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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA - SAN FRANCISCO DIVISION

DAVID BARANCO, JAMES ABBITT,
 HARRIET ABRUSCATO, DONALD
 BROWN, DANIEL CARON, ANITA
 FARRELL, JOHN FURNO, JAMES
 JENKIN, ROGER KINNUNEN, GARY
 KUBBER and MALISA NICOLAU
 individually and on behalf of all others
 similarly situated,

Plaintiffs,

v.

FORD MOTOR COMPANY, a Delaware
 corporation,

Defendant.

Case No. 3:17-cv-03580-EMC

FIRST AMENDED CLASS ACTION COMPLAINT

CLASS ACTION

District Judge Edward M. Chen
 Courtroom 5, 17th Floor

Comp. Filed: June 21, 2017
 Trial Date: Not Yet Set

JURY TRIAL DEMANDED

1 Plaintiffs David Baranco, James Abbitt, Harriet Abruscato, Donald Brown, Daniel
 2 Caron, Anita Farrell, John Furno, James Jenkin, Roger Kinnunen, Gary Kubber, and Malisa
 3 Nicolau, individually and on behalf of all others similarly situated, upon personal knowledge
 4 of the facts pertaining to themselves and on information and belief as to all other matters, by
 5 and through undersigned counsel, hereby bring this class action complaint against Defendant
 6 Ford Motor Company and allege as follows:

7 NATURE OF THE CASE

8 1. Certain model year Ford and Lincoln vehicles contain defects within the door
 9 latch assembly that can cause unwarranted “door ajar” warnings which lead to the doors not
 10 locking and the battery depleting down. The models and model years at issue are: 2011 to
 11 2016 Ford Edges, 2012 to 2014 Ford Flexes, 2013 to 2014 Ford Explorers, 2011 to 2013
 12 Lincoln MKXs, and 2013 Lincoln MKTs (collectively, “Subject Vehicles”).

13 2. All Subject Vehicles share a common defect: the vehicles frequently, but
 14 intermittently, display a false “door ajar” warning even when all doors are closed. The
 15 warning may remain active for hours, including after the vehicle is turned off, and it does not
 16 deactivate when the doors are opened and shut once again. When the warning is falsely
 17 activated, the vehicle’s safety door lock mechanism is defeated, all doors unlock, and the
 18 driver is unable to relock them, permitting passengers to open the doors while the vehicle is in
 19 motion and allowing the doors to open in the event of an accident, thereby increasing the risk
 20 of harm to the vehicle’s occupants. These false warnings can also cause the interior dome
 21 lights to illuminate and remain on while an audible alarm sounds repeatedly. The failure of the
 22 dome lights to extinguish makes it difficult to see the road and other vehicles at night and
 23 difficult to reverse. And because the lights can remain on long after the vehicle is turned off,
 24 the battery is at risk of draining.

25 3. Owners whose vehicles are still covered by Defendant’s three-year warranty are
 26 required to pay a \$100 deductible for the repair and/or a diagnostic fee between \$100 and
 27 \$200. However, the defect often continues to arise outside of the warranty period, requiring
 28 owners to pay up to \$700 or more to repair a problem Defendant know will affect many of its

1 customers. Further, owners have reported that the problem continues to occur even after
2 dealer service technicians make the repair, indicating a mechanical or electrical defect with the
3 door latch assembly switch itself. Many owners have had to pay for several repairs, costing
4 even more money and repeatedly imposing on their time.

5 4. The warning lights and audible alerts in Subject Vehicles are an integral
6 function of these vehicles' safety systems. They alert drivers to important vehicle conditions,
7 including potential dangers and service issues that require operator response to prevent a
8 hazard or an expensive repair.

9 5. Door locks are crucial to the occupant protection systems in a vehicle because
10 they provide increased securement of the vehicle door, protecting occupants from ejection out
11 of the vehicle during rollover crashes, saving hundreds of lives each year. Thus, the National
12 Highway Traffic Safety Administration ("NHTSA") has urged that parents look for automated
13 safety locks when purchasing a vehicle to reduce the risk of children being ejected.

14 6. Studies show that glare from interior vehicle lights activated during nighttime
15 driving reduce driver visibility and increase driver distraction.

16 7. Consumers rely on automakers, such as Defendant, to promptly inform them
17 and initiate a remedy or countermeasure when it discovers a vehicle model contains a defect,
18 especially one that is present in multiple models and model years and that puts the safety of
19 themselves and their passengers at risk.

20 8. Defendant has represented that its vehicles are safe and that the warnings and
21 alarms will sound only if a vehicle door is open, Defendant's customers reasonably expect
22 their vehicles to perform as represented by Defendant. Contrary to this promise and
23 expectation, Subject Vehicles were designed, manufactured, and sold with a door latch
24 assembly defect that incorrectly recognizes the door as ajar when it is closed. As a result,
25 Subject Vehicles' doors remain unlocked and the internal door warning lights remain on,
26 which render the vehicles unsafe.

27 ///

28 ///

1 9. Ford has long known that the door latch assemblies on Subject Vehicles were
2 defective through various sources that include: (1) its own records of customer complaints;
3 (2) dealership records; (3) records from and to the National Highway Traffic Safety
4 Administration (NHTSA); (4) warranty and post-warranty claims; (5) door latch and door
5 sensor failure in prior model years with similar defects; and (6) pre-sale durability testing. In
6 fact, in 2014, Ford issued a Technical Service Bulletin (“TSB”) to dealers advising that some
7 Subject Vehicles “may exhibit a door ajar lamp illuminated with all doors closed” and
8 instructing service technicians to clean the door latch electrical connector. TSBs are not sent
9 to customers or reported publicly.

10 10. As of September 2016, NHTSA received 1,560 complaints related to the 2011
11 to 2013 Ford Edge. NHTSA subsequently learned that Ford had also received 1,418
12 complaints and 33,074 warranty claims for the false “door ajar” defect.

13 11. Ford admits that a change it implemented to the Body Control Module
14 beginning with its model year 2011 vehicles created a defect causing contamination buildup in
15 the connector, resulting in the false “door ajar” warning.

16 12. Despite its knowledge of the safety risks and high repair expenses associated
17 with this defect, Ford failed to disclose the existence of the defect to Plaintiffs, other Class
18 members, and the public. Nor has it paid for the repairs, offered to reimburse Subject Vehicle
19 owners for costs incurred to identify and repair this defect, extended the warranty, or issued a
20 recall. Rather, Defendant has refused to take any action to correct this concealed design
21 defect.

22 13. Plaintiffs and the Class purchased and leased Subject Vehicles that are of a
23 lesser standard, grade, value, and quality than represented, and they did not receive vehicles
24 that met ordinary and reasonable consumer expectations regarding safe and reliable operation.

25 14. As a result of Defendant’s unfair, deceptive, and/or fraudulent conduct, owners
26 of Subject Vehicles have suffered loss of money and/or lost value. Plaintiffs and Class
27 members have suffered injury in fact and incurred damages.
28

JURISDICTION AND VENUE

15. The Court has jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. §1332(d) because: (a) this action is brought as a proposed class action under Fed. R. Civ. P. 23; (b) the proposed Class includes more than 100 members; (c) many of the proposed Class members are citizens of states that are diverse from Defendant's citizenship; and (d) the matter in controversy exceeds \$5,000,000, exclusive of interest and costs.

16. Venue is proper in this judicial District under 28 U.S.C. §1391(b), because a substantial part of the challenged conduct or omissions giving rise to claims occurred and/or emanated from this District, Ford maintains one of the largest automotive research centers in this District, and Defendant has caused harm to Class members residing in this District.

PARTIES

17. Plaintiff David Baranco resides in and is a citizen of the State of California. In or around May 2016, Mr. Baranco, who resides in San Rafael, purchased a 2013 Ford Edge in Santa Clara, California. Within a week of his purchase, Mr. Baranco's Ford Edge manifested the "door ajar" defect, which defect continues and is ongoing.

18. Plaintiff James Abbitt resides in and is a citizen of the State of North Carolina. In or around August 2013, Mr. Abbitt purchased a new 2013 Ford Flex SE. Mr. Abbitt experienced the "door ajar" defect in 2015 in one door, and in 2017 in another. On the second occasion, Mr. Abbitt incurred out-of-pocket costs to repair the defect.

19. Plaintiff Harriet Abruscato resides in and is a citizen of the State of Illinois. Ms. Abruscato is the owner of a 2013 Ford Edge which she purchased new from Arlington Heights Ford in Arlington Heights, Illinois. The "door ajar" defect manifested in Ms. Abruscato's vehicle on two separate occasions. On the later occasion, Ms. Abruscato incurred out-of-pocket costs to repair the defect.

20. Plaintiff Donald Brown resides in and is a citizen of the State of New Hampshire. In early 2014, Mr. Brown purchased a new 2013 Ford Edge from a Ford dealer in Manchester, New Hampshire. Approximately a year and half after his purchase, Mr. Brown experienced the "door ajar" defect. A Ford technician ostensibly repaired the defect; however,

1 it manifested again approximately one year later. On both occasions, Mr. Brown incurred out-
2 of-pocket costs to repair the defect.

3 21. Plaintiff Daniel Caron resides in and is a citizen of the State of Massachusetts.
4 In or around August 2013, Mr. Caron purchased a new 2013 Ford Flex from a Ford dealer in
5 Las Cruces, New Mexico. At just over 50,000 miles, Mr. Caron's Ford Flex manifested the
6 "door ajar" defect. Mr. Caron incurred out-of-pocket costs to repair the defect.

7 22. Plaintiff Anita Farrell resides in and is a citizen of the State of Florida. In or
8 around November 2013, Ms. Farrell purchased a 2012 Ford Edge from Carmax, a used car
9 retailer located in Jacksonville, Florida. In or around October 2015, Ms. Farrell experienced
10 the "door ajar" defect. A Ford dealer ostensibly repaired the defect; however, it manifested
11 again about a year and half later. On both occasions, Ms. Farrell incurred out-of-pocket costs
12 to repair the defect.

13 23. Plaintiff John Furno resides in and is a citizen of the State of Illinois. In or
14 around January 2014, Mr. Furno purchased a 2013 Ford Edge from Carmax, a used car retailer
15 located in Schaumburg, Illinois. In or around May 2016, Mr. Furno experienced the "door
16 ajar" defect. A Ford dealer ostensibly repaired the defect; however, it manifested again just
17 six months later. On both occasions, Mr. Furno incurred out-of-pocket costs to repair the
18 defect.

19 24. Plaintiff James Jenkin resides in and is a citizen of the State of New York. In
20 or around August 2014, Mr. Jenkin purchased a 2013 Ford Edge in Rochester, New York. The
21 following year, Mr. Jenkin's Ford Edge manifested the "door ajar" defect first on the driver's
22 side and then on the passenger's side. The driver's side was purportedly repaired by a Ford
23 dealership; however, after a period of time the defect again manifested on the driver's side.
24 The "door ajar" defect is also ongoing on the passenger's side.

25 25. Plaintiff Roger Kinnunen resides in and is a citizen of the State of Michigan. In
26 or around July 2011, Mr. Kinnunen purchased a new 2011 Ford Edge from Suburban Ford of
27 Sterling Heights, Michigan. In or around October 2012, the "door ajar" defect manifested in
28 Mr. Kinnunen's vehicle and was ostensibly repaired by a Ford dealer. In or around February

1 2015, the “door ajar” defect again manifested and was ostensibly repaired by a Ford dealer. In
2 or around February 2016, the defect began again. On the third time, Mr. Kinnunen paid to
3 have the defect repaired by a third-party repair facility.

4 26. Plaintiff Gary Kubber resides in and is a citizen of the State of New York. In or
5 around May 2014, Mr. Kubber purchased a 2013 Ford Edge in Pulaski, New York.
6 Approximately two years later, Mr. Kubber’s Ford Edge manifested the “door ajar” defect.
7 The defect was ostensibly repaired by a Ford dealership in Pulaski, but the defect again
8 manifested approximately one week later. Mr. Kubber thereafter paid to have the defect
9 repaired by a third-party repair facility in Syracuse.

10 27. Plaintiff Malisa Nicolau is a resident and citizen of the State of California. In
11 or around June 2015, Ms. Nicolau purchased a 2013 Ford Edge from Encinitas Ford, located in
12 Encinitas, California. In or around December 2015, Ms. Nicolau experienced the “door ajar”
13 defect which was ostensibly repaired by a Ford dealer. Less than a year and half later, in May
14 2017, the defect again manifested. Ms. Nicolau incurred out-of-pocket costs to repair the
15 defect.

16 28. Defendant Ford Motor Company (“Ford”) is incorporated in the State of
17 Delaware and is headquartered in Dearborn, Michigan. Ford sells, markets, distributes, and
18 services Ford and Lincoln vehicles in California and throughout the United States, including
19 Subject Vehicles. It is the parent company of Lincoln Motor Company. Ford established the
20 Ford Research and Innovation Center in Palo Alto, California in 2015, and plans to double its
21 current staff of 130 by the end of 2017.

22 29. Lincoln Motor Company (“Lincoln”) is headquartered in Dearborn, Michigan.
23 Lincoln sells, markets, distributes, and services Lincoln vehicles in California and throughout
24 the United States, including the Lincoln Subject Vehicles. It is a division of Ford Motor
25 Company. Ford and Lincoln are the alter egos of one another and operate as a single business
26 enterprise for the production, marketing, and sale of Subject Vehicles.

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28

FACTUAL BACKGROUND**I. THE FALSE “DOOR AJAR” WARNING DEFECT**

30. The Ford Edge is a midsize crossover SUV that debuted in model year 2007. For model year 2011, Ford unveiled the next generation, with new features both externally and in the interior.

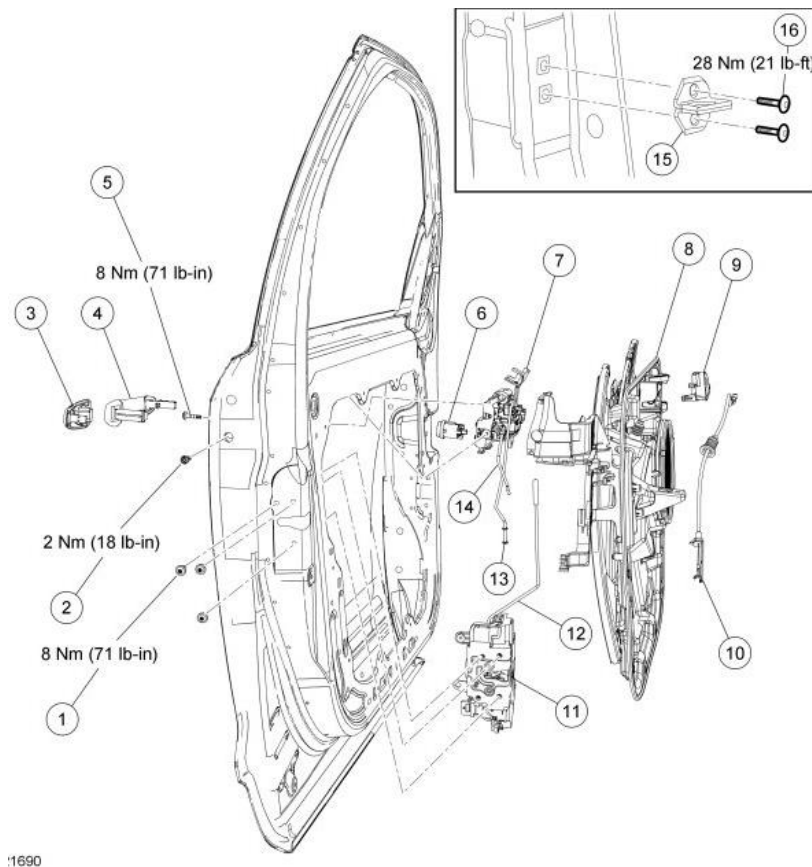
31. The Ford Flex is a full-size crossover utility vehicle that debuted in model year 2009. Ford introduced a new generation of the Flex for model year 2013, changing the exterior design and adding new features and a sleeker look inside.

32. The Ford Explorer is a full-size SUV that debuted in model year 1991. The Explorer’s last generation overhaul was unveiled in model year 2011.

33. The Lincoln MKX is a midsize luxury crossover SUV that uses the same platform as the Ford Edge. Like the Edge, the MKX’s latest generation was released in model year 2011.

34. The Lincoln MKT is a full-size luxury crossover utility vehicle made using the same platform as the Ford Flex. Like the Flex, the MKT was updated for model year 2013.

35. As depicted below at figure number 11, the Subject Vehicles contain a door latch assembly that has an integral electro-mechanical switch (also known as a sensor) and door lock actuator. The switch signals on or off when the door is open or closed. This is a typical arrangement: a switch is opened or closed based on the whether the door is open or closed. The vehicle computer reads the voltage signal from the switch, usually 5 volts signifies on, zero volts closed.



36. The Subject Vehicles contain a Body Control Module (“BCM”) that monitors the voltage from the door latch switch, continuously sampling it to determine its position (*i.e.*, open or closed). When the switch communicates that the door is closed, the BCM sends a “wetting current” through the electrical connector from the door latch switch to the BCM to keep it clean. A wetting current is the minimum electric current needed to flow through an electrical contact to break through the surface film resistance on the contact. Without wetting a current, a film of oxidation can occur from humidity and exposure to moisture.

37. According to their Owners’ Manuals (“Manuals”), all Subject Vehicles contain Ford’s autolock feature, which can be disabled through an authorized dealer or using the information display if the vehicle is equipped with that capability. For example, the Manual for the 2013 Ford Edge states:

The autolock feature [if enabled] will lock all the doors when:

- all the doors are closed,
- the ignition is on,
- you shift into any gear putting your vehicle in motion, and

- your vehicle reaches a speed greater than 12 mph (20 km/h).

The autolock feature repeats when:

- you open then close any door while the ignition is on and the vehicle speed is 9 mph (15 km/h) or lower, and
- your vehicle then reaches a speed greater than 12 mph (20 km/h).

38. The 2013 Ford Edge Manual states that warning lamps and indicators “can alert you to a vehicle condition that may become serious enough to cause expensive repairs.” The “Door Ajar” warning “[d]isplays when the ignition is on and any door is not completely closed.”

39. The Manuals state that the vehicle’s overhead dome lamp will illuminate when an occupant depresses an instrument panel switch or when any door is opened. Under a heading of “Battery Saver,” the Manuals state: “If you leave the courtesy lamps, dome lamps or headlamps on, the battery saver shuts them off 10 minutes after you switch the ignition off.”

40. The Manuals state: “WARNING: Driving while distracted can result in loss of vehicle control, crash and injury. We strongly recommend that you use extreme caution when using any device that may take your focus off the road. Your primary responsibility is the safe operation of your vehicle.” The warning is referring to the use of electronic devices while driving, but it is also applicable when the “device” is a defective vehicle that keeps needlessly chiming an alarm, turning on bright lights that make it difficult to see outside, and unlocking doors.

41. Each Subject Vehicle carries a “Bumper to Bumper” Warranty that extends to three years, or 36,000 miles, whichever comes first.

42. In 2014, Ford informed dealers through a TSB that the 2011 to 2013 Edge Vehicles, 2013 Flex Vehicles, 2013 to 2014 Explorer Vehicles, 2011 to 2013 MKX Vehicles, and 2013 MKT Vehicles “may exhibit a door ajar lamp illuminated with all doors closed.” Ford instructed dealers to remove the door latch or door trim panel and use a tool called the Essential Special Service Tool to “clean” the inside of the door latch electrical connector. This procedure was supposed to clear the switch contacts of contamination allowing a clear electrical path to ground when the switch is closed, thus allowing the BCM to receive an

1 accurate reading to determine whether the door was open or closed. Ford's explanation of the
 2 problem to NHTSA later specified that the contamination was specific to the electrical
 3 contacts on the switch.

4 43. Ford's "fix," which some dealers also referred to as "burning the wires," was a
 5 work-around that did not repair the underlying defect but temporarily stopped it from
 6 manifesting for a short period of time. This permitted Ford to give the false appearance of
 7 repairing the defect, and doing so at a lower repair cost and often during the warranty period.
 8 However, the work-around is temporary, with many customers reporting that the defect begins
 9 again in spite of their paying for what they were told was a repair and requiring customers to
 10 pay for multiple repairs, ultimately a higher cost. As a result, and through the TSB, Defendant
 11 attempted to temporarily fix the defect during the warranty period knowing that the defect will
 12 manifest again; however, often outside of the warranty period, at which time Defendant
 13 recommends that Class members replace the entire door latch assembly at a significant cost to
 14 vehicle owners and lessees. Not surprisingly, this is a recommendation that Defendant did not
 15 heed and chose to ignore when creating the TSB. Even after paying for what they were told
 16 was a repair, many Subject Vehicle customers experienced reoccurrence of the defect,
 17 requiring additional time and money to have the defect fixed.

18 44. Defendant is experienced in the design and manufacture of consumer vehicles.
 19 In keeping with industry standards, Defendant conducts tests, including pre-sale durability
 20 testing, on incoming components, including the door latch system, to verify the parts are free
 21 from defect and comply with Defendant's specifications.¹ Thus, Defendant knew or should

22
 23
 24 ¹ Defendant's "engineers use a suite of high-tech design tools and virtual manufacturing
 25 technology to detect and avoid potential issues" along with "extensive testing of vehicle
 26 prototypes." *Customer Satisfaction and Quality*, Ford 2013-14 Sustainability Report.
 27 <http://corporate.ford.com/microsites/sustainability-report-2013-14/financial-satisfaction.html>
 28 (last viewed July 8, 2017); *see also* Akweli Parker, *How Car Testing Works*,
 HOWSTUFFWORKS.COM. [http://auto.howstuffworks.com/car-driving-safety/safety-regulatory-](http://auto.howstuffworks.com/car-driving-safety/safety-regulatory-devices/car-testing.htm)
 devices/car-testing.htm ("The idea behind car testing is that it allows manufacturers to work
 out all the kinks and potential problems of a model before it goes into full production.") (last
 viewed July 8, 2017). Defendant also "use[s] an extensive Global Quality Operating System
 (GOOS) at every stage of vehicle development and manufacture to make sure that our vehicles

1 have known the door latch system was defective and prone to put drivers in a dangerous
2 position due to the inherent risk of the defect.

3 45. Additionally, Defendant learned or should have learned of this widespread
4 defect from the sheer number of reports received from dealerships. Defendant's customer
5 relations department, which interacts with individual dealerships to identify potential common
6 defects, has received numerous reports regarding the defect, which led to the release of the
7 TSBs. Defendant's customer relations department also collects and analyzes field data
8 including, but not limited to, repair requests made at dealerships, technical reports prepared by
9 engineers who have reviewed vehicles for which warranty coverage is being requested, parts
10 sales reports, and warranty claims data.

11 46. Defendant's warranty department similarly analyzes and collects data submitted
12 by its dealerships in order to identify trends in its vehicles. It is Defendant's policy that when
13 a repair is made under warranty the dealership must provide Defendant with detailed
14 documentation of the problem and the fix employed to correct it. Dealerships have an
15 incentive to provide detailed information to Defendant, because they will not be reimbursed
16 for any repairs unless the justification is sufficiently detailed.

17 47. As demonstrated by the numerous complaints that the problem reappeared after
18 the "fix," although simulating the wetting current by cleaning the connector with the special
19 tool will reduce the contamination on the switch, it will not permanently resolve the issue.
20 The underlying defect is that the switch is designed in such a way as to allow the
21 contamination to occur in the first place. Before Ford changed its BCM strategy to reduce its
22 wetting current, the current was strong enough to often minimize the effects of the
23 contamination. When Ford reduced the current by 75 percent, it made the defect much more
24 apparent. However, that was not the root cause. The true remedy is to redesign the switch
25 assembly itself, and in absence of that, the only effective remedy is to replace the switch
26 assembly. Merely "cleaning" the connector only staves off the problem until another day.

27
28 meet or exceed customer expectations." *Customer Satisfaction and Quality*, Ford 2013-14
Sustainability Report (emphasis added).

48. When the BCM receives a voltage signal that indicates the door is open, it communicates with the Instrument Panel Cluster, which triggers an audible warning, activates a visual warning on the instrument panel, and sends out a visual intermittent “shift to park” message because it believes the doors are open and thus the vehicle is stopped. In addition, all interior lights are illuminated and the doors are unlocked, and they cannot then be manually relocked. This dangerous situation can continue for several hours, even after the vehicle is parked and turned off, draining the battery and potentially stranding vehicle occupants. These functions are activated by design and are intended to alert the driver a door is open.

49. Ford has admitted that the defect exists, but refuses to remedy it. It has stated: “Beginning with the 2011 model year Edge vehicles, a change in BCM strategy resulted in a reduction of the wetting current sent out to clean the switch contacts by more than 75%. Over time, this low level of current is not sufficient to keep the switch contacts clean and contamination build up causes them to fail”

50. Over 2,670 people have reported false door ajar problems to NHTSA and Ford and more than 33,000 warranty claims had been submitted. In addition to complaints regarding the vehicles listed in Ford’s TSBs, owners of 2014 Edge Vehicles and 2014 Flex Vehicles have reported the same issue.

51. Further, NHTSA has received 14 complaints that doors opened while the vehicle was in motion. In the complaints to the agency, at least one occupant reported falling outside of the vehicle, and another reported a theft while his vehicle was parked and unlocked. For example:²

My vehicle is a 2014 Ford Edge with less 40,000 miles. The door ajar sensor is malfunctioning thus preventing the door to lock while vehicle is in motion and the interior dome light stays on while driving. My child has opened the door on many occasions while vehicle was in motion and almost fell out. Ford is aware of this issue and there many online forums with customers having the same issue dating back to 2010. And instead of doing recall ford has issued a tsb. (ODI 10640829)³

² All complaints to NHTSA have been reproduced as originally written and may contain spelling or grammatical errors.

³ The term “ODI” means NHTSA’s Office of Defects Investigation.

1 My door ajar light dome light stays on even though the door is shut it's
 2 dangerous while driving at night due to domelight staying on its distracting
 3 cause door ding sounds off while driving been stranded one time cause dome
 4 light stood on but the one thats the worst I was so used to still driving with
 5 light on I was in my parking lot luckily with wife I turn on car dome light is
 6 on so I figure door is shut its just the sensor going off like always but door shut
 7 this time the door was open not shut I turn and fall off car lucky wife pressed
 8 break one day a person is going to think its just the sensor going off and door
 is locked while actually its open get hurt and I'll be the first witness for that
 persons lawsuit against ford cause they are acting like thats not a recall
 situation shame on Ford I will never buy a ford and will tell everyone and their
 brother the same thing they say buy a ford cause its ford tough better said ford
 tough luck. (ODI 10865235)

9 Unable to lock doors from within cabin due to door ajar sensor. Child easily
 10 opens door while driving. Had a stranger open my door and got in passenger
 11 seat thinking it was his mothers car, than [sic] goodness he did not have a gun.
 Lack of safety and security function. (ODI 1216751)

12 Driver's door sensor is faulty. The vehicle's instrument panel will indicate that
 13 the door is ajar when it is firmly closed. This alert often appears while the
 14 vehicle is in motion. When I exit the vehicle and the problem occurs, this will
 15 prevent the interior lights from going out and it will prevent the security
 16 system from arming. This problem is distracting while driving due to the alerts
 17 and the interior lighting, especially at night. The issue has also resulted in theft
 18 from my vehicle. When the vehicle is off, the dome lights do not go off as the
 sensor indicates the door is open. While parked outside my house, my vehicle
 was broken into without the alarm sounding, resulting in theft of personal
 items including checks, cash, and electronics. The vehicle's battery has also
 drained overnight to the point of needing a jump start. (ODI 10837099)

19 52. Many other owners reported to NHTSA that the false "door ajar" warning
 20 creates a safety hazard. For example:

21 The door ajar indicator remains lit even when door is properly secured. This
 22 results in the interior lighting remaining on and failure of the door locks to
 23 properly activate, even at highway speed. I am a former investigator for the
 24 U.S. DOT and I find this to be a very dangerous situation which should be
 recalled. If the doors are not properly locked there is an increased risk to
 occupants of the vehicle in the event of a crash. (ODI 10861426)

25 We were on our way to Texas from Missouri. As we were traveling south on
 26 I35 a warning light came on the dash stating that the driver's door was ajar
 27 when it appeared to be shut. It then told us to shift to park and shut the door.
 28 We pulled over on I35 thinking it was something that we needed to do for
 safety reasons. My wife got out of the vehicle and was almost hit by a car at
 highway speeds. After shutting the door several times the warning light would
 not go off as well as the dome light. Because of the issue the doors would not

1 lock and the alarm would not arm itself. I have been a local police officer for
2 KCPD for 14 years and have seen far too many accidents because of people
3 pulling over on a highway. This issue needs to be addressed and fixed on all
4 ford vehicles. (ODI 10731557)

5 The driver's door warning drivers door is ajar will not go off. Even when car
6 is off, lights remain on inside the car. While driving, light and warning
7 continually stay on, doors will not lock because sensor for door remains on.
8 When I come to a stop while car is running, warning to shift car to park will
9 come on ... this is a huge safety problem with little children in car. Doors will
10 not stay locked. (ODI 10905592)

11 The door ajar alarm will sound even when the door is secure. When this
12 occurs the interior lights come on and it gives a audible signal. Interior lights
13 coming on are hazardous when driving at night especially when it happens
14 expectantly. This activation also causes the lights to stay on after you leave the
15 vehicle. This has caused the battery to drain and not being able to start the
16 engine. This happen to my wife while at work. Fortunately, this time, it
17 wasn't in a remote location, but it could happen. Ford refuses to recall or
18 repair at their cost, even though I had it repaired previously (while under
19 warranty). (ODI 10853493)

20 Two door ajar lights on our 2011 edge remain on at all times. Bea aide [*sic*] of
21 this I am forced to drive at night with the interior lights on. This is unsafe and
22 very distracting for us and other drivers. One of these doors is my daughters
23 which we are very uneasy about. We are aware how big this problem is and
24 people are desperate for help!!! I wrote to ford but they said they can't help
25 because there are no recalls and they can't find any record of our car being at a
26 ford dealer so I just sent them the invoice. I cannot believe there are so many
27 vehicles with the same problem and ford won't do anything about it. (ODI
28 10898371)

When starting and shutting off the car, the "driver door ajar" warning comes
on and interior lights will not shut off. You have to continually slam the door
to get both to go out. Sometimes the warning light and interior lights come on
while driving. This makes it extremely difficult to see the road when it's dark
outside. I almost went into a ditch last week because of this issue. I started
complaining about this issue while still under warranty but the ford dealer did
not fix it. Now they want \$500 to correct the problem. Ford should be
accountable for this known safety issue - not the consumer. (ODI 10826096)

When my car was under warranty driver door would say door ajar and all locks
would open when the door was closed - they fixed had to fix door sensor now
my other doors are doing the same and we are out of warranty - this is a safety
issue when driving at night and your door locks open at a stop light anyone can
carjack or jump in your car, will not let me kids use my car - the car dealership
told me they have so many flex repairs of this same issue. (ODI 10845784)

53. Ford TSB 15-0013 specifies a flat-rate time of 0.6 to 2.7 hours (depending on the model, trim package, etc.) to fix the false warning. Most automotive dealerships charge \$100.00 to \$125.00 per hour for service repairs. Thus, owners are charged up to \$337.50 to have the defect repaired. However, many customers who have only had the connector cleaned continue to experience the false warning, either on the repaired door or a different door, requiring further repairs:

For the third time the “driver door ajar” warning light is illuminated while the door is closed and presumed locked. The dealer made repairs the first two times and now is charging me again [*sic*] for this third occurrence [*sic*] of the same issue stating they previously only cleaned the part which is now determined to need replacement. My teenager often drives this vehicle and we do not know if the driver door is closed or locked because of the defect in the warning system. (ODI 10672510)

The sensor in my drivers door does not recognize the door is closed. As I’m driving the doors will not lock and the interior lights flash on and off because the electrical system thinks the door is opening. Also the vehicle alerts me with every bump I hit in the road that the door is ajar with a screen alert and ringing bell. I brought this to the dealership and spent \$150 to have it cleaned which helped for 6 months and now it is acting up again. (ODI 10691819)

The contact owns a 2013 Ford Edge. Immediately after starting the vehicle with all the doors closed, the door ajar warning light illuminated. The vehicle was taken to a dealer where it was diagnosed that a switch needed to be replaced. The vehicle was repaired; however, the failure recurred. The vehicle was taken back to the dealer where it was diagnosed that the replaced switch needed to be cleaned. The vehicle was repaired; however, the failure persisted. The manufacturer was not notified of the failure. The failure mileage was 55,000. (ODI 10874316)

Door ajar at driver’s side “on” intermittently, either parked or driving until it remained “on” all the time even after shifting to park, opening and closing the door, turning the engine on and off. Warning showed need to shift to park. Hazardous when driving, especially on the freeway. Ford maintenance repaired/cleaned latch on 4/2015 and charged \$269.90. Same problem reappeared on 12/2015. Ford maintenance replaced/repair faulty door latch on 1/2016 and charged \$317. (ODI 10818276)

There is an instrument panel alarm that says “driver door ajar” that remains despite repeated opening and closing of the driver’s door. We paid almost \$600 to have the sensor replaced about a year ago, and now it is doing the same thing. The dealership wants to charge us again to fix it. It is a safety issue... (ODI 10864600)

1 For months I have dealt with doors showing ajar, even when closed. Inside
 2 lights stay on... And alarm sounds often. First it was the passenger door, now
 3 the driver door and right rear passenger door constantly say ajar. Alarm
 4 sounds in the middle of the night. It has become necessary to disconnect
 5 battery cable every night in order for this not to happen. Recently had to
 purchase new battery. Passenger door was repaired at no cost to me... But
 dealerships want to charge me \$1000 to repair door latches on driver door and
 rear passenger door, which on a 2013 vehicle is ridiculous. (ODI 10779827)

6 The door front driver side door sensor went bad and tells car that door is ajar.
 7 This was replaced under warranty last year. Now yesterday the same thing has
 8 happened to the front passenger side door sensor. This was quoted to me at
 9 \$700. This is ridiculous for a bad door sensor that Ford has put bad and faulty
 sensors on. I feel that I should not be liable for. The Ford dealership in town
 said, "this is a problem with Ford Flex." (ODI 10745861)

10 2011 Ford Edge door ajar light and dome light stays on after shutting door. It
 11 ended up being the sensor in the front passenger door and front drivers door.
 12 The front drivers door sensor was replaced twice in 2013 and once in 2014.
 13 The passenger side door was replaced in 2014 and in January 2015. The door
 14 sensor issue started at 34,000 miles. We are currently at around 43,000 miles
 15 and the door sensors continue to be a major problem. Replacing the drivers
 side door sensor 3 times in 2 years and the passenger side door sensor in 2
 years as well should not happen, especially only driving 9,000 miles in those 2
 years. (ODI 10671674)

16 Drivers side door latch faulty, was showing door ajar when closed which
 17 prevented doors from locking and kept interior lights on not sure if airbag
 18 would arm or not. Was under warranty and took to dealer for repair and was
 19 told it just needed to be reset. Dealer did not document the repair and when the
 20 problem started happening again a few months later I was told it would be
 \$600 to replace the latch. Ford knows about this problem and has issued a
 technical bulletin but has not issued a recall. (ODI 10730729)

21 Driver door ajar light would not go off, even though the door seemed to be
 22 closed. Thus doors would not lock and occasionally warning lights would
 23 flash, distracting me as I drove. I took the car to my local Ford dealer and was
 told it was a faulty front door latch, which they replaced for \$425.65. (ODI
 10861649)

24 54. Because the lights can stay on for hours, many consumers have had their
 25 batteries drained, leaving them stranded and concerned for their safety. Sometimes the drained
 26 battery also affects other systems in the vehicle:

27 At the end of February my "door ajar" light kept staying on after closing it- I
 28 had to repeatedly close it to get the light to go off. On March 5th my vehicle
 lost power while traveling down a main highway at night with my 2 year old

1 daughter. I had to pull over and wait for someone to come help us ... the
2 driver's side door latch had gone bad and since it stayed on it killed my battery
3 along with my throttle body had gone bad in my car as well.... I have in
4 turned been waiting now 5 weeks for the throttle body part for my car, which
has left me having to borrow a way to go because I can't afford to fix my car
and pay for a rental. (ODI 1276812)

5 The "door ajar" warning light comes on intermittently and has drained the
6 battery at least 4 times over the past 10 months. The dead battery has left me
stranded on several occadions [*sic*]. (ODI 10703795)

7 I am having the same issues as hundreds of others have had and posted on the
8 NHTSA site. The door ajar issue followed by the shift to park issue ... battery
9 also went dead around 47000 miles and crashed my gps. Approximately \$900
to fix the three issues. (ODI 10609157)

10 55. Multiple consumers reported trying to repair the problem themselves or
11 foregoing having the repair done because it is too expensive. This leaves consumers in a
12 dangerous situation because they cannot afford to remedy a defect. For example:

13 Drivers side door ajar indicator continuously going off when door is shut.
14 Continues to stay on after several attempts to shut door to make alarm go off.
15 Makes it a driving distraction. Has been an ongoing issue and we just took it
16 to the dealership to have repaired. Our extended warranty will not cover the
17 problem and the dealership wanted over \$500 to repair. We cannot afford the
18 repair right now so we have to deal with it until we can. Again, a major
19 driving distraction. (ODI 10808940)

20 First door ajar warning would come on, when you closed door it would go
21 away. Now it just stay on, the lights say on and the bells chimes. I see theirs
22 [*sic*] a lot of complaints on the internet. Please help!!! This is not in my
23 budget!! Thanks. (ODI 10592180)

24 [I]n order for the door to close and not have the door ajar warning light come
25 on the driver must loosen the latch before closing the door. Even if one does
26 this, it does not guarantee that it would not pop on while driving. Extremely
27 dangerous. (ODI 10499482)

28 The driver side door ajar warning sensor stays on. This caused interior and
exterior lights to remain on. Took hours to "fool" the system to get warning
sensor to deactivate, consequently all lights went out. Ford dealership service
department swore they never heard of this yet owner complaints are all over
the internet. (ODI 10691253)

56. Further, www.carcomplaints.com, a popular website that tracks automotive
defect patterns, identified the following as the top car defects reported to the website in the

1 past 90 days: (1) 2013 Ford Edge (door ajar light stays on); (2) 2012 Ford Edge (door ajar light
2 stays on); and (3) 2011 Ford Edge (door ajar light stays on).⁴

3 57. The defect is dangerous, distracting, and expensive enough that some owners
4 have created videos to explain their home remedies to other consumers. For instance, video
5 posted on YouTube explained how to ground the switch on a 2013 Flex, telling viewers that
6 owner had already spent \$1,200 in unsuccessful repairs.⁵ The fix has its own risks, however,
7 because it tricks the BCM into always thinking the door is closed, so that it will not detect a
8 door that is open while the vehicle is in motion.

9 58. There are safer and non-problematic alternative designs available. Most
10 modern vehicles utilize a door switch or door sensor mounted on the door jamb. These sensors
11 are typically spring-loaded plunger style switches that move in and out depending on whether
12 the passenger door is in the opened or closed position. When the plunger switch moves in and
13 out, the electrical contacts within the switch simultaneously open or close an electrical circuit.
14 The opening and closing of this electrical circuit can coincide with many other features such as
15 turning the interior dome lights on or off, arming, disarming, or triggering the vehicle alarm,
16 and allowing or not allowing the vehicle doors to engage in the locked position.

17 59. The Subject Vehicles do not have door sensors located on the door jamb of the
18 vehicle. Instead, the door sensors are part of the door latch assembly, located inside the
19 passenger doors of Subject Vehicles. As a result, the door latch and door sensors in Subject
20 Vehicles are manufactured, housed, sold, serviced, and repaired as one collective unit.
21 Therefore, when the door sensor fails and necessitates replacement, the entire door latch
22 assembly must also be replaced.

23 **II. THE “DOOR AJAR” DEFECT CREATES UNSAFE CONDITIONS**

24 **A. Door Locks Are Integral to Occupant Safety**

25 60. Multiple studies and evaluations have found that locked vehicle doors are
26 integral to occupant safety, both in crashes and to prevent children and thieves from opening

27
28 ⁴ See http://www.carcomplaints.com/recent_trends/.

⁵ See <https://www.youtube.com/watch?v=ZYOTHnPUQXM&feature=youtube>.

1 doors.

2 61. In the 1950s, automakers began a concerted effort to install strong door locks in
3 vehicles after concluding that most occupant ejections could be prevented if the doors
4 remained closed during a crash. A 1962 study comparing the rates of ejections and deaths
5 prior to 1956, when many automakers introduced a stronger, modified safety lock, to rates
6 after that year found the rate of doors opening decreased by 32 percent, and the rate of ejection
7 decreased by almost 40 percent. The study concluded that if all vehicles had the modified
8 safety locks, 1,800 lives would be saved annually.⁶

9 62. In 1968, NHTSA implemented Federal Motor Vehicle Safety Standard
10 (“FMVSS”) 206, Door Locks and Door Retention Components, which was aimed at
11 decreasing the likelihood of a vehicle occupant being ejected during a crash.⁷ FMVSS 206
12 requires that each door be equipped with a locking device that prevents someone outside the
13 vehicle from opening the door and allows the vehicle occupants to unlock the doors. It does
14 not require that vehicles have a particular locking mechanism, only that vehicle doors stay
15 latched and not disengage during several specific crash test scenarios. To meet the test
16 requirements, many manufacturers adopted an autolock feature causing doors to lock after the
17 vehicle is put into gear and reaches a targeted speed and to remain locked unless the driver
18 chooses to unlock them or immediately following a crash.

19 63. A 1989 NHTSA evaluation of the effect of FMVSS 206 in rollover crashes in
20 passenger cars noted that the “design of doors and their locks, latches and hinges is crucial
21 here.”⁸ During that time, the rate of rollovers actually increased because smaller vehicles have
22 a higher propensity for rollovers.⁹ However, the improved door latches and locks prevented
23

24
25 ⁶ John W. Garrett, Evaluation of Effectiveness of Door Locks on Pre-1956 and Post-
1955 Automobiles, 77 Pub. Health Reports 369 (May 1962).

26 ⁷ See 49 C.F.R. §571.206.

27 ⁸ Charles J. Kahane, NHTSA Report No. DOT HS 807 489, An Evaluation of Door
28 Locks and Roof Crush Resistance of Passenger Cars – Federal Motor Vehicle Safety Standards
206 and 216 (1989), at xv.

⁹ *Id.* at xviii.

1 15 percent of rollover ejections in passenger cars, saving 400 lives annually.¹⁰ In 2002 alone,
 2 improved locks and latches saved an estimated 1,398 lives.¹¹ An updated evaluation published
 3 in 2004, found that improved door locks in light trucks prevented ejections in rollovers by
 4 10 percent.¹²

5 64. In 2004, and again in 2008, NHTSA proposed to study the safety and
 6 effectiveness of automatic door locks (“ADL”), such as those used in Subject Vehicles,
 7 stating: “ADL improve the likelihood that doors will stay closed in the event of an accident,
 8 retaining the structural integrity of the vehicle and lowering the chance of occupant ejection.
 9 In addition, they prevent doors from being opened accidentally and/or by children.”¹³ In its
 10 2004 proposal, NHTSA noted that General Motors had petitioned the agency to allow vehicles
 11 equipped with ADL to be tested with the doors locked because ADLs are a safety device.¹⁴ In
 12 2008, NHTSA noted that during side-impact tests, “doors of vehicles with ADL have become
 13 unlatched and swung open when tested in the unlocked position, but not when tested in the
 14 locked position.”¹⁵

15 65. In 2015, NHTSA concluded that improved door locks had saved a total of
 16 42,135 lives between 1960 and 2012, primarily in rollover crashes.¹⁶

17 66. NHTSA has repeatedly urged parents to purchase vehicles with automatic door
 18 locks. In its general guide to parents on safety features to consider when purchasing a vehicle,
 19 NHTSA stated:

21 ¹⁰ *Id.* at 224.

22 ¹¹ NHTSA, Report No. DOT HS 809 833, *Lives Saved by the Federal Motor Vehicle*
 23 *Safety Standards and Other Vehicle Safety Technologies, 1960-2002* (2004), at 72.

24 ¹² *Id.* at xviii.

25 ¹³ NHTSA, Report No. DOT HS 809 699, *Evaluation Program Plan – Calendar Years*
 26 *2004-2007* (2004), at 28; *see also* NHTSA, Report No. DOT HS 810 983, *Evaluation Program*
 27 *Plan, 2008-2012* (2004), at 26.

28 ¹⁴ NHTSA, Report No. DOT HS 809 699, at 28.

¹⁵ NHTSA, Report No. DOT HS 810 983, at 26.

¹⁶ Charles J. Kahane, Paper No. 15-0291, *Lives Saved by Vehicle Safety Technologies*
 and *Associated Federal Motor Vehicle Safety Standards, 1960 to 212 – Passenger Cars and*
LTVs (2015), at 10.

Automatic door locks: To prevent accidental door openings in a moving vehicle and to reduce the risk of occupant ejection in a vehicle crash, some manufacturers offer automatic door locks that activate when the car is put into gear or reaches a certain speed. Automatic door locks also prevent unlawful forced entry into the vehicle when stopped in traffic. There are also child safety door locks that the driver can control. When child safety locks are engaged, the rear doors cannot be opened from the inside.¹⁷

67. Additionally, in annual guidelines for parents, NHTSA has reported that “[i]t is important that the rear doors be locked when children are in the rear seat so that they do not inadvertently open them while in transit.”¹⁸ The agency noted that 75 to 80 percent of vehicles had ADL by 2009.

68. As NHTSA noted, door locks also prevent unlawful entry into vehicles, including motor vehicle theft. Statistics vary by source, but the Department of Justice’s Bureau of Justice Statistics (“BJS”) found that in 2015, there were 465,650 motor vehicle thefts in the United States.¹⁹ The motor vehicle theft rate has decreased dramatically since 1993: BJS has determined that between 1993 and 2010, thefts decreased from about 19 percent to about 5 percent.²⁰

69. Evaluations of the reasons the motor vehicle theft rate has declined dramatically are scarce. However, a study of similar theft reductions in the United Kingdom concluded that it was not because there were fewer attempts—the percentage of attempted thefts actually rose during the evaluated time frame—but rather because of an increase in vehicle security, including better quality locks.²¹

70. As some consumers noted in their complaints to NHTSA, a significant concern for vehicle occupants who are unable to lock the vehicles’ doors is attempted theft while they

¹⁷ NHTSA, A Parent’s Guide to Playing It Safe with Kids and Cars, at 3.

¹⁸ See, e.g., NHTSA, Buying a Safer Car for Child Passengers: A Guide for Parents (2009), at 5.

¹⁹ Dep’t of Justice, Bureau of Justice Statistics, Report NCJ 250180, Criminal Victimization 2015 (2016), at 5.

²⁰ Janet L. Lauritsen & Maribeth L. Rezey, Dep’t of Justice, Bureau of Justice Statistics, Measuring the Prevalence of Crime with the National Crime Victimization Survey, NCJ 241656 (2013), at 11.

²¹ Graham Farrell, Attempted Crime and the Crime Drop, 26 Int’l Criminal Justice Rev. 21 (2016), at 23, 25.

are in the vehicle, known as carjacking. The BJS estimated that between 1993 and 2002, the latest statistics publicly available, about 34,000 carjackings occurred annually, resulting in approximately 15 fatalities per year and injuries to about one-third of the victims.²²

71. In its information to the public about carjackings, the U.S. Department of State urged vehicle occupants to keep doors locked and windows up because it “increased your safety and makes it more difficult for an attacker to surprise you.”²³ The Subject Vehicles’ defect makes it impossible for many Class members to follow this advice.

B. Unceasing Interior Lights and Audible Warnings Pose Unsafe Distractions for Drivers

72. Ford prides itself on its commitment to reducing driver distractions, stating:

Distracted driving is an important issue for everyone on the road today. According to a 100-car study conducted by Virginia Tech Transportation Institute, driver inattention that may involve looking away from the road for more than a few seconds is a factor in nearly 80 percent of accidents.

Ford Motor Company devotes considerable attention to this traffic safety issue through research, testing, education and technology²⁴

73. False alarms, and even necessary auditory alarms and displays, can cause dangerous distractions for drivers. NHTSA’s Human Factors Design Guidance for Driver-Vehicle Interfaces warns that:

False alarms are defined as alarms that indicate a threat when no threat exists. They can cause driver distraction, incorrect decisions and/or responses, and distrust in the crash warning system (CWS). Furthermore, they may increase reaction time to true warnings.²⁵

74. Regarding audible warnings, the Guidance states that drivers will respond quicker if they perceive a higher degree of urgency, but “signals that are perceived as more

²² Patsy Klaus, Dep’t of Justice, Bureau of Justice Statistics, National Crime Victimization Survey: Carjacking, 1993-2002, NCJ 205123 (2004), at 1.

²³ U.S. Dep’t of State, Publ’n No. 10863, Carjacking: Don’t Be a Victim (2002).

²⁴ Ford, Reducing Driver Distractions (2012), PDF *available at* <https://media.ford.com/content/fordmedia/fna/us/en/news/2013/07/19/safe.html>.

²⁵ NHTSA, Report No. DOT HS 812 360, Human Factors Design Guidance for Driver-Vehicle Interfaces (2016), at 4-2.

1 urgent than is warranted by the situation can result in confusion, distraction, or inappropriate
2 responses, such as overly-aggressive or startle responses.”²⁶

3 75. The Guidance also notes that even simple visual displays should be designed to
4 minimize glare because “light emanating from displays can be glaring at night causing
5 discomfort, or in some conditions, reduced visibility of the external driving environment.”²⁷

6 76. Vehicle interior lighting intended for use when the vehicle is stationary. A
7 1985 study found that even the standard map light reduced forward visibility by 10 to
8 20 percent.²⁸ Additionally, a 2007 study found that interior light reflections off windows make
9 it more difficult for drivers to detect pedestrians.²⁹

10 77. Automotive safety experts have recognized the intrinsic danger of illuminating
11 the interior cabin while driving at night. A paper presented at NHTSA’s 16th Enhanced Safety
12 of Vehicles Conference in 1998 about how vision interacts with headlights noted:

13 Every driver is familiar with the effect of overly bright interior lighting
14 distracting one’s attention from what is going on outside the car at night. This
15 effect is added to the reduction in object visibility resulting from diminished
16 contrast.³⁰

16 C. Plaintiffs’ Experiences with Their Vehicles

17 *David Baranco*

18 78. Plaintiff David Baranco resides in San Rafael, California. He owns a 2013
19 Ford Edge which he purchased in Santa Clara, California, from a private party in or around
20 May 2016. Part of the purchase price was paid to the private party, and part was paid to Ford
21 Motor Company in order to pay off the loan on the vehicle held by Ford Motor Company.

22
23 ²⁶ *Id.* at 7-5.

24 ²⁷ *Id.* at 6-14.

25 ²⁸ P. L. Olson, The effect of vehicle interior lighting systems on driver sight distance, Technical Report No. UMTRI-85-31, Univ. of Mich. Transp. Research Inst. (1985).

26 ²⁹ Joel M. Devonshire & Michael J. Flannagan, Effects of Automotive Interior Lighting on Driver Vision, Univ. of Mich. Transp. Research Inst., Technical Report No. UMTRI-2007-1 (2007).

27 ³⁰ Burkard Wördenweber & Nils Labahn, Headlamp-Based Vision System and Vision
28 Task, NHTSA 16th Enhanced Safety of Vehicles Conference, Paper No. 98-S2-P-19 (1998), at 517.

1 79. Within a week of his purchase, Mr. Baranco experienced the “door ajar” defect.
2 Even with the doors firmly closed, the defect manifests by a distracting beeping sound, the
3 display alternately flashes “door ajar” and “shift to park,” the interior dome lights come on and
4 stays on, and the doors cannot be locked from the inside (not even manually). Further, when
5 the car is parked and turned off, the interior lights may remain on, running down the battery.
6 The interior lights remaining on also reduces the driver’s visibility, especially at night, and
7 makes it difficult and dangerous to pull into traffic or to reverse. Mr. Baranco drives extra
8 distances as needed to find night time parking that does not require him to reverse the vehicle.
9 He has had a collision and close calls while reversing when the interior dome lights would not
10 go out.

11 80. Mr. Baranco contacted Ford on three occasions and requested that Ford repair
12 the “door ajar” defect. Ford refused each time.

13 ***James Abbitt***

14 81. Plaintiff James Abbitt is a citizen of the State of North Carolina. He resides in
15 High Point, North Carolina. In or about August 2013, while he was serving in the Army,
16 Mr. Abbitt purchased a new 2013 Ford Flex SE through the military. Mr. Abbitt took delivery
17 of the new vehicle in North Carolina.

18 82. In or around November 2015, while stationed in Alaska, Mr. Abbitt
19 experienced the “door ajar” defect in the front passenger door. The door would not lock, the
20 “door ajar” warning light flashed continually, and the interior dome light stayed on.
21 Mr. Abbitt took the vehicle to the Seekins Ford service department in Fairbanks, which
22 administered an electric surge to the vehicle to re-set the door and the dome light.

23 83. In or around May 2017, while in North Carolina, the “door ajar” defect
24 manifested again, this time in the right rear passenger door. As with the first incident, the door
25 would not lock, the “door ajar” warning light flashed continually, and the interior dome light
26 stayed on. In addition, the vehicle security alarm randomly activated multiple times in the
27 middle of the night while the vehicle was parked in the garage.

1 84. Mr. Abbitt took his car to the Parkway Ford service department in High Point,
2 North Carolina. The technician informed Mr. Abbitt that it would cost over \$400 to fix the
3 problem. By this time, Mr. Abbitt's 2013 Ford Flex was out of warranty, so he declined the
4 costly repair. However, after living with the defect for two weeks, it was so disruptive and
5 potentially dangerous that he changed his mind. To save money, Mr. Abbitt spent time online
6 researching the availability of replacement door latch assemblies. He ultimately purchased
7 one from Amazon and paid Parkway Ford to install it.

8 ***Harriet Abruscato***

9 85. Plaintiff Harriet Abruscato resides in Illinois. She owns a 2013 Ford Edge
10 which she purchased new in 2013 from Arlington Heights Ford in Arlington Heights, Illinois.

11 86. In April 2015 and again in 2017, Ms. Abruscato experienced the "door ajar"
12 defect on the driver's side door in her vehicle. Even with the doors closed, the "door ajar"
13 warning on the dashboard of her vehicle would continually light-up. In response,
14 Ms. Abruscato would frequently open and close her door, even when at stop lights, to try to
15 get the "door ajar" warning light off. When using her key fob to lock the doors after parking
16 the vehicle, the horn would sound twice as if the door was open, causing her to go around
17 checking the doors to make sure they were locked securely. The process was frustrating and
18 concerning because Ms. Abruscato did not want anyone entering her vehicle. When the "door
19 ajar" warning light was on, the dome light in her vehicle would stay on for a while and then
20 fade off. Because she was concerned about the battery dying, Ms. Abruscato would wait until
21 the warning light faded off before leaving the vehicle.

22 87. Because of the inconvenience and safety concerns, on April 21, 2015,
23 Ms. Abruscato took her vehicle in to be repaired by Arlington Heights Ford with the repair
24 covered by the factory warranty.

25 88. After the reoccurrence of the defect in 2017, and because of the inconvenience
26 and safety concerns caused by the defect, on June 10, 2017, Ms. Abruscato took her vehicle to
27 Arlington Heights Ford to have the defect repaired a second time. This time, the Ford dealer
28

1 replaced the driver's side door latch assembly. Ms. Abruscato incurred out-of-pocket costs for
2 the repair.

3 ***Donald Brown***

4 89. Plaintiff Daniel Brown resides in Deerfield, New Hampshire. He owns a 2013
5 Ford Edge which he purchased new from a Ford dealer, AutoFair Ford, in Manchester, New
6 Hampshire in early 2014.

7 90. Approximately a year and half after his purchase, around mid-2015, the "door
8 ajar" defect manifested in the driver's side door. Even with the door firmly closed, the display
9 flashed "door ajar" and a distracting beeping sound persisted. Mr. Brown took his vehicle to a
10 Ford technician at AutoFair Ford. The technician informed that he had a special tool that
11 would be used for the repair. Mr. Brown paid for the purported repair.

12 91. Approximately a year after Mr. Brown paid to have the defect purportedly
13 repaired, in the summer of 2016, it manifested again in the same door. As before, the display
14 flashed "door ajar" and the irritating and distracting beeping sound accompanied the display
15 warning. Mr. Brown took his car back to AutoFair Ford. This time, AutoFair replaced the
16 door latch and Mr. Brown again paid for the repair.

17 ***Daniel Caron***

18 92. Plaintiff Daniel Caron resides in Boxford, Massachusetts. He owns a 2013
19 Ford Flex which he purchased new from a Ford dealership in Las Cruces, New Mexico on or
20 around August 27, 2013.

21 93. In February 2017, when the vehicle had been driven about 50,000 miles,
22 Mr. Caron experienced the "door ajar" defect on the driver's side door. Even with the door
23 firmly closed, the defect manifests by a distracting beeping sound, the display flashes "door
24 ajar," the interior dome lights come on and stay on until higher speeds are reached. The
25 beeping sound is an additional distraction because it ceases when the car is stopped at lights or
26 corners and begins again when the car is accelerated. The interior lights may also remain on
27 when the car is parked and turned off, running down the battery. The interior lights remaining
28 on also reduce the driver's visibility, especially at night, and make it difficult and dangerous to

1 pull into traffic or to reverse.

2 94. Believing the car was unsafe to drive, Mr. Caron took his Ford Flex to a Ford
3 dealership in Haverhill, Massachusetts. The Ford dealer repaired the driver's side door, which
4 repairs were paid for by Mr. Caron.

5 ***Anita Farrell***

6 95. Plaintiff Anita Farrell is a citizen of the State of Florida, residing in
7 Jacksonville, Florida, 32277.

8 96. In or around November 18, 2013, Ms. Farrell purchased a 2012 Ford Edge from
9 Carmax, a used car retailer located in Jacksonville, Florida. Ms. Farrell purchased (and still
10 owns) this vehicle, which is used for personal, family, and/or household uses. Her vehicle
11 bears Vehicle Identification Number: 2FMDK3GC0CBA22074.

12 97. In or around October 2015, at approximately 50,256 miles, Ms. Farrell
13 experienced a "door ajar" warning light on her instrument cluster. Even with the doors firmly
14 closed, the "door ajar" warning was displayed and the doors could not be locked from the
15 inside (not even manually). In addition, the interior dome lights stayed on which is distracting
16 to the driver, especially at night. Ms. Farrell presented her vehicle to Coggin Ford, an
17 authorized Ford dealer and repair center in Jacksonville, Florida. The technician verified that
18 the driver door was causing the "door ajar" issue. The technician removed the driver's door
19 latch "to electronically clean ajar switch," presumably as described in TSB 15-0013 (described
20 above). Ms. Farrell was charged for the purported repair.

21 98. In or around May 2017, at approximately 69,075 miles, Ms. Farrell again
22 experienced a "door ajar" warning light on her instrument cluster and presented her vehicle to
23 AutoNation Ford Jacksonville, an authorized Ford dealer and repair center in Jacksonville,
24 Florida. The technician verified that the driver door latch was again causing the "door ajar"
25 issue and replaced the door latch assembly. Ms. Farrell was again charged and paid for this
26 repair.

John Furno

99. Plaintiff John Furno is a citizen of the State of Illinois, residing in Morton Grove, Illinois, 60053.

100. In or around January 1, 2014, Mr. Furno purchased a 2013 Ford Edge from Carmax, a used car retailer located in Schaumburg, Illinois. Mr. Furno purchased (and still owns) this vehicle, which is used for personal, family, and/or household uses. His vehicle bears Vehicle Identification Number: 2FMDK4JC6DBC46823.

101. In or around May 2016, Mr. Furno experienced a “door ajar” warning light on his instrument cluster. Even with the doors firmly closed, the “door ajar” warning was displayed and the doors could not be locked from the inside (not even manually). In addition, the interior dome lights stayed on which is distracting to the driver, especially at night. Mr. Furno presented his vehicle to Golf Mill Ford, an authorized Ford dealer and repair center in Niles, Illinois. The technician verified that the driver door was causing the “door ajar” issue. The technician determined that TSB 15-0013 applied (described above), and attempted to clean the contacts per the TSB. Mr. Furno paid for this purported repair of the “door ajar” defect.

102. In or around October 2016, only six-months after the purported repair, Mr. Furno again experienced a “door ajar” warning light on his instrument cluster and again presented his vehicle to Golf Mill Ford. The technician verified that the driver door latch was again causing the “door ajar” issue. This time, the technician recommended replacement of the door latch assembly. Mr. Furno again incurred out-of-pocket costs for the repair.

James Jenkin

103. Plaintiff James Jenkin resides in Union Springs, New York. He owns a 2013 Ford Edge which he purchased in Rochester, New York on or around August, 2014. The vehicle was warrantied at the time of purchase and had been driven just 13,000 miles.

104. Less than a year later, when the vehicle was at about 26,000 miles, Mr. Jenkin experienced the “door ajar” defect on the driver’s side. Even with the driver’s side door firmly closed, the defect manifested by a distracting ding sound, the display alternately flashed “door

1 ajar,” and “shift to park,” the interior lights came on and stayed on until higher speeds were
2 reached, and the doors could not be locked from the inside (not even manually). When the car
3 was parked and turned off, the interior lights at times remained on, running down the battery.

4 105. Mr. Jenkin took the car to a Ford dealership in New York, which purportedly
5 repaired the “door ajar” defect on the driver’s side. A short time later and also in 2015, the
6 “door ajar” defect manifested on the passenger side. As with the driver’s side, the display
7 dings and flashes “door ajar,” the doors cannot be locked (not even manually), and the interior
8 lights remain on. Because the interior lights may stay on even when the car is parked and
9 turned off, on a number of occasions the battery has been drained. Mr. Jenkin has had to
10 replace the battery. He thereafter purchased materials he used to devise a method to readily
11 disconnect the battery when the vehicle is not in use.

12 106. In the summer of 2017, the “door ajar” defect began again on the driver’s side.
13 Mr. Jenkin returned to the Ford dealership which had worked on the same door in 2015. The
14 technician informed that the work done on his vehicle in 2015 was actually a work-around, not
15 a repair, whereby following Ford’s procedures the wires in the switch were burned resulting in
16 a temporary fix. However, the work-around could only be used once. The dealership
17 estimated it would cost over \$600 to repair both doors of Mr. Jenkin’s vehicle. The “door
18 ajar” defect is ongoing and continuing.

19 ***Roger Kinnunen***

20 107. Plaintiff Roger Kinnunen is a citizen of the State of Michigan, residing in
21 Ishpeming, Michigan, 49849.

22 108. In or around July 18, 2011, Mr. Kinnunen purchased a new 2011 Ford Edge
23 from Suburban Ford of Sterling Heights, an authorized Ford dealer and repair center located in
24 Sterling Heights, Michigan. Mr. Kinnunen purchased (and still owns) this vehicle, which is
25 used for personal, family, and/or household uses. His vehicle bears Vehicle Identification
26 Number: 2FMDK3GCXBBB40891.

27 109. In or around October 2012, Mr. Kinnunen experienced a “door ajar” warning
28 light on his instrument cluster. He presented his vehicle to Fox Marquette, an authorized Ford

1 dealer and repair center in Marquette, Michigan. The technician verified that the “door ajar”
2 light came on intermittently. As a result, a special order was placed for the driver’s door latch
3 assembly so that it could be replaced in Mr. Kinnunen’s vehicle.

4 110. In or around February 2015, Mr. Kinnunen again experienced a “door ajar”
5 warning light on his instrument cluster and notified Fox Marquette. In May 2015, he again
6 presented his vehicle to Fox Marquette where the technician verified Mr. Kinnunen’s concern.
7 The technician determined that TSB 15-0013 applied (described above), removed the driver
8 door latch from the vehicle and thereafter cycled the latch per the TSB.

9 111. In or around February 2016, Mr. Kinnunen again experienced a “door ajar”
10 warning light on his instrument cluster. As a result, Mr. Kinnunen was only able to lock the
11 doors of his vehicle when the transmission was in the “Park” position. When he placed the
12 vehicle in “Drive”, the doors unlocked and would not relock. Mr. Kinnunen first contacted
13 Fox Marquette and was told that he would have to pay out-of-pocket for a replacement door
14 latch assembly because, as Fox Marquette explained, TSB 15-0013 had already been
15 performed and it could not be performed again. As a result, in September 2016, Mr. Kinnunen
16 took his vehicle to Bartanens Auto Body, a third-party repair facility, where the driver door
17 latch assembly was replaced and paid for by Mr. Kinnunen.

18 ***Gary Kubber***

19 112. Plaintiff Gary Kubber resides in Manlius, New York. He owns a 2013 Ford
20 Edge which he purchased from a car dealership in Pulaski, New York in May 2014. The
21 vehicle was warrantied at the time of purchase and had been driven just over 20,400 miles.

22 113. In or around July 2016, when the vehicle had been driven about 47,000 miles,
23 the “door ajar” defect manifested. Even with the doors firmly closed, the defect manifested by
24 a distracting ding sound, the display flashed “door ajar,” the interior dome lights came on and
25 stayed on until higher speeds are reached, and the doors could not be locked from the inside
26 with the electronic lock button. Mr. Kubber could manually push down the locks but does not
27 know if the doors were actually locked. When the car was parked and turned off, the interior
28 lights at times remained on, running down the battery.

1 114. Mr. Kubber took his vehicle to F.X. Caprara Ford Inc., a Ford dealer and repair
2 facility in Pulaski. The Ford technician ostensibly repaired the “door ajar” defect. However,
3 about one week later, the same problems began again. This time the Ford shop wanted \$360 to
4 make another attempt to repair the defect. Mr. Kubber contacted Ford Motor Company who
5 refused to pay for the repair. Ultimately, Mr. Kubber paid to have the “door ajar” defect
6 repaired by a mechanic in Syracuse.

7 ***Malisa Nicolau***

8 115. Plaintiff Malisa Nicolau is a citizen of the State of California, residing in San
9 Diego, California 92121.

10 116. In or around June 17, 2015, Ms. Nicolau purchased a 2013 Ford Edge from
11 Encinitas Ford, located in Encinitas, California. Ms. Nicolau purchased (and still owns) this
12 vehicle, which is used for personal, family, and/or household uses. Her vehicle bears Vehicle
13 Identification Number: 2FMDK3AK9DBA36606.

14 117. In or around December 2015, Ms. Nicolau experienced a “door ajar” warning
15 light on her instrument cluster along with interior lights staying on. She presented her vehicle
16 to Ken Grody Ford, an authorized Ford dealer in Carlsbad, California. Ken Grody Ford
17 verified that the driver door latch was causing the “door ajar” issue and performed a “door
18 latch cleaning” as a warranty repair. Ms. Nicolau inquired whether the issue would reoccur,
19 and the technician informed her that it may recur in the future. Ms. Nicolau inquired if Ken
20 Grody Ford, or Defendant, would cover the repairs under warranty if she was no longer under
21 the time and mileage limitations of the warranty, and the technician indicated it may be
22 possible.

23 118. In or around May 2017, with only 37,927 miles, Ms. Nicolau again experienced
24 a “door ajar” warning light on her instrument cluster along with the interior lights staying on.
25 She again presented her vehicle to Ken Grody Ford in Carlsbad, California. The technician
26 verified that the driver door latch was causing the “door ajar” issue. The technician
27 recommended replacement of the driver door latch assembly. Because of the serious nature of
28 the “door ajar” defect, Ms. Nicolau paid to have the recommended repair completed.

CLASS ACTION ALLEGATIONS

119. Plaintiffs bring this class action pursuant to Fed. R. Civ. P. 23(a) and (b)(3) on behalf of a proposed Class defined as:

All persons who are current or former owners, purchasers or lessees of a Subject Vehicle distributed for sale or lease in any of the fifty States, the District of Columbia, Puerto Rico, and all other United States territories and possessions.

120. Alternatively, Plaintiffs allege a multi-state Class or single state Classes defined as:

All persons who are current or former owners, purchasers or lessees of a Subject Vehicle distributed for sale or lease in California, Florida, Illinois, New Hampshire, New Mexico, New York, North Carolina, Michigan and other states with similar laws.

Excluded from the Class are: (a) Ford, its officers, directors, and employees; its affiliates and affiliates' officers, directors, and employees; its distributors and distributors' officers, directors, and employees; and Ford Dealers and Ford Dealers' officers and directors; (b) Plaintiffs' Counsel; (c) judicial officers and their immediate family members and associated court staff assigned to this case; and (d) persons or entities who or which timely and properly excluded themselves from the Class.

121. Certification of Plaintiffs' claims for classwide treatment is appropriate because Plaintiffs can prove the elements of their claims on a classwide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

122. **Numerosity – Federal Rule of Civil Procedure 23(a)(1).** The Class consists of approximately a million people. Therefore, the Class is so numerous that joinder of all members would be impracticable. The sheer number of Class members makes joinder of all members impracticable.

123. **Commonality and Predominance – Federal Rule of Civil Procedure 23(a)(2) and 23(b)(3).** This action involves common questions of law and fact that predominate over any questions affecting individual Class members, including:

a. whether Subject Vehicles are defective;

- b. whether Subject Vehicles' defects constitute a safety risk;
- c. whether Ford misrepresented the standard, quality, and characteristics of Subject Vehicles;
- d. whether Ford's misrepresentations regarding the standard, quality, and characteristics of Subject Vehicles were likely to mislead reasonable consumers;
- e. whether Ford's omission that the "door ajar" warnings on Subject Vehicles were faulty was a material fact that a reasonable consumer would be expected to rely on when deciding whether to purchase a vehicle;
- f. whether Plaintiffs and the other Class members have been damaged and, if so, the extent of such damages; and
- g. whether Plaintiffs and the other Class members are entitled to equitable relief, including, but not limited to, restitution and injunctive relief.

124. Ford engaged in a common course of conduct giving rise to the legal rights sought to be enforced by Plaintiffs individually and on behalf of the other Class members. Similar or identical statutory and common law violations, business practices, and injuries are involved. Individual questions, if any, pale by comparison, in both quality and quantity, to the numerous common questions that dominate this action.

125. **Typicality – Federal Rule of Civil Procedure 23(a)(3).** Plaintiffs' claims are typical of the claims of the other Class members because, among other things, Plaintiffs and the other Class members were injured through the substantially uniform misconduct described above. Plaintiffs are advancing the same claims and legal theories on behalf of themselves and all other Class members, and no defense is available to Ford that is unique to any one plaintiff.

126. **Adequacy of Representation – Federal Rule of Civil Procedure 23(a)(4).** Plaintiffs are adequate representatives of the Class because their interests do not conflict with the interests of the other Class members. Additionally, Plaintiffs have retained counsel competent and experienced in complex class action litigation. Thus, the Class's interests will

1 be fairly and adequately protected by Plaintiffs and their counsel.

2 127. **Superiority – Federal Rule of Civil Procedure 23(b)(3).** A class action is
 3 superior to any other available means for the fair and efficient adjudication of this controversy,
 4 and no unusual difficulties are likely to be encountered in the management of this matter as a
 5 class action. The damages, harm, or other financial detriment suffered individually by
 6 Plaintiffs and the other Class members are relatively small compared to the burden and
 7 expense that would be required to litigate their claims on an individual basis against Ford,
 8 making it impracticable for Class members to individually seek redress for Defendant's
 9 wrongful conduct. Even if Class members could afford individual litigation, the court system
 10 should not be forced to shoulder such inefficiency. Individualized litigation would create a
 11 potential for inconsistent or contradictory judgments and increase the delay and expense to all
 12 parties and the court system. By contrast, the class action device presents far fewer
 13 management difficulties and provides the benefits of single adjudication, economies of scale,
 14 and comprehensive supervision by a single court.

15 CAUSES OF ACTION

16 **COUNT I**

17 **VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT**

18 (On Behalf of Plaintiffs Baranco and Nicolau and the Nationwide Class
 19 or, Alternatively, the Multi-State Class)

20 128. Plaintiffs repeat and reallege all other paragraphs as if fully set forth herein.

21 129. Ford is a "person" under Cal. Civ. Code §1761(c).

22 130. Plaintiffs and each of the Class members are "consumers" as defined by Cal.
 23 Civ. Code §1761(d), because they purchased or leased one or more Subject Vehicles for
 24 personal, family or household purposes.

25 131. Defendant's conduct, as described herein, in misrepresenting in Subject
 26 Vehicles' manuals that Subject Vehicles' warnings and alarms will sound only if a vehicle
 27 door is open, and omitting the fact that it designed and manufactured Subject Vehicles with a
 28 uniform defect within the door latch switch that can cause unwarranted "door ajar" warnings

1 and other related problems, violates the California Consumers Legal Remedies Act (“CLRA”),
 2 Cal. Civ. Code §§1750, *et seq.* Specifically, Defendant violated the CLRA by misrepresenting
 3 and omitting material facts regarding Subject Vehicles, and by engaging in the following
 4 practices proscribed by Cal. Civil Code §1770(a) in transactions that were intended to result
 5 in, and did result in, the sale of Subject Vehicles:

- 6 a. representing that Subject Vehicles have approval, characteristics, ingredients,
 7 uses, benefits, or quantities which they do not have;
- 8 b. representing that Subject Vehicles were of a particular standard, quality, or
 9 grade if they are of another;
- 10 c. advertising Subject Vehicles with intent not to sell them as advertised; and
- 11 d. representing that Subject Vehicles have been supplied in accordance with
 12 previous representations when they have not.

13 132. Defendant violated the Act by selling Subject Vehicles that it knew possessed
 14 uniform defects that caused the Subject Vehicles to issue a “door ajar” warning when the doors
 15 were closed and exposed the public to an unreasonable safety risk. Defendant omitted from
 16 Plaintiffs and the other Class members, to whom it had a duty to disclose, the material fact that
 17 Subject Vehicles were sold with defective door latch switches that issued false door ajar
 18 warnings and caused the doors to remain unlocked and the interior lights to remain on. This is
 19 a fact that a reasonable consumer would consider important in selecting a vehicle to purchase
 20 or lease.

21 133. Ford’s Technical Service Bulletins were false and deceptive because they
 22 recommended a “fix” – cleaning the electrical connector – that did not resolve the false “door
 23 ajar” warning defect. The Technical Service Bulletins instituted by Ford were not adequate
 24 and Subject Vehicles are still defective.

25 134. Pursuant to California Civil Code §1782(d), Plaintiffs, individually and on
 26 behalf of the other members of the Class, seek a Court order enjoining the above-described
 27 wrongful acts and practices of Defendant, ordering Defendant to extend repair remedies to all
 28

1 Class members who experience faulty door ajar warnings, and awarding restitution and
2 disgorgement.

3 135. Pursuant to §1782 of the Act, Plaintiffs notified Defendant in writing of the
4 particular violations of §1770 of the Act and demanded that Defendant rectify the problems
5 associated with the actions detailed above and give notice to all affected consumers of
6 Defendant's intent to so act. A copy of the letter is attached hereto as Exhibit A. Defendant
7 failed to rectify or agree to rectify the problems associated with the actions detailed above and
8 or to give notice to all affected consumers within 30 days of the date of written notice pursuant
9 to §1782 of the Act. Accordingly, Plaintiffs also seek damages proximately caused by
10 Defendant's violation of the CLRA. Such damages include paying more for Subject Vehicles
11 than they should have, expending time, effort, and money to repair or attempt to repair the
12 defect, diminished value of Subject Vehicles, and other damages proximately caused by
13 Defendant's misconduct as alleged herein.

14 136. Defendant's conduct is fraudulent, wanton, and malicious entitling Plaintiffs
15 and the Class to punitive damages. Plaintiffs also seek attorneys' fees and costs as permitted
16 by the CLRA.

17 137. Pursuant to §1782(d) of the Act, attached hereto as Exhibit B is the affidavit
18 showing that this action has been commenced in the proper form.

19 **COUNT II**

20 **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW**

21 (On Behalf of Plaintiffs Baranco and Nicolau and the Nationwide Class
22 or, Alternatively, the Multi-State Class)

23 138. Plaintiffs repeat and reallege all other paragraphs as if fully set forth herein.

24 139. The Unfair Competition Law, California Business & Professions Code
25 §§17200, *et seq.* ("UCL") prohibits any "unlawful," "fraudulent," or "unfair" business act or
26 practice and any false or misleading advertising. In the course of conducting business,
27 Defendant committed "unlawful" business practices by, among other things, making the
28 representations and omissions of material facts, as set forth more fully herein, and violating

1 California Civil Code §§1572, 1573, 1709, 1711, 1770(a)(5), (7), (9), and (16), and California
2 Business & Professions Code §17500, *et seq.*, and the common law. Plaintiffs, individually
3 and on behalf of the other Class members, reserve the right to allege other violations of the
4 law, which constitute other unlawful business acts or practices. Such conduct is ongoing and
5 continues to this date.

6 140. In the course of conducting business, Defendant committed “unfair” business
7 practices by, among other things, making the representations and omissions of material facts
8 that Subject Vehicles’ door warnings and alarms will sound only if a vehicle door is open, as
9 alleged. There is no societal benefit from such false and misleading representations and
10 omissions—only harm. While Plaintiffs and the other Class members were harmed by this
11 conduct, Defendant was unjustly enriched. As a result, Defendant’s conduct is “unfair,” as it
12 has offended an established public policy. Further, Defendant engaged in immoral, unethical,
13 oppressive, and unscrupulous activities that are substantially injurious to consumers.

14 141. Further, as set forth in this complaint, Plaintiffs allege violations of consumer
15 protection, unfair competition, and truth in advertising laws in California and other states,
16 resulting in harm to consumers. Defendant’s acts and omissions also violate and offend the
17 public policy against engaging in false and misleading advertising, unfair competition, and
18 deceptive conduct towards consumers. This conduct constitutes violations of the unfair prong
19 of California Business & Professions Code §§17200, *et seq.* There were reasonably available
20 alternatives to further Defendant’s legitimate business interests other than the conduct
21 described herein.

22 142. California Business & Professions Code §§17200, *et seq.*, also prohibits any
23 “fraudulent business act or practice.” In the course of conducting business, Defendant
24 committed “fraudulent business act[s] or practices” by among other things, prominently
25 making the representations (which also constitute advertising within the meaning of §17200)
26 and omissions of material facts regarding the safety, characteristics, and production quality of
27 the Subject Vehicles.
28

143. Defendant's actions, claims, omissions, and misleading statements, as more fully set forth above, were also false or misleading and likely to deceive the consuming public within the meaning of California Business & Professions Code §§17200, *et seq.*

144. Plaintiffs have in fact been deceived as a result of their reliance on Defendant's material representations and omissions, which are described above. Plaintiffs have suffered injury in fact and lost money as a result of purchasing one of the Subject Vehicles. Such injury includes paying more for Subject Vehicles than they should have, expending time, effort and money to repair or attempt to repair the defect, diminished value of Subject Vehicles, and other damages proximately caused by Defendant's misconduct as alleged herein.

145. Unless restrained and enjoined, Defendant will continue to engage in the above-described conduct. Accordingly, injunctive relief is appropriate. Plaintiffs, on behalf of themselves, all others similarly situated, and the general public, seek restitution from Defendant of all money obtained from Plaintiffs and the other members of the Class collected as a result of unfair competition, an injunction prohibiting Defendant from continuing such practices, corrective advertising, and all other relief this Court deems appropriate, consistent with California Business & Professions Code §17203.

COUNT III

VIOLATION OF THE FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT

(On Behalf of Plaintiff Farrell and the Nationwide Class
or, Alternatively, the Multi-State Class)

146. Plaintiffs repeat and reallege all other paragraphs as if fully set forth herein.

147. The purpose of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA") is "to protect the consuming public ... from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce." Fla. Stat. §501.202 (2). FDUTPA prohibits "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce." Fla. Stat. §501.204(1).

1 148. Plaintiff Farrell and members of the Class are “consumers” as defined by
2 Fla. Stat. §501.203(7). Defendant was engaged in and committed the acts alleged herein in the
3 course of “trade or commerce” within the meaning of Fla. Stat. §501.203(8).

4 149. Defendant has violated FDUTPA by the conduct, statements, and omissions
5 described above, and by knowingly and intentionally concealing from consumers the existence
6 of the defective door latches (and the costs and diminished value of Subject Vehicles as a
7 result of Defendant’s conduct). Accordingly, Defendant engaged in unfair or deceptive acts or
8 practices as defined by FDUTPA, including representing that Subject Vehicles have
9 characteristics, uses, benefits, and qualities which they do not have; representing that Subject
10 Vehicles are of a particular standard and quality when they are not; advertising Subject
11 Vehicles with the intent not to sell them as advertised; and otherwise engaging in conduct
12 likely to deceive.

13 150. The facts concealed or not disclosed by Defendant to Plaintiff Farrell and the
14 Class members are material in that a reasonable consumer would have considered them to be
15 important in deciding whether to purchase a Subject Vehicle or pay a lesser price. Had
16 Plaintiff and the Class members known about the defective door latches, they would not have
17 purchased Subject Vehicles or would have paid less for them.

18 151. Plaintiff Farrell and the other Class members were injured and incurred actual
19 damages as a result of Defendant’s conduct in that they purchased or leased Subject Vehicles
20 that would have unsafe and nonfunctioning door locks, overpaid for their Subject Vehicles and
21 did not receive the benefit of their bargain, paid for repairs or attempted repairs of the defect,
22 their Subject Vehicles have suffered a diminution in value, and suffered other injuries
23 proximately caused by Defendant’s misconduct as alleged herein. These injuries are the direct
24 and proximate consequence of Defendant’s misconduct and violation of Fla. Stat. §501.201.

25 152. Pursuant to Fla. Stat. §501.211(1) and (2), Plaintiff Farrell on behalf of herself
26 and members of the Class seeks an order for restitution, disgorgement, and damages.
27 Additionally, pursuant to Fla. Stat. §501.2105, Plaintiff Farrell claims attorneys' fees and costs
28 as permitted by the statute.

COUNT IV

**VIOLATION OF THE ILLINOIS CONSUMER FRAUD AND
DECEPTIVE PRACTICES ACT**

(On Behalf of Plaintiffs Abruscato and Furno and the Nationwide Class
or, Alternatively, the Multi-State Class)

153. Plaintiffs repeat and reallege all other paragraphs as if fully set forth herein.

154. The Illinois Consumer Fraud and Deceptive Business Practices Act prohibits unfair or deceptive acts or practices in the conduct of any trade or commerce, including “the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, ... whether any person has in fact been misled, deceived, or damaged thereby.” 815 Ill. Comp. Stat. §505/2. The Act also prohibits suppliers from representing that their goods are of a particular quality or grade that they are not.

155. The Subject Vehicles are “merchandise” as defined in 815 Ill. Comp. Stat. §505/1(b). Defendant is a “person” as defined in 815 Ill. Comp. Stat. §505/1(c). Plaintiffs Abruscato and Furno and the other Illinois Class members are “consumers” as defined in 815 Ill. Comp. Stat. §505/1(e) because they purchased their vehicles for personal use and not for resale in the ordinary course of their trade or business.

156. Defendant has engaged in deception, fraud, unfair practices, and concealment by the conduct, statements, and omissions described above, and by knowingly and intentionally concealing from consumers the existence of the defective door latches (and the costs and diminished value of Subject Vehicles as a result of Defendant’s conduct). Accordingly, Defendant engaged in unfair or deceptive acts or practices as defined in 815 Ill. Comp. Stat. §505/2, including representing that Subject Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Subject Vehicles are of a particular standard and quality when they are not; advertising Subject Vehicles with the intent not to sell them as advertised; and otherwise engaging in conduct likely to deceive.

157. The facts concealed or not disclosed by Defendant to Plaintiffs Abruscato and Furno and the Class members are material in that a reasonable consumer would have considered them to be important in deciding whether to purchase a Subject Vehicle or pay a lesser price. Had Plaintiffs and the Class members known about the defective door latches, they would not have purchased Subject Vehicles or would have paid less for them.

158. Plaintiffs Abruscato and Furno and the other Class members were injured as a result of Defendant's conduct in that they purchased or leased Subject Vehicles that would have unsafe and nonfunctioning door locks, overpaid for their Subject Vehicles and did not receive the benefit of their bargain, paid for repairs or attempted repairs of the defect, their Subject Vehicles have suffered a diminution in value, and suffered other injuries proximately caused by Defendant's misconduct as alleged herein. These injuries are the direct and natural consequence of Defendant's misconduct.

159. The injuries suffered by Plaintiffs and the Class members are greatly outweighed by any potential countervailing benefit to consumers or to competition, nor are they injuries that Plaintiffs and the Class members should have reasonably avoided.

160. Plaintiffs Abruscato and Furno's and the other Class members' injuries were proximately caused by Defendant's fraudulent and deceptive business practices.

161. Defendant's conduct in this regard was wanton, willful, outrageous, and in reckless indifference to the rights of Plaintiffs and the other Class members and warrants the imposition of punitive damages. Plaintiffs also seek attorneys' fees as permitted by 815 Ill. Comp. Stat. §505/10a.

COUNT V

VIOLATION OF NEW HAMPSHIRE CONSUMER PROTECTION ACT

(On Behalf of Plaintiff Donald Brown and the Nationwide Class
or, Alternatively, the Multi-State Class)

162. Plaintiffs repeat and reallege all other paragraphs as if fully set forth herein.

163. Donald Brown and other Class members and Defendant are "persons" as defined by N.H. Rev. Stat. §358-A:1(I). Defendant engaged in "trade" or "commerce" as

1 defined by N.H. Rev. Stat. §358-A:1(II).

2 164. New Hampshire's Consumer Protection Act, N.H. Rev. Stat. §358-A:1, *et seq.*
 3 makes it "unlawful for any person to use any unfair method of competition or any unfair or
 4 deceptive act or practice in the conduct of any trade or commerce in this state." N.H. Rev.
 5 Stat. §358-A:2. Defendant violated and continues to violate the New Hampshire Consumer
 6 Protection Act by engaging in the following practices proscribed by N.H. Rev. Stat. §358-A:2
 7 in transactions with Plaintiff Brown and the Class which were intended to result in, and did
 8 result in, the sale of the Subject Vehicles, by:

9 (V) "representing that [the Subject Vehicles have] ... approval, characteristics, ...
 10 uses [and] benefits ... [which] they do not have";

11 (VII) "representing that [the Subject Vehicles are] of a particular standard, quality
 12 or grade ... if they are of another"; and

13 (IX) "Advertising goods or services with intent not to sell them as advertised."

14 165. Defendant also violated the Consumer Protection Act by representing and
 15 failing to disclose material facts regarding the door ajar defect in Subject Vehicles, as
 16 described above, when it knew, or should have known, that the representations were false and
 17 misleading and that the omissions were of material facts it was obligated to disclose.

18 166. As alleged herein, Plaintiff Brown and other members of the Class have been
 19 damaged as a result of Defendant's conduct. Such damages include paying more for Subject
 20 Vehicles than they should have, expending time, effort and money to repair or attempt to
 21 repair the defect, diminished value of Subject Vehicles, and other damages proximately caused
 22 by Defendant's misconduct as alleged herein.

23 167. Pursuant to N.H. Rev. Stat. §358-A:10-a, Plaintiff Brown, individually and on
 24 behalf of the other members of the Class, seeks a court order enjoining the above-described
 25 wrongful acts and practices of Defendant and other appropriate equitable relief. Plaintiff
 26 Brown, individually and on behalf of the other members of the Class, also seeks actual
 27 damages and reasonable attorneys' fees pursuant to N.H. Rev. Stat. §358-A:10-a.
 28

COUNT VI**VIOLATION OF NEW MEXICO UNFAIR PRACTICES ACT**

(On Behalf of Plaintiff Daniel Caron and the Nationwide Class
or, Alternatively, the Multi-State Class)

168. Plaintiffs repeat and reallege all other paragraphs as if fully set forth herein.

169. New Mexico's Unfair Practices Act, N.M. Stat. §57-12-1, *et seq.* prohibits any "unfair or deceptive trade practice" declared unlawful pursuant to the Unfair Practices Act, and "false or misleading oral or written statement, visual description or other representation" in connection with the sale of goods that "may, tends to or does deceive any person." N.M. Stat. §57-12-2(D); N.M. Stat. §57-12-3. Daniel Caron is a "person" as defined by N.M. Stat. §57-12-2(A).

170. Defendant violated and continues to violate the New Mexico Unfair Practices Act by engaging in the following practices proscribed by N.M. Stat. §57-12-2(D) in transactions with Plaintiff Caron and the Class which were intended to result in, and did result in, the sale of the Subject Vehicles, by:

(5) "representing that [the Subject Vehicles have] ... approval, characteristics, ... uses [and] benefits ... [which] they do not have";

(7) "representing that [the Subject Vehicles are] of a particular standard, quality or grade ... if they are of another"; and

(14) "using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if doing so deceives or tends to deceive."

171. Defendant also violated the Unfair Practices Act by representing and failing to disclose material facts regarding the door ajar defect in Subject Vehicles, as described above, when it knew, or should have known, that the representations were false and misleading and that the omissions were of material facts it was obligated to disclose.

172. Defendant also engaged in an unconscionable trade practice under N.M. Stat. §57-12-2(E) by selling Subject Vehicles such that there is a "gross disparity between the value received by a person and the price paid" and by failing to disclose the costs, risks and

1 diminished value of Subject Vehicles as a result of the defect.

2 173. As alleged herein, Plaintiff Caron and other members of the Class have been
3 damaged as a result of Defendant's conduct. Such damages include paying more for Subject
4 Vehicles than they should have, expending time, effort and money to repair or attempt to
5 repair the defect, diminished value of Subject Vehicles, and other damages proximately caused
6 by Defendant's misconduct as alleged herein.

7 174. Pursuant to N.M. Stat. §57-12-10(A), Plaintiff Caron, individually and on
8 behalf of the other members of the Class, seeks a court order enjoining the above-described
9 wrongful acts and practices of Defendant. Pursuant to N.M. Stat. §57-12-10(B) and (E),
10 Plaintiff Caron, individually and on behalf of the other members of the Class, seeks actual
11 damages or the sum of \$100, whichever is greater, and awards up to three times actual
12 damages for Defendant's willful violation of the Unfair Practices Act. Pursuant to N.M. Stat.
13 §57-12-10(C), Plaintiff Caron, individually and on behalf of the other members of the Class,
14 seeks attorneys' fees and costs.

15 COUNT VII

16 VIOLATION OF N.Y. GEN. BUS. LAW §349

17 (On Behalf of Plaintiffs James Jenkin and Gary Kubber and the Nationwide Class or,
18 Alternatively, the Multi-State Class)

19 175. Plaintiffs repeat and reallege all other paragraphs as if fully set forth herein.

20 176. Plaintiffs Jenkin and Kubber and other members of the Class are persons within
21 the meaning of New York General Business Law ("GBL") §349(h). Defendant engaged in
22 business, trade or commerce within the meaning of GBL §349(a).

23 177. Section 349(a) of the GBL declares as unlawful "[d]eceptive acts or practices in
24 the conduct of any business, trade or commerce."

25 178. As described herein, Defendant engaged in consumer-oriented conduct that was
26 misleading and directed at the consuming public.

27 179. In the course of conducting business, Defendant committed deceptive business
28 practices by, among other things, making representations of material fact that Subject

Vehicles' door warnings and alarms will sound only if a vehicle door is open, and omitting the material fact that it manufactured Subject Vehicles with a uniform defect within the door latch switch that can cause unwarranted "door ajar" warnings and other related problems. There is no societal benefit from such deceptive acts and false representations and omissions -only harm.

180. Defendant's violations caused injury to Plaintiffs and the Class because they lost money as a result of purchasing one of defective Subject Vehicles by paying more than they should have and by expending time, effort, and money to repair or attempt to repair the door latch switch or devise other means to work around the defect, and/or have unsafe vehicles of diminished value.

181. Plaintiffs and the Class members purchased Subject Vehicles on the belief that Subject Vehicles would not issue false "door ajar" warnings which not only cause distractions while driving and drain the battery, but also result in the door remaining unlocked causing a very real safety concern.

182. Plaintiffs and the Class members are entitled to recover actual damages, statutory damages, treble damages, and reasonable attorneys' fees, and they seek an order enjoining Defendant from continuing its false and deceptive conduct.

COUNT VIII

VIOLATION OF NORTH CAROLINA'S CONSUMER PROTECTION STATUTE

(On Behalf of Plaintiff James Abbitt and the Nationwide Class
or, Alternatively, the Multi-State Class)

183. Plaintiff repeats and realleges all other paragraphs as if fully set forth herein.

184. This cause of action is brought pursuant to North Carolina's consumer protection statute, N.C. Gen. Stat. §75-1.1, *et seq.* (the "North Carolina Act"). Plaintiff James Abbitt and members of the Class are persons within the meaning of the North Carolina Act.

185. The North Carolina Act, §75-1.1, declares that "unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are declared unlawful." Defendant's sale of Subject Vehicles is "commerce" as defined by the

1 North Carolina Act.

2 186. Defendant violated the North Carolina Act by making representations of
3 material fact that Subject Vehicles' door warnings and alarms will sound only if a vehicle door
4 is open, and omitting the material fact that it designed and manufactured Subject Vehicles with
5 a uniform defect within the door latch switch that can cause unwarranted "door ajar" warnings
6 and other related problems. There is no societal benefit from such deceptive acts and false
7 representations and omissions—only harm.

8 187. Defendant's conduct, including misrepresentations and omissions in the course
9 of commerce, inflicted real injury and damage upon Plaintiff Abbitt and the Class who have
10 purchased defective Subject Vehicles. Such damages include paying more for Subject
11 Vehicles than they should have, expending time, effort and money to repair or attempt to
12 repair the defect, diminished value of Subject Vehicles, and other damages proximately caused
13 by Defendant's misconduct as alleged herein.

14 188. Thus, as a result of Defendant's unlawful conduct, Plaintiff Abbitt and the
15 Class are entitled to judgment, full restitution and damages, including treble damages.
16 N.C. Gen. Stat. §75-16 ("if damages are assessed in such case judgment shall be rendered in
17 favor the plaintiff and against the defendant for treble the amount fixed by the verdict").
18 Plaintiff Abbitt and Class members also seek costs, including attorneys' fees and expenses.

19 189. Defendant has willfully engaged in the unfair and deceptive acts and practices
20 that constitute violations of the North Carolina Act. Defendant knew or should have known
21 that its unfair and deceptive acts and practices were frivolous and malicious.

22 **COUNT IX**

23 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

24 (On Behalf of Named Plaintiffs and the Nationwide Class
25 or, Alternatively, the Multi-State Class)

26 190. Plaintiffs repeat and reallege all other paragraphs as if fully set forth herein.

27 191. Defendant is and was, at all relevant times, a merchant with respect to Subject
28 Vehicles and manufactured, distributed, warrantied and/or sold Subject Vehicles.

1 192. A warranty that Subject Vehicles were in merchantable condition and fit for the
2 ordinary purposes for which they were sold was implied by law in the instant transaction.

3 193. Plaintiffs and the other Class members purchased Subject Vehicles that were
4 manufactured and sold by Defendant in consumer transactions.

5 194. Subject Vehicles, when sold and at all times thereafter, were not in
6 merchantable condition and were not fit for the ordinary purpose for which cars are used.
7 Subject Vehicles left Defendant's possession and control with defective door latch switches
8 that rendered them at all times thereafter unmerchantable, unfit for ordinary use, unsafe, and a
9 threat to public safety. Plaintiffs and the other Class members used their Subject Vehicles in
10 the normal and ordinary manner for which Subject Vehicles were designed and advertised.

11 195. Defendant knew before the time of sale to Plaintiffs, or earlier, that Subject
12 Vehicles were produced with defective door latch switches that would issue false "door ajar"
13 warnings and keep the doors from locking and the lights on, rendering Subject Vehicles unfit
14 for their ordinary purpose.

15 196. Despite Plaintiffs' and the other Class members' normal and ordinary use,
16 maintenance, and upkeep, the door latch switches of Subject Vehicles experienced faulty "door
17 ajar" alarms and warnings lights as a result of a manufacturing or design defect that existed at
18 the time Defendant transferred Subject Vehicles from its possession or control. The defect
19 rendered Subject Vehicles unfit for their ordinary use and incapable of performing the tasks
20 they were designed, advertised, and sold to perform.

21 197. As a result, Subject Vehicles' door latch switches are not of fair or average
22 quality. Nor would they pass without objection in the automotive industry. The fact that the
23 false warnings make it impossible to lock the vehicle's doors while the vehicle is in operation
24 renders the vehicle unsafe to drive and requires repairs of Subject Vehicle's door-locking
25 mechanism before safe, ordinary use can resume.

26 198. All conditions precedent have occurred or been performed.

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199. Defendant had actual notice of its breach of warranty. Through consumer complaints, Defendant learned that the defect, the existence and ubiquity of which it knew much earlier, has been the subject of publicized consumer disputes nationwide. Its implementation of the Technical Service Bulletins directed to Subject Vehicles shows actual notice.

200. Defendant's warranty disclaimers, exclusions, and limitations, to the extent that they may be argued to apply, were, at the time of sale, and continue to be unconscionable and unenforceable to disclaim liability for a known, latent defect. Defendant knew when it first made these warranties and their limitations that the defect existed and that the warranties might expire before a reasonable consumer would notice or observe the defect. Defendant also failed to take necessary actions to adequately disclose or cure the defect after the existence of the defect came to the public's attention and sat on its reasonable opportunity to cure or remedy the defect, its breaches of warranty, and consumers' losses. Under these circumstances, it would be futile to enforce any informal resolution procedures or give Defendant any more time to cure the defect, its breaches of warranty, or otherwise attempt to resolve or address Plaintiffs' and the other Class members' claims.

201. As a direct and foreseeable result of the defect in Subject Vehicles' door latch switches, Plaintiffs and the other Class members suffered diminution in the value of Subject Vehicles, out-of-pocket losses related to repairing, maintaining, and servicing their defective Subject Vehicles, costs associated with arranging and obtaining alternative means of transportation, and other incidental and consequential damages recoverable under the law.

202. Plaintiffs and Class members have had sufficient direct dealings with Ford or its agents (dealerships) to establish privity of contract between Plaintiffs and the Class members. Notwithstanding this, privity is not required in this case because Plaintiffs and Class members are intended third-party beneficiaries of contracts between Ford and its dealers; specifically, they are the intended beneficiaries of Ford's implied warranties. The dealers were not intended to be the ultimate consumers of Subject Vehicles; the warranty agreements were designed for and intended to benefit the ultimate consumers only. Finally, privity is also not

1 required because Plaintiffs' and Class members' Subject Vehicles are inherently dangerous
2 due to the aforementioned defects and nonconformities.

3 **COUNT X**

4 **BREACH OF EXPRESS WARRANTY**

5 (On Behalf of Named Plaintiffs and the Nationwide Class
6 or, Alternatively, the Multi-State Class)

7 203. Plaintiffs repeat and reallege all other paragraphs as if fully set forth herein.

8 204. Ford is and was, at all relevant times, a merchant with respect to Subject
9 Vehicles.

10 205. When marketing, distributing, and selling Subject Vehicles, Defendant
11 expressly warranted that each provided 36 months or 36,000 miles of comprehensive coverage,
12 whichever occurred first, during which time Ford represented it would cover the cost of any
13 repair or replacement necessary due to a defect in materials or workmanship relating to Subject
14 Vehicles.

15 206. Defendant knew that the door latch switches on Subject Vehicles were
16 defective at the time of sale. Indeed, Defendant was well aware of the faulty door warnings in
17 Subject Vehicles. Defendant breached express warranties when Defendant delivered Subject
18 Vehicles that did not conform to its affirmations of fact and industry standards for door-lock
19 mechanisms.

20 207. Ford breached the express warranty to repair the defects in Subject Vehicles,
21 because it failed to adequately repair the door latch switches in Subject Vehicles to ensure
22 such vehicles did not issue false "door ajar" warnings and refrain from locking the doors.

23 208. Despite Defendant's knowledge of the problem and opportunity to cure (as
24 evidenced by the Technical Service Bulletins), Defendant failed to notify Plaintiffs and the
25 other members of the Class of the defect and to adequately repair, at no charge to the Class, the
26 defective door-lock mechanisms.

27 209. All conditions precedent have occurred or been performed.
28

1 210. Defendant had actual notice of its breaches of express warranty. Through
2 consumer complaints Defendant learned that the defect, the existence and ubiquity of which it
3 knew much earlier, was the subject of consumer disputes nationwide. Its implementation of
4 the Technical Service Bulletins directed at Subject Vehicles shows actual notice.

5 211. Defendant's warranty disclaimers, exclusions, and limitations, to the extent that
6 they may be argued to apply, were, at the time of sale, and continue to be unconscionable and
7 unenforceable to disclaim liability for a known, latent defect. Defendant knew when it first
8 made these warranties and their limitations that the defect existed and that the warranties might
9 expire before a reasonable consumer would notice or observe the defect. Defendant also failed
10 to take any actions to adequately disclose or cure the defect after the existence of the defect
11 came to the public's attention and sat on its reasonable opportunity to cure or remedy the
12 defect, its breaches of warranty, and consumers' losses. Under these circumstances, it would
13 be futile to enforce any informal resolution procedures or give Defendant any more time to
14 cure the defect, its breaches of warranty, or otherwise attempt to resolve or address Plaintiffs'
15 and the other Class members' claims.

16 212. Plaintiffs and the other Class members were damaged as a result of Ford's
17 breach of express warranty because the door latch switches on Subject Vehicles are defective,
18 compromising the safety of the vehicles' passengers, and requiring repair of Subject Vehicles'
19 door-lock mechanisms.

20 213. As a direct and foreseeable result of Defendant's failure to repair Subject
21 Vehicles' door latch switches, Plaintiffs and the other Class members suffered diminution in
22 the value of Subject Vehicles, out-of-pocket losses related to the repairing, maintaining, and
23 servicing their defective Subject Vehicles, costs associated with arranging other forms of
24 transportation, and other incidental and consequential damages recoverable under the law.

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COUNT XI**DECLARATORY RELIEF**

(On Behalf of Named Plaintiffs and the Nationwide Class
or, Alternatively, the Multi-State Class)

214. Plaintiffs repeat and reallege all paragraphs as if fully set forth herein.

215. Pursuant to 28 U.S.C. §2201, the Court “may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.”

216. Defendant marketed, distributed, and sold Subject Vehicles equipped with door latch switches prone to issuing false “door ajar” warnings on account of Defendant’s failure to design and manufacture a door-lock mechanism without defects.

217. Accordingly, Plaintiffs seek entry of the following declarations: (1) model years 2011 to 2013 Edge Vehicles, 2013 Flex Vehicles, 2013 to 2014 Explorer Vehicles, 2011 to 2013 MKX Vehicles, and 2013 MKT Vehicles, contain faulty door latch switches and are defective; (2) all persons who purchased model years 2011 to 2013 Edge Vehicles, 2013 Flex Vehicles, 2013 to 2014 Explorer Vehicles, 2011 to 2013 MKX Vehicles, and 2013 MKT Vehicles, are to be provided the best practicable notice of the defect, which cost shall be borne by Defendant; and (3) Defendant must establish an inspection, repair, and replacement program and protocol and notify Class members of such program, pursuant to which Defendant, including its authorized representatives, and at no cost to Class members, will inspect, upon request, Class members’ Subject Vehicles for defective door latch switches and repair or replace the door latch switches on Subject Vehicles that have experienced false “door ajar” warnings.

REQUESTS FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, respectfully requests that the Court enter an Order:

- a. certifying the Class under Federal Rule of Civil Procedure 23(a), 23(b)(2), and 23(b)(3), as requested herein;

- b. appointing Plaintiffs as Class Representatives;
- c. finding that Ford engaged in the unlawful conduct as alleged herein;
- d. awarding Plaintiffs and the other Class members damages;
- e. awarding Plaintiffs and the other Class members restitution and disgorgement of monies Defendant acquired through its violations of the law;
- f. awarding Plaintiffs and the other Class members injunctive and declaratory relief;
- g. requiring Ford to repair or replace the door latch switches on Subject Vehicles;
- h. awarding Plaintiffs and the other Class members pre-judgment and post-judgment interest on all amounts awarded;
- i. awarding Plaintiffs and the other Class members reasonable attorneys' fees, costs, and expenses; and
- j. granting such other relief as the Court deems just and appropriate.

JURY TRIAL DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury on all claims so triable.

Respectfully submitted,

Dated: August 18, 2017

BLOOD HURST & O'REARDON, LLP
TIMOTHY G. BLOOD (149343)
LESLIE E. HURST (178432)
CAMILLE S. BASS (297609)

By: *s/ Timothy G. Blood*

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Attorneys for Plaintiff and the Class

CERTIFICATE OF SERVICE

I hereby certify that on August 18, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the Electronic Mail Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on August 18, 2017.

s/ Timothy G. Blood

TIMOTHY G. BLOOD

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EXHIBIT A



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Leslie E. Hurst
lhurst@bholaw.com

June 21, 2017

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Jim Hackett, Pres. and CEO
Ford Motor Company
One American Road
Dearborn, MI 48126

Mr. Kumar A. Galhotra, V. Pres. and Pres.
Lincoln Motor Company
One American Road
Dearborn, MI 48126

RECEIPT NO. 7014 0150 0000 6250 7420

RECEIPT NO. 7014 0150 0000 6250 7413

Re: *Young v. Ford Motor Company and Lincoln Motor Company*

Dear Messrs. Hackett and Galhotra:

We represent David Baranco ("Plaintiff") and all other consumers similarly situated in an action against Ford Motor Company ("Ford") and Lincoln Motor Company ("Lincoln") (together, "Defendants") regarding the following vehicle models and model years: 2011 to 2016 Ford Edges, 2012 to 2014 Ford Flexes, 2013 to 2014 Ford Explorers, 2011 to 2013 Lincoln MKXs, and 2013 Lincoln MKTs (collectively, the "Subject Vehicles"). This action arises out of, *inter alia*, misrepresentations by Ford and Lincoln to consumers that the Subject Vehicles' warnings and alarms will sound only if a vehicle door is open, and omitting the fact that they manufactured the Subject Vehicles with a uniform defect within the door latch switch that can cause unwarranted "door ajar" warnings and other related problems, potentially compromising the safety of the Subject Vehicles' occupants and other motorists.

Plaintiff, and others similarly situated, did not receive the product Ford or Lincoln promised them. Instead, they purchased a defective product. The full claims, including the facts and circumstances surrounding these claims, are detailed in the Class Action Complaint, a copy of which is enclosed and incorporated by this reference.

Ford and Lincoln's representations and omissions are false and misleading and constitute unfair methods of competition and unlawful, unfair, and fraudulent acts or practices, undertaken by Defendants with the intent to result in the sale of the Subject Vehicles to the consuming public.

Defendants' practices constitute violations of the Consumers Legal Remedies Act, California Civil Code §§1750, *et seq.* Specifically, Defendants' practices violate California Civil Code §1770(a) under, *inter alia*, the following subdivisions:

- (5) Representing that [the Subject Vehicles] have ... approval, characteristics, ingredients, uses, benefits, or quantities which they do not have

* * *



Messrs. Jim Hackett and Kumar Galhotra
June 21, 2017
Page 2

- (7) Representing that [the Subject Vehicles] are of a particular standard, quality, or grade ... if they are of another.
* * *
- (9) Advertising [the Subject Vehicles] ... with intent not to sell them as advertised.
* * *
- (16) Representing that [the Subject Vehicles have] been supplied in accordance with a previous representation when [they have] not.

As detailed in the enclosed Complaint, Defendants' practices also violate California Business and Professions Code §§17200, *et seq.*, and constitute a breach of warranty.

While the Complaint constitutes sufficient notice of the claims asserted, pursuant to California Civil Code §1782 and California Commercial Code §2607, we hereby demand on behalf of our clients and all others similarly situated that Defendants immediately correct and rectify these violations by ceasing dissemination of false and misleading information as described in the enclosed Complaint, providing notice of the defect to all members of the putative Class, and establishing an inspection, repair, and replacement program and protocol and notify Class Members of such program, pursuant to which Defendants, including their authorized representatives, and at no cost to putative Class Members, will inspect, upon request, the Subject Vehicles owned by putative Class Members for defective door latch switches and repair or replace the door latch switches on the Subject Vehicles that have experienced false "door ajar" warnings. In addition, Defendants must provide reimbursement for interest, costs, and fees.

We await your response.

Sincerely,

LESLIE E. HURST

LEH:jk

Enclosure

EXHIBIT B

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Attorneys for Plaintiff and the Class

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA - SAN FRANCISCO DIVISION

DAVID BARANCO, individually and on
 behalf of all others similarly situated,

Plaintiff,

v.

FORD MOTOR COMPANY, a Delaware
 corporation; LINCOLN MOTOR
 COMPANY, a Delaware corporation,

Defendants.

Case No. 3:17-cv-03580

**AFFIDAVIT OF TIMOTHY G. BLOOD
 PURSUANT TO CALIFORNIA CIVIL
 CODE §1780(d)**

CLASS ACTION

JURY TRIAL DEMANDED

BLOOD HURST & O'REARDON, LLP

BLOOD HURST & O'REARDON, LLP

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I, TIMOTHY G. BLOOD, declare as follows:

1. I am an attorney duly licensed to practice before all of the courts of the State of California. I am the managing partner of the law firm of Blood Hurst & O'Reardon, LLP, one of the counsel of record for plaintiff in the above-entitled action.
2. Defendants Ford Motor Company ("Ford") and Lincoln Motor Company ("Lincoln") have done and are doing business in Marin County, California. Such businesses include selling, marketing, distributing, and servicing, through their authorized dealers and distributors, the Ford and Lincoln vehicles at issue.
3. Plaintiff David Baranco resides in the city of San Rafael, which is located in Marin County, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 21, 2017, at San Diego, California.

s/ Timothy G. Blood
TIMOTHY G. BLOOD