
13 aftermarket reinforcement options.

14 Consumer 3: Are they ever going to fix the 1 bolt issue, with the
15 correct subframe and leave the e-brake alone?

16 Consumer 4: Dealer told me it was a bandaid until a real fix gets
17 rolled out.

18 Consumer 3: hopefully, some are saying that it must break before
19 they fix it

20 73. On the “Ford Explorer ST Forum” group on facebook.com, a
21 consumer of a 2021 Ford Explorer ST posted the following, along with a picture:

22 I got some good news about my ST and others who have the single
23 bolt in the subframe holding the rear diff. Mine has snapped twice in
24 6800 miles. The first time they just replaced the single bolt and
25 everything else. This time they are going to replace the subframe
26 with the correct one with 2 bolt holes. So hopefully there is at least a
27 legit real fix from Ford now.

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74. On explorerst.org, a consumer of a 2021 Ford Explorer ST posted the following:

I have a 21 ST and have only done a few mods. 5 star race tune, Borla exhaust, intercooler. I'll start off by saying I do have a heavy foot. I was leaving a red light, not in sport mode and not 100% acceleration and all of a sudden I heard a loud pop and the whole car started shacking and making crazy thud sounds. I thought I had a tire that blew out. It was similar to that sound. Needles to say it was not a tire. I broke the bolts that hold the rear diff on. The bolts were clean snapped and the noise I was hearing was my drive shaft turning but not connected to the rear end. I had it towed to Ford and they are covering the repairs under warranty. Has anyone else heard of this happening.

They are replacing the whole rear end, rear right axle, drive shaft mounting bracket, etc....

My ST has less than 6,000 miles on it.

Defendant Had Superior and Exclusive Knowledge of the Rear Subframe Defect

75. Defendant had superior and exclusive knowledge of the Rear

1 Subframe Defect and knew or should have known that the defect was not known
2 or reasonably discoverable by Plaintiffs and Class Members before they purchased
3 or leased the Class Vehicles.

4 76. Discovery will show that before Plaintiffs purchased their Class
5 Vehicles, and since at least 2019, Defendant knew the Class Vehicles required the
6 most robust four-bolt subframe assembly, and since the beginning of 2020,
7 Defendant knew about the Rear Subframe Defect through sources not available to
8 consumers, including pre-release testing data, early consumer complaints to
9 Defendant and its dealers who are their agents for vehicle repairs, high failure rates
10 and replacement part sales data, consumer complaints to NHTSA (which
11 Defendant monitors), by developing TSBs in an effort to address the Rear
12 Subframe Defect, and through other aggregate data from Defendant's dealers
13 about the problem. TSBs are issued exclusively to Defendant's dealerships and
14 service providers and are not disseminated to consumers, even if their vehicles
15 receive services as outlined in the bulletins.

16 77. Defendant is experienced in the design and manufacture of consumer
17 vehicles. As an experienced manufacturer, Defendant conducts tests, including
18 pre-sale durability testing, on incoming components, including the Rear Subframe
19 and Rear Subframe Assembly, to verify the parts are free from defect and align
20 with Defendant's specifications. Thus, Defendant knew or should have known the
21 Rear Subframe was defective and prone to putting drivers in a dangerous position
22 due to the inherent risks of the Rear Subframe Defect.

23 78. Additionally, discovery will show that Defendant knew of the impact
24 of this defect from the sheer number of reports received from dealerships.
25 Defendant's customer relations department, which interacts with individual
26 dealerships to identify potential common defects, has received numerous reports
27 regarding the Defect, which led to the release of TSBs and dealer communications.
28 Defendant's customer relations department also collects and analyzes field data

1 including, but not limited to, repair requests made at dealerships, technical reports
2 prepared by engineers who have reviewed vehicles for which warranty coverage
3 is being requested, parts sales reports, and warranty claims data.

4 79. Defendant's warranty department similarly analyzes and collects data
5 submitted by its dealerships to identify warranty trends in its vehicles. It is
6 Defendant's policy that when a repair is made under warranty the dealership must
7 provide Defendant with detailed documentation of the problem and a complete
8 disclosure of the repairs employed to correct it. Dealerships have an incentive to
9 provide detailed information to Defendant, because they will not be reimbursed
10 for any repairs unless the justification for reimbursement is sufficiently detailed.

11 80. Ford first issued Special Service Message ("SSM") 50471 in
12 February 2022 for Model Year ("MY") 2020-2022 Ford Explorer vehicles,
13 advising that "[s]ome 2020-2022 Explorer vehicles may exhibit a rear axle
14 mounting bolt that has broken." Ford explained that, "[i]n order to correct the
15 condition, the rear subframe, differential cover, and mounting bolts will need to
16 be replaced in addition to any other damaged components."

17 81. On April 14, 2022, Ford issued a Safety Recall Report (Manufacturer
18 Recall No. 22S27) recalling 2020-2022 Ford Explorer 2.3L RWD / 3.0L PHEV /
19 3.3 L FHEV Retail / 3.0L ST gas vehicles (along with two types of Ford Explorer
20 police vehicles that are not sold to the general public and are not a part of this
21 complaint). The Safety Recall Report ("Recall") explained that the affected
22 vehicles are "equipped with suspect rear axle bolts and and [sic] an older version
23 of Electronic Park Brake Software."

24 82. The Recall described the defect as follows:

25 Affected vehicles were built with a 3-point mounted axle design. On
26 some units the rear axle horizontal mounting bolt may fracture.
27 Powertrain torque through the driveline causes axle rotation of the
28 pinion angled towards the subframe, which exerts a bending force on
the rear axle bolt. Peak torque is normally experienced during a launch
event. After numerous peak torque events are experienced, the bolt
may suffer a fatigue failure, which will lead to the axle housing moving

1 out of position, resulting in a condition described by customers and
2 dealer technicians variably as loud, grinding, binding, or clunking
noises.

3 83. The Recall describes the safety risk of this defect as follows:
4 If the rear axle bolt breaks, the driveshaft/half shafts may become
5 disconnected, resulting in loss of transmission torque to the rear
6 wheels which is necessary to hold the vehicle in park. If the parking
7 brake is not applied, the loss of the primary park torque will allow the
8 vehicle to roll in park increasing the risk of crash and injury.” The the
above-described issue occurs without warning (“Identification of Any
Warning that can Occur: NA”). The Remedy Program initiated as part
of the recall merely instructs affected vehicle owners to “take their
vehicle to a Ford or Lincoln dealer to have the PCM software updated
to engage the Electronic Park Brake when Park is commanded.

9 84. In June 2022, Ford began Customer Satisfaction Program 22N06,
10 which provided a “one-time repair (if needed) to the parts required to replace a
11 rear subframe bushing and axle cover due to a rear axle bolt bending and fracturing
12 for ten (10) years of service or 150,000 miles from the warranty start date of the
13 vehicle, whichever occurs first.”

14 85. On April 19, 2022, Ford issued a Delivery Hold to all U.S. Ford and
15 Lincoln Dealers pursuant to the Recall that stated, “[i]n some of the affected
16 vehicles, the rear axle mounting bolt may fracture during vehicle acceleration. A
17 fractured rear axle bolt will allow the rear axle housing to move out of position,
18 resulting in severe noise and vibration.” If the driveshaft/half shafts become
19 disconnected and there is loss of transmission torque to the rear wheels, there could
20 be a consequential loss of power while the vehicle is being driven. The driver
21 could also lose complete control of the vehicle. This vastly increases the risk of
22 safety hazards, including collisions. In such cases, a software update that engages
23 the Electronic Parking Brake when in Park does nothing to remedy the defect, and
24 a one-time repair that is only provided once the bolt has already fractured requires
25 consumers to brave the safety risks before an adequate remedy is provided under
26 warranty. Discovery will show that the problem persists despite Ford’s software
27 update Recall, as a result of the Defect as described herein.
28

1 86. The Recall also included a Chronology of Defect/Noncompliance
2 Determination (the “Chronology”). Per the Chronology, Ford was undeniably
3 aware of the Rear Subframe Defect as early as August 2021 when it reviewed
4 warranty claims.

5 87. However, Ford was aware in at least 2019, and likely several years
6 before, that the Class Vehicles required the four bolt rear subframe assembly (with
7 two rear axle mounting bolts) as evidenced by its presale design and testing of the
8 newly re-designed 2020 Ford Explorer ST, the specs for which—researched and
9 created by Ford itself—required the four bolt rear subframe assembly (with two
10 rear axle mounting bolts) on all higher horsepower and torque-rated vehicles, *i.e.*
11 the Class Vehicles. Ultimately, Ford implemented the four bolt subframe in only
12 a small subset of the 2020 Ford Explorer STs with higher horsepower and torque
13 ratings, the rollout for which immediately preceded the Class Vehicles. On
14 information and belief, Ford willfully substituted the unsafe rear subframe
15 assembly (with one rear axle mounting bolt) for the safer-as-designed four bolt
16 assembly due to supply chain issues beginning in 2020 as a result of the Covid-19
17 pandemic.

18 88. Discovery will show that each TSB, customer satisfaction program,
19 and service action issued by Defendant was approved by managers, directors,
20 and/or executives at Ford. Therefore, discovery will show that Defendant’s
21 managers, directors, and/or executives knew, or should have known, about the
22 Rear Subframe Defect, but refused to disclose the Rear Subframe Defect to
23 prospective purchasers and owners, and/or actively concealed the Rear Subframe
24 Defect.

25 89. The existence of the Rear Subframe Defect is a material fact that a
26 reasonable consumer would consider when deciding whether to purchase or lease
27 a Class Vehicle. Had Plaintiffs and other Class Members known of the Rear
28 Subframe Defect, they would have paid less for the Class Vehicles or would not

1 have purchased or leased them.

2 90. Reasonable consumers, like Plaintiffs, expect that a vehicle's Rear
3 Subframe is safe, will function in a manner that will not pose a safety risk and will
4 stay securely fastened, and is free from defects. Plaintiffs and Class Members
5 further reasonably expect that Defendant will not sell or lease vehicles with known
6 safety defects, such as the Rear Subframe Defect, and will disclose any such
7 defects to its consumers when it learns of them. They did not expect Defendant to
8 conceal and fail to disclose the Rear Subframe Defect to them, and to then
9 continually deny its existence.

10 **Defendant Has Actively Concealed the Rear Subframe Defect**

11 91. Despite their knowledge of the Rear Subframe Defect in the Class
12 Vehicles, Defendant actively concealed the existence and nature of the defect from
13 Plaintiffs and Class Members. Specifically, Defendant failed to disclose or
14 actively concealed at and after the time of purchase, lease, or repair:

- 15 (a) any and all known material defects or material nonconformity
16 of the Class Vehicles, including the defects pertaining to the
17 Rear Subframe;
- 18 (b) that the Class Vehicles, including the Rear Subframe, were not
19 in good working order, were defective, and were not fit for their
20 intended purposes; and
- 21 (c) that the Class Vehicles and their Rear Subframes were
22 defective, despite the fact that Defendant learned of such
23 defects as early as 2020, if not earlier.

24 92. Discovery will show that when consumers present their Class
25 Vehicles to an authorized Defendant's dealer for Rear Subframe repairs, rather
26 than repair the problem under warranty, Defendant's dealers either inform
27 consumers that their vehicles are functioning properly or conduct repairs that
28 merely mask the Rear Subframe Defect such as performing a software update

1 and/or replacing the rear subframe only once and only if the rear subframe bolt
2 fails.

3 93. Defendant has caused Plaintiffs and Class Members to expend money
4 and/or time at their dealerships to diagnose, repair or replace the Class Vehicles'
5 Rear Subframe and/or related components, despite Defendant's knowledge of the
6 Rear Subframe Defect.

7 **Defendant Has Unjustly Retained a Substantial Benefit**

8 94. Discovery will show that Defendant unlawfully failed to disclose the
9 alleged defect to induce Plaintiffs and other putative Class Members to purchase or
10 lease the Class Vehicles.

11 95. Plaintiffs further allege that Defendant thus engaged in deceptive acts
12 or practices pertaining to all transactions involving the Class Vehicles, including
13 Plaintiffs'.

14 96. As discussed above, therefore, Plaintiffs allege that Defendant
15 unlawfully induced them to purchase their Class Vehicles by concealing a material
16 fact (the defective rear subframe) and that they would have paid less for the Class
17 Vehicle, or not purchased it at all, had they known of the defect.

18 97. Accordingly, Defendant's ill-gotten gains, benefits accrued in the
19 form of increased sales and profits resulting from the material omissions that did -
20 and likely will continue to - deceive consumers, should be disgorged.

21 **The Agency Relationship regarding the Vehicle Warranties Between**
22 **Defendant Ford and its Authorized Dealers**

23 98. In order to sell vehicles to the general public, Defendant Ford enters
24 into agreements with its networks of authorized dealerships to engage in retail sales
25 with consumers such as Plaintiffs while also advertising the warranties provided
26 by Ford directly to consumers when they purchase a Ford-branded vehicle from the
27 authorized dealership. These agreements specifically authorize the dealerships to
28 act in Ford's stead to provide repairs under the warranties Ford provides directly to

1 consumers. Accordingly, discovery will show, particularly the dealership
2 agreements between Defendant Ford and third-party dealerships, that Defendant
3 Ford has authorized these dealerships to be its agents for the purposes of warranty
4 repairs, including diagnosis of whether warranty repairs are required, and as such,
5 the consumers are third-party beneficiaries of these dealership agreements because
6 they benefit from being able to purchase and receive warranty repairs locally.
7 Discovery will show that because Plaintiffs and members of the Class are third-
8 party beneficiaries of the dealership agreement which create an implied warranty
9 of merchantability of the goods being sold by these authorized dealerships, they
10 may avail themselves of the implied warranty against Defendant. This is true
11 because third-party beneficiaries to contracts between other parties that create an
12 implied warranty of merchantability may avail themselves of the implied warranty.
13 *See In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, &*
14 *Prod. Liab. Litig.*, 754 F. Supp. 2d 1145, 1185 (C.D. Cal. 2010).

15 99. Further, Plaintiffs and each of the members of the Class are the
16 intended beneficiaries of the express and implied warranties which accompany
17 each Class Vehicle. The dealers were not intended to be the ultimate consumers of
18 the Class Vehicles, and they have no rights under the warranty agreements provided
19 by Ford. These warranties were designed for and intended to benefit the consumers
20 only. The consumers are the true intended beneficiaries of the express and implied
21 warranties, and the consumers may therefore avail themselves of those warranties.

22 100. Ford issued the express warranty to Plaintiffs and the Class members.
23 Ford also developed and disseminated the owner's manuals and warranty booklets
24 which direct consumers to take their vehicles to authorized dealerships for
25 diagnosis and repair. Ford also developed and disseminated the advertisements
26 such as vehicle brochures and television commercials, and other promotional
27 materials relating to the Class Vehicles and promoting the terms of the warranties
28 that they issue with the sale of each Class Vehicle. Ford is also responsible for the

1 content of the Monroney Stickers on its vehicles. Because Ford issues the express
2 warranties directly to the consumers, the consumers are in direct privity with Ford
3 with respect to the warranties.

4 101. In promoting, selling, and repairing their defective vehicles,
5 Defendant acts through numerous authorized dealers who act as, and represent
6 themselves to the public as exclusive Ford representatives and agents, particularly
7 for the purpose of providing repairs that are the responsibility of Ford to provide
8 under its warranties. That the dealers act as Defendant's agents for this purpose is
9 demonstrated by the following facts:

- 10 (a) The authorized dealerships complete all service and repair
11 according to instructions disseminated directly to them by
12 Ford, including service manuals, technical service bulletins
13 ("TSBs"), technical tips ("TT"), and other documents drafted
14 by Ford;
- 15 (b) Technicians at Defendant's dealerships are required to go to at
16 least yearly Ford-given trainings in order to remain certified to
17 work on Ford-branded vehicles, at which they receive training
18 on proprietary systems, which provides guided, step-by-step
19 instructions on diagnosing and repairing Ford-branded
20 vehicles;
- 21 (c) Consumers are able to receive services under Ford's issued
22 New Vehicle Limited Warranties only at authorized
23 dealerships, and they are able to receive these services because
24 of the agreements between Ford and the authorized dealers.
25 These agreements provide Ford with a significant amount of
26 control over the actions of the authorized dealerships;
- 27 (d) The warranties provided by Ford for the defective vehicles
28 direct consumers to take their vehicles to authorized

1 dealerships for repairs or services;

2 (e) Ford controls the way in which its authorized dealers can
3 respond to complaints and inquiries concerning defective
4 vehicles, and the dealerships are able to perform repairs under
5 warranty only with Ford’s authorization;

6 (f) Ford has entered into agreements and understandings with their
7 authorized dealers pursuant to which they authorize and
8 exercise substantial control over the operations of their dealers
9 and the dealers' interaction with the public, particularly the
10 advertising of the Class Vehicles, specifically the terms and
11 conditions of the express warranties, as well as how consumers
12 may avail themselves of the remedies under those express
13 warranties; and

14 (g) Ford implemented its express and implied warranties as they
15 relate to the defects alleged herein by instructing authorized
16 Ford dealerships to address complaints of the Defect by
17 prescribing and implementing the relevant TSBs cited herein.

18 102. Indeed, Ford warranty booklet makes it abundantly clear that only its
19 authorized dealerships are its agents for warranty service. The booklets, which are
20 plainly written for the consumers, not the dealerships, tell consumers that to obtain
21 warranty service, the Ford vehicle must be “taken to a Ford dealership for a
22 warranted repair during the warranty period.” (Ford Warranty).

23 103. Accordingly, as the above paragraphs demonstrate, the authorized
24 dealerships are agents of Defendant for the purposes of the warranties, which are
25 direct contracts between Ford and the purchasers of their branded vehicles.
26 Plaintiffs and each of the members of the Class have had sufficient direct dealings
27 with either Ford or their agent dealerships to establish privity of contract between
28 Ford, on one hand, and Plaintiffs and each of the members of the Class, on the other

1 hand. This establishes privity with respect to the express and implied warranty
2 between Plaintiffs and Defendant. It also establishes that Plaintiffs were dealing
3 with Defendant through their authorized agent dealerships when they were given
4 the New Vehicle Limited Warranty associated with their vehicles, without any
5 ability to negotiate the terms of that Warranty.

6 **Defendant's Warranties were Unconscionable**

7 104. Plaintiffs signed contracts for sale with Defendant's authorized
8 dealers, and with that sale, were presented with a separate Warranty as drafted by
9 Ford. While Plaintiffs have some ability to negotiate price of the vehicle, they have
10 no ability to negotiate the terms of the Warranty. Plaintiffs had no bargaining power
11 with respect to the Warranty, were presented with it as a *fait accompli*, and had to
12 accept it in the exact form in which it was presented to them, which occurred after
13 the vehicle purchase transaction was completed. Plaintiffs had no meaningful
14 choice regarding any aspect of the Warranty or its terms, including durational
15 limitations of time and mileage. The terms of the warranty unreasonably favored
16 Ford over Plaintiffs and the members of the Class; a gross disparity in bargaining
17 power existed as between Ford and Class members; and Ford knew or should have
18 known that the Rear Subframe Defect would manifest in the Class Vehicles both
19 before and after the Warranty, thereby rendering the time and mileage limitations
20 insufficient, inadequate, and unconscionable.

21 105. Ford drafted the terms of the Warranty in part by using its exclusive,
22 superior knowledge of the existence and likely manifestation of the Rear Subframe
23 Defect. Plaintiffs and Class Members were entirely ignorant of the Rear Subframe
24 Defect when purchasing their Vehicles and when presented with the Warranty.
25 Plaintiffs' acceptance of the Warranty and its terms, including any disclaimers or
26 durational limits, was neither knowing nor voluntary. Ford knew or should have
27 known at the time of sale that the Class Vehicles were defective and would fail
28 prematurely solely because of a defect in design, materials, and workmanship, to

1 wit, the Rear Subframe Defect. Plaintiffs and Class Members, on the other hand,
2 had no notice of or ability to detect the Rear Subframe Defect prior to purchasing
3 the Class Vehicles. For this reason, the terms of the Warranty unreasonably favored
4 Ford over Plaintiffs and Class Members, and Plaintiffs' and Class Members'
5 acceptance of the Warranty's durational limitations, to the extent they are found to
6 apply so as to exclude instances where the Rear Subframe Defect manifested
7 outside of them, was neither knowing nor voluntary, thereby rendering such
8 limitation unconscionable and ineffective.

9 106. Defendant's exclusive superior knowledge of the existence of the
10 Rear Subframe Defect and when it would manifest influenced its analysis of the
11 Rear Subframe Defect and whether it should pay for a recall (*i.e.*, if a defect is more
12 likely to manifest within the durational limits, a recall is only fractionally more
13 expensive than warranty repairs; if it is more likely to manifest outside those limits,
14 a recall is exponentially more expensive than warranty repairs.)

15 107. Plaintiffs were also not aware and could not have been aware that
16 Ford would willfully not inform them of the Rear Subframe Defect which affects
17 the safety of their vehicles and that the Rear Subframe Defect could manifest
18 outside of the durational limit of the Warranty, despite Defendant's knowledge of
19 this. *See Carlson v. Gen. Motors Corp.*, 883 F.2d 287 (4th Cir. 1989), cert. denied,
20 495 U.S. 904 (1990) (““proof that GM knew of and failed to disclose major,
21 inherent product defects would obviously suggest that its imposition of the
22 challenged ‘durational limitations’ on implied warranties constituted
23 ‘overreaching,’ and that the disclaimers themselves were therefore
24 ‘unconscionable.’”)

25 **TOLLING OF THE STATUTES OF LIMITATIONS**

26 108. Any applicable statute of limitations has been tolled by Defendant's
27 knowing and active concealment of the Rear Subframe Defect and
28 misrepresentations and omissions alleged herein. Through no fault or lack of

1 diligence, Plaintiffs and members of the Class were deceived regarding the Class
2 Vehicles and could not reasonably discover the Rear Subframe Defect or
3 Defendant’s deception with respect to the Rear Subframe Defect. Defendant and
4 its agents continue to deny the existence and extent of the Rear Subframe Defect,
5 even when questioned by Plaintiffs and members of the Class. Instead, Defendant
6 decided to release an ineffective software update as a “recall” for the Rear
7 Subframe Defect.

8 109. Plaintiffs and members of the Class did not discover and did not know
9 of any facts that would have caused a reasonable person to suspect that Defendant
10 was concealing a defect and/or the Class Vehicles contained the Rear Subframe
11 Defect and the corresponding safety risk. As alleged herein, the existence of the
12 Rear Subframe Defect was material to Plaintiffs and members of the Class at all
13 relevant times. Within the time period of any applicable statutes of limitations,
14 Plaintiffs and members of the Class could not have discovered through the exercise
15 of reasonable diligence the existence of the Rear Subframe Defect or that the
16 Defendant was concealing the Rear Subframe Defect.

17 110. At all times, Defendant is and was under a continuous duty to disclose
18 to Plaintiffs and members of the Class the true standard, quality, and grade of the
19 Class Vehicles and to disclose the Rear Subframe Defect and corresponding safety
20 risk due to their exclusive and superior knowledge of the existence and extent of
21 the Rear Subframe Defect in Class Vehicles.

22 111. Defendant knowingly, actively, and affirmatively concealed the facts
23 alleged herein. Plaintiffs and members of the Class reasonably relied on
24 Defendant’s knowing, active, and affirmative concealment.

25 112. For these reasons, all applicable statutes of limitation have been tolled
26 based on the discovery rule and Defendant’s fraudulent concealment, and
27 Defendant is estopped from relying on any statutes of limitations in defense of this
28 action.

1 **CLASS ACTION ALLEGATIONS**

2 113. Plaintiffs bring this lawsuit as a class action on behalf of themselves
3 and all others similarly situated as members of the proposed Class pursuant to
4 Federal Rules of Civil Procedure 23(a) and 23(b)(3). This action satisfies the
5 numerosity, commonality, typicality, adequacy, predominance, and superiority
6 requirements of those provisions.

7 114. The Class and Sub-Classes are defined as:

8 **Class:** All persons and entities in the United States who
9 purchased or leased a Class Vehicle (the “Nationwide
10 Class” or “Class”).

11 **California Sub-Class:** All persons and entities who
12 purchased or leased a Class Vehicle in the State of
California.

13 **CLRA Sub-Class:** All members of the California Sub-
14 Class who are “consumers” within the meaning of
California Civil Code § 1761(d).

15 **Maryland Sub-Class:** All persons and entities who
16 purchased or leased a Class Vehicle in the State of
Maryland.

17 **Texas Sub-Class:** All persons and entities who
18 purchased or leased a Class Vehicle in the State of Texas.

19 115. Excluded from the Class and Sub-Classes are: (1) Defendant, any
20 entity or division in which Defendant has a controlling interest, and its legal
21 representatives, officers, directors, assigns, and successors; (2) the Judge to whom
22 this case is assigned and the Judge’s staff; (3) any Judge sitting in the presiding
23 state and/or federal court system who may hear an appeal of any judgment entered;
24 and (4) those persons who have suffered personal injuries as a result of the facts
25 alleged herein. Plaintiffs reserves the right to amend the Class and Sub-Class
26 definitions if discovery and further investigation reveal that the Class and Sub-
27 Classes should be expanded or otherwise modified.

28 116. **Numerosity:** Although the exact number of Class Members is

1 uncertain, and can only be ascertained through appropriate discovery, the number
2 is significant enough such that joinder is impracticable. The disposition of the
3 claims of these Class Members in a single action will provide substantial benefits
4 to all parties and to the Court. The Class Members are readily identifiable from
5 information and records in Defendant's possession, custody, or control, as well as
6 from records kept by the Department of Motor Vehicles.

7 117. Typicality: Plaintiffs' claims are typical of the claims of the Class in
8 that Plaintiffs, like all Class Members, purchased or leased a Class Vehicle
9 designed, manufactured, and distributed by Defendant. The representative
10 Plaintiffs, like all Class Members, has been damaged by Defendant's misconduct
11 in that they have incurred or will incur the cost of repairing or replacing the
12 defective Rear Subframe and/or its components. Furthermore, the factual bases of
13 Defendant's misconduct are common to all Class Members and represent a
14 common thread resulting in injury to the Class.

15 118. Commonality: There are numerous questions of law and fact
16 common to Plaintiffs and the Class that predominate over any question affecting
17 Class Members individually. These common legal and factual issues include the
18 following:

- 19 (a) Whether Class Vehicles suffer from defects relating to the Rear
20 Subframe;
- 21 (b) Whether the defects relating to the Rear Subframe constitute an
22 unreasonable safety risk;
- 23 (c) Whether Defendant knew about the defects pertaining to the
24 Rear Subframe and, if so, how long Defendant has known of
25 the defect;
- 26 (d) Whether the defective nature of the Rear Subframe constitutes
27 a material fact;
- 28 (e) Whether Defendant has had an ongoing duty to disclose the

- 1 defective nature of the Rear Subframe to Plaintiffs and Class
2 Members;
- 3 (f) Whether Plaintiffs and the other Class Members are entitled to
4 equitable relief, including a preliminary and/or a permanent
5 injunction;
- 6 (g) Whether Defendant knew or reasonably should have known of
7 the defects pertaining to the Rear Subframe before it sold and
8 leased Class Vehicles to Class Members;
- 9 (h) Whether Defendant should be declared financially responsible
10 for notifying the Class Members of problems with the Class
11 Vehicles and for the costs and expenses of repairing and
12 replacing the defective Rear Subframe and/or its components;
- 13 (i) Whether Defendant is obligated to inform Class Members of
14 their right to seek reimbursement for having paid to diagnose,
15 repair, or replace their defective Rear Subframe and/or its
16 components;
- 17 (j) whether Ford’s representations and omissions about the true
18 defective nature of the Class Vehicles were likely to mislead or
19 deceive, and therefore fraudulent, within the meaning of
20 California’s Unfair Competition Law (“UCL”);
- 21 (k) Whether Ford’s representations and omissions about the true
22 defective nature of the Class Vehicles were and are unfair
23 within the meaning of the UCL;
- 24 (l) Whether Defendant breached the implied warranty of
25 merchantability under California law;
- 26 (m) Whether Defendant breached the implied warranty of
27 merchantability under Maryland law;
- 28 (n) Whether Defendant breached their express warranties under

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Maryland Law;

(o) Whether Defendant breached the implied warranty of merchantability pursuant to the Magnuson-Moss Warranty Act; and

(p) Whether Defendant breached express warranties pursuant to the Magnuson-Moss Warranty Act.

119. Adequate Representation: Plaintiffs will fairly and adequately protect the interests of the Class Members. Plaintiffs has retained attorneys experienced in the prosecution of class actions, including consumer and product defect class actions, and Plaintiffs intend to vigorously prosecute this action.

120. Predominance and Superiority: Plaintiffs and Class Members have all suffered, and will continue to suffer, harm and damages as a result of Defendant’s unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Absent a class action, most Class Members would likely find the cost of litigating their claims prohibitively high and would therefore have no effective remedy. Because of the relatively small size of the individual Class Members’ claims, it is likely that only a few Class Members could afford to seek legal redress for Defendant’s misconduct. Absent a class action, Class Members will continue to incur damages, and Defendant’s misconduct will continue unabated without remedy or relief. Class treatment of common questions of law and fact would also be a superior method to multiple individual actions or piecemeal litigation in that it will conserve the resources of the courts and the litigants and promote consistency and efficiency of adjudication.

FIRST CAUSE OF ACTION

Violation of California’s Consumer Legal Remedies Act (“CLRA”),

Cal Civ. Code § 1750, *et seq.*

(On behalf of the CLRA Sub-Class)

121. Plaintiffs incorporate by reference each allegation set forth above.

122. Plaintiffs Ken Hunnel and Leanne Hunnel (“California Plaintiffs”) bring this cause of action individually and on behalf of the members of the CLRA Sub-Class.

123. Ford is a “person” as defined by the CLRA. Cal. Civ. Code § 1761(c).

124. Plaintiffs and CLRA Sub-Class Members are “consumers” within the meaning of the CLRA. Cal. Civ. Code § 1761(d).

125. The purchase and leases of Class Vehicles by California Plaintiffs and the CLRA Sub-Class Members constitute “transactions” as defined by the CLRA. Cal. Civ. Code § 1761(e).

126. The Class Vehicles constitute “goods” or “services” as defined by the CLRA. Cal. Civ. Code § 1761(a) and (b).

127. California Plaintiffs and the CLRA Sub-Class Members purchased or leased the Class Vehicles primarily for personal, family, and household purposes as meant by the CLRA. Cal. Civ. Code § 1761(d).

128. Ford’s representations, active concealments, omissions, and failures to disclose regarding the Class Vehicles violated the CLRA in the following ways:

129. Ford misrepresented the Class Vehicles had characteristics, uses, or benefits Class Vehicles did not in fact have (Cal. Civ. Code § 1770(a)(5));

130. Ford misrepresented that the Class Vehicles were of a particular standard, quality, or grade when they were of another (Cal. Civ. Code § 1770(a)(7));

131. Ford advertised the Class Vehicles with the intent not to sell/lease them as advertised (Cal. Civ. Code § 1770(a)(9));

1 132. Ford misrepresented that the Class Vehicles and the warranties
2 conferred or involved rights, remedies, or obligations that they did not (Cal. Civ.
3 Code § 1770(a)(14)); and

4 133. Ford misrepresented that the Class Vehicles were supplied in
5 accordance with previous representations when they were not (Cal. Civ. Code
6 § 1770(a)(16)).

7 134. Ford repeatedly engaged in these unfair and deceptive acts or
8 practices in the course of its trade or business. These acts or practices were
9 material, capable of deceiving a substantial portion of the purchasing public, and
10 caused economic harm to purchasers and lessees of the Class Vehicles, including
11 the Plaintiffs.

12 135. By 2021, and well before the sale or lease of Class Vehicles, Ford
13 knew or should have known about the Rear Subframe Defect affecting the Class
14 Vehicles. Ford further knew or should have known that the Class vehicles were
15 defectively designed or manufactured, that, as a result of this defect, the Rear
16 Subframe bolt would repeatedly fail, and that it was not suitable for its intended
17 use.

18 136. Ford had exclusive knowledge of material facts concerning the
19 existence of the Rear Subframe Defect in the Class Vehicles, and actively
20 concealed that defect from consumers. It did so by denying the existence of a
21 defect to consumers—such as Plaintiffs—who contacted Ford about the failures
22 of their Rear Subframe. Ford also concealed the Rear Subframe Defect by failing
23 to provide an effective and permanent remedy to all of the Class Vehicles and by
24 only providing a software update without replacing defective rear subframes
25 and/or replacing failed Rear Subframe bolts only once when the failure already
26 occurred.

27 137. Ford was under a duty to California Plaintiffs and the CLRA Sub-
28 Class Members to disclose the defective nature of the Rear Subframes, as well as

1 the associated costs that would have to be repeatedly expended in order to
2 temporarily address the failures caused by the Rear Subframe Defect, because:

3 138. Ford was in a superior position to know the true state of facts about
4 the Rear Subframe Defect in the Class Vehicles;

5 139. California Plaintiffs and the CLRA Sub-Class Members could not
6 reasonably have been expected to learn or discover that the Class Vehicles suffered
7 from the Rear Subframe Defect until, at the earliest, the manifestation of the Rear
8 Subframe Defect; and

9 140. Ford knew that California Plaintiffs and CLRA Sub-Class Members
10 could not reasonably have been expected to learn or discover the Rear Subframe
11 Defect prior to its manifestation.

12 141. In failing to disclose the defective nature of the Class Vehicles, Ford
13 knowingly and intentionally concealed material facts and breached its duty not to
14 do so.

15 142. The facts concealed or not disclosed by Ford to Plaintiffs and the
16 CLRA Sub-Class Members are material in that a reasonable consumer would have
17 considered them to be important in deciding whether or not to purchase or lease a
18 Class Vehicle. Moreover, a reasonable consumer would consider the Rear
19 Subframe Defect to be an undesirable quality, as California Plaintiffs and the
20 CLRA Sub-Class Members did. Had California Plaintiffs and other Class
21 Members known that the Class Vehicles had the Rear Subframe Defect, they
22 would not have purchased or leased a Class Vehicle or would have paid less for it.

23 143. California Plaintiffs and the CLRA Sub-Class Members are
24 reasonable consumers who did not expect their Class Vehicles to contain a
25 defective rear subframe. It is a reasonable and objective consumer expectation for
26 consumers to expect that the rear subframe will not be mounted with an
27 insufficient number of bolts, causing the single rear axle bolt to fracture, resulting
28 in severe noise and vibration, sudden drop of the rear differential, sudden loss of

1 power, and/or destruction of a broad array of suspension, driveshaft assembly, and
2 exhaust system components.

3 144. As a result of Ford's misconduct, California Plaintiffs and C CLRA
4 Sub-Class Members have been harmed in that the Class Vehicles contain defective
5 rear subframes and suffer from an insufficient number of bolts, causing the single
6 rear axle bolt to fracture, resulting in severe noise and vibration, sudden drop of
7 the rear differential, sudden loss of power, and/or destruction of a broad array of
8 suspension, driveshaft assembly, and exhaust system components—all of which
9 create a grave risk of serious injury to person and property and cause Class
10 Members to spend money to attempt to remedy the Rear Subframe Defect.

11 145. As a direct and proximate result of Ford's unfair or deceptive acts or
12 practices, California Plaintiffs and the CLRA Sub-Class Members have suffered
13 and will continue to suffer harm in that they have a Vehicle with a defective rear
14 subframe and they have experienced and may continue to experience their Class
15 Vehicles' single rear axle bolt to fracture, resulting in severe noise and vibration,
16 sudden drop of the rear differential, sudden loss of power, and/or destruction of a
17 broad array of suspension, driveshaft assembly, and exhaust system components,
18 for which Ford has refused to provide an effective and permanent fix.

19 146. California Plaintiffs and the CLRA Sub-Class Members seek an order
20 enjoining Ford's unfair or deceptive acts or practices and equitable relief under
21 Cal. Civ. Code § 1780(e), and any other just and proper relief available under the
22 CLRA.

23 147. In accordance with section 1782(a) of the CLRA, Plaintiffs' counsel
24 has served Ford with notice of its alleged violations of Cal. Civ. Code § 1770(a)
25 relating to the Class Vehicles purchased by Plaintiffs and the CLRA Sub-Class
26 Members and demanded that Ford, within thirty (30) days of such notice, correct
27 or agree to correct the actions described therein and agree to reimburse associated
28 out-of-pocket costs. If Defendant fails to provide appropriate relief for its

1 violations of the CLRA within 30 days, Plaintiffs will seek monetary,
2 compensatory, and punitive damages, in addition to the injunctive and equitable
3 relief Plaintiffs seek now.

4 **SECOND CAUSE OF ACTION**

5 **Violation of California’s Unfair Competition Law,**

6 **Cal. Bus. & Prof. Code § 17200, *et seq.***

7 **(On behalf of the California Sub-Class)**

8 148. Plaintiffs incorporate by reference each allegation set forth above.

9 149. California Plaintiffs bring this cause of action individually and on
10 behalf of Class Members.

11 150. California Business & Professions Code § 17200 prohibits “unfair
12 competition” including any “unlawful, unfair, or fraudulent business practice” and
13 “unfair, deceptive, untrue or misleading advertising.” Ford engaged in conduct
14 that violated each of this statute’s three prongs.

15 151. Ford committed an unlawful business act or practice in violation of
16 Cal. Bus. & Prof. Code § 17200, *et seq.*, by systematically breaching its warranty
17 obligations and by violating the CLRA and the Song-Beverly Consumer Warranty
18 Act as alleged above and below.

19 152. Ford committed unfair business acts and practices in violation of Cal.
20 Bus. & Prof. Code § 17200, *et seq.*, because the acts and practices described
21 herein, including but not limited to Ford’s failure to provide a permanent remedy
22 to fix the Rear Subframe Defect, where immoral, unethical, oppressive,
23 unscrupulous, unconscionable, and/or substantially injurious to California
24 Plaintiffs and Class Members. Ford’s acts and practices were additionally unfair
25 because the harm to California Plaintiffs and Class Members is substantial and is
26 not outweighed by any countervailing benefits to consumers or competition.
27 Further, Ford’s acts and practices were unfair in that they were contrary to
28 legislatively declared or public policy.

1 behalf of California Class Members.

2 161. Ford provided all purchasers and lessees of the Class Vehicles with
3 the express warranty described herein, which became a material part of the
4 bargain.

5 162. Ford provided all purchasers and lessees of Ford or Ford-branded
6 Class Vehicles with the Ford New Vehicle Limited Warranty.

7 163. Ford sold and leased the Class Vehicles with a written express
8 warranty covering the Vehicles for three years or 36,000 miles, whichever comes
9 first.

10 164. Ford's New Vehicle Limited Warranty expressly states that Ford will
11 "without charge, repair, replace, or adjust all parts on your vehicle that
12 malfunction or fail during normal use during the applicable coverage period due
13 to a manufacturing defect in factory-supplied materials or factory workmanship"
14 so long the Vehicle is properly operated and maintained and taken to a Ford
15 dealership for repair within the warranty period.

16 165. Ford further provides powertrain warranty coverage, which is
17 applicable to "Rear-Wheel Drive: axle shafts, rear bearings, center support
18 bearing, drive axle housing (including all internal parts), drive shaft, retainers,
19 supports, seals and gaskets, universal and constant velocity joints. Four-
20 Wheel/All-Wheel Drive: axle shafts, bearings (front and rear), center support
21 bearing, drive shafts, final drive housing (including all internal parts), hubs-
22 automatic front locking (four-wheel drive), locking rings (four-wheel drive), seals
23 and gaskets, universal and constant velocity joints." This coverage applies for 5-
24 years or up to 60,000 miles, whichever comes first.

25 166. Ford manufactured and/or installed the rear subframes and the rear
26 subframes' component parts in the Class Vehicles, and the rear subframes and
27 their component parts are covered by the express Warranties.

28 167. The Rear Subframe Defect at issue in this litigation was present at the

1 time the Class Vehicles were sold or leased to California Plaintiffs and the
2 California Sub-Class Members.

3 168. As described herein, the Class Vehicles were manufactured with
4 defective material and such defect existed at the time the Vehicles left the
5 manufacturing plant. California Plaintiffs and Class Members submitted their
6 Vehicles for warranty repairs as referenced herein. Ford failed to comply with the
7 terms of the express written warranty provided to each Class member, by failing
8 and/or refusing to repair the subject materials defect under the Vehicle's warranty
9 as described herein.

10 169. California Plaintiffs and the California Sub-Class Members relied on
11 Ford's express warranties, which were a material part of the bargain, when
12 purchasing or leasing their Class Vehicles.

13 170. Under the express Warranties, Ford was obligated to correct the Rear
14 Subframe Defect in the vehicles owned or leased by California Plaintiffs and the
15 California Sub-Class Members.

16 171. Although Ford was obligated to correct the Rear Subframe Defect,
17 none of the attempted fixes to the rear subframes are adequate under the terms of
18 the Warranties, as they did not cure the defect.

19 172. Ford breached the express Warranties by performing illusory repairs.
20 Rather than repairing the vehicles pursuant to the express Warranties, Ford falsely
21 informed California Sub-Class Members that there was no problem with their
22 Class Vehicles, performed ineffective procedures including software updates,
23 and/or replaced defective components in the rear subframes with equally defective
24 components, without actually repairing the Class Vehicles.

25 173. Ford and its agent dealers have failed and refused to conform the rear
26 subframes to the express Warranties. Ford's conduct, as discussed throughout this
27 Complaint, has voided any attempt on its part to disclaim liability for its actions.

28 174. Moreover, Ford's attempt to disclaim or limit these express

1 Warranties vis-à-vis consumers is unconscionable and unenforceable under the
2 circumstances here. Specifically, Ford’s warranty limitation is unenforceable
3 because it knowingly sold a defective product without informing consumers about
4 the defect.

5 175. The time limits contained in Ford’s warranty period were also
6 unconscionable and inadequate to protect California Plaintiffs and the California
7 Sub-Class Members. Among other things, California Plaintiffs and the California
8 Sub-Class Members had no meaningful choice in determining these time
9 limitations, the terms of which unreasonably favored Ford. A gross disparity in
10 bargaining power existed between Ford and the Class members, and Ford knew or
11 should have known that the Class Vehicles were defective at the time of sale.

12 176. California Plaintiffs and the California Sub-Class Members have
13 complied with all obligations under the Warranties, or otherwise have been
14 excused from performance of said obligations as a result of Ford’s conduct
15 described herein.

16 177. California Plaintiffs and the California Sub-Class Members were not
17 required to notify Ford of the breach because affording Ford a reasonable
18 opportunity to cure its breach of written warranty would have been futile. Ford
19 was also on notice of the Rear Subframe Defect from the complaints and service
20 requests it received from Plaintiff and the Class Members, from repairs and/or
21 replacements of the rear subframes or components thereof, and through other
22 internal and external sources.

23 178. Because Ford, through its conduct and exemplified by its own service
24 bulletins, has covered repairs of the Rear Subframe Defect if Ford determines the
25 repairs are appropriately covered under the Warranties, Ford cannot now deny that
26 the Warranties cover the Rear Subframe Defect.

27 179. Because Ford has not been able remedy the Rear Subframe Defect,
28 any limitation on remedies included in the Warranties causes the Warranties to fail

1 their essential purposes, rendering them null and void.

2 180. As a direct and proximate cause of Ford's breach, California Plaintiffs
3 and the California Sub-Class Members suffered damages and continue to suffer
4 damages, including economic damages at the point of sale or lease and diminution
5 of value of their Class Vehicles. Additionally, California Plaintiffs and the
6 California Sub-Class Members have incurred or will incur economic damages at
7 the point of repair in the form of the cost of repair.

8 181. As a direct and proximate result of Ford's breach of express
9 warranties, California Plaintiffs and the California Sub-Class Members have been
10 damaged in an amount to be determined at trial.

11 182. Ford's acts in failing and/or refusing to repair the materials defect
12 during the warranty period so as to bring the Vehicles into conformity with the
13 express warranties, deprived California Plaintiffs and members of the Class of
14 their rights guaranteed them under the express warranties offered by Ford.

15 183. As a direct and proximate result of the willful failure of Ford to
16 comply with its obligations under the express warranties, California Plaintiffs and
17 members of the Class have suffered actual and consequential damages. Such
18 damages include, but are not limited to, the cost of repairing the Vehicles, the loss
19 of the use and enjoyment of the subject Vehicle, and a diminution in the value of
20 the Vehicle containing the materials defects identified herein. The precise amount
21 of these damages is unknown at the present time but is in excess of the
22 jurisdictional limits of this Court.

23 **FOURTH CAUSE OF ACTION**

24 **Breach of Implied Warranty**

25 **Under the Song-Beverly Consumer Warranty Act**

26 **Cal. Civ. Code §§ 1790, *et seq.***

27 **(On behalf of the California Sub-Class)**

28 184. Plaintiffs incorporate by reference each allegation set forth above.

1 185. California Plaintiffs bring this cause of action individually and on
2 behalf of California Class Members.

3 186. Ford’s Class Vehicles are “consumer goods” within the meaning of
4 Cal. Civ. Code § 1791(a).

5 187. Ford is a manufacturer within the meaning of Cal. Civ.
6 Code § 1791(j).

7 188. California Plaintiffs and Class Members who purchased or leased
8 their Class Vehicles within the State of California are “buyers” and “lessees”
9 within the meaning of Cal. Civ. Code §§ 1791(b) and (h).

10 189. Ford impliedly warranted to California Plaintiffs and Class Members
11 that its Vehicles were “merchantable” within the meaning of Cal. Civ. Code
12 §§ 1791(a) and 1792.

13 190. Ford impliedly warranted to California Plaintiffs and Class Members
14 that it would repair or replace any defective products, including the rear subframe.

15 191. The propensity of the Rear Subframe Defect to cause the single rear
16 axle bolt to fracture, resulting in severe noise and vibration, sudden drop of the
17 rear differential, sudden loss of power, and/or destruction of a broad array of
18 suspension, driveshaft assembly, and exhaust system components renders the
19 Class Vehicles to not be of the quality that a buyer or lessee would reasonably
20 expect, and therefore not merchantable.

21 192. The Rear Subframe Defect is latent and was present at the time of the
22 sale/lease of Class Vehicles, and therefore the Vehicles were not merchantable at
23 the time of sale/lease.

24 193. The Class Vehicles do not conform to the promises and affirmations
25 of fact made by Ford in its promotional materials and vehicle owner manuals in
26 that the Rear Subframe Defect creates a safety hazard contrary to Ford’s
27 assurances that, among other things, it is “steadfast about safety” and that the
28 Vehicles are “quality, comfortable, and “proof of [Ford’s] commitment to safety.”

1 within the meaning of, *inter alia*, Cal. Com. Code §§ 2103(a) and 10103(a)(14).

2 203. When it sold or leased its Class Vehicles, Ford extended an implied
3 warranty to Class Members that the Class Vehicles were merchantable and fit for
4 the ordinary purpose for which they were sold or leased, pursuant to Cal. Com.
5 Code §§ 2314, 10212, and 10214.

6 204. Because California Plaintiffs and the California Sub-Class Members
7 purchased their vehicles from an authorized Ford dealership, they are in privity
8 with Defendant. Plaintiff California Plaintiffs and the California Sub-Class
9 Members have had sufficient direct dealings with Ford and its agents for the
10 purposes of fulfilling its responsibilities under the express warranty (dealerships
11 and customer support personnel) to establish privity of contract between Ford, on
12 one hand, and California Plaintiffs and the California Sub-Class Members, on the
13 other hand. Furthermore, Ford provided warranties directly to California Plaintiffs
14 and the California Sub-Class Members and California Plaintiffs and the California
15 Sub-Class Members are the intended beneficiaries of Ford's express and implied
16 warranties. The dealers were not intended to be the ultimate consumers of their
17 vehicles and have no rights under the warranty agreements provided with provided
18 with the Class Vehicles; the warranty agreements were designed for and intended
19 to benefit the consumer only.

20 205. Nonetheless, privity is not required here because California Plaintiffs
21 and the California Sub-Class Members are the intended third-party beneficiaries
22 of contracts between Ford and its dealerships. These contracts give the dealerships
23 the right to sell Ford brand vehicles, as well as service and perform warranty
24 repairs on Ford's behalf. California Plaintiffs and the California Sub-Class
25 Members are the beneficiaries of these contracts, because they are the intended
26 end-consumers and users of the products Ford distributes to its authorized
27 dealerships. California Plaintiffs and the California Sub-Class Members also have
28 the right to receive service and warranty work at dealerships located more

1 conveniently to them than Ford’s headquarters.

2 206. California Plaintiffs and other Class Members who purchased or
3 leased a Class Vehicle directly from Ford are entitled to the benefit of their
4 bargain: a Vehicle with a non-defective rear subframe that does not cause the
5 single rear axle bolt to fracture, resulting in severe noise and vibration, sudden
6 drop of the rear differential, sudden loss of power, and/or destruction of a broad
7 array of suspension, driveshaft assembly, and exhaust system components.

8 207. Ford breached this implied warranty in that its Class Vehicles are (1)
9 not fit for ordinary use, and (2) not of a merchantable quality.

10 208. The Rear Subframe Defect is latent and was present at the time of the
11 sale/lease, and therefore the Vehicles were not merchantable at the time of the
12 sale/lease.

13 209. Had the Rear Subframe Defect that existed at the time of sale/lease
14 been known, the Class Vehicles would not have been sold or leased or would not
15 have been sold or leased at the same price for which Class Members paid.

16 210. As a direct and proximate result of Ford’s breach of the implied
17 warranty of merchantability, California Plaintiffs and Class Members have been
18 damaged in an amount to be proven at trial.

19 **SIXTH CAUSE OF ACTION**

20 **Breach of Express Warranty**

21 **Md. Com. Law §§ 2-313 and 2A-210**

22 **(On Behalf of the Maryland Sub-Class against Defendant)**

23 211. Plaintiffs incorporate by reference each allegation set forth above.

24 212. Plaintiff Bradley Caricofe (“Maryland Plaintiff”) brings this count on
25 behalf of himself and the Maryland Sub-Class against Defendant.

26 213. Ford is and was at all relevant times a “merchant” with respect to
27 motor vehicles under Md. Com. Law §§ 2-104(1) and 2A-103(3), and a “seller” of
28 motor vehicles under § 2-103(1)(d).

1 214. With respect to leases, Ford is and was at all relevant times a “lessor”
2 of motor vehicles under Md. Com. Law § 2A-103(1)(p).

3 215. The Class Vehicles are and were at all relevant times “goods” within
4 the meaning of Md. Com. Law §§ 2-105(1) and 2A-103(1)(h).

5 216. The rear subframes were manufactured and/or installed in the Class
6 Vehicles by Defendant and are covered by the express warranty.

7 217. Defendant provided all purchasers and lessees of the Class Vehicles
8 with an express warranty described herein, which became a material part of the
9 bargain. Accordingly, Ford’s express warranty is an express warranty under
10 Maryland state law.

11 218. Ford sold and leased the Class Vehicles with a written express
12 warranty covering the Vehicles for three years or 36,000 miles, whichever comes
13 first.

14 219. Ford’s New Vehicle Limited Warranty (“NVLW”) expressly states
15 that Ford will “without charge, repair, replace, or adjust all parts on your vehicle
16 that malfunction or fail during normal use during the applicable coverage period
17 due to a manufacturing defect in factory-supplied materials or factory
18 workmanship” so long the Vehicle is properly operated and maintained and taken
19 to a Ford dealership for repair within the warranty period.

20 220. Ford further provides powertrain warranty coverage, which is
21 applicable to “Rear-Wheel Drive: axle shafts, rear bearings, center support
22 bearing, drive axle housing (including all internal parts), drive shaft, retainers,
23 supports, seals and gaskets, universal and constant velocity joints. Four-
24 Wheel/All-Wheel Drive: axle shafts, bearings (front and rear), center support
25 bearing, drive shafts, final drive housing (including all internal parts), hubs-
26 automatic front locking (four-wheel drive), locking rings (four-wheel drive), seals
27 and gaskets, universal and constant velocity joints.” This coverage applies for 5-
28 years or up to 60,000 miles, whichever comes first.

1 221. Defendant’s NVLW and other warranties regarding the Class
2 Vehicles formed a basis of the bargain that was breached when Maryland Plaintiff
3 and members of the Maryland Sub-Class purchased or leased the Class Vehicles
4 with the defective rear subframe and/or related components.

5 222. Maryland Plaintiff and members of the Maryland Sub-Class
6 experienced defects within the warranty period. Despite the existence of the
7 NVLW, Defendant failed to inform Maryland Plaintiff and members of the
8 Maryland Sub-Class that the Class Vehicles were equipped with defective rear
9 subframes and related components. When providing repairs under the express
10 warranty, these repairs were ineffective and incomplete and did not provide a
11 permanent repair for the Rear Subframe Defect.

12 223. Ford breached the express warranty through the acts and omissions
13 described above, including by promising to repair or adjust defects in materials or
14 workmanship of any part supplied by Defendant and then failing to do so.
15 Defendant has not repaired or adjusted, and has been unable to repair or adjust,
16 the Class Vehicles materials and workmanship defects.

17 224. Privity is not required here because Maryland Plaintiff and members
18 of the Maryland Sub-Class are intended third-party beneficiaries of contracts
19 between Ford and its distributors and dealers, and specifically, of Ford’s express
20 warranties, including the NVLW, the Powertrain Warranty, and any other
21 warranties. The dealers were not intended to be the ultimate consumers of the
22 Class Vehicles and have rights under the warranty agreements provided with the
23 Class Vehicles; the warranty agreements were designed for and intended to benefit
24 the consumer only.

25 225. Any attempt by Ford to disclaim or limit recovery to the terms of the
26 express warranty is unconscionable and unenforceable here. Specifically, the
27 warranty limitation is unenforceable because Ford knowingly sold or leased
28 defective products without informing consumers about the Rear Subframe Defect.

1 The time limits are unconscionable and inadequate to protect Maryland Plaintiff
2 and the members of the Maryland Sub-Class. Among other things, Maryland
3 Plaintiff and members of the Maryland Sub-Class did not determine these time
4 limitations and/or did not know of other limitations not appearing in the text of the
5 warranties, the terms of which were drafted by Ford and unreasonable favored
6 Ford. A gross disparity in bargaining power and knowledge of the extent, severity,
7 and safety risk of the Rear Subframe Defect existed between Ford and members
8 of the Maryland Sub-Class.

9 226. Further, the limited warranty promising to repair and/or correct a
10 manufacturing or workmanship defect fails of its essential purpose because the
11 contractual remedy is insufficient to make Maryland Plaintiff and the members of
12 the Maryland Sub-Class whole, because Ford has failed and/or has refused to
13 adequately provide the promised remedies, *i.e.*, a permanent repair, within a
14 reasonable time.

15 227. Maryland Plaintiff was not required to notify Ford of the breach
16 because affording Ford a reasonable opportunity to cure its breach of written
17 warranty would have been futile. Ford was also on notice of the Rear Subframe
18 Defect from the complaints and service requests it received from Class Members,
19 including those formal complaints submitted to NHTSA, and through other
20 internal sources.

21 228. Nonetheless, Maryland Plaintiff and members of the Maryland Sub-
22 Class provided notice to Ford of the breach of express warranties when they took
23 their vehicles to Ford -authorized providers of warranty repairs.

24 229. As a result of Ford's breach of the applicable express warranties,
25 owners and/or lessees of the Class Vehicles suffered, and continue to suffer, an
26 ascertainable loss of money, property, and/or value of their Class Vehicles.

27 230. As a direct and proximate result of Defendant's breach of express
28 warranties, Maryland Plaintiff and members of the Maryland Sub-Class have been

1 damaged in an amount to be determined at trial.

2 231. As a result of Ford’s breach of the express warranty, Maryland
3 Plaintiff and Maryland Sub-Class Members are entitled to legal and equitable
4 relief against Ford, including actual damages, specific performance, attorney’s
5 fees, costs of suit, and other relief as appropriate.

6 **SEVENTH CAUSE OF ACTION**

7 **Breach of the Implied Warranty of Merchantability**

8 **Md. Com. Law §§ 2-314 and 2A-212**

9 **(On Behalf of the Maryland Sub-Class against Defendant)**

10 232. Plaintiffs incorporate by reference each allegation set forth above.

11 233. Maryland Plaintiff brings this count on behalf of himself and the
12 Maryland Sub-Class against Defendant.

13 234. Ford is and was at all relevant times a “merchant” with respect to
14 motor vehicles under Md. Com. Law §§ 2-104(1) and 2A-103(3), and a “seller” of
15 motor vehicles under § 2-103(1)(d).

16 235. With respect to leases, Ford is and was at all relevant times a “lessor”
17 of motor vehicles under Md. Com. Law § 2A-103(1)(p).

18 236. The Class Vehicles are and were at all relevant times “goods” within
19 the meaning of Md. Com. Law §§ 2-105(1) and 2A-103(1)(h).

20 237. A warranty that the Class Vehicles were in merchantable condition
21 and fit for the ordinary purpose for which vehicles are used is implied by law under
22 Md. Com. Law §§ 2-314 and 2A-212.

23 238. Ford knew or had reason to know of the specific use for which the
24 Class Vehicles were purchased or leased. Ford directly sold and marketed Class
25 Vehicles to customers through authorized dealers, like those from whom Maryland
26 Plaintiff and members of the Maryland Sub-Class bought or leased their vehicles,
27 for the intended purpose of consumers purchasing the vehicles. Ford knew that the
28 Class Vehicles would and did pass unchanged from the authorized dealers to

1 Maryland Plaintiff and members of the Maryland Sub-Class, with no modification
2 to the defective Class Vehicles.

3 239. Ford provided Maryland Plaintiff and members of the Maryland Sub-
4 Class with an implied warranty that the Class Vehicles and their components and
5 parts are merchantable and fit for the ordinary purposes for which they were sold.
6 However, the Class Vehicles are not fit for their ordinary purpose of providing
7 reasonably reliable and safe transportation because, inter alia, the Class Vehicles
8 and their rear subframe suffered from an inherent defect at the time of sale and
9 thereafter and are not fit for their particular purpose of providing safe and reliable
10 transportation.

11 240. This implied warranty included, among other things: (i) a warranty
12 that the Class Vehicles that were manufactured, supplied, distributed, and/or sold
13 by Ford were safe and reliable for providing transportation; and (ii) a warranty that
14 the Class Vehicles would be fit for their intended use while the Class Vehicles
15 were being operated.

16 241. Contrary to the applicable implied warranties, the Class Vehicles at
17 the time of sale and thereafter were not fit for their ordinary and intended purpose
18 of providing Plaintiffs and Class Members with reliable, durable, and safe
19 transportation. Instead, the Class Vehicles were and are defective at the time of
20 sale or lease and thereafter as more fully described above. Ford knew of this defect
21 at the time these sale or lease transactions occurred.

22 242. As a result of Ford's breach of the applicable implied warranties,
23 Maryland Plaintiff and members of the Maryland Sub-Class suffered an
24 ascertainable loss of money, property, and/or value of their Class Vehicles.
25 Additionally, as a result of the Rear Subframe Defect, Maryland Plaintiff and
26 members of the Maryland Sub-Class were harmed and suffered actual damages in
27 that the Class Vehicles are substantially certain to fail before their expected useful
28 life has run.

1 243. Ford's actions, as complained of herein, breached the implied
2 warranty that the Class Vehicles were of merchantable quality and fit for such use
3 in violation of the Uniform Commercial Code and relevant state law.

4 244. Maryland Plaintiff and members of the Maryland Sub-Class have
5 complied with all obligations under the warranty, or otherwise have been excused
6 from performance of said obligations as a result of Ford's conduct described
7 herein.

8 245. Privity is not required here because Maryland Plaintiff and members
9 of the Maryland Sub-Class are intended third-party beneficiaries of contracts
10 between Ford and its distributors and dealers, and specifically, of Ford's express
11 warranties, including the NVLW, the Powertrain Warranties, and any warranties
12 provided with certified pre-owned vehicles. The dealers were not intended to be
13 the ultimate consumers of the Class Vehicles and have rights under the warranty
14 agreements provided with the Class Vehicles; the warranty agreements were
15 designed for and intended to benefit the consumer only.

16 246. Maryland Plaintiff and members of the Maryland Sub-Class were not
17 required to notify Ford of the breach because affording Ford a reasonable
18 opportunity to cure its breach of warranty would have been futile. Ford was also
19 on notice of the Rear Subframe Defect from the complaints and service requests it
20 received from Maryland Plaintiff and the Class Members and through other
21 internal sources.

22 247. Nonetheless, Maryland Plaintiff and members of the Maryland Sub-
23 Class provided notice to Ford of the breach of express warranties when they took
24 their vehicles to Ford-authorized provider of warranty repairs.

25 248. As a direct and proximate cause of Ford's breach, Maryland Plaintiff
26 and members of the Maryland Sub-Class suffered damages and continue to suffer
27 damages, including economic damages at the point of sale or lease and diminution
28 of value of their Class Vehicles. Additionally, Maryland Plaintiff and members of

1 the Maryland Sub-Class have incurred or will incur economic damages at the point
2 of repair in the form of the cost of repair as well as additional losses.

3 249. As a direct and proximate result of Ford’s breach of the implied
4 warranty of merchantability, Maryland Plaintiff and members of the Maryland
5 Sub-Class have been damaged in an amount to be proven at trial.

6 **EIGHTH CAUSE OF ACTION**

7 **Violations of the Maryland Consumer Protection Act,**

8 **Md. Code Ann., Com. Law § 13-101, *et seq.***

9 **(On Behalf of the Maryland Sub-Class against Defendant)**

10 250. Plaintiffs incorporate by reference each allegation set forth above.

11 251. Maryland Plaintiff brings this cause of action on behalf of himself and
12 on behalf of the members of the Maryland Sub-Class.

13 252. Ford, Maryland Plaintiff, and the Maryland Sub-Class Members are
14 “persons” within the meaning of Md. Code Ann., Com. Law § 13-101(h).

15 253. The Maryland Consumer Protection Act (“Maryland CPA”) provides
16 that a person may not engage in any unfair and deceptive trade practice in the sale
17 or lease of any consumer good, including representing that goods are of a
18 particular standard, quality, or grade if they are not, advertising goods without
19 intent to sell or lease them as advertised, selling goods knowing that a service,
20 replacement or repair was needed, “failure to state a material fact if the failure
21 deceives or tends to deceive,” and “[d]eception, fraud, false pretense, false
22 premise, misrepresentation, or knowing concealment, suppression, or omission of
23 any material fact with the intent that a consumer rely on the same,” Md. Code
24 Ann., Com. Law § 13-301, regardless of whether the consumer is actually
25 deceived or damaged, Md. Code Ann., Com. Law § 13-302. Ford engaged in
26 unlawful trade practices, and unfair or deceptive acts or practices that violated the
27 Maryland CPA.

28 254. Ford participated in unfair or deceptive trade practices that violated

1 the Maryland CPA. As described below and alleged throughout the Complaint, by
2 failing to disclose the Rear Subframe Defect, by concealing the Rear Subframe
3 Defect, by marketing its vehicles as safe, reliable, well-engineered, and of high
4 quality, and by presenting itself as a reputable manufacturer that valued safety,
5 performance and reliability, and stood behind its vehicles after they were sold,
6 Ford knowingly and intentionally misrepresented and omitted material facts in
7 connection with the sale or lease of the Class Vehicles. Ford systematically
8 misrepresented, concealed, suppressed, or omitted material facts relating to the
9 Class Vehicles and the Rear Subframe Defect in the course of its business.

10 255. Ford also engaged in unlawful trade practices by employing
11 deception, deceptive acts or practices, fraud, misrepresentations, or concealment,
12 suppression, or omission of any material fact with intent that others rely upon such
13 concealment, suppression, or omission, in connection with the sale of the Class
14 Vehicles.

15 256. Ford's unfair and deceptive acts or practices occurred repeatedly in
16 Ford's trade or business, were capable of deceiving a substantial portion of the
17 purchasing public and imposed a serious safety risk on the public.

18 257. Ford knew that the Class Vehicles suffered from an inherent defect,
19 were defectively designed and/or manufactured, and were not suitable for their
20 intended use.

21 258. Ford knew or should have known that its conduct violated the
22 Maryland CPA.

23 259. Defendant was under a duty to Maryland Plaintiff and the Maryland
24 Sub-Class Members to disclose the defective nature of the Class Vehicles because:

25 260. Defendant was in a superior position to know the true state of facts
26 about the safety defect in the Class Vehicles;

27 261. Defendant made partial disclosures about the quality of the Class
28 Vehicles without revealing the defective nature of the Class Vehicles; and

1 262. Defendant actively concealed the defective nature of the Class
2 Vehicles from Maryland Plaintiff and the Maryland Sub-Class Members at the
3 time of sale and thereafter.

4 263. By failing to disclose the Rear Subframe Defect, Defendant
5 knowingly and intentionally concealed material facts and breached its duty not to
6 do so.

7 264. The facts concealed or not disclosed by Defendant to Maryland
8 Plaintiff and the Maryland Sub-Class Members are material because a reasonable
9 person would have considered them to be important in deciding whether or not to
10 purchase or lease Defendant's Class Vehicles, or to pay less for them. Whether a
11 vehicle's rear subframe and/or rear subframe component parts is defective, which
12 can cause the rear axle bolt to fracture, resulting in severe noise and vibration,
13 sudden drop of the rear differential, sudden loss of power, and/or destruction of a
14 broad array of suspension, driveshaft assembly, and exhaust system components,
15 is a material safety concern. Had Maryland Plaintiff and the Maryland Sub-Class
16 Members known that the Class Vehicles suffered from the Rear Subframe Defect
17 described herein, they would not have purchased or leased the Class Vehicles or
18 would have paid less for them.

19 265. Maryland Plaintiff and the Maryland Sub-Class Members are
20 reasonable consumers who do not expect that their vehicles will suffer from the
21 Rear Subframe Defect. That is the reasonable and objective consumer expectation
22 for vehicles.

23 266. As a result of Defendant's misconduct, Maryland Plaintiff and the
24 Maryland Sub-Class Members have been harmed and have suffered actual
25 damages in that the Class Vehicles are defective and require repairs or
26 replacement.

27 267. As a direct and proximate result of Defendant's unfair or deceptive
28 acts or practices, Maryland Plaintiff and the Maryland Sub-Class Members have

1 suffered and will continue to suffer actual damages.

2 268. Ford’s violations present a continuing risk to Maryland Plaintiff and
3 the Maryland Sub-Class Members as well as to the general public. Ford’s unlawful
4 acts and practices complained of herein affect the public interest.

5 269. Maryland Plaintiff provided notice of his claims by letter dated March
6 6, 2023.

7 270. Pursuant to Md. Code Ann., Com. Law § 13-408, Maryland Plaintiff
8 and members of the Maryland Sub-Class seek monetary relief against Ford in the
9 amount of actual damages, attorneys’ fees, and any other just and proper relief
10 available under the Maryland CPA.

11 **NINTH CAUSE OF ACTION**

12 **Breach of Express Warranty**

13 **Tex. Bus. & Com. Code §§ 2.313 AND 2A.210**

14 **(On Behalf of the Texas Sub-Class against Defendant)**

15 271. Plaintiffs incorporate by reference each allegation set forth above.

16 272. Plaintiffs Shawn Thibodeaux and Julie Thibodeaux (“Texas
17 Plaintiffs”) bring this cause of action on behalf of themselves and on behalf of the
18 Class against Defendant.

19 273. Defendant Ford is and was at all relevant times a “merchant” with
20 respect to motor vehicles under Texas Bus. & Com. Code §§ 2.104(1) and
21 2A.103(a)(20), and a “seller” of motor vehicles under § 2.103(a)(4).

22 274. With respect to leases, Defendant Ford is and was at all relevant times
23 a “lessor” of motor vehicles under Texas Bus. & Com. Code § 2A.103(a)(16).

24 275. The Class Vehicles are and were at all relevant times “goods” within
25 the meaning of Texas Bus. & Com. Code §§ 2.105(a) and 2A.103(a)(8).

26 276. The rear subframes were manufactured and/or installed in the Class
27 Vehicles by Ford and are covered by the express warranty.

28 277. Defendant Ford provided all purchasers and lessees of the Class

1 Vehicles with an express warranty described herein, which became a material part
2 of the bargain. Accordingly, Defendant Ford’s express warranty is an express
3 warranty under Texas state law.

4 278. Ford’s New Vehicle Limited Warranty expressly states that Ford will
5 “without charge, repair, replace, or adjust all parts on your vehicle that
6 malfunction or fail during normal use during the applicable coverage period due
7 to a manufacturing defect in factory-supplied materials or factory workmanship”
8 so long the Vehicle is properly operated and maintained and taken to a Ford
9 dealership for repair within the warranty period. According to Ford, the NVLW
10 coverage is for 3-year/36,000 miles.

11 279. Defendant Ford’s NVLW and other warranties regarding the Class
12 Vehicles formed a basis of the bargain that was breached when Texas Plaintiffs
13 and members of the Texas Sub-Class purchased or leased the Class Vehicles with
14 the defective rear subframe and/or related components.

15 280. Texas Plaintiffs and members of the Texas Sub-Class experienced
16 defects within the warranty period. Despite the existence of the NVLW, Defendant
17 Ford failed to inform Texas Plaintiffs and members of the Texas Sub-Class that
18 the Class Vehicles were equipped with defective rear subframes and related
19 components. When providing repairs under the express warranty, these repairs
20 were ineffective and incomplete and did not provide a permanent repair for the
21 Defect.

22 281. Defendant Ford breached the express warranty through the acts and
23 omissions described above, including by promising to repair or adjust defects in
24 materials or workmanship of any part supplied by Ford and then failing to do so.
25 Defendant Ford have not repaired or adjusted, and have been unable to repair or
26 adjust, the Class Vehicles materials and workmanship defects.

27 282. Texas Plaintiffs and members of the Texas Sub-Class have had
28 sufficient direct dealings with either Defendant Ford or their agents (i.e.,

1 dealerships and technical support) to establish privity of contract between
2 Defendant Ford, on one hand, and Texas Plaintiffs and each member of the Texas
3 Sub-Class on the other hand. Nonetheless, privity is not required here because
4 Texas Plaintiffs and members of the Texas Sub-Class are intended third-party
5 beneficiaries of contracts between Defendant Ford and their distributors and
6 dealers, and specifically, of Defendant Ford's express warranties, including the
7 NVLW, the Powertrain Warranties, and any warranties provided with certified
8 pre-owned vehicles. The dealers were not intended to be the ultimate consumers
9 of the Class Vehicles and have rights under the warranty agreements provided with
10 the Class Vehicles; the warranty agreements were designed for and intended to
11 benefit the consumer only.

12 283. Any attempt by Defendant Ford to disclaim or limit recovery to the
13 terms of the express warranty is unconscionable and unenforceable here.
14 Specifically, the warranty limitation is unenforceable because Ford knowingly
15 sold or leased defective products without informing consumers about the Defect.
16 The time limits are unconscionable and inadequate to protect Texas Plaintiffs and
17 the members of the Texas Sub-Class. Among other things, Texas Plaintiffs and
18 members of the Texas Sub-Class did not determine these time limitations and/or
19 did not know of other limitations not appearing in the text of the warranties, the
20 terms of which were drafted by Defendant Ford and unreasonable favored
21 Defendant Ford. A gross disparity in bargaining power and knowledge of the
22 extent, severity, and safety risk of the Defect existed between Defendant Ford and
23 members of the Texas Sub-Class.

24 284. Further, the limited warranty promising to repair and/or correct a
25 manufacturing or workmanship defect fails of its essential purpose because the
26 contractual remedy is insufficient to make Texas Plaintiffs and the members of the
27 Texas Sub-Class whole, because Defendant Ford have failed and/or have refused
28 to adequately provide the promised remedies, i.e., a permanent repair, within a

1 reasonable time.

2 285. Texas Plaintiffs were not required to notify Defendant Ford of the
3 breach because affording Defendant Ford a reasonable opportunity to cure their
4 breach of written warranty would have been futile. Defendant Ford were also on
5 notice of the Defect from the complaints and service requests it received from
6 Class Members, including those formal complaints submitted to NHTSA, and
7 through other internal sources.

8 286. Nonetheless, Texas Plaintiffs and members of the Texas Sub-Class
9 provided notice to Defendant Ford of the breach of express warranties when they
10 took their vehicles to Ford-authorized providers of warranty repairs. Texas
11 Plaintiffs also provided notice to Defendant Ford of their breach of express
12 warranty by a letter dated April 20, 2023.

13 287. As a result of Defendant Ford's breach of the applicable express
14 warranties, owners and/or lessees of the Class Vehicles suffered, and continue to
15 suffer, an ascertainable loss of money, property, and/or value of their Class
16 Vehicles.

17 288. As a direct and proximate result of Defendant Ford's breach of
18 express warranties, Texas Plaintiffs and members of the Texas Sub-Class have
19 been damaged in an amount to be determined at trial.

20 289. As a result of Defendant Ford's breach of the express warranty, Texas
21 Plaintiffs and Texas Sub-Class Members are entitled to legal and equitable relief
22 against Ford, including actual damages, specific performance, attorney's fees,
23 costs of suit, and other relief as appropriate.

24 **TENTH CAUSE OF ACTION**

25 **Breach of The Implied Warranty of Merchantability**

26 **Tex. Bus. & Com. Code §§ 2.314 and 2A.212**

27 **(On Behalf of the Texas Sub-Class against Defendant)**

28 290. Plaintiffs incorporate by reference each allegation set forth above.

1 291. Texas Plaintiffs bring this cause of action on behalf of himself and on
2 behalf of the Class against Defendant.

3 292. Ford is and was at all relevant times a “merchant” with respect to
4 motor vehicles under Texas Bus. & Com. Code §§ 2.104(1) and 2A.103(a)(20),
5 and a “seller” of motor vehicles under § 2.103(a)(4).

6 293. With respect to leases, Ford is and was at all relevant times a “lessor”
7 of motor vehicles under Texas Bus. & Com. Code § 2A.103(a)(16).

8 294. The Class Vehicles are and were at all relevant times “goods” within
9 the meaning of Texas Bus. & Com. Code §§ 2.105(a) and 2A.103(a)(8).

10 295. A warranty that the Class Vehicles were in merchantable condition
11 and fit for the ordinary purpose for which vehicles are used is implied by law under
12 Texas Bus. & Com. Code §§ 2.314 and 2A.212.

13 296. Ford knew or had reason to know of the specific use for which the
14 Class Vehicles were purchased or leased. Ford directly sold and marketed Class
15 Vehicles to customers through authorized dealers, like those from whom Texas
16 Plaintiffs and members of the Texas Sub-Class bought or leased their vehicles, for
17 the intended purpose of consumers purchasing the vehicles. Ford knew that the
18 Class Vehicles would and did pass unchanged from the authorized dealers to Texas
19 Plaintiffs and members of the Texas Sub-Class, with no modification to the
20 defective Class Vehicles.

21 297. Ford provided Texas Plaintiffs and members of the Texas Sub-Class
22 with an implied warranty that the Class Vehicles and their components and parts
23 are merchantable and fit for the ordinary purposes for which they were sold.
24 However, the Class Vehicles are not fit for their ordinary purpose of providing
25 reasonably reliable and safe transportation because, inter alia, the Class Vehicles
26 and their rear subframe and related components suffered from an inherent defect
27 at the time of sale and thereafter and are not fit for their particular purpose of
28 providing safe and reliable transportation.

1 298. This implied warranty included, among other things: (i) a warranty
2 that the Class Vehicles that were manufactured, supplied, distributed, and/or sold
3 by Ford were safe and reliable for providing transportation; and (ii) a warranty that
4 the Class Vehicles would be fit for their intended use while the Class Vehicles
5 were being operated.

6 299. Contrary to the applicable implied warranties, the Class Vehicles at
7 the time of sale and thereafter were not fit for their ordinary and intended purpose
8 of providing Plaintiffs and Class Members with reliable, durable, and safe
9 transportation. Instead, the Class Vehicles were and are defective at the time of
10 sale or lease and thereafter as more fully described above. Ford knew of this defect
11 at the time these sale or lease transactions occurred.

12 300. As a result of Ford's breach of the applicable implied warranties,
13 Texas Plaintiffs and members of the Texas Sub-Class suffered an ascertainable
14 loss of money, property, and/or value of their Class Vehicles. Additionally, as a
15 result of the Defect, Texas Plaintiffs and members of the Texas Sub-Class were
16 harmed and suffered actual damages in that the Class Vehicles are substantially
17 certain to fail before their expected useful life has run.

18 301. Ford's actions, as complained of herein, breached the implied
19 warranty that the Class Vehicles were of merchantable quality and fit for such use
20 in violation of the Uniform Commercial Code and relevant state law.

21 302. Texas Plaintiffs and members of the Texas Sub-Class have complied
22 with all obligations under the warranty, or otherwise have been excused from
23 performance of said obligations as a result of Ford's conduct described herein.

24 303. Texas Plaintiffs and members of the Texas Sub-Class have had
25 sufficient direct dealings with either Ford or its agents (i.e., dealerships and
26 technical support) to establish privity of contract between Ford, on one hand, and
27 Texas Plaintiffs and members of the Texas Sub-Class on the other hand.
28 Nonetheless, privity is not required here because Texas Plaintiffs and members of

1 the Texas Sub-Class are intended third-party beneficiaries of contracts between
2 Ford and its distributors and dealers, and specifically, of Ford's express
3 warranties, including the NVLW, the Powertrain Warranties, and any warranties
4 provided with certified pre-owned vehicles. The dealers were not intended to be
5 the ultimate consumers of the Class Vehicles and have rights under the warranty
6 agreements provided with the Class Vehicles; the warranty agreements were
7 designed for and intended to benefit the consumer only.

8 304. Texas Plaintiffs and members of the Texas Sub-Class were not
9 required to notify Ford of the breach because affording Ford a reasonable
10 opportunity to cure its breach of warranty would have been futile. Ford was also
11 on notice of the Defect from the complaints and service requests it received from
12 Texas Plaintiffs and the Class Members and through other internal sources.

13 305. Nonetheless, Texas Plaintiffs and members of the Texas Sub-Class
14 provided notice to Ford of the breach of express warranties when they took their
15 vehicles to Ford-authorized providers of warranty repairs. Texas Plaintiffs also
16 provided notice to Ford of its breach of express warranty by a letter dated April
17 20, 2023.

18 306. As a direct and proximate cause of Ford's breach, Texas Plaintiffs
19 and members of the Texas Sub-Class suffered damages and continue to suffer
20 damages, including economic damages at the point of sale or lease and diminution
21 of value of their Class Vehicles. Additionally, Texas Plaintiffs and members of the
22 Texas Sub-Class have incurred or will incur economic damages at the point of
23 repair in the form of the cost of repair as well as additional losses.

24 307. As a direct and proximate result of Ford's breach of the implied
25 warranty of merchantability, Texas Plaintiffs and members of the Texas Sub-Class
26 have been damaged in an amount to be proven at trial.
27
28

ELEVENTH CAUSE OF ACTION

**Violations of the Texas Deceptive Trade Practices Act –
Consumer Protection Act,
Texas Bus. & Com. Code § 17.41, et seq.
(On Behalf of the Texas Sub-Class against Defendant)**

308. Plaintiffs incorporate by reference each allegation set forth above.

309. Texas Plaintiffs bring this cause of action on behalf of himself and on behalf of the Class against Defendant.

310. Ford is a “person” as that term is defined in Tex. Bus. & Com. Code § 17.45(3).

311. Texas Plaintiffs and the members of the Texas Sub-Class are individuals, partnerships, or corporations with assets of less than \$25 million (or are controlled by corporations or entities with less than \$25 million in assets), see Tex. Bus. & Com. Code § 17.41, and are therefore “consumers” pursuant to Tex. Bus. & Com. Code § 17.45(4).

312. Ford is engaged in “trade” or “commerce” or “consumer transactions” within the meaning Tex. Bus. & Com. Code § 17.46(a).

313. The Texas Deceptive Trade Practices – Consumer Protection Act (“Texas DTPA”) prohibits “false, misleading, or deceptive acts or practices in the conduct of any trade or commerce,” Tex. Bus. & Com. Code § 17.46(a), and an “unconscionable action or course of action,” which means “an act or practice which, to a consumer’s detriment, takes advantage of the lack of knowledge, ability, experience, or capacity of the consumer to a grossly unfair degree.” Tex. Bus. & Com. Code §§ 17.45(5) and 17.50(a)(3). Ford engaged in unlawful trade practices, and unfair or deceptive acts or practices that violated the Texas DTPA.

314. Ford participated in unfair or deceptive trade practices that violated the Texas DTPA. As described below and alleged throughout the Complaint, by failing to disclose the Defect, by concealing the Defect, by marketing its vehicles

1 as safe, reliable, well-engineered, and of high quality, and by presenting itself as
2 a reputable manufacturer that valued safety, performance and reliability, and stood
3 behind its vehicles after they were sold, Ford knowingly and intentionally
4 misrepresented and omitted material facts in connection with the sale or lease of
5 the Class Vehicles. Ford systematically misrepresented, concealed, suppressed, or
6 omitted material facts relating to the Class Vehicles and the Defect in the course
7 of its business.

8 315. Ford also engaged in unlawful trade practices by employing
9 deception, deceptive acts or practices, fraud, misrepresentations, or concealment,
10 suppression, or omission of any material fact with intent that others rely upon such
11 concealment, suppression, or omission, in connection with the sale of the Class
12 Vehicles.

13 316. Ford's unfair and deceptive acts or practices occurred repeatedly in
14 Ford's trade or business, were capable of deceiving a substantial portion of the
15 purchasing public, and imposed a serious safety risk on the public.

16 317. Ford knew that the Class Vehicles suffered from an inherent defect,
17 were defectively designed and/or manufactured, and were not suitable for their
18 intended use.

19 318. Ford knew or should have known that its conduct violated the Texas
20 DTPA.

21 319. Ford was under a duty to Texas Plaintiffs and the Texas Sub-Class
22 Members to disclose the defective nature of the Class Vehicles because:

23 320. Ford was in a superior position to know the true state of facts about
24 the safety defect in the Class Vehicles;

25 321. Ford made partial disclosures about the quality of the Class Vehicles
26 without revealing the defective nature of the Class Vehicles; and

27 322. Ford actively concealed the defective nature of the Class Vehicles
28 from Texas Plaintiffs and the Texas Sub-Class Members at the time of sale and

1 thereafter.

2 323. By failing to disclose the Defect, Ford knowingly and intentionally
3 concealed material facts and breached its duty not to do so.

4 324. The facts concealed or not disclosed by Ford to Texas Plaintiffs and
5 the Texas Sub-Class Members are material because a reasonable person would
6 have considered them to be important in deciding whether or not to purchase or
7 lease Ford's Class Vehicles, or to pay less for them. Whether a vehicle's rear
8 subframe is defective, causing the rear axle bolt to fracture, resulting in severe
9 noise and vibration, sudden drop of the rear differential, sudden loss of power,
10 and/or destruction of a broad array of suspension, driveshaft assembly, and
11 exhaust system components, is a material safety concern. Had Texas Plaintiffs and
12 the Texas Sub-Class Members known that the Class Vehicles suffered from the
13 Defect described herein, they would not have purchased or leased the Class
14 Vehicles or would have paid less for them.

15 325. Texas Plaintiffs and the Texas Sub-Class Members are reasonable
16 consumers who do not expect that their vehicles will suffer from the Defect. That
17 is the reasonable and objective consumer expectation for vehicles.

18 326. As a result of Ford's misconduct, Texas Plaintiffs and the Texas Sub-
19 Class Members have been harmed and have suffered actual damages in that the
20 Class Vehicles are defective and require repairs or replacement.

21 327. As a direct and proximate result of Ford's unfair or deceptive acts or
22 practices, Texas Plaintiffs and the Texas Sub-Class Members have suffered and
23 will continue to suffer actual damages.

24 328. Ford's violations present a continuing risk to Texas Plaintiffs and the
25 Texas Sub-Class Members as well as to the general public. Ford's unlawful acts
26 and practices complained of herein affect the public interest.

27 329. Texas Plaintiffs provided notice of their claims by a letter dated April
28 20, 2023.

1 replacement within the warranty period, and refusing to honor the express
2 warranty by repairing or replacing, free of charge, the rear subframe and its
3 component parts. Defendant has failed to “repair” the defects as alleged herein.

4 337. Plaintiffs was not required to notify Defendant of the breach or was
5 not required to do so because affording Defendant a reasonable opportunity to cure
6 its breach of written warranty would have been futile. Defendant was also on
7 notice of the defect from complaints and service requests they received from Class
8 Members, from repairs and/or replacements of the rear subframe, and from other
9 internal sources.

10 338. Plaintiffs also provided notice to Defendant of their breach of
11 warranty claims under the MMWA by letters dated March 6, 2023 (Plaintiff
12 Caricofe); April 20, 2023 (Plaintiffs Shawn Thibodeaux and Julie Thibodeaux);
13 and May 26, 2023 (Plaintiffs Ken Hunnel and Leanne Hunnel).

14 339. As a direct and proximate cause of Defendant’s breach, Plaintiffs and
15 the other Class members have suffered, and continue to suffer, damages, including
16 economic damages at the point of sale or lease. Additionally, Plaintiffs and the
17 other Class members have incurred or will incur economic damages at the point
18 of repair in the form of the cost of repair.

19 340. Plaintiffs and the other Class members are entitled to legal and
20 equitable relief against Defendant, including actual damages, consequential
21 damages, specific performance, attorneys’ fees, costs of suit, and other relief as
22 appropriate.

23 **THIRTEENTH CAUSE OF ACTION**

24 **(Breach of Implied Warranty under the Magnuson-Moss Warranty Act,**

25 **15 U.S.C. § 2303 *et seq.*)**

26 **(On Behalf of the Nationwide Class, or, in the Alternative, on Behalf of All**

27 **Sub-Classes Against Defendant)**

28 341. Plaintiffs incorporate by reference each allegation set forth above.

1 342. Plaintiffs bring this cause of action on behalf of themselves and the
2 Class against Defendant.

3 343. The Class Vehicles are a “consumer product” within the meaning of
4 the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

5 344. Plaintiffs and Class Members are “consumers” within the meaning of
6 the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

7 345. Defendant is “suppliers” and “warrantors” within the meaning of the
8 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)-(5).

9 346. Defendant impliedly warranted that the Class Vehicles were of
10 merchantable quality and fit for use. This implied warranty included, among other
11 things: (i) a warranty that the Class Vehicles and their rear subframes
12 manufactured, supplied, distributed, and/or sold by Defendant would provide safe
13 and reliable transportation; and (ii) a warranty that the Class Vehicles and their
14 rear subframes would be fit for their intended use while the Class Vehicles were
15 being operated.

16 347. Contrary to the applicable implied warranties, the Class Vehicles and
17 their rear subframes at the time of sale and thereafter were not fit for their ordinary
18 and intended purpose of providing Plaintiffs and Class Members with reliable,
19 durable, and safe transportation. Instead, the Class Vehicles are defective,
20 including the defective design and materials of their rear subframes.

21 348. Defendant’s breach of implied warranties has deprived Plaintiffs and
22 Class Members of the benefit of their bargain.

23 349. The amount in controversy of Plaintiffs’ individual claims meets or
24 exceeds the sum or value of \$25,000. In addition, the amount in controversy meets
25 or exceeds the sum or value of \$50,000 (exclusive of interests and costs) computed
26 on the basis of all claims to be determined in this suit.

27 350. Defendant has been afforded a reasonable opportunity to cure their
28 breach, including when Plaintiffs and Class members brought their vehicles in for

1 diagnoses and rear subframes repair.

2 351. As a direct and proximate cause of Defendant's breach of implied
3 warranties, Plaintiffs and Class Members sustained and incurred damages and
4 other losses in an amount to be determined at trial. Defendant's conduct damaged
5 Plaintiffs and Class Members, who are entitled to recover actual damages,
6 consequential damages, specific performance, diminution in value, costs,
7 attorneys' fees, and/or other relief as appropriate.

8 352. As a result of Defendant's violations of the Magnuson-Moss
9 Warranty Act as alleged herein, Plaintiffs and Class Members have incurred
10 damages.

11 353. Plaintiffs also provided notice to Defendant of its breach of warranty
12 claims under the MMWA by letters dated March 6, 2023 (Plaintiff Caricofe); April
13 20, 2023 (Plaintiffs Shawn Thibodeaux and Julie Thibodeaux); and May 26, 2023
14 (Plaintiffs Ken Hunnel and Leanne Hunnel).

15 **FOURTEENTH CAUSE OF ACTION**

16 **(For Fraud by Omission or Fraudulent Concealment)**

17 **(On Behalf of the Nationwide Class, or, in the Alternative, on Behalf of All**
18 **Sub-Classes Against Defendant)**

19 354. Plaintiffs incorporate by reference each allegation set forth above.

20 355. Plaintiffs bring this cause of action on behalf of themselves and the
21 Class or, alternatively, on behalf of all Sub-Classes against Defendant.

22 356. Defendant knew that the Class Vehicles suffered from an inherent
23 Rear Subframe Defect, were defectively designed and/or manufactured, and were
24 not suitable for their intended use.

25 357. Defendant concealed from and failed to disclose to Plaintiffs and
26 Class Members the defective nature of the Class Vehicles.

27 358. Defendant was under a duty to Plaintiffs and Class Members to
28 disclose the defective nature of the Class Vehicles because:

- 1 a. Defendant was in a superior position to know the true state of
- 2 facts about the safety defect contained in the Class Vehicles;
- 3 b. The omitted facts were material because they directly impact
- 4 the safety of the Class Vehicles;
- 5 c. Defendant knew the omitted facts regarding the Rear Subframe
- 6 Defect were not known to or reasonably discoverable by
- 7 Plaintiffs and Class Members;
- 8 d. Defendant made partial disclosures about the quality of the
- 9 Class Vehicles without revealing their true defective nature;
- 10 and,
- 11 e. Defendant actively concealed the defective nature of the Class
- 12 Vehicles from Plaintiffs and Class Members.

13 359. The facts concealed or not disclosed by Defendant to Plaintiffs and
14 the other Class Members are material in that a reasonable person would have
15 considered them to be important in deciding whether to purchase or lease
16 Defendant's Class Vehicles or pay a lesser price for them. Whether a vehicle's rear
17 subframe is defective, causing the rear axle bolt to fracture, resulting in severe
18 noise and vibration, sudden drop of the rear differential, sudden loss of power,
19 and/or destruction of a broad array of suspension, driveshaft assembly, and
20 exhaust system components, is a material safety concern. Had Plaintiffs and Class
21 Members known about the defective nature of the Class Vehicles, they would not
22 have purchased or leased the Class Vehicles or would have paid less for them.

23 360. Defendant concealed or failed to disclose the true nature of the design
24 and/or manufacturing defects contained in the Class Vehicles to induce Plaintiffs
25 and Class Members to act thereon. Plaintiffs and the other Class Members
26 justifiably relied on Defendant's omissions to their detriment. This detriment is
27 evident from Plaintiffs and Class Members' purchase or lease of Defendant's
28 defective Class Vehicles.

1 purchased through Defendant's authorized dealers and distributors, the money
2 from the vehicle sales flows directly back to Defendant.

3 368. Additionally, as a direct and proximate result of Defendant's failure
4 to disclose known defects in the Class Vehicles, Plaintiffs and Class Members
5 have vehicles that require repeated, high-cost repairs that can and therefore have
6 conferred an unjust substantial benefit upon Defendant.

7 369. Defendant has been unjustly enriched due to the known defects in the
8 Class Vehicles through the use of money paid that earned interest or otherwise
9 added to Defendant's profits when said money should have remained with
10 Plaintiffs and Class Members.

11 370. Plaintiffs and Class Members were not aware of the true facts
12 regarding the Defect in the Class Vehicles and did not benefit from Defendant's
13 unjust conduct.

14 371. As a result of the Defendant's unjust enrichment, Plaintiffs and Class
15 Members have suffered damages.

16 372. Plaintiffs do not seek restitution under their unjust enrichment claim.
17 Rather, Plaintiffs and Class Members seek non-restitutionary disgorgement of the
18 financial profits that Defendant obtained as a result of its unjust conduct.

19 373. Additionally, Plaintiffs seek injunctive relief to compel Defendant to
20 offer, under warranty, remediation solutions that Defendant identifies. Plaintiffs
21 also seek injunctive relief enjoining Defendant from further deceptive distribution,
22 sales, and lease practices with respect to Class Vehicles, enjoining Defendant from
23 selling the Class Vehicles with the misleading information; compelling Defendant
24 to provide Class members with a replacement components that do not contain the
25 defects alleged herein; and/or compelling Defendant to reform their warranties, in
26 a manner deemed to be appropriate by the Court, to cover the injury alleged and
27 to notify all Class Members that such warranties have been reformed. Money
28 damages are not an adequate remedy for the above requested non-monetary

1 injunctive relief.

2 **RELIEF REQUESTED**

3 374. Plaintiffs, on behalf of themselves and all others similarly situated,
4 request the Court enter judgment against Defendant, as follows:

5 (a) An order certifying the proposed Class and Sub-Classes,
6 designating Plaintiffs as named representatives of the Class,
7 and designating the undersigned as Class Counsel;

8 (b) A declaration that Defendant is financially responsible for
9 notifying all Class Members about the defective nature of the
10 rear subframe, including the need for periodic maintenance;

11 (c) An order enjoining Defendant from further deceptive
12 distribution, sales, and lease practices with respect to Class
13 Vehicles; compelling Defendant to issue a voluntary recall for
14 the Class Vehicles pursuant to 49 U.S.C. § 30118(a);
15 compelling Defendant to repair and eliminate the Rear
16 Subframe Defect from every Class Vehicle; enjoining
17 Defendant from selling the Class Vehicles with the misleading
18 information; and/or compelling Defendant to reform its
19 warranty, in a manner deemed to be appropriate by the Court,
20 to cover the injury alleged and to notify all Class Members that
21 such warranty has been reformed;

22 (d) An award to Plaintiffs and the Class for compensatory,
23 exemplary, and statutory damages, including interest, in an
24 amount to be proven at trial, except that Plaintiffs are not
25 praying for an award of monetary damages under the CLRA at
26 this time;

27 (e) Any and all remedies provided pursuant to the Magnuson-Moss
28 Warranty Act;

- 1 (f) Any and all remedies provided pursuant to the causes of action
- 2 and statutes alleged herein;
- 3 (g) A declaration that Defendant must disgorge, for the benefit of
- 4 the Class, all or part of the ill-gotten profits it received from the
- 5 sale or lease of the Class Vehicles or make full restitution to
- 6 Plaintiffs and Class Members;
- 7 (h) An award of attorneys' fees and costs, as allowed by law;
- 8 (i) An award of pre-judgment and post-judgment interest, as
- 9 provided by law;
- 10 (j) Leave to amend the Complaint to conform to the evidence
- 11 produced at trial; and
- 12 (k) Such other relief as may be appropriate under the
- 13 circumstances.

14 **DEMAND FOR JURY TRIAL**

15 375. Pursuant to Federal Rule of Civil Procedure 38(b) and Southern
16 District of California Local Rule 38.1, Plaintiffs hereby demand a trial by jury of
17 all issues in this action so triable.

18 Dated: May 31, 2023

19 Respectfully submitted,

20 Capstone Law APC

21 By: /s/ Laura E. Goolsby

22 Tarek H. Zohdy
23 Cody R. Padgett
24 Laura E. Goolsby

25 Attorneys for Plaintiffs