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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

IN RE FORD TAILGATE LITIGATION

Case No. 11-CV-2953-RS

**FORD MOTOR COMPANY’S ANSWER
AND AFFIRMATIVE DEFENSES TO
PLAINTIFFS’ THIRD CONSOLIDATED
AMENDED COMPLAINT; JURY TRIAL
DEMANDED**

1 Defendant Ford Motor Company (“Ford”) responds to the separately numbered paragraphs
2 of Plaintiffs’ Third Consolidated Amended Class Action Complaint (“TCAC”) as follows:

3 **I. NATURE OF THE CASE**

4 1. Ford admits that Plaintiffs bring this action making the allegations described in
5 paragraph 1, but denies that the allegations have merit.

6 2. Ford denies the allegations in paragraph 2.

7 3. Ford denies the allegations in paragraph 3. Ford specifically denies that the appliqué
8 “encases and supports the tailgate window”, as alleged. The appliqué is a plastic trim piece with no
9 functional role whatsoever.

10 4. In response to the allegations in paragraph 4, Ford admits only that it published
11 Technical Service Bulletin 03-15-05 on July 18, 2003, and that this TSB states, in part, that certain
12 2002-03 Explorer and Mountaineer vehicles “may exhibit a damaged/cracked plastic appliqué
13 without glass damage.” Ford denies all of the remaining allegations in this paragraph and
14 specifically denies that a cracked appliqué constitutes a safety risk or that Ford had a duty to
15 disclose the small risk that the appliqué might crack at some point during the lifetime of the vehicle.

16 5. Ford denies the allegations in paragraph 5.

17 6. Ford denies the allegations in paragraph 6.

18 7. Ford denies the allegations in paragraph 7.

19 8. Ford denies the allegations in paragraph 8.

20 9. Ford denies the allegations in paragraph 9. Ford specifically denies that the alleged
21 defect constitutes a safety risk.

22 10. Ford denies the allegations in paragraph 10.

23 11. In response to the allegations in paragraph 11, Ford denies that certification of the
24 proposed class or any sub-class is appropriate.

25 **II. JURISDICTION AND VENUE**

26 12. In response to the allegations in paragraph 12, Ford admits that this Court has
27 jurisdiction over this action pursuant to 28 U.S.C. § 1332(d).

28

1 21. Ford denies that Plaintiff Zane Dery sustained any damages as a result of any action
2 or inaction by Ford. Ford is without knowledge or information sufficient to form a belief as to the
3 truth of the remaining allegations in paragraph 21 and therefore denies those allegations.

4 22. Ford denies that Plaintiff Linda Heywood sustained any damages as a result of any
5 action or inaction by Ford. Ford is without knowledge or information sufficient to form a belief as
6 to the truth of the remaining allegations in paragraph 22 and therefore denies those allegations.

7 23. Ford denies that Plaintiff Carl Linder sustained any damages as a result of any action
8 or inaction by Ford. Ford is without knowledge or information sufficient to form a belief as to the
9 truth of the remaining allegations in paragraph 23 and therefore denies those allegations.

10 24. Ford denies that Plaintiff Denise Procento sustained any damages as a result of any
11 action or inaction by Ford. Ford is without knowledge or information sufficient to form a belief as
12 to the truth of the remaining allegations in paragraph 24 and therefore denies those allegations.

13 25. Ford denies that Plaintiff Gary Farson sustained any damages as a result of any
14 action or inaction by Ford. Ford is without knowledge or information sufficient to form a belief as
15 to the truth of the remaining allegations in paragraph 25 and therefore denies those allegations.

16 26. Ford denies that Plaintiff Vivian Buchanan sustained any damages as a result of any
17 action or inaction by Ford. Ford is without knowledge or information sufficient to form a belief as
18 to the truth of the remaining allegations in paragraph 26 and therefore denies those allegations.

19 27. Ford denies that Plaintiff Debbie SanSouci sustained any damages as a result of any
20 action or inaction by Ford. Ford is without knowledge or information sufficient to form a belief as
21 to the truth of the remaining allegations in paragraph 27 and therefore denies those allegations.

22 28. Ford denies that Plaintiff Frank Everett sustained any damages as a result of any
23 action or inaction by Ford. Ford is without knowledge or information sufficient to form a belief as
24 to the truth of the remaining allegations in paragraph 28 and therefore denies those allegations.

25 29. Ford denies that Plaintiff Ronald Caunt sustained any damages as a result of any
26 action or inaction by Ford. Ford is without knowledge or information sufficient to form a belief as
27 to the truth of the remaining allegations in paragraph 29 and therefore denies those allegations.

28

1 30. Plaintiff Joshua Carson's claims were dismissed by the Court's Order of August 8,
2 2014 (ECF No. 182) and therefore no response is required to the allegations in paragraph 30. To the
3 extent a response is deemed to be required, Ford denies the allegations in this paragraph.

4 31. Ford denies that Plaintiff Michael Andosca sustained any damages as a result of any
5 action or inaction by Ford. Ford is without knowledge or information sufficient to form a belief as
6 to the truth of the remaining allegations in paragraph 31 and therefore denies those allegations.

7 32. Ford denies that Plaintiff Spencer Ware sustained any damages as a result of any
8 action or inaction by Ford. Ford is without knowledge or information sufficient to form a belief as
9 to the truth of the remaining allegations in paragraph 32 and therefore denies those allegations.

10 33. Ford denies that Plaintiff Brian Martin sustained any damages as a result of any
11 action or inaction by Ford. Ford is without knowledge or information sufficient to form a belief as
12 to the truth of the remaining allegations in paragraph 33 and therefore denies those allegations.

13 34. Paragraph 34 is blank and therefore no response is required.

14 35. Ford denies that Plaintiff Keith Bova sustained any damages as a result of any action
15 or inaction by Ford. Ford is without knowledge or information sufficient to form a belief as to the
16 truth of the remaining allegations in paragraph 35 and therefore denies those allegations.

17 36. Ford denies that Plaintiff Mark Giunto sustained any damages as a result of any
18 action or inaction by Ford. Ford is without knowledge or information sufficient to form a belief as
19 to the truth of the remaining allegations in paragraph 36 and therefore denies those allegations.

20 37. Ford denies that Plaintiff Dennis Daughtery sustained any damages as a result of any
21 action or inaction by Ford. Ford is without knowledge or information sufficient to form a belief as
22 to the truth of the remaining allegations in paragraph 37 and therefore denies those allegations.

23 38. Plaintiff Diana Brunner's claims were dismissed by the Court's Order of August 8,
24 2014 (ECF No. 182) and therefore no response is required to the allegations in paragraph 38. To the
25 extent a response is deemed to be required, Ford denies the allegations in this paragraph.

26 39. Ford denies that Plaintiff Melia Douglas sustained any damages as a result of any
27 action or inaction by Ford. Ford is without knowledge or information sufficient to form a belief as
28 to the truth of the remaining allegations in paragraph 39 and therefore denies those allegations.

1 40. Ford denies that Plaintiff Connie Garsey sustained any damages as a result of any
2 action or inaction by Ford. Ford is without knowledge or information sufficient to form a belief as
3 to the truth of the remaining allegations in paragraph 40 and therefore denies those allegations.

4 41. Ford denies that Plaintiff Andrew Stalnecker sustained any damages as a result of
5 any action or inaction by Ford. Ford is without knowledge or information sufficient to form a belief
6 as to the truth of the remaining allegations in paragraph 41 and therefore denies those allegations.

7 42. Plaintiff Gary Buck's claims were dismissed by the Court's Order of August 8, 2014
8 (ECF No. 182) and therefore no response is required to the allegations in paragraph 42. To the
9 extent a response is deemed to be required, Ford denies the allegations in paragraph 42.

10 43. Ford denies that Plaintiff Heather S. Hardee sustained any damages as a result of any
11 action or inaction by Ford. Ford is without knowledge or information sufficient to form a belief as
12 to the truth of the remaining allegations in paragraph 43 and therefore denies those allegations.

13 44. Ford denies that Plaintiff Ruben Wilson sustained any damages as a result of any
14 action or inaction by Ford. Ford is without knowledge or information sufficient to form a belief as
15 to the truth of the remaining allegations in paragraph 44 and therefore denies those allegations.

16 45. Ford denies that Plaintiff Fredrick Gregg sustained any damages as a result of any
17 action or inaction by Ford. Ford is without knowledge or information sufficient to form a belief as
18 to the truth of the remaining allegations in paragraph 45 and therefore denies those allegations.

19 46. Ford denies that Plaintiff Dean Olack sustained any damages as a result of any action
20 or inaction by Ford. Ford is without knowledge or information sufficient to form a belief as to the
21 truth of the remaining allegations in paragraph 46 and therefore denies those allegations.

22 47. In response to the allegations in paragraph 47, Ford admits that it is a corporation
23 organized under the laws of the State of Delaware and that its principal place of business is located
24 in Dearborn, Michigan. Ford further admits that it is registered to do business in the State of
25 California. Ford assembled and sold model year 2002 through 2005 Ford Explorer and Mercury
26 Mountaineer vehicles, and model year 2003 through 2005 Lincoln Aviator vehicles, to independent,
27 authorized dealerships in the United States and that it provided certain express, written, limited
28 warranties on these vehicles when sold as new. Ford denies that it sold the vehicles directly to

1 Plaintiffs or to members of the putative class. Ford further denies that it manufactured each and
2 every one of the thousands of component parts in the subject vehicles. Except as stated herein, Ford
3 denies the allegations in paragraph 47.

4 **IV. TOLLING OF THE STATUTE OF LIMITATIONS**

5 48. Ford denies the allegations in paragraph 48.

6 49. Ford denies the allegations in paragraph 49.

7 50. Ford denies the allegations in paragraph 50.

8 51. Ford denies the allegations in paragraph 51.

9 52. Ford denies the allegations in paragraph 52.

10 53. Ford denies the allegations in paragraph 53.

11 54. Ford denies the allegations in paragraph 54.

12 55. Ford denies the allegations in paragraph 55.

13 56. Ford denies the allegations in paragraph 56.

14 **V. COMMON FACTUAL ALLEGATIONS**

15 57. In response to the allegations in paragraph 57, Ford admits that the U152 platform
16 was used for 2002-2005 Explorer and Mountaineer vehicles. Ford denies the remaining allegations
17 in this paragraph. The Lincoln Aviator for the 2003 through 2005 model years was built on the
18 U231 platform.

19 58. Ford denies the allegations in paragraph 58.

20 59. In response to the allegations in paragraph 59, Ford admits that it marketed and
21 provided express, written, limited warranties on new 2002 through 2005 Ford Explorer and
22 Mercury Mountaineer vehicles, and new 2003 through 2005 Lincoln Aviator vehicles. Ford admits
23 that it sold these vehicles to independent, authorized dealerships in the United States, but denies
24 that it sold the vehicles directly to consumers. Ford denies the remaining allegations in paragraph
25 59.

26 60. In response to the allegations in paragraph 60, Ford admits that it sold more than
27 1,200,000 Ford Explorer vehicles during calendar years 2002 through 2005. Ford further admits
28 that the Ford Explorer and Mercury Mountaineer were redesigned for the 2006 model year, and that

1 the Lincoln Aviator was discontinued after the 2005 model year. Ford denies the remaining
2 allegations in this paragraph.

3 61. Ford denies the allegations in paragraph 61.

4 62. The term “liftgate” better describes the portion of the vehicle at issue, rather than
5 “tailgate.” Ford denies that the “tailgate” of these vehicles is made of ABS or Xenoy, but admits
6 that the liftgate appliqué on the Explorer and Mountaineer was initially made of ABS. This was
7 later changed to Xenoy. The appliqué on the Lincoln Aviators at issue was made of Xenoy. Ford
8 denies the remaining allegations in paragraph 60.

9 63. Ford denies the allegations in paragraph 63.

10 64. Ford denies the allegations in paragraph 64.

11 65. Ford denies the allegations in paragraph 65, including the allegations set forth in
12 section “C” immediately preceding paragraph 65.

13 66. Ford denies the allegations in paragraph 66.

14 67. Ford denies the allegations in paragraph 67. By way of further response, Ford states
15 this it issued several Technical Service Bulletins that were intended to provide information about
16 the repair of plastic appliqués on 2002-2005 Ford Explorer and Mercury Mountaineer vehicles, and
17 2003-2005 Lincoln Aviator vehicles, which speak for themselves..

18 68. In response to the allegations in paragraph 68, Ford admits that a TSB is not a recall.
19 Ford denies the remaining allegations in paragraph 68 as stated, including the allegations set forth
20 in section “D” immediately preceding paragraph 68. Ford specifically denies that TSBs are
21 unavailable to the public.

22 69. In response to the allegations in paragraph 69, Ford admits that it issued Technical
23 Service Bulletin 02-25-6 on December 13, 2002, which speaks for itself, and that plaintiffs have
24 quoted portions of this TSB. By way of further response, Ford states that TSB 02-25-6 applies to
25 2002 Explorers and Mountaineers. Except as stated, Ford denies the allegations in this paragraph.

26 70. In response to the allegations in paragraph 70, Ford admits that it issued Technical
27 Service Bulletin 03-12-6 on June 16, 2003, which speaks for itself, and that plaintiffs have quoted
28 portions of this TSB. By way of further response, Ford states that TSB 03-12-6 applies to 2002-

1 2003 Explorers and Mountaineers and states, in part, that “Some vehicles may exhibit a
2 damage/cracked plastic applique without glass damage.” TSB 03-12-6 further states, in part, that
3 repairs are “eligible under the provisions of the bumper to bumper warranty coverage.” Except as
4 stated, Ford denies the allegations in this paragraph

5 71. In response to the allegations in paragraph 71, Ford admits that it issued Technical
6 Service Bulletin 03-15-5 on July 18, 2003, which speaks for itself, and that plaintiffs have quoted
7 portions of this TSB. By way of further response, Ford states that TSB 03-15-5 applies to 2002-
8 2003 Explorers and Mountaineers and states, in part, that “Some vehicles may exhibit a
9 damage/cracked plastic applique without glass damage.” TSB 03-15-5 further states, in part, that
10 repairs are “eligible under the provisions of the bumper to bumper warranty coverage.” Except as
11 stated, Ford denies the allegations in this paragraph.

12 72. In response to the allegations paragraph 72, Ford admits that it issued Technical
13 Service Bulletin 04-8-5 on April 23, 2004, which speaks for itself, and that plaintiffs have quoted
14 portions of this TSB. By way of further response, Ford states that TSB 04-8-5 states, in part, “Some
15 2002-2004 Explorer/Mountaineer and 2003-2004 Aviator vehicles may exhibit a damaged/cracked
16 plastic applique without liftgate glass damage.” TSB 04-8-5 further states, in part, that repairs are
17 “eligible under provisions of New Vehicle Limited Warranty Coverage.” Except as stated, Ford
18 denies the allegations in this paragraph.

19 73. In response to the allegations in paragraph 73, Ford admits that it issued Technical
20 Service Bulletin 05-24-2 on November 17, 2005, which speaks for itself, and that plaintiffs have
21 quoted portions of this TSB. By way of further response, Ford states that TSB 05-24-2 states, in
22 part, that it was intended to “update the vehicle model year coverage” and that “[s]ome 2002-2005
23 Explorer/Mountaineer and 2003-2005 Aviator vehicles may exhibit a damaged/cracked plastic
24 applique without liftgate glass damage.” TSB 05-24-2 further states, in part, that repairs are
25 “eligible under provisions of New Vehicle Limited Warranty Coverage.” Except as stated, Ford
26 denies the allegations in this paragraph.

27 74. Ford denies the allegations in paragraph 74 as stated. By way of further response,
28 Ford states that it issued Recall 04S20, which applied to certain 2002 and 2003 Ford Explorer and

1 Mercury Mountaineer vehicles. This recall involved the potential for the liftgate glass strut to
2 detach from the cylinder ball stud bracket on certain 2002 model year vehicles, and the potential on
3 certain 2003 model year vehicles for the liftgate glass hinge to fracture at the hinge glass boss/bolt
4 attachment to the glass due to increased loading from the reorientation of the lift cylinder, creating
5 the potential for the glass to fall. Ford denies that Recall 04S20 is related in any way to the alleged
6 defect at issue in this litigation. Ford specifically denies that a cracked appliqué can cause the
7 liftgate glass to drop or break, and states that there is no safety risk whatsoever relating to a cracked
8 liftgate appliqué. Ford further states that the photograph included by Plaintiffs immediately
9 preceding this paragraph is irrelevant and misleading, and should be stricken from the Third
10 Amended Complaint, in that the fact that a liftgate window breaks on a liftgate that also has a
11 cracked appliqué does not establish that the appliqué had anything at all to do with causing the glass
12 to break.

13 75. Ford denies the allegations in paragraph 75. Ford specifically denies that a cracked
14 appliqué can cause the liftgate glass to drop or break, and further denies that the alleged defect
15 constitutes a safety risk.

16 76. Ford denies the allegations in paragraph 76.

17 77. Ford denies the allegations in paragraph 77.

18 78. Ford denies the allegations in paragraph 78.

19 79. Ford denies the allegations in paragraph 79, including the allegations set forth in
20 section “F” immediately preceding paragraph 79.

21 80. Ford denies the allegations in paragraph 80.

22 81. Ford denies the allegations in paragraph 81.

23 82. Ford denies the allegations in paragraph 82.

24 83. Ford is without knowledge or information sufficient to form a belief as to the truth of
25 the allegations in paragraph 83, including sub-paragraphs (a)-(c) and therefore denies those
26 allegations.

27 84. Ford is without knowledge or information sufficient to form a belief as to the truth of
28 the allegations in paragraph 84 and therefore denies those allegations.

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VI. NAMED PLAINTIFFS' EXPERIENCES

85. Plaintiff Nancy Hough's claims were dismissed by the Court's Order of August 8, 2014 (ECF No. 182) and therefore no response is required to the allegations in paragraphs 85 through 90. To the extent a response is deemed to be required, Ford denies the allegations in paragraphs 85 through 90.

86. Ford is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 91 and therefore denies those allegations.

87. Ford denies the allegations in paragraph 92.

88. Ford denies the allegations in paragraph 93.

89. Ford denies the allegations in paragraph 94.

90. Ford is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 95 and therefore denies those allegations.

91. Ford is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 96 and therefore denies those allegations.

92. Ford denies the allegations in paragraph 97.

93. Ford is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 98 and therefore denies those allegations.

94. Ford denies the allegations in paragraph 99.

95. Ford denies the allegations in paragraph 100.

96. Ford denies the allegations in paragraph 101.

97. Ford denies the allegations in paragraph 102.

98. Ford is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 103 and therefore denies those allegations.

99. Ford denies the allegations in paragraph 104.

100. Ford is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 105 and therefore denies those allegations.

101. Ford denies the allegations in paragraph 106.

102. Ford denies the allegations in paragraph 107.

1 103. Ford denies the allegations in paragraph 108.

2 104. Ford is without knowledge or information sufficient to form a belief as to the truth of
3 the allegations in paragraph 109 and therefore denies those allegations.

4 105. Ford is without knowledge or information sufficient to form a belief as to the truth of
5 the allegations in paragraph 110 and therefore denies those allegations.

6 106. Ford is without knowledge or information sufficient to form a belief as to the truth of
7 the allegations in paragraph 111 and therefore denies those allegations.

8 107. Ford denies the allegations in paragraph 112.

9 108. Ford is without knowledge or information sufficient to form a belief as to the truth of
10 the allegations in paragraph 113 and therefore denies those allegations.

11 109. Ford denies the allegations in paragraph 114.

12 110. Ford denies the allegations in paragraph 115.

13 111. Ford denies the allegations in paragraph 116.

14 112. Ford is without knowledge or information sufficient to form a belief as to the truth of
15 the allegations in paragraph 117 and therefore denies those allegations.

16 113. Ford is without knowledge or information sufficient to form a belief as to the truth of
17 the allegations in paragraph 118 and therefore denies those allegations.

18 114. Ford denies the allegations in paragraph 119.

19 115. Ford is without knowledge or information sufficient to form a belief as to the truth of
20 the allegations in paragraph 120 and therefore denies those allegations.

21 116. Ford denies the allegations in paragraph 121.

22 117. Ford denies the allegations in paragraph 122.

23 118. Ford denies the allegations in paragraph 123.

24 119. Ford is without knowledge or information sufficient to form a belief as to the truth of
25 the allegations in paragraph 124 and therefore denies those allegations.

26 120. Ford denies the allegations in paragraph 125.

27 121. Ford is without knowledge or information sufficient to form a belief as to the truth of
28 the allegations in paragraph 126 and therefore denies those allegations.

- 1 122. Ford denies the allegations in paragraph 127.
- 2 123. Ford denies the allegations in paragraph 128.
- 3 124. Ford denies the allegations in paragraph 129.
- 4 125. Ford is without knowledge or information sufficient to form a belief as to the truth of
- 5 the allegations in paragraph 130 and therefore denies those allegations.
- 6 126. Ford is without knowledge or information sufficient to form a belief as to the truth of
- 7 the allegations in paragraph 131 and therefore denies those allegations.
- 8 127. Ford denies the allegations in paragraph 132.
- 9 128. Ford is without knowledge or information sufficient to form a belief as to the truth of
- 10 the allegations in paragraph 133 and therefore denies those allegations.
- 11 129. Ford denies the allegations in paragraph 134.
- 12 130. Ford denies the allegations in paragraph 135.
- 13 131. Ford denies the allegations in paragraph 136.
- 14 132. Ford is without knowledge or information sufficient to form a belief as to the truth of
- 15 the allegations in paragraph 137 and therefore denies those allegations.
- 16 133. Ford denies the allegations in paragraph 138.
- 17 134. Ford is without knowledge or information sufficient to form a belief as to the truth of
- 18 the allegations in paragraph 139 and therefore denies those allegations.
- 19 135. Ford denies the allegations in paragraph 140.
- 20 136. Ford denies the allegations in paragraph 141.
- 21 137. Ford denies the allegations in paragraph 142.
- 22 138. Ford is without knowledge or information sufficient to form a belief as to the truth of
- 23 the allegations in paragraph 143 and therefore denies those allegations
- 24 139. Ford is without knowledge or information sufficient to form a belief as to the truth of
- 25 the allegations in paragraph 144 and therefore denies those allegations
- 26 140. Ford denies the allegations in paragraph 145.
- 27 141. Ford is without knowledge or information sufficient to form a belief as to the truth of
- 28 the allegations in paragraph 146 and therefore denies those allegations.

- 1 142. Ford denies the allegations in paragraph 147.
- 2 143. Ford denies the allegations in paragraph 148.
- 3 144. Ford denies the allegations in paragraph 149.
- 4 145. Ford is without knowledge or information sufficient to form a belief as to the truth of
5 the allegations in paragraph 150 and therefore denies those allegations.
- 6 146. Ford is without knowledge or information sufficient to form a belief as to the truth of
7 the allegations in paragraph 151 and therefore denies those allegations.
- 8 147. Ford denies the allegations in paragraph 152.
- 9 148. Ford is without knowledge or information sufficient to form a belief as to the truth of
10 the allegations in paragraph 153 and therefore denies those allegations.
- 11 149. Ford denies the allegations in paragraph 154.
- 12 150. Ford denies the allegations in paragraph 155.
- 13 151. Ford denies the allegations in paragraph 156.
- 14 152. Ford is without knowledge or information sufficient to form a belief as to the truth of
15 the allegations in paragraph 157 and therefore denies those allegations.
- 16 153. Ford is without knowledge or information sufficient to form a belief as to the truth of
17 the allegations in paragraph 158 and therefore denies those allegations.
- 18 154. Ford denies the allegations in paragraph 159.
- 19 155. Ford is without knowledge or information sufficient to form a belief as to the truth of
20 the allegations in paragraph 160 and therefore denies those allegations.
- 21 156. Ford denies the allegations in paragraph 161.
- 22 157. Ford denies the allegations in paragraph 162.
- 23 158. Ford denies the allegations in paragraph 163.
- 24 159. Ford is without knowledge or information sufficient to form a belief as to the truth of
25 the allegations in paragraph 164 and therefore denies those allegations.
- 26 160. Ford is without knowledge or information sufficient to form a belief as to the truth of
27 the allegations in paragraph 165 and therefore denies those allegations.
- 28 161. Ford denies the allegations in paragraph 166.

1 162. Ford is without knowledge or information sufficient to form a belief as to the truth of
2 the allegations in paragraph 167 and therefore denies those allegations.

3 163. Ford denies the allegations in paragraph 168.

4 164. Ford denies the allegations in paragraph 169.

5 165. Ford denies the allegations in paragraph 170.

6 166. Ford is without knowledge or information sufficient to form a belief as to the truth of
7 the allegations in paragraph 171 and therefore denies those allegations.

8 167. Ford is without knowledge or information sufficient to form a belief as to the truth of
9 the allegations in paragraph 172 and therefore denies those allegations.

10 168. Ford denies the allegations in paragraph 173.

11 169. Ford is without knowledge or information sufficient to form a belief as to the truth of
12 the allegations in paragraph 174 and therefore denies those allegations.

13 170. Ford denies the allegations in paragraph 175.

14 171. Ford denies the allegations in paragraph 176.

15 172. Ford denies the allegations in paragraph 177.

16 173. Ford is without knowledge or information sufficient to form a belief as to the truth of
17 the allegations in paragraph 178 and therefore denies those allegations.

18 174. Ford denies the allegations in paragraph 179.

19 175. Ford is without knowledge or information sufficient to form a belief as to the truth of
20 the allegations in paragraph 180 and therefore denies those allegations.

21 176. Ford denies the allegations in paragraph 181.

22 177. Ford denies the allegations in paragraph 182.

23 178. Ford denies the allegations in paragraph 183.

24 179. Ford is without knowledge or information sufficient to form a belief as to the truth of
25 the allegations in paragraph 184 and therefore denies those allegations.

26 180. Ford is without knowledge or information sufficient to form a belief as to the truth of
27 the allegations in paragraph 185 and therefore denies those allegations.

28 181. Ford denies the allegations in paragraph 186.

1 182. Ford is without knowledge or information sufficient to form a belief as to the truth of
2 the allegations in paragraph 187 and therefore denies those allegations.

3 183. Ford denies the allegations in paragraph 188.

4 184. Ford denies the allegations in paragraph 189.

5 185. Ford denies the allegations in paragraph 190.

6 186. Ford is without knowledge or information sufficient to form a belief as to the truth of
7 the allegations in paragraph 191 and therefore denies those allegations.

8 187. Ford is without knowledge or information sufficient to form a belief as to the truth of
9 the allegations in paragraph 192 and therefore denies those allegations.

10 188. Ford denies the allegations in paragraph 193.

11 189. Ford is without knowledge or information sufficient to form a belief as to the truth of
12 the allegations in paragraph 194 and therefore denies those allegations.

13 190. Ford denies the allegations in paragraph 195.

14 191. Ford denies the allegations in paragraph 196.

15 192. Ford denies the allegations in paragraph 197.

16 193. Ford is without knowledge or information sufficient to form a belief as to the truth of
17 the allegations in paragraph 198 and therefore denies those allegations

18 194. Ford is without knowledge or information sufficient to form a belief as to the truth of
19 the allegations in paragraph 199 and therefore denies those allegations

20 195. Ford denies the allegations in paragraph 200.

21 196. Ford is without knowledge or information sufficient to form a belief as to the truth of
22 the allegations in paragraph 201 and therefore denies those allegations.

23 197. Ford denies the allegations in paragraph 202.

24 198. Ford denies the allegations in paragraph 203.

25 199. Ford denies the allegations in paragraph 204.

26 200. Ford is without knowledge or information sufficient to form a belief as to the truth of
27 the allegations in paragraph 205 and therefore denies those allegations.

28 201. Ford denies the allegations in paragraph 206.

1 202. Ford is without knowledge or information sufficient to form a belief as to the truth of
2 the allegations in paragraph 207 and therefore denies those allegations.

3 203. Ford denies the allegations in paragraph 208.

4 204. Ford denies the allegations in paragraph 209.

5 205. Ford denies the allegations in paragraph 210.

6 206. Ford is without knowledge or information sufficient to form a belief as to the truth of
7 the allegations in paragraph 211 and therefore denies those allegations.

8 207. Ford denies the allegations in paragraph 212.

9 208. Ford is without knowledge or information sufficient to form a belief as to the truth of
10 the allegations in paragraph 213 and therefore denies those allegations.

11 209. Ford denies the allegations in paragraph 214.

12 210. Ford denies the allegations in paragraph 215.

13 211. Ford denies the allegations in paragraph 216.

14 212. Ford is without knowledge or information sufficient to form a belief as to the truth of
15 the allegations in paragraph 217 and therefore denies those allegations.

16 213. Ford is without knowledge or information sufficient to form a belief as to the truth of
17 the allegations in paragraph 218 and therefore denies those allegations.

18 214. Ford is without knowledge or information sufficient to form a belief as to the truth of
19 the allegations in paragraph 219 and therefore denies those allegations.

20 215. Ford is without knowledge or information sufficient to form a belief as to the truth of
21 the allegations in paragraph 220 and therefore denies those allegations.

22 216. Ford denies the allegations in paragraph 221.

23 217. Ford denies the allegations in paragraph 222.

24 218. Ford denies the allegations in paragraph 223.

25 219. Ford is without knowledge or information sufficient to form a belief as to the truth of
26 the allegations in paragraph 224 and therefore denies those allegations.

27 220. Ford is without knowledge or information sufficient to form a belief as to the truth of
28 the allegations in paragraph 225 and therefore denies those allegations.

1 221. Ford is without knowledge or information sufficient to form a belief as to the truth of
2 the allegations in paragraph 226 and therefore denies those allegations.

3 222. Ford is without knowledge or information sufficient to form a belief as to the truth of
4 the allegations in paragraph 227 and therefore denies those allegations.

5 223. Ford is without knowledge or information sufficient to form a belief as to the truth of
6 the allegations in paragraph 228 and therefore denies those allegations.

7 224. Ford denies the allegations in paragraph 229.

8 225. Ford denies the allegations in paragraph 230.

9 226. Ford denies the allegations in paragraph 231.

10 227. Ford is without knowledge or information sufficient to form a belief as to the truth of
11 the allegations in paragraph 232 and therefore denies those allegations.

12 228. Ford is without knowledge or information sufficient to form a belief as to the truth of
13 the allegations in paragraph 233 and therefore denies those allegations

14 229. Plaintiff Diana Bruner's claims were dismissed by the Court's Order of August 8,
15 2014 (ECF No. 182) and therefore no response is required to the allegations in paragraphs 235
16 through 240. To the extent a response is deemed to be required, Ford denies the allegations in
17 paragraphs 235 through 240.

18 230. Ford is without knowledge or information sufficient to form a belief as to the truth of
19 the allegations in paragraph 241 and therefore denies those allegations.

20 231. Ford denies the allegations in paragraph 242.

21 232. Ford denies the allegations in paragraph 243.

22 233. Ford denies the allegations in paragraph 244.

23 234. Ford is without knowledge or information sufficient to form a belief as to the truth of
24 the allegations in paragraph 245 and therefore denies those allegations.

25 235. Ford is without knowledge or information sufficient to form a belief as to the truth of
26 the allegations in paragraph 246 and therefore denies those allegations.

27 236. Ford denies the allegations in paragraph 247.

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1 237. Ford is without knowledge or information sufficient to form a belief as to the truth of
2 the allegations in paragraph 248 and therefore denies those allegations.

3 238. Ford denies the allegations in paragraph 249.

4 239. Ford denies the allegations in paragraph 250.

5 240. Ford denies the allegations in paragraph 251.

6 241. Ford is without knowledge or information sufficient to form a belief as to the truth of
7 the allegations in paragraph 252 and therefore denies those allegations.

8 242. Ford is without knowledge or information sufficient to form a belief as to the truth of
9 the allegations in paragraph 253 and therefore denies those allegations.

10 243. Ford is without knowledge or information sufficient to form a belief as to the truth of
11 the allegations in paragraph 254 and therefore denies those allegations.

12 244. Ford is without knowledge or information sufficient to form a belief as to the truth of
13 the allegations in paragraph 255 and therefore denies those allegations.

14 245. Ford is without knowledge or information sufficient to form a belief as to the truth of
15 the allegations in paragraph 256 and therefore denies those allegations.

16 246. Ford denies the allegations in paragraph 257.

17 247. Ford is without knowledge or information sufficient to form a belief as to the truth of
18 the allegations in paragraph 258 and therefore denies those allegations.

19 248. Ford denies the allegations in paragraph 259.

20 249. Ford denies the allegations in paragraph 260.

21 250. Ford denies the allegations in paragraph 261.

22 251. Ford is without knowledge or information sufficient to form a belief as to the truth of
23 the allegations in paragraph 262 and therefore denies those allegations.

24 252. Ford is without knowledge or information sufficient to form a belief as to the truth of
25 the allegations in paragraph 263 and therefore denies those allegations.

26 253. Ford is without knowledge or information sufficient to form a belief as to the truth of
27 the allegations in paragraph 264 and therefore denies those allegations.

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1 254. Ford is without knowledge or information sufficient to form a belief as to the truth of
2 the allegations in paragraph 265 and therefore denies those allegations.

3 255. Ford is without knowledge or information sufficient to form a belief as to the truth of
4 the allegations in paragraph 266 and therefore denies those allegations.

5 256. Ford denies the allegations in paragraph 267.

6 257. Plaintiff Gary Buck's claims were dismissed by the Court's Order of August 8, 2014
7 (ECF No. 182) and therefore no response is required to the allegations in paragraphs 268 through
8 273. To the extent a response is deemed to be required, Ford denies the allegations in paragraphs
9 268 through 273.

10 258. Ford is without knowledge or information sufficient to form a belief as to the truth of
11 the allegations in paragraph 274 and therefore denies those allegations.

12 259. Ford denies the allegations in paragraph 275.

13 260. Ford denies the allegations in paragraph 276.

14 261. Ford denies the allegations in paragraph 277.

15 262. Ford is without knowledge or information sufficient to form a belief as to the truth of
16 the allegations in paragraph 278 and therefore denies those allegations.

17 263. Ford is without knowledge or information sufficient to form a belief as to the truth of
18 the allegations in paragraph 279 and therefore denies those allegations.

19 264. Ford denies the allegations in paragraph 280.

20 265. Ford is without knowledge or information sufficient to form a belief as to the truth of
21 the allegations in paragraph 281 and therefore denies those allegations.

22 266. Ford denies the allegations in paragraph 282.

23 267. Ford denies the allegations in paragraph 283.

24 268. Ford denies the allegations in paragraph 284.

25 269. Ford is without knowledge or information sufficient to form a belief as to the truth of
26 the allegations in paragraph 285 and therefore denies those allegations.

27 270. Ford is without knowledge or information sufficient to form a belief as to the truth of
28 the allegations in paragraph 286 and therefore denies those allegations.

1 271. Ford denies the allegations in paragraph 287.

2 272. Ford is without knowledge or information sufficient to form a belief as to the truth of
3 the allegations in paragraph 288 and therefore denies those allegations.

4 273. Ford denies the allegations in paragraph 289.

5 274. Ford denies the allegations in paragraph 290.

6 275. Ford denies the allegations in paragraph 291.

7 276. Ford is without knowledge or information sufficient to form a belief as to the truth of
8 the allegations in paragraph 292 and therefore denies those allegations.

9 277. Ford denies the allegations in paragraph 293.

10 278. Ford is without knowledge or information sufficient to form a belief as to the truth of
11 the allegations in paragraph 294 and therefore denies those allegations.

12 279. Ford denies the allegations in paragraph 295.

13 280. Ford denies the allegations in paragraph 296.

14 281. Ford denies the allegations in paragraph 297.

15 282. Ford is without knowledge or information sufficient to form a belief as to the truth of
16 the allegations in paragraph 298 and therefore denies those allegations.

17 283. Ford is without knowledge or information sufficient to form a belief as to the truth of
18 the allegations in paragraph 292 and therefore denies those allegations.

19 284. Ford denies the allegations in paragraph 300.

20 **VII. CLASS ACTION ALLEGATIONS**

21 285. In response to the allegations in paragraph 301, Ford admits that Plaintiffs purport to
22 bring this action on behalf of the proposed Nationwide Class, but denies that certification of the
23 proposed class is appropriate.

24 286. In response to the allegations in paragraph 302, including subparts (a) through (x),
25 Ford admits that Plaintiffs purport to bring this action on behalf of the proposed state sub-classes,
26 but denies that certification of any of the proposed state sub-classes is appropriate. Ford further
27 denies that a proposed sub-class of Alabama, Mississippi, Ohio or Tennessee residents can be
28 certified as all claims brought under those States' laws have been dismissed by order of the Court.

1 287. In response to the allegations in paragraph 303, Ford admits that Plaintiffs exclude
2 certain individuals and entities from the proposed class and sub-classes, but denies that certification
3 of the class or any sub-class is appropriate in this case.

4 288. Ford denies the allegations in paragraph 304.

5 289. Ford denies the allegations in paragraph 305.

6 290. Ford denies the allegations in paragraph 306, including sub-paragraphs (a) through
7 (i).

8 291. Ford denies the allegations in paragraph 307.

9 292. Ford denies the allegations in paragraph 308.

10 293. Ford denies the allegations in paragraph 309.

11 294. Ford denies the allegations in paragraph 310, including sub-paragraphs (a) through
12 (c).

13 **VIII. CLAIMS ALLEGED**

14 **COUNT ONE**

15 295. Count One was dismissed by the Court’s Order of August 8, 2014 (ECF No. 182)
16 and therefore no response is required to the allegations in paragraphs 311 through 322. To the
17 extent a response is deemed to be required, Ford denies the allegations in paragraphs 311 through
18 322.

19 **COUNT TWO**

20 296. Count Two was dismissed by the Court’s Order of August 8, 2014 (ECF No. 182)
21 and therefore no response is required to the allegations in paragraphs 323 through 334. To the
22 extent a response is deemed to be required, Ford denies the allegations in paragraphs 323 through
23 334.

24 **COUNT THREE**

25 297. In response to the allegations in paragraph 335, Ford incorporates its responses to
26 paragraphs 1 through 310 of the TCAC.

27 298. Ford denies the allegations in paragraph 336.

28 299. Ford denies the allegations in paragraph 337, including subparts (a) through (c).

1 300. Ford denies the allegations in paragraph 338, including subparts (a) through (c).

2 301. Ford denies the allegations in paragraph 339, including subparts (a) through (c).

3 302. Ford denies the allegations in paragraph 340, including subparts (a) through (e).

4 303. Ford denies the allegations in paragraph 341.

5 304. In response to the allegations in paragraph 342, Ford admits that Plaintiffs seek the
6 remedies states in this paragraph on behalf of themselves and the putative California sub-class, but
7 denies that Plaintiffs or any member of the putative California sub-class is entitled to any of the
8 remedies listed or to any other damages, costs, or relief from Ford.

9 **COUNT FOUR**

10 305. In response to the allegations in paragraph 343, Ford incorporates its responses to
11 paragraphs 1 through 310 of the TCAC.

12 306. Ford denies the allegations in paragraph 344.

13 307. Ford denies the allegations in paragraph 345.

14 308. Ford denies the allegations in paragraph 346.

15 309. Ford denies the allegations in paragraph 347.

16 310. Ford denies the allegations in paragraph 348.

17 311. Ford denies the allegations in paragraph 349.

18 312. Ford denies the allegations in paragraph 350. Ford further states that plaintiffs' claim
19 for restitution under the CLRA was dismissed by this Court's Order of August 8, 2014 (ECF No.
20 182).

21 **COUNT FIVE**

22 313. In response to the allegations in paragraph 351, Ford incorporates its responses to
23 paragraphs 1 through 310 of the TCAC.

24 314. The allegations in paragraph 352 state a legal conclusion to which no response is
25 required. To the extent a response is deemed to be required, Ford denies the allegations in this
26 paragraph.

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COUNT SEVEN

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2 331. In response to the allegations in paragraph 369, Ford incorporates its responses to
3 paragraphs 1 through 310 of the TCAC.

4 332. In response to the allegations in paragraph 370, Ford incorporates its responses to
5 paragraphs 1 through 369 of the TCAC.

6 333. The allegations in paragraph 371 state a legal conclusion to which no response is
7 required. To the extent a response is deemed to be required, Ford denies the allegations in this
8 paragraph.

9 334. Ford denies the allegations in paragraph 372.

10 335. Ford denies the allegations in paragraph 373.

11 336. Ford denies the allegations in paragraph 374.

12 337. Ford denies the allegations in paragraph 375.

13 338. Ford denies the allegations in paragraph 376.

14 339. Ford denies the allegations in paragraph 377.

15 340. Ford denies the allegations in paragraph 378.

16 341. Ford denies the allegations in paragraph 379.

COUNT EIGHT

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18 342. Count Eight was dismissed by the Court's Order of August 8, 2014 (ECF No. 182)
19 and therefore no response is required to the allegations in paragraphs 380 through 388. To the
20 extent a response is deemed to be required, Ford denies the allegations in paragraphs 380 through
21 388.

COUNT NINE

22
23 343. In response to the allegations in paragraph 389, Ford incorporates its responses to
24 paragraphs 1 through 310 of the TCAC.

25 344. The allegations in paragraph 390 state a legal conclusion to which no response is
26 required. To the extent a response is deemed to be required, Ford denies the allegations in this
27 paragraph.

28 345. Ford denies the allegations in paragraph 391.

1 346. Ford denies the allegations in paragraph 392.

2 347. Ford denies the allegations in paragraph 393.

3 348. Ford denies the allegations in paragraph 394.

4 349. Ford denies the allegations in paragraph 395.

5 350. Ford denies the allegations in paragraph 396.

6 351. Ford denies the allegations in paragraph 397.

7 **COUNT TEN**

8 352. Count Ten was dismissed by the Court’s Order of August 8, 2014 (ECF No. 182)
9 and therefore no response is required to the allegations in paragraphs 398 through 408. To the
10 extent a response is deemed to be required, Ford denies the allegations in paragraphs 398 through
11 408.

12 **COUNT ELEVEN**

13 353. In response to the allegations in paragraph 409, Ford incorporates its responses to
14 paragraphs 1 through 310 of the TCAC.

15 354. In response to the allegations in paragraph 410, including subparts (a) and (b), Ford
16 admits that plaintiffs have quoted Ga. Code. Ann. § 10-1-372(a)(5) and § 10-1-372(a)(7). Ford
17 denies that it is liable to plaintiffs or any member of the putative class or sub-class pursuant to Ga.
18 Code Ann. § 10-1-372(a)(5), § 10-1-372(a)(7), or any other section or subsection of the Georgia
19 Uniform Deceptive Trade Practices Act.

20 355. Ford denies the allegations in paragraph 411.

21 356. Ford denies the allegations in paragraph 412.

22 357. Ford denies the allegations in paragraph 413.

23 358. Ford denies the allegations in paragraph 414.

24 359. Ford denies the allegations in paragraph 415.

25 **COUNT TWELVE**

26 360. Count Twelve was dismissed by the Court’s Order of August 8, 2014 (ECF No. 182)
27 and therefore no response is required to the allegations in paragraphs 416 through 427. To the

28

1 extent a response is deemed to be required, Ford denies the allegations in paragraphs 416 through
2 427.

3 **COUNT THIRTEEN**

4 361. In response to the allegations in paragraph 428, Ford incorporates its responses to
5 paragraphs 1 through 310 of the TCAC.

6 362. The allegations in paragraph 429 state a legal conclusion to which no response is
7 required. To the extent a response is deemed to be required, Ford denies the allegations in this
8 paragraph.

9 363. The allegations in paragraph 430 state a legal conclusion to which no response is
10 required. To the extent a response is deemed to be required, Ford denies the allegations in this
11 paragraph.

12 364. The allegations in paragraph 431 state a legal conclusion to which no response is
13 required. To the extent a response is deemed to be required, Ford denies the allegations in this
14 paragraph.

15 365. The allegations in paragraph 432 state a legal conclusion to which no response is
16 required. To the extent a response is deemed to be required, Ford denies the allegations in this
17 paragraph.

18 366. Ford denies the allegations in paragraph 433.

19 367. Ford denies the allegations in paragraph 434.

20 368. Ford denies the allegations in paragraph 435.

21 369. Ford denies the allegations in paragraph 436.

22 370. Ford denies the allegations in paragraph 437.

23 371. Ford denies the allegations in paragraph 438.

24 **COUNT FOURTEEN**

25 372. Count Fourteen was dismissed by the Court's Order of August 8, 2014 (ECF No.
26 182) and therefore no response is required to the allegations in paragraphs 439 through 450. To the
27 extent a response is deemed to be required, Ford denies the allegations in paragraphs 439 through
28 450.

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COUNT FIFTEEN

373. In response to the allegations in paragraph 451, Ford incorporates its responses to paragraphs 1 through 310 of the TCAC.

374. The allegations in paragraph 452 state a legal conclusion to which no response is required. To the extent a response is deemed to be required, Ford denies the allegations in this paragraph.

375. Ford denies the allegations in paragraph 453.

376. Ford denies the allegations in paragraph 454.

377. Ford denies the allegations in paragraph 455.

378. Ford denies the allegations in paragraph 456.

379. Ford denies the allegations in paragraph 457.

380. Ford denies the allegations in paragraph 458.

381. Ford denies the allegations in paragraph 459.

COUNT SIXTEEN

382. Count Sixteen was dismissed by the Court's Order of August 8, 2014 (ECF No. 182) and therefore no response is required to the allegations in paragraphs 460 through 469. To the extent a response is deemed to be required, Ford denies the allegations in paragraphs 460 through 469.

COUNT SEVENTEEN

383. In response to the allegations in paragraph 470, Ford incorporates its responses to paragraphs 1 through 310 of the TCAC.

384. Ford denies the allegations in paragraph 471.

385. Ford denies the allegations in paragraph 472.

386. Ford denies the allegations in paragraph 473, including subparts (a) through (e).

387. Ford denies the allegations in paragraph 474.

388. Ford denies the allegations in paragraph 475.

389. Ford denies the allegations in paragraph 476.

COUNT TWENTY-ONE

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402. In response to the allegations in paragraph 509, Ford incorporates its responses to paragraphs 1 through 310 of the TCAC.

403. The allegations in paragraph 510 state a legal conclusion to which no response is required. To the extent a response is deemed to be required, Ford denies the allegations in this paragraph.

404. The allegations in paragraph 511 state a legal conclusion to which no response is required. To the extent a response is deemed to be required, Ford denies the allegations in this paragraph.

405. The allegations in paragraph 512 state a legal conclusion to which no response is required. To the extent a response is deemed to be required, Ford denies the allegations in this paragraph.

406. Ford denies the allegations in paragraph 513.

407. Ford denies the allegations in paragraph 514.

408. Ford denies the allegations in paragraph 515.

409. Ford denies the allegations in paragraph 516.

410. Ford denies the allegations in paragraph 517.

411. Ford denies the allegations in paragraph 518.

412. Ford denies the allegations in paragraph 519.

413. Ford denies the allegations in paragraph 520.

414. Ford denies the allegations in paragraph 521.

415. Ford denies the allegations in paragraph 522.

416. Ford denies the allegations in paragraph 523.

417. Ford denies the allegations in paragraph 524.

COUNT TWENTY-TWO

418. Count Twenty-Two was dismissed by the Court’s Order of August 8, 2014 (ECF No. 182) and therefore no response is required to the allegations in paragraphs 525 through 535. To the

1 extent a response is deemed to be required, Ford denies the allegations in paragraphs 525 through
2 535.

3 **COUNT TWENTY-THREE**

4 419. In response to the allegations in paragraph 536, Ford incorporates its responses to
5 paragraphs 1 through 310 of the TCAC.

6 420. Ford denies the allegations in paragraph 537.

7 421. Ford denies the allegations in paragraph 538.

8 422. Ford denies the allegations in paragraph 539, including subparts (a) through (c).

9 423. Ford denies the allegations in paragraph 540.

10 424. Ford denies the allegations in paragraph 541.

11 425. Ford denies the allegations in paragraph 542.

12 426. In response to the allegations in paragraph 543, Ford admits that Plaintiffs seek the
13 remedies stated in this paragraph on behalf of themselves and the putative New Hampshire sub-
14 class, but denies that Plaintiffs or any member of the putative New Hampshire sub-class is entitled
15 to the remedies listed or to any other damages, costs, or relief from Ford.

16 **COUNT TWENTY-FOUR**

17 427. Count Twenty-Four was dismissed by the Court's Order of August 8, 2014 (ECF
18 No. 182) and therefore no response is required to the allegations in paragraphs 544 through 553. To
19 the extent a response is deemed to be required, Ford denies the allegations in paragraphs 544
20 through 553.

21 **COUNT TWENTY-FIVE**

22 428. In response to the allegations in paragraph 554, Ford incorporates its responses to
23 paragraphs 1 through 310 of the TCAC.

24 429. In response to the allegations in paragraph 555, Ford incorporates its responses to
25 paragraphs 1 through 554 of the TCAC.

26 430. The allegations in paragraph 556 state a legal conclusion to which no response is
27 required. To the extent a response is deemed to be required, Ford denies the allegations in this
28 paragraph.

1 431. Ford denies the allegations in paragraph 557.

2 432. Ford denies the allegations in paragraph 558.

3 433. Ford denies the allegations in paragraph 559.

4 434. Ford denies the allegations in paragraph 560.

5 435. Ford denies the allegations in paragraph 561.

6 436. Ford denies the allegations in paragraph 562.

7 437. Ford denies the allegations in paragraph 563.

8 **COUNT TWENTY-SIX**

9 438. In response to the allegations in paragraph 564, Ford incorporates its responses to
10 paragraphs 1 through 310 of the TCAC.

11 439. The allegations in paragraph 565 state a legal conclusion to which no response is
12 required. To the extent a response is deemed to be required, Ford denies the allegations in this
13 paragraph.

14 440. The allegations in paragraph 566 state a legal conclusion to which no response is
15 required. To the extent a response is deemed to be required, Ford denies the allegations in this
16 paragraph.

17 441. Ford denies the allegations in paragraph 567.

18 442. Ford denies the allegations in paragraph 568.

19 443. Ford denies the allegations in paragraph 569.

20 444. Ford denies the allegations in paragraph 570.

21 445. Ford denies the allegations in paragraph 571.

22 446. Ford denies the allegations in paragraph 572.

23 447. Ford denies the allegations in paragraph 573.

24 **COUNT TWENTY-SEVEN**

25 448. Count Twenty-Seven was dismissed by the Court's Order of August 8, 2014 (ECF
26 No. 182) and therefore no response is required to the allegations in paragraphs 574 through 585. To
27 the extent a response is deemed to be required, Ford denies the allegations in paragraphs 574
28 through 585.

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COUNT TWENTY-EIGHT

449. In response to the allegations in paragraph 586, Ford incorporates its responses to paragraphs 1 through 310 of the TCAC.

450. The allegations in paragraph 587 state a legal conclusion to which no response is required. To the extent a response is deemed to be required, Ford denies the allegations in this paragraph.

451. Ford denies the allegations in paragraph 588.

452. Ford denies the allegations in paragraph 589.

453. Ford denies the allegations in paragraph 590.

454. Ford denies the allegations in paragraph 591.

455. Ford denies the allegations in paragraph 592.

456. Ford denies the allegations in paragraph 593.

457. Ford denies the allegations in paragraph 594.

COUNT TWENTY-NINE

458. Count Twenty-Nine was dismissed by the Court’s Order of August 8, 2014 (ECF No. 182) and therefore no response is required to the allegations in paragraphs 595 through 604. To the extent a response is deemed to be required, Ford denies the allegations in paragraphs 595 through 604.

COUNT THIRTY

459. Count Thirty was dismissed by the Court’s Order of August 8, 2014 (ECF No. 182) and therefore no response is required to the allegations in paragraphs 605 through 619. To the extent a response is deemed to be required, Ford denies the allegations in paragraphs 605 through 619.

COUNT THIRTY-ONE

460. In response to the allegations in paragraph 620, Ford incorporates its responses to paragraphs 1 through 310 of the TCAC.

461. Ford denies the allegations in paragraph 621.

462. Ford denies the allegations in paragraph 622.

1 463. Ford denies the allegations in paragraph 623.

2 464. Ford denies the allegations in paragraph 624.

3 465. Ford denies the allegations in paragraph 625.

4 466. Ford denies the allegations in paragraph 626.

5 467. Ford denies the allegations in paragraph 627.

6 **COUNT THIRTY-TWO**

7 468. Count Thirty-Two was dismissed by the Court's Order of August 8, 2014 (ECF No.
8 182) and therefore no response is required to the allegations in paragraphs 628 through 639. To the
9 extent a response is deemed to be required, Ford denies the allegations in paragraphs 628 through
10 639.

11 **COUNT THIRTY-THREE**

12 469. In response to the allegations in paragraph 640, Ford incorporates its responses to
13 paragraphs 1 through 310 of the TCAC.

14 470. The allegations in paragraph 641 state a legal conclusion to which no response is
15 required. To the extent a response is deemed to be required, Ford denies the allegations in this
16 paragraph.

17 471. Ford denies the allegations in paragraph 642.

18 472. Ford denies the allegations in paragraph 643.

19 473. Ford denies the allegations in paragraph 644.

20 474. Ford denies the allegations in paragraph 645.

21 475. Ford denies the allegations in paragraph 646.

22 476. Ford denies the allegations in paragraph 647.

23 477. Ford denies the allegations in paragraph 648.

24 **COUNT THIRTY-FOUR**

25 478. Count Thirty-Four was dismissed by the Court's Order of August 8, 2014 (ECF No.
26 182) and therefore no response is required to the allegations in paragraphs 649 through 661. To the
27 extent a response is deemed to be required, Ford denies the allegations in paragraphs 649 through
28 661.

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COUNT THIRTY-FIVE

479. Count Thirty-Five was dismissed by the Court’s Order of August 8, 2014 (ECF No. 182) and therefore no response is required to the allegations in paragraphs 662 through 676. To the extent a response is deemed to be required, Ford denies the allegations in paragraphs 662 through 676.

COUNT THIRTY-SIX

480. In response to the allegations in paragraph 677, Ford incorporates its responses to paragraphs 1 through 310 of the TCAC.

481. The allegations in paragraph 678 state a legal conclusion to which no response is required. To the extent a response is deemed to be required, Ford denies the allegations in this paragraph.

- 482. Ford denies the allegations in paragraph 679.
- 483. Ford denies the allegations in paragraph 680.
- 484. Ford denies the allegations in paragraph 681.
- 485. Ford denies the allegations in paragraph 682.
- 486. Ford denies the allegations in paragraph 683.
- 487. Ford denies the allegations in paragraph 684.
- 488. Ford denies the allegations in paragraph 685.

COUNT THIRTY-SEVEN

489. Count Thirty-Seven was dismissed by the Court’s Order of August 8, 2014 (ECF No. 182) and therefore no response is required to the allegations in paragraphs 686 through 698. To the extent a response is deemed to be required, Ford denies the allegations in paragraphs 686 through 698.

COUNT THIRTY-EIGHT

490. In response to the allegations in paragraph 699, Ford incorporates its responses to paragraphs 1 through 310 of the TCAC.

1 509. Ford denies the allegations in paragraph 730.

2 510. Ford denies the allegations in paragraph 731.

3 511. Ford denies the allegations in paragraph 732.

4 512. Ford denies the allegations in paragraph 733.

5 513. Ford denies the allegations in paragraph 734.

6 514. Ford denies the allegations in paragraph 735.

7 515. In response to the allegations in paragraph 736, Ford admits that Plaintiffs seek the
8 remedies states in this paragraph on behalf of themselves and the putative West Virginia sub-class,
9 but denies that Plaintiffs or any member of the putative West Virginia sub-class is entitled to any of
10 the remedies listed or to any other damages, costs, or relief from Ford.

11 **COUNT FORTY-TWO**

12 516. Count Forty-Two was dismissed by the Court’s Order of August 8, 2014 (ECF No.
13 182) and therefore no response is required to the allegations in paragraphs 737 through 748. To the
14 extent a response is deemed to be required, Ford denies the allegations in paragraphs 737 through
15 748.

16 **IX. REQUEST FOR RELIEF**

17 517. In response to the allegations in section IX, including subparts (1) through (6), Ford
18 denies that plaintiffs, any member of the putative class, or any member of the putative sub-classes
19 are entitled to any of the relief they seek or to any other damages, costs, remedies, or relief from
20 Ford. Ford further denies that certification of the putative class or any sub-class is appropriate.

21 518. All allegations of the TCAC that Ford has not admitted, denied, or otherwise
22 responded to, are hereby denied.

23 **AFFIRMATIVE DEFENSES**

24 **FIRST AFFIRMATIVE DEFENSE**

25 The claims of Plaintiffs and the putative class¹ may be barred by the applicable statutes of
26 limitations and repose. Ford asserts this defense under applicable state law as to each of the counts

27 ¹ Unless otherwise noted, “putative class” refers collectively to members of the putative nationwide
28 class and each state sub-class, as defined in paragraphs 301 and 302 of the TCAC.

1 asserted in the TCAC. Depending on the applicable state law, the claims of Plaintiffs and the putative
2 class or sub-classes accrued, and the statute of limitations began to run, on: (1) the date the vehicle
3 was originally delivered as a new vehicle by Ford to an authorized Ford dealer; (2) the date the
4 vehicles was originally sold or leased as a new vehicle, regardless of whether the plaintiff or putative
5 class member was the original purchaser or lessee; (3) the date the vehicle was purchased or leased
6 by the plaintiff or putative class member as a new or used vehicle; or (4) in certain states, the date
7 on which the Plaintiff discovered the cracked appliqué. Ford asserts that the claims accrued, and the
8 statute of limitations began to run, on the earliest date that is consistent with the applicable state
9 law.

10 **SECOND AFFIRMATIVE DEFENSE**

11 The “unfairness” prong of the California Unfair Competition Law is so unclear, vague,
12 indefinite, and uncertain that it fails to place Ford on notice of the conduct that is prohibited and
13 therefore violates the Due Process Clause of the Fourteenth Amendment to the United States
14 Constitution and the California Constitution (art. I, § 7).

15 **THIRD AFFIRMATIVE DEFENSE**

16 To the extent that Plaintiffs seek to impose compensatory or punitive liability on Ford on
17 the basis that their vehicles or the vehicles identified in the proposed class and state sub-class
18 definitions are “defective” or have a “defect” without having a definition of defect tethered to any
19 recognized legal standard or to any objective criteria, any monetary amount award against Ford
20 would violate the due process clauses of the U.S. Constitution and the Constitutions of Plaintiffs’
21 States, because such a construction and application of the statutes at issue (a) would render the
22 statutes impermissibly vague as applied in that Ford would have been provided no fair warning of
23 what conduct was prohibited, and (b) would permit arbitrary and discriminatory enforcement of the
24 statutes.

25 **FOURTH AFFIRMATIVE DEFENSE**

26 Any plaintiff or putative class member who received a settlement or payment from Ford as a
27 result of the alleged defect, as well as those who did not incur any out-of-pocket costs for repairs
28

1 because such repairs were covered by Ford, are barred from any recovery by releases and/or the
2 doctrine of accord and satisfaction.

3 **FIFTH AFFIRMATIVE DEFENSE**

4 The claims of plaintiffs and the putative class may be barred by the doctrine of res judicata.
5 More specifically, any plaintiff or putative class member who previously brought a lawsuit on the
6 basis of the alleged defect in the liftgate appliqué of his or her vehicle, and which resulted in a final
7 judgment on the merits, is barred from re-litigating his or her claims in this case.

8 **SIXTH AFFIRMATIVE DEFENSE**

9 To the extent that Plaintiffs seek recovery of economic damages under the New Jersey
10 Consumer Fraud Act related to a safety concern, the claims are subsumed by the New Jersey
11 Product Liability Act, N.J.S.A. § 2A:58C-6, et seq.

12 **SEVENTH AFFIRMATIVE DEFENSE**

13 The claims of plaintiffs and the putative class are barred by laches because they inexcusably
14 delayed pursuit of their claims and such delay has resulted in prejudice to Ford. More specifically,
15 plaintiffs and the putative class members failed to file suit within a reasonable time after they had,
16 or should have had, knowledge of a basis for their claims. Some or all of the Plaintiffs and members
17 of the putative first noticed the cracked appliqué on their vehicles years before filing suit, and were
18 thereby put on notice of their claims.

19 **EIGHTH AFFIRMATIVE DEFENSE**

20 Ford did not sell or lease any of the subject vehicles directly to plaintiffs or the putative
21 class. Thus, to the extent applicable under state law, the claims of plaintiffs and the putative class
22 are barred by lack of privity.

23 **NINTH AFFIRMATIVE DEFENSE**

24 Plaintiffs assert that the alleged defect has resulted only in damage to the vehicles
25 themselves, and they do not assert, nor seek recovery, for personal injury or damage to any other
26 property as a result of the alleged defect. Accordingly, the claims of plaintiffs Debbie SanSouci and
27 Frank Everett (Count Nineteen – Massachusetts), Dennis Daughtery (Count Twenty-Eight –North
28 Carolina), and Connie Garsey and Andrew Stalnecker (Count Thirty-Three – Pennsylvania), as well

1 as the claims of the putative class members that they seek to represent, and class members in any
2 other state in which the economic loss rule applies to the statutory claims alleged, are barred by the
3 economic loss rule, which precludes recovery where the only alleged damages are to the product
4 itself.

5 **TENTH AFFIRMATIVE DEFENSE**

6 As defined in the TCAC, the putative class includes individuals and entities whose vehicles
7 did not manifest the alleged defect during the time that they owned or leased it. Accordingly, the
8 claims of these individuals are barred, in whole or in part, for lack of a cognizable or ascertainable
9 injury.

10 **ELEVENTH AFFIRMATIVE DEFENSE**

11 Prior to filing this lawsuit, Plaintiff Gary Farson and members of the putative Indiana sub-
12 class failed to provide proper and adequate notice of their intention to commence an action under
13 the Indiana Deceptive Consumer Sales Act (“DCSA”) as required by Ind. Code Ann. §24-5-0.5-5.
14 Accordingly, their DCSA claims are barred.

15 **TWELFTH AFFIRMATIVE DEFENSE**

16 Prior to filing this lawsuit, plaintiff Debbie SanSouci, Frank Everett, and members of the
17 putative Massachusetts sub-class failed to provide proper and adequate notice of their intention to
18 commence an action under the Massachusetts Consumer Protection Act (“CPA”) as required by
19 Mass. Gen. Laws 93A, § 9(3). Accordingly, their CPA claims are barred.

20 **THIRTEENTH AFFIRMATIVE DEFENSE**

21 Prior to filing this lawsuit, plaintiff Heather S. Hardee and members of the putative Texas
22 sub-class failed to provide proper and adequate notice of their intention to commence an action
23 under the Texas Deceptive Trade Practices Act (“DTPA”) as required by Tex. Bus. & Com. Code §
24 17.505. Accordingly, their DTPA claims are barred.

25 **FOURTEENTH AFFIRMATIVE DEFENSE**

26 Prior to filing this lawsuit, plaintiff Dean Olack and members of the putative West Virginia
27 sub-class failed to provide proper and adequate notice of their intention to commence an action
28

1 under the West Virginia Consumer Credit and Protection Act (“CCPA”) as required by W. Va.
2 Code Ann. 46A-6-106. Accordingly, their CCPA claims are barred.

3 **FIFTEENTH AFFIRMATIVE DEFENSE**

4 The relief available to plaintiffs and the putative class members, if any, is circumscribed by
5 the terms of the New Vehicle Limited Warranty to which they consented upon purchase of their
6 Ford vehicles.

7 **SIXTEENTH AFFIRMATIVE DEFENSE**

8 The claims of any plaintiff or member of the proposed class whose vehicles have been sold,
9 destroyed, or otherwise disposed of may be barred, in whole or in part, by applicable state law
10 relating to spoliation of evidence.

11 **SEVENTEENTH AFFIRMATIVE DEFENSE**

12 Plaintiffs’ and members of the putative class and state sub-classes’ claims for treble and/or
13 punitive and/or exemplary damages would violate the Fifth Amendment to the U.S. Constitution
14 and similar state constitutional provisions because it would expose Ford to multiple punishments
15 and fines for the same act or conduct.

16 **EIGHTEENTH AFFIRMATIVE DEFENSE**

17 Plaintiffs’ and members of the putative class and state sub-classes’ claims for treble and/or
18 punitive and/or exemplary damages violates the Due Process Clause of the Fifth and Fourteenth
19 Amendments to the U.S. Constitution because it seeks to punish Ford based upon unconstitutionally
20 vague standards.

21 **NINETEENTH AFFIRMATIVE DEFENSE**

22 Plaintiffs’ and members of the putative class and state sub-classes’ claims for treble and/or
23 punitive and/or exemplary damages violates the Eighth Amendment to the U.S. Constitution and
24 similar state constitutional provisions because it seeks to impose an excessive fine upon Ford, is
25 penal in nature, and seeks to punish Ford based upon unconstitutionally vague standards.

26 **TWENTIETH AFFIRMATIVE DEFENSE**

27 Plaintiffs and members of the putative class and state sub-classes who do not meet statutory
28 requirements for suit under the applicable state statutes (e.g., not a “consumer” under the Texas

1 Consumer Protection Law, or did not purchase for “personal, family or household uses” under the
2 Pennsylvania Unfair and Deceptive Trade Practices Act) have no standing under state law to pursue
3 such statutory claims.

4 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

5 Ford gives notice that it intends to rely upon and reserves its right to assert such other and
6 related defenses as may become available or apparent under the substantive laws of California,
7 Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Louisiana, Maryland, Massachusetts,
8 Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma,
9 Pennsylvania, Texas, Virginia, Washington, and West Virginia.

10 Wherefore, Ford prays as follows:

- 11 1. that plaintiffs take nothing by way of their TCAC;
- 12 2. that Ford be awarded costs of suit;
- 13 3. that Ford be awarded reasonable attorneys’ fees; and
- 14 4. for such other and further relief as the Court deems just and proper.

15 **DEMAND FOR JURY TRIAL**

16 Ford hereby demands a trial by jury of all issues so triable.

17
18 Dated: August 22, 2014

Respectfully submitted,

19
20 /s/ Amir Nassihi
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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of August, 2014, copies of the foregoing Answer of Ford Motor Company to Plaintiffs' Third Consolidated Amended Complaint were served via ECF on all counsel of record.

/s/ Amir Nassihi