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13
14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION**

16
17 IN RE FORD TAILGATE LITIGATION

16 Case No. 11-CV-2953-RS
17 **THIRD CONSOLIDATED**
18 **AMENDED CLASS ACTION**
19 **COMPLAINT**
20 **JURY TRIAL DEMANDED**
Judge: Hon. Richard Seeborg

1 Plaintiffs Nancy Hough, James Denning, Al Morelli, Sally J. Nettleton, Alan Lipkin, Dr.
2 Charles Cohen, Zane Dery, Linda Heywood, Carl Linder, Denise Procento, Gary Farson, Vivian
3 Buchanan, Debbie SanSouci, Frank Everett, Ronald Caunt, Joshua Carson, Michael Andosca,
4 Spencer Ware, Brian Martin, Keith Bova, Mark Giunto, Dennis Daughtery, Diana Brunner, Melia
5 Douglas, Connie Garsey, Andrew Stalneckner, Gary L. Buck, Heather S. Hardee, Ruben Wilson,
6 Fredrick Gregg, and Dean Olack (collectively, “Plaintiffs”), individually, and on behalf of the other
7 members of the below-defined nationwide class and statewide sub-classes they respectively seek
8 to represent (collectively the “Class,” unless otherwise identified herein), for their Consolidated
9 Amended Class Action Complaint (the “Consolidated Amended Complaint”) allege against
10 Defendant Ford Motor Company (“Ford” or “Defendant”), upon personal knowledge as to
11 themselves and their own acts, and as to all other matters upon information and belief, based upon
12 the investigation made by the undersigned attorneys, as follows:

13 I. NATURE OF THE CASE

14 1. This consolidated class action is brought by Plaintiffs seeking damages and equitable
15 relief on their own behalf and on behalf of all other current and former owners or lessees of model
16 2002 through model 2005 Ford Explorers or Mercury Mountaineers, or model 2003 through 2005
17 Lincoln Aviators (collectively, the “Ford Vehicles”). This Complaint does not assert, and is not
18 intended to assert, wrongful death or personal injury claims, or any damages therefrom.

19 2. Unknown to Plaintiffs and the other Class members when they purchased or leased the
20 Ford Vehicles (and until manifestation of the defect), the tailgates of the Ford Vehicles were made of
21 flawed materials, improperly designed, and/or were assembled using deficient techniques. As a
22 result, these tailgates were defective at the moment of manufacture, assembly, and sale and were
23 substantially certain to exhibit a large, discernible crack to the tailgate appliqué panel (“Cracked
24 Tailgate” or the “Cracked Tailgate Problem”).

1 3. The cracked panel at issue encases and supports the tailgate window, as shown.

2 Normal

Cracked



11 4. Ford knew of the Cracked Tailgate Problem in early 2002, during the first few months
12 after the Ford Vehicles were initially manufactured. In fact, Ford, through the issuance of Technical
13 Service Bulletins (“TSB”), circulated only to dealership service departments and not to the public,
14 specifically acknowledged on July 18, 2003, that the Ford Vehicles at issue “may exhibit a
15 damaged/cracked plastic applique” on the tailgate. Given that Ford was aware of this defect while
16 still engaged in the manufacture and sale of the Ford Vehicles, Ford had (and still has) a duty to
17 disclose and remedy the inherent safety risk associated with the Cracked Tailgate Problem.

18 5. Despite this specific knowledge, however, Ford continued to manufacture (through
19 2005), and has continued to advertise for sale, sell, and purportedly warrant the Ford Vehicles. As
20 more fully discussed below, Ford has made misrepresentations and concealed material information
21 regarding the Cracked Tailgate Problem, which has allowed Ford to continue to sell and/or lease the
22 Ford Vehicles to Class members and avoid the expense of the repair or redesign necessary to properly
23 address the Cracked Tailgate Problem.

24 6. As a result of Ford’s continued concealment of the tailgate defect, Plaintiffs and the
25 Class had no knowledge of the Cracked Tailgate Problem prior to purchasing their Ford Vehicle(s).
26 Indeed, in most instances, Ford has systematically refused to repair any Cracked Tailgates, whether

1 inside or outside the original or extended warranty period, fraudulently asserting to Plaintiffs and the
2 Class (and the public generally) that any cracked tailgates on the Ford Vehicles were caused by an
3 outside force (*i.e.*, a collision or debris) or not an inherent design, assembly, or manufacturing flaw in
4 the Ford Vehicles.

5 7. Ford's uniform failure to disclose this defect constitutes both an actionable
6 misrepresentation and an unfair, unlawful, fraudulent, and deceptive business practice in violation of
7 the consumer protection statutes of several states, among other violations discussed below.

8 8. Ford had the knowledge and capability to notify purchasers of the defect and to repair,
9 at its own expense, those defective parts of the Ford Vehicles. Ford, however, chose to conceal the
10 defect and let purchasers and lessees suffer repair costs or reduction in value of their vehicles.

11 9. Plaintiffs and the other members of the Class, as well as the general public, were and
12 are also subject to substantial safety risks resulting from the Cracked Tailgate. As a result of the
13 Cracked Tailgate Problem, the liftglass window portion (known as a "backlite") of the tailgate is
14 more susceptible to shattering, which creates the potential for bodily harm – see photo below. The
15 Cracked Tailgate Problem poses other safety risks as well, including but not limited to the potential
16 for the appliqué to detach from the Vehicle and fly off the Vehicle while in operation in traffic
17 resulting in the known danger of vehicle-related road debris, and the potential for the sharp edge of
18 the crack to cause a laceration of the skin.



1 10. As a result of Ford's practices, Plaintiffs and the other Class members have suffered
 2 injury in fact and have lost money or property, including economic damages. Moreover, Ford has
 3 committed unfair and/or deceptive acts and practices under the laws of California, Colorado,
 4 Connecticut, Florida, Georgia, Illinois, Indiana, Maryland, Massachusetts, Michigan, New
 5 Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Tennessee,
 6 Texas, Virginia, Washington, and West Virginia; breached its common law warranty obligations in
 7 Alabama, California, Colorado, Connecticut, Georgia, Indiana, Maryland, Massachusetts,
 8 Mississippi, New Hampshire, New Jersey, North Carolina, Oklahoma, Pennsylvania, Tennessee,
 9 Texas, Virginia, and West Virginia; unjustly enriched itself at the expense of consumers in Alabama,
 10 California, Connecticut, Florida, Georgia, Illinois, Indiana, Maryland, Massachusetts, Mississippi,
 11 New Hampshire, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas,
 12 Virginia, and West Virginia; and violated the Magnuson-Moss Federal Warranty Act, 15 U.S.C. §
 13 2301, *et seq.*

14 11. Plaintiffs, therefore, bring this action individually and on behalf of a proposed
 15 nationwide class of similarly situated owners and lessees of Ford Vehicles and on behalf of sub-
 16 classes of similarly situated Ford Vehicle owners and lessees in Alabama, California, Colorado,
 17 Connecticut, Florida, Georgia, Illinois, Indiana, Maryland, Massachusetts, Michigan, Mississippi,
 18 New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Tennessee,
 19 Texas, Virginia, Washington, and West Virginia.

20 **II. JURISDICTION AND VENUE**

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

25 13. The Court has personal jurisdiction over Ford because Ford has purposefully availed
 26 itself of the privilege of conducting business activities in the State of California by advertising and

1 selling its manufactured vehicles (including the Ford Vehicles at issue) within the State of California.
2 Additionally, Ford has maintained systematic and continuous business contacts with the State of
3 California, and is registered to conduct business in this State.

4 14. Venue is proper in this District, pursuant to 28 U.S.C. § 1391, because a substantial
5 part of the acts or omissions giving rise to the claims brought herein occurred or emanated within this
6 District, and Ford has caused harm to one or more Plaintiffs residing in this District.

7 **III. PARTIES**

8 **A. Plaintiffs**

9 **1. Alabama**

10 15. Plaintiff Nancy Hough is a natural person and citizen of Alabama who purchased a
11 Ford Vehicle and was damaged as a result.

12 **2. California**

13 16. Plaintiff James Denning is a natural person and citizen of California who purchased a
14 Ford Vehicle and was damaged as a result.

15 17. Plaintiff Al Morelli is a natural person and citizen of California who purchased a Ford
16 Vehicle and was damaged as a result.

17 18. Plaintiff Sally J. Nettleton is a natural person and citizen of California who purchased
18 a Ford Vehicle and was damaged as a result.

19 **3. Colorado**

20 19. Plaintiff Alan Lipkin is a natural person and citizen of Colorado who purchased a Ford
21 Vehicle and was damaged as a result.

22 **4. Connecticut**

23 20. Plaintiff Dr. Charles Cohen is a natural person, a citizen of California, and formerly a
24 citizen of Connecticut who purchased a Ford Vehicle in Connecticut and was damaged as a result.

1 **5. Florida**

2 21. Plaintiff Zane Dery is a natural person and citizen of Florida who purchased Ford
3 Vehicles and was damaged as a result.

4 **6. Georgia**

5 22. Plaintiff Linda Heywood is a natural person and citizen of Georgia who purchased a
6 Ford Vehicle and was damaged as a result.

7 **7. Illinois**

8 23. Plaintiff Carl Linder is a natural person and citizen of Illinois who purchased a Ford
9 Vehicle and was damaged as a result.

10 24. Plaintiff Denise Procento is a natural person and citizen of Illinois who purchased a
11 Ford Vehicle and was damaged as a result.

12 **8. Indiana**

13 25. Plaintiff Gary Farson is a natural person and citizen of Indiana who purchased a Ford
14 Vehicle and was damaged as a result.

15 **9. Maryland**

16 26. Plaintiff Vivian Buchanan is a natural person and citizen of Maryland who purchased
17 a Ford Vehicle and was damaged as a result.

18 **10. Massachusetts**

19 27. Plaintiff Debbie SanSouci is a natural person and citizen of Massachusetts who
20 purchased a Ford Vehicle and was damaged as a result.

21 28. Plaintiff Frank Everett is a natural person and citizen of Massachusetts who purchased
22 a Ford Vehicle and was damaged as a result.

23 **11. Michigan**

24 29. Plaintiff Ronald Caunt is a natural person and citizen of Michigan who purchased a
25 Ford Vehicle and was damaged as a result.

12. Mississippi

30. Plaintiff Joshua Carson is a natural person and citizen of Mississippi who purchased a Ford Vehicle and was damaged as a result.

13. New Hampshire

31. Plaintiff Michael Andosca is a natural person and citizen of New Hampshire who purchased a Ford Vehicle and was damaged as a result.

14. New Jersey

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

33. Plaintiff Brian Martin is a natural person and citizen of New Jersey who purchased a Ford Vehicle and was damaged as a result.

34.

15. New York

35. Plaintiff Keith Bova is a natural person and citizen of New York who purchased a Ford Vehicle and was damaged as a result.

36. Plaintiff Mark Giunta is a natural person, a citizen of Texas, and formerly a citizen of New York who took title to a Ford Vehicle in New York and was damaged as a result.

16. North Carolina

37. Plaintiff Dennis Daughtery is a natural person and citizen of North Carolina who purchased a Ford Vehicle and was damaged as a result.

17. Ohio

38. Plaintiff Diana Brunner is a natural person and citizen of Ohio who purchased a Ford Vehicle and was damaged as a result.

18. Oklahoma

39. Plaintiff Melia Douglas is a natural person and citizen of Oklahoma who purchased a Ford Vehicle and was damaged as a result.

1 **19. Pennsylvania**

2 40. Plaintiff Connie Garsey is a natural person and citizen of Pennsylvania who purchased
3 a Ford Vehicle and was damaged as a result.

4 41. Plaintiff Andrew Stalnecker is a natural person and citizen of Pennsylvania who
5 purchased a Ford Vehicle and was damaged as a result.

6 **20. Tennessee**

7 42. Plaintiff Gary L. Buck is a natural person and citizen of Tennessee who purchased a
8 Ford Vehicle and was damaged as a result.

9 **21. Texas**

10 43. Plaintiff Heather S. Hardee is a natural person and citizen of Texas who purchased a
11 Ford Vehicle and was damaged as a result.

12 **22. Virginia**

13 44. Plaintiff Ruben Wilson is a natural person and citizen of Virginia who purchased a
14 Ford Vehicle and was damaged as a result.

15 **23. Washington**

16 45. Plaintiff Fredrick Gregg is a natural person and citizen of Washington who purchased
17 a Ford Vehicle and was damaged as a result.

18 **24. West Virginia**

19 46. Plaintiff Dean Olack is a natural person and citizen of West Virginia who purchased a
20 Ford Vehicle and was damaged as a result.

21 **B. Defendant**

22 47. Ford Motor Company (“Ford”) is a corporation doing business in all fifty states
23 (including the District of Columbia) and is organized under the laws of the State of Delaware, with its
24 principal place of business in Dearborn, Michigan. Ford is registered to do business in the State of
25 California. At all times relevant to this action, Ford manufactured, sold, and purportedly warranted,
26

1 under the Ford, Lincoln, and Mercury brand names, the Ford Vehicles at issue throughout the United
2 States.

3 IV. TOLLING OF THE STATUTE OF LIMITATIONS

4 A. Discovery Rule Tolling

5 48. Plaintiffs could not have discovered through the exercise of reasonable diligence that
6 their Ford Vehicles' tailgates were defective within the time period of any applicable statutes of
7 limitation.

8 49. Among other things, Plaintiffs did not know and could not have known that the
9 tailgates regularly crack in other similar vehicles and/or that Ford issued several Technical Service
10 Bulletins regarding the Cracked Tailgate Problem.

11 B. Fraudulent Concealment Tolling

12 50. Throughout the time period relevant to this action, Ford affirmatively concealed from
13 Plaintiffs and the other Class members the defect described herein. Indeed, Ford kept Plaintiffs and
14 the other Class members ignorant of vital information essential to the pursuit of their claims, and as a
15 result, neither Plaintiffs nor the other Class members could have discovered, even upon reasonable
16 exercise of diligence, that the Cracked Tailgate Problem was caused by a design, assembly and/or
17 manufacturing defect.

18 51. Specifically, and as discussed in greater detail below, Ford was aware of the Cracked
19 Tailgate Problem since at least early 2002. Despite its knowledge of the defect, Ford continued to
20 manufacture, advertise, sell, lease, and purportedly warrant the Ford Vehicles without disclosing that
21 the Cracked Tailgate Problem was caused by a design, assembly and/or manufacturing defect.

22 52. Ford has repeatedly and expressly denied the existence of the Cracked Tailgate
23 problem to Plaintiffs and the other Class members. When Plaintiffs and the other Class members
24 attempted to have Ford repair or reimburse them for repairs to their Cracked Tailgates, Ford has
25 concealed that it was responsible for the damage. Ford's affirmative statements of denial concealed
26 Ford's knowledge of the underlying problem from Plaintiffs and the other Class members.

1 53. Thus, the running of all applicable statutes of limitation have been suspended with
2 respect to any claims which Plaintiffs and the other Class members have sustained as a result of the
3 Cracked Tailgate Problem by virtue of the fraudulent concealment doctrine.

4 **C. Estoppel**

5 54. Ford was under a continuous duty to disclose to Plaintiffs and the other Class members
6 the true character, quality, and nature of its vehicle tailgates.

7 55. Ford knowingly, affirmatively, and actively concealed the true nature, quality and
8 character of its vehicle tailgates from consumers.

9 56. Based on the foregoing, Ford is estopped from relying on any statutes of limitations in
10 defense of this action.

11 **V. COMMON FACTUAL ALLEGATIONS**

12 **A. The Ford Vehicles**

13 57. For model year 2002, Ford significantly redesigned its primary four-door sports utility
14 vehicle model known-then as the Ford Explorer/Mercury Mountaineer. The 2002 redesign
15 (referenced internally by Ford as “UN152”), served as the basis for the 2002 to 2005 model years for
16 the Ford Explorer and Mercury Mountaineer vehicles. The Lincoln Aviator, which Ford introduced
17 in 2003, was also based on the UN152 design.

18 58. All the Ford Vehicles at issue (*i.e.*, the model 2002 through model 2005 Ford Explorer
19 and Mercury Mountaineer, and model 2003 through model 2005 Lincoln Aviator) share the same
20 model chassis, have materially identical tailgates, and suffer from the same Cracked Tailgate
21 Problem.

22 59. Ford marketed, distributed, and purportedly warranted the Ford Vehicles in the United
23 States.

24 60. During the calendar years 2002 through 2005, Ford sold at least 1,386,086 Ford
25 Explorers, 174,243 Mercury Mountaineers, and 70,890 Lincoln Aviators in the United States, totaling
26 approximately 1.6 million Ford Vehicles at issue herein. In 2006, the Ford Explorer and Mercury

1 Mountaineer were redesigned (designing out the appliqué and the Cracked Tailgate Problem), while
2 the Lincoln Aviator model was discontinued after the 2005 model year.

3 **B. The Cracked Tailgate Problem**

4 61. Each Ford Vehicle manufactured by Ford contains an inherent, common defect, the
5 Cracked Tailgate Problem, that causes a body panel appliqué on the rear tailgate to crack at varying
6 places along the appliqué:



15 62. The rear tailgate of the Ford Vehicles is made from ABS (acrylonitrile butadiene
16 styrene) or Xenoy, both plastic materials that are prone to cracking under stress due to variances in
17 temperature, moisture, and other strains.

18 63. At some point during the life of the Ford Vehicles, these stresses will cause a large
19 discernible crack to the appliqué panel, immediately devaluing the Ford Vehicle, and causing the
20 safety hazards described above.

21 64. The cost of repairing a cracked tailgate in the Ford Vehicles, including parts and labor,
22 can be at least \$300 to \$800 per crack. The repair does not protect against subsequent cracks;
23 however, and the Cracked Tailgate Problem will continue to manifest itself regardless of repair.
24 Repairing the shattered backlite can cost between \$1,000 and \$2,000.

1 **C. Ford Knew of the Cracked Tailgate Problem No Later Than Early 2002**

2 65. Ford was aware of the Cracked Tailgate Problem in the Ford Vehicles no later than
3 early 2002, during the first few months after the Ford Vehicles were initially manufactured. Soon
4 thereafter, Ford received thousands of complaints about the defective tailgate, but failed to recall the
5 Ford Vehicles or otherwise address the defect in any meaningful way.

6 66. Ford knew that the Cracked Tailgate Problem was caused by a defect because, among
7 other reasons, the Cracked Tailgate Problem began occurring: (a) almost immediately after the first
8 models of the Ford Vehicles were sold to the public; (b) in an identical position on the defective
9 part;(c) with nearly identical resulting damage to the defective part; (d) across all three brand models
10 (*i.e.*, Ford, Lincoln, and Mercury) of Ford Vehicles; and (e) to thousands, if not tens of thousands, of
11 Ford Vehicles throughout the United States.

12 67. Indeed, Ford acknowledged its awareness of the defect by issuing several Technical
13 Service Bulletins (“TSBs”) regarding the Cracked Tailgate Problem.

14 **D. Ford’s Technical Service Bulletins Concerning the Cracked Tailgate Problem**

15 68. A TSB is not to be confused with a recall. TSBs are often issued by vehicle
16 manufacturers when there are numerous occurrences of an unanticipated, systemic problem that can
17 impact the normal operation of the vehicle. The TSB itself provides only a guide for the repair or
18 remediation of the identified problem. Moreover, TSBs are circulated among dealership service
19 departments, and are *not* provided to vehicle owners or the public generally. Unlike with a recall,
20 dealers are not required to call in (or repair) cars for which there are TSBs, nor is there any obligation
21 to do the TSB repairs for free (or even at a reduced charge to the owner).

22 69. The first TSB that Ford issued with respect to this problem – TSB 02-25-6: “Body –
23 Backglass/Liftgate – Xenoy Material Backglass Available to Service Cracks, Warp, Separation –
24 Service Tips” – was published on December 13, 2002, and applied to 2002 Explorers and 2002
25 Mountaineers. TSB 02-25-26 was the first TSB to acknowledge that the Ford Vehicles “may exhibit
26 cracking, warp, or separation of the rear liftgate applique.” TSB 02-25-6 provided that the entire

1 liftgate glass assembly should be replaced. This service was purportedly “Eligible [For Repair]
2 Under The Provisions Of *Bumper To Bumper Warranty Coverage*” (emphasis added).

3 70. The second TSB that Ford issued with respect to this problem – TSB 03-12-6: “Body
4 – Liftgate Glass Applique Damaged/Cracked – Service Procedure” – was published on June 16, 2003,
5 and applied to 2002-2003 Explorers and 2002-2003 Mountaineers. TSB 03-12-6 stated that it was
6 “no longer necessary to replace the entire liftgate glass assembly to correct this condition.” The TSB
7 also purported that the repair was “Eligible Under The Provisions Of *Bumper To Bumper Warranty*
8 *Coverage*” (emphasis added).

9 71. The third TSB that Ford issued with respect to this problem – TSB 03-15-5: “Liftgate
10 Glass Appliqué – Damaged/Cracked – Service Procedure” – was published on July 18, 2003, and
11 applied to 2002-2003 Explorers and 2002-2003 Mountaineers. Like the other TSBs, TSB 03-15-5
12 recognized, among other things, that Ford Vehicles “may exhibit a damaged/cracked plastic appliqué
13 without glass damage.” The Cracked Tailgate problem was, at the time, purportedly “eligible [for
14 repair] under the provisions of *Bumper to Bumper Warranty coverage*” (emphasis added).

15 72. The fourth TSB that Ford issued with respect to this problem – TSB 04-8-5: “Liftgate
16 Glass Appliqué – Damaged/Cracked – Service Procedure” – was published on April 23, 2004, and
17 applied to 2002-2004 Explorers; 2002-2004 Mountaineers; and 2003-2004 Aviators. Its stated
18 purpose was to “update vehicle line coverage and service procedure.” TSB 04-8-5 acknowledged
19 that “some 2002-2004 Explorer/Mountaineer and 2003-2004 Aviator vehicles may exhibit a
20 damaged/cracked plastic appliqué without liftgate glass damage.” At the time, Ford asserted that the
21 Cracked Tailgate problem was (purportedly) “eligible under the provisions of *New Vehicle Limited*
22 *Warranty coverage*” (emphasis added).

23 73. The fifth TSB that Ford issued with respect to this problem – TSB 05-24-2: “Liftgate
24 Glass Appliqué – Damaged/Cracked – Service Procedure” – was published on November 17, 2005,
25 and applied to 2002-2004 Explorers, 2002-2004 Mountaineers, and 2003-2004 Aviators. Its stated
26 purpose was to “update the vehicle model year coverage.” TSB 05-24-2 recognized that “some 2002-

1 2005 Explorer/Mountaineer and 2003-2005 Aviator vehicles may exhibit a damaged/cracked plastic
2 appliqué without liftgate glass damage.” At the time, Ford again asserted that the Cracked Tailgate
3 problem was (purportedly) “eligible under the provisions of *New Vehicle Limited Warranty*
4 coverage” (emphasis added).

5 **E. The Safety Risks Created by the Cracked Tailgate Problem**



16
17 74. Ford has already recognized that the potential breaking of the backlite creates a
18 substantial safety hazard. On or about October 2004, Ford recalled several of the Ford Vehicle
19 models herein (the 2002 and 2003 Ford Explorer and Mercury Mountaineer) due to a faulty liftglass
20 hinge that could cause the window in the tailgate to drop out and hit/injure the operator or bystanders.
21 Ford agreed to replace hinges on the liftglass because “the liftgate window may drop unexpectedly
22 when it is being operated. When the window drops it may a (sic) strike a person nearby or the glass
23 may break creating the potential for cuts or bruises.”

24 75. Here, the identical safety hazard is created upon manifestation of the Cracked Tailgate.
25 Moreover, the Cracked Tailgate Problem can cause (and has caused) the backlite to shatter causing
26 substantial risk of serious injury.

1 76. Ford's decision to use ABS or Xenoy causes the cracks in the tailgates to compromise
2 the integrity of components attached to the tailgate. When this one component is compromised, the
3 components attached to it that rely on its integrity are also compromised, such as latches, glass,
4 hinges, and other components.

5 77. The use of ABS or Xenoy in the Ford Vehicles means that when a crack appears, the
6 components attached to the tailgates, including hinges, latches, and glass, are compromised. As a
7 result of the Cracked Tailgate Problem, the backlite becomes unstable and has an increased likelihood
8 of shattering. The shattering glass creates the potential for personal injury.

9 78. Another safety risk is the propensity of the appliqué to separate from the vehicle.
10 There is no fastener such as screws, nuts, or bolts that attach the applique to the vehicle. Thus, as the
11 appliqué cracks and warps, it can also detach completely from the vehicle, as TSB 02-25-6
12 acknowledges. This also results in a safety hazard, especially if it occurs when the vehicle is in
13 motion and/or in the middle of traffic. The Cracked Tailgate also results in a sharp rough hard plastic
14 edge that poses the safety hazard of a laceration.

15 **F. Ford has Wrongfully Denied Vehicle Warranty Claims Relating to the Cracked Tailgate**
16 **Problem**

17 79. Despite specific knowledge that the Cracked Tailgate Problem is the result of a
18 manufacturing defect, Ford continued to manufacture, advertise, sell, and purportedly warrant the
19 Ford Vehicles as marketable and free from known defects. In addition, since discovery of the defect
20 at issue in early 2002, Ford has repeatedly adjusted its position on whether Ford is responsible to
21 remedy the Cracked Tailgate Problem in order to avoid liability for the defect.

22 80. Initially, when customers suffered the Cracked Tailgate within the warranty period,
23 Ford asserted that the crack was caused by external forces and, thus, not covered under Ford's new
24 vehicle warranty. As such, by refusing to repair the Cracked Tailgates on any vehicles reporting the
25 damage after early 2002, but before the expiration of the warranty period, Ford was fraudulently
26 rejecting Class members' valid warranty claims.

1 81. Upon information and belief, at present, Ford states that it will cover the defective part
2 under its three-year new vehicle warranty, but not under any extended (Ford or non-Ford) warranties.
3 Obviously, however, the last new Ford Vehicle was sold in or about 2005, so any three-year warranty
4 thereon has long-since expired, so Ford's recent, empty acknowledgement of coverage under the
5 original three-year warranty is meaningless.

6 **G. Consumer Allegations**

7 82. Thousands of complaints have been lodged by customers regarding the Cracked
8 Tailgate Problem.

9 83. The National Highway Traffic Safety Administration ("NHTSA") has received at least
10 337 unique complaints of tailgate cracks in the 2002 through 2005 Ford Explorers, as well as 65
11 complaints for the same Mercury Mountaineer, and twelve for the Lincoln Aviator models. Some of
12 these complaints note that the damaged tailgate results in a safety risk, as the defect in the tailgate
13 could potentially cause the tailgate's glass to fall out (as described above). The following are a few
14 examples of the NHTSA complaints:

15 a. "Ford Explorer, 2002. Stress crack (about one eighth inch wide, seven inches
16 long) in frame below rear hatch window, to the left of the ford name plate. Crack occurred
17 without any external force being applied (no collision, not struck by foreign object, etc.). The
18 frame is simply not able to carry the weight of the glass window. Consequently, the rear glass
19 window appears to be in danger of falling out. This is the identical problem as reported at
20 www.nhtsa.dot.gov in oid numbers: 10049180, 10052830, 10052901, 10053989, 10079762,
21 10104457, 10105660. In each case, neither the dealer nor Ford would fix the defective
22 window frame. And likewise, they will not fix the one on my vehicle, even though I have an
23 extended warranty in effect. An individual in the body shop at my dealer said that he has
24 recently seen about a dozen similar problems." (NHTSA Consumer Complaint, ODI No.
25 10105716.)

1 b. “Rear lift gate panel below glass has developed a crack. This lift gate has been
2 recalled but dealer states the cracked panel is not part of the recall. Two dealers have said this
3 problem has occurred in other vehicles. . . .” (NHTSA Consumer Complaint, ODI No.
4 10110700.)

5 c. “A vertical crack on plastic covering of hatch cover. Starts at the Lincoln
6 medallion that is cut into the plastic piece and extends vertically to bottom edge. I took it to a
7 Lincoln dealer. Estimate was \$500 for a piece of plastic that measures approximately 12
8 inches high and the width of the hatch door. This is definitely a design error on the part of
9 Ford. The service manager told me that he sees a lot of this same complaint and it is not
10 covered by Ford. A \$42,500 automobile with a defect in design that results in an unsightly
11 split in plastic piece wanting an outrageous fee of \$500 to replace the piece. Do you think I
12 will ever buy another ford product. Not in this lifetime! Thanks Ford who always puts
13 quality first.” (NHTSA Consumer Complaint, ODI No. 10261983.)

14 84. Moreover, on various Internet forums including, but not limited to,
15 www.carcomplaints.com, www.automotiveforums.com, www.townhall-talk.edmunds.com, and
16 <http://www.explorerforum.com>, owners of Ford Vehicles throughout the United States have, and
17 continue to, consistently complain about their model 2002 through model 2005 Ford Explorer and
18 Mercury Mountaineer, and model 2003 through model 2005 Lincoln Aviator’s cracked tailgates. As
19 an example, the following Internet forums contain well over 1,000 reports, from all around the United
20 States, complaining of the Cracked Tailgate Problem:

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

22 <http://www.carcomplaints.com/Ford/Explorer/>;

23 <http://www.explorerforum.com>; and

24 <http://www.aboutautomobile.com/Complaint/>.

1 **VI. NAMED PLAINTIFFS' EXPERIENCES**

2 **A. Nancy Hough**

3 85. On or about April 5, 2005, Plaintiff Hough purchased a new 2002 Ford Explorer from
4 a Ford dealership in Alabama.

5 86. Unknown to Plaintiff Hough at the time, but known to Ford, 2002 Ford Explorers were
6 subject to, and would almost certainly experience during the life of the vehicle, the Cracked Tailgate
7 Problem.

8 87. By April 2005, Ford had specific knowledge that Plaintiff Hough's vehicle would
9 likely experience the Cracked Tailgate Problem.

10 88. Despite this knowledge, Ford sold Plaintiff Hough the Ford Vehicle, and associated
11 Ford new vehicle warranty and extended Ford service plan, without disclosing the vehicle's inherent
12 (and pre-existing) defect.

13 89. Upon discovering the Cracked Tailgate in the winter of 2007, Plaintiff Hough
14 informed Ford about the damage. When Ford refused to repair the Cracked Tailgate at its expense,
15 Plaintiff Hough paid to have the Cracked Tailgate repaired on her Ford Vehicle.

16 90. Plaintiff Hough discovered that the Cracked Tailgate had occurred for the second time
17 in or around June 2008. Plaintiff Hough again informed Ford about the damage and Ford refused to
18 repair the vehicle. When Ford refused to repair the Cracked Tailgate at its expense for the second
19 time, Plaintiff Hough again paid to have the Cracked Tailgate repaired on her Ford Vehicle.

20 **B. James Denning**

21 91. In or about 2004, Plaintiff Denning purchased a new 2004 Ford Explorer from a Ford
22 dealership in California.

23 92. Unknown to Plaintiff Denning at the time, but known to Ford, 2004 Ford Explorers
24 were subject to, and would almost certainly experience during the life of the vehicle, the Cracked
25 Tailgate Problem.

1 93. By 2004, Ford had specific knowledge that Plaintiff Denning's vehicle would likely
2 experience the Cracked Tailgate Problem.

3 94. Despite this knowledge, Ford sold Plaintiff Denning the Ford Vehicle, and associated
4 Ford new vehicle warranty, without disclosing the vehicle's inherent (and pre-existing) defect.

5 95. In or about July 2011, Plaintiff Denning first observed the Cracked Tailgate on his
6 vehicle.

7 96. Upon discovering the damage, Plaintiff Denning requested that Ford repair the
8 Cracked Tailgate Problem on his vehicle, but Ford refused.

9 97. As a result of the defect, the Cracked Tailgate has resulted in the diminution of the
10 Ford Vehicle's value.

11 **C. Al Morelli**

12 98. In or about 2003, Plaintiff Morelli purchased a new 2003 Ford Explorer from a Ford
13 dealership in California.

14 99. Unknown to Plaintiff Morelli at the time, but known to Ford, 2003 Ford Explorers
15 were subject to, and would almost certainly experience during the life of the vehicle, the Cracked
16 Tailgate Problem.

17 100. By November 2003, Ford had specific knowledge that Plaintiff Morelli's vehicle
18 would likely experience the Cracked Tailgate Problem.

19 101. Despite this knowledge, Ford sold Plaintiff Morelli the Ford Vehicle, and associated
20 Ford new vehicle warranty, without disclosing the vehicle's inherent (and pre-existing) defect.

21 102. In or about August 2011, Plaintiff Morelli first observed the Cracked Tailgate on his
22 vehicle.

23 103. Upon discovering the damage, Plaintiff Morelli requested that Ford repair the Cracked
24 Tailgate Problem on his vehicle, but Ford refused.

25 104. As a result of the defect, the Cracked Tailgate presents a continuing safety hazard to
26 Plaintiff Morelli and has resulted in the diminution of the Ford Vehicle's value.

1 **D. Sally J. Nettleton**

2 105. On or about November 28, 2003, Plaintiff Nettleton purchased a used 2003 Ford
3 Explorer from a Ford dealership in California.

4 106. Unknown to Plaintiff Nettleton at the time, but known to Ford, 2003 Ford Explorers
5 were subject to, and would almost certainly experience during the life of the vehicle, the Cracked
6 Tailgate Problem.

7 107. By November 2003, Ford had specific knowledge that Plaintiff Nettleton's vehicle
8 would almost certainly experience the Cracked Tailgate Problem.

9 108. Despite this knowledge, Ford sold Plaintiff Nettleton the Ford Vehicle, with the then-
10 current and effective Ford new vehicle warranty, without disclosing the vehicle's inherent (and pre-
11 existing) defect.

12 109. In or about February 2008, Plaintiff Nettleton first observed the Cracked Tailgate on
13 her vehicle.

14 110. Upon discovering the damage, Plaintiff Nettleton took her vehicle into a Ford
15 dealership and notified Ford of the Cracked Tailgate Problem that had manifested on her vehicle.
16 Plaintiff Nettleton requested that Ford repair the Cracked Tailgate Problem on her vehicle, but Ford
17 refused on the grounds that the Ford Vehicle was out of warranty.

18 111. Plaintiff Nettleton then notified Ford of the Cracked Tailgate Problem by mail but
19 Ford again refused to repair the Cracked Tailgate Problem on her vehicle.

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

22 **E. Alan Lipkin**

23 113. On or about April 26, 2004, Plaintiff Lipkin purchased a new 2004 Lincoln Aviator
24 from a Lincoln, Mercury dealership in Colorado.

1 114. Unknown to Plaintiff Lipkin at the time, but known to Ford, 2004 Lincoln Aviators
2 were subject to, and would almost certainly experience during the life of the vehicle, the Cracked
3 Tailgate Problem.

4 115. By April 2004, Ford had specific knowledge that Plaintiff Lipkin's vehicle would
5 likely experience the Cracked Tailgate Problem.

6 116. Despite this knowledge, Ford sold Plaintiff Lipkin the Ford Vehicle, and associated
7 Ford new vehicle limited warranty, without disclosing the vehicle's inherent (and pre-existing)
8 defect.

9 117. In or about February 2011, Plaintiff Lipkin first observed the Cracked Tailgate on his
10 vehicle.

11 118. Upon discovering the damage, Plaintiff Lipkin requested that Ford repair the Cracked
12 Tailgate Problem on his vehicle, but Ford refused.

13 119. As a result of the defect, the Cracked Tailgate presents a continuing safety hazard to
14 Plaintiff Lipkin and has resulted in the diminution of the Ford Vehicle's value.

15 **F. Dr. Charles Cohen**

16 120. On or about December 31, 2004, Plaintiff Cohen purchased a new 2005 Eddie Bauer
17 Edition Ford Explorer from a Ford dealership in Connecticut.

18 121. Unknown to Plaintiff Cohen at the time, but known to Ford, 2005 Ford Explorers were
19 subject to, and would almost certainly experience during the life of the vehicle, the Cracked Tailgate
20 Problem.

21 122. By December 2004, Ford had specific knowledge that Plaintiff Cohen's vehicle would
22 likely experience the Cracked Tailgate Problem.

23 123. Despite this knowledge, Ford sold Plaintiff Cohen the Ford Vehicle, and associated
24 Ford new vehicle limited warranty, without disclosing the vehicle's inherent (and pre-existing)
25 defect.

1 124. In or about March 2012, Plaintiff Cohen first observed the Cracked Tailgate on his
2 vehicle.

3 125. As a result of the defect, the Cracked Tailgate presents a continuing safety hazard to
4 Plaintiff Cohen and has resulted in the diminution of the Ford Vehicle's value.

5 **G. Zane Dery**

6 126. In or about 2008, Plaintiff Dery purchased a used 2005 Lincoln Aviator from a
7 Mercury dealership in Florida.

8 127. Unknown to Plaintiff Dery at the time, but known to Ford, 2005 Lincoln Aviators
9 were subject to, and would almost certainly experience during the life of the vehicle, the Cracked
10 Tailgate Problem.

11 128. At the time Plaintiff Dery's vehicle was placed onto the market by Ford, Ford had
12 specific knowledge that Plaintiff Dery's vehicle would likely experience the Cracked Tailgate
13 Problem.

14 129. Despite this knowledge, Ford did not disclose the vehicle's inherent (and pre-existing)
15 defect.

16 130. In or about 2010, Plaintiff Dery first observed the Cracked Tailgate on his vehicle.

17 131. Upon discovering the damage, Plaintiff Dery requested that Ford repair the Cracked
18 Tailgate Problem on his vehicle, but Ford refused.

19 132. As a result of the defect, the Cracked Tailgate presents a continuing safety hazard to
20 Plaintiff Dery and has resulted in the diminution of the 2005 Lincoln Aviator's value.

21 **H. Linda Heywood**

22 133. In or about 2002, Plaintiff Heywood purchased a new 2002 Ford Explorer from a Ford
23 dealership in Georgia.

24 134. Unknown to Plaintiff Heywood at the time, but known to Ford, 2002 Ford Explorers
25 were subject to, and would almost certainly experience during the life of the vehicle, the Cracked
26 Tailgate Problem.

1 135. By early 2002, Ford had specific knowledge that Plaintiff Heywood's vehicle would
2 likely experience the Cracked Tailgate Problem.

3 136. Despite this knowledge, Ford did not disclose the vehicle's inherent (and pre-existing)
4 defect.

5 137. In or about March or April 2008, Plaintiff Heywood first observed the Cracked
6 Tailgate on her vehicle.

7 138. As a result of the defect, the Cracked Tailgate presents a continuing safety hazard to
8 Plaintiff Heywood and has resulted in the diminution of the Ford Vehicle's value.

9 **I. Carl Linder**

10 139. On or about September 25, 2008, Plaintiff Linder purchased a used 2003 Ford
11 Explorer in Illinois.

12 140. Unknown to Plaintiff Linder at the time, but known to Ford, 2003 Ford Explorers were
13 subject to, and would almost certainly experience during the life of the vehicle, the Cracked Tailgate
14 Problem.

15 141. At the time Plaintiff Linder's vehicle was placed onto the market by Ford, Ford had
16 specific knowledge that Plaintiff Linder's vehicle would likely experience the Cracked Tailgate
17 Problem.

18 142. Despite this knowledge, Ford placed Plaintiff Linder's Ford Vehicle on the market
19 without disclosing the vehicle's inherent (and pre-existing) defect.

20 143. In or about the winter of 2010, Plaintiff Linder first observed the Cracked Tailgate on
21 his vehicle.

22 144. Upon discovering the damage, Plaintiff Linder requested that Ford repair the Cracked
23 Tailgate Problem on his vehicle, but Ford refused.

24 145. As a result of the defect, the Cracked Tailgate presents a continuing safety hazard to
25 Plaintiff Linder and has resulted in the diminution of the Ford Vehicle's value.

1 **J. Denise Procento**

2 146. In late 2001, Plaintiff Procento purchased a new 2002 Eddie Bauer Edition Ford
3 Explorer from a Ford dealership in Illinois.

4 147. Unknown to Plaintiff Procento at the time, but known to Ford, 2002 Ford Explorers
5 were subject to, and would almost certainly experience during the life of the vehicle, the Cracked
6 Tailgate Problem.

7 148. At the time Plaintiff Procento's vehicle was placed onto the market by Ford, Ford had
8 specific knowledge that Plaintiff Procento's vehicle would likely experience the Cracked Tailgate
9 Problem.

10 149. Despite this knowledge, Ford sold Plaintiff Procento the Ford Vehicle, and associated
11 Ford new vehicle limited warranty, without disclosing the vehicle's inherent (and pre-existing)
12 defect.

13 150. In or about February 2011, Plaintiff Procento first observed the Cracked Tailgate on
14 her vehicle.

15 151. Upon discovering the damage, Plaintiff Procento requested that Ford repair the
16 Cracked Tailgate Problem on her vehicle, but Ford refused.

17 152. As a result of the defect, the Cracked Tailgate has resulted in the diminution of the
18 Ford Vehicle's value.

19 **K. Gary Farson**

20 153. In or about 2003, Plaintiff Farson purchased a used 2003 Ford Explorer in Indiana.

21 154. Unknown to Plaintiff Farson at the time, but known to Ford, 2003 Ford Explorers were
22 subject to, and would almost certainly experience during the life of the vehicle, the Cracked Tailgate
23 Problem.

24 155. At the time Plaintiff Farson's vehicle was placed onto the market by Ford, Ford had
25 specific knowledge that Plaintiff Farson's vehicle would likely experience the Cracked Tailgate
26 Problem.

1 156. Despite this knowledge, Ford placed Plaintiff Farson's Ford Vehicle on the market
2 without disclosing the vehicle's inherent (and pre-existing) defect.

3 157. In or about August 2011, Plaintiff Farson first observed the Cracked Tailgate on his
4 vehicle.

5 158. Upon discovering the damage, Plaintiff Farson requested that Ford repair the Cracked
6 Tailgate Problem on his vehicle, but Ford refused.

7 159. As a result of the defect, the Cracked Tailgate presents a continuing safety hazard to
8 Plaintiff Farson and has resulted in the diminution of the Ford Vehicle's value.

9 **L. Vivian Buchanan**

10 160. On or about March 22, 2003, Plaintiff Buchanan purchased a new 2003 Lincoln
11 Aviator from a Lincoln dealership in Maryland.

12 161. Unknown to Plaintiff Buchanan at the time, but known to Ford, 2003 Lincoln Aviators
13 were subject to, and would almost certainly experience during the life of the vehicle, the Cracked
14 Tailgate Problem.

15 162. By March 2003, Ford had specific knowledge that Plaintiff Buchanan vehicle would
16 likely experience the Cracked Tailgate Problem.

17 163. Despite this knowledge, Ford sold Plaintiff Buchanan the Ford Vehicle, and associated
18 Ford new vehicle warranty, without disclosing the vehicle's inherent (and pre-existing) defect.

19 164. In or about Winter 2008, Plaintiff Buchanan first observed the Cracked Tailgate on her
20 vehicle. The crack also loosened the sealant surrounding the liftgate window.

21 165. Upon discovering the damage, Plaintiff Buchanan requested that Ford repair the
22 Cracked Tailgate Problem on her vehicle, but Ford refused.

23 166. As a result of the defect, the Cracked Tailgate presents a continuing safety hazard to
24 Plaintiff Buchanan and has resulted in the diminution of the Ford Vehicle's value.

1 **M. Frank Everett**

2 167. On or about September 17, 2004, Plaintiff Everett purchased a used 2004 Ford
3 Explorer for personal use from a Ford dealership in Massachusetts.

4 168. Unknown to Plaintiff Everett at the time, but known to Ford, 2004 Ford Explorers
5 were subject to, and would almost certainly experience during the life of the vehicle, the Cracked
6 Tailgate Problem.

7 169. At the time Plaintiff Everett's vehicle was placed onto the market by Ford, Ford had
8 specific knowledge that Plaintiff Everett's vehicle would likely experience the Cracked Tailgate
9 Problem.

10 170. Despite this knowledge, Ford placed Plaintiff Everett's Ford Vehicle on the market
11 without disclosing the vehicle's inherent (and pre-existing) defect.

12 171. Sometime in 2006 or 2007, Plaintiff Everett first observed the Cracked Tailgate on his
13 vehicle.

14 172. Upon discovering the damage, Plaintiff Everett called Ford's Customer Service
15 number and requested that Ford repair the Cracked Tailgate Problem, but Ford refused, stating that
16 Ford was unaware of similar reports of the Cracked Tailgate Problem and that the damage was likely
17 the result of an impact to the rear of the vehicle.

18 173. As a result of the defect, the Cracked Tailgate presents a continuing safety hazard to
19 Plaintiff Everett and has resulted in the diminution of the Ford Vehicle's value.

20 **N. Debbie SanSouci**

21 174. On or about May 22, 2010, Plaintiff SanSouci was a consumer who purchased a used
22 2004 Ford Explorer for personal use from a Ford dealership in Massachusetts.

23 175. Unknown to Plaintiff SanSouci at the time, but known to Ford, 2004 Lincoln Aviators
24 were subject to, and would almost certainly experience during the life of the vehicle, the Cracked
25 Tailgate Problem.

1 176. At the time Plaintiff SanSouci's vehicle was placed onto the market by Ford, Ford had
2 specific knowledge that Plaintiff SanSouci's vehicle would likely experience the Cracked Tailgate
3 Problem.

4 177. Despite this knowledge, Ford placed Plaintiff SanSouci's Ford Vehicle on the market
5 without disclosing the vehicle's inherent (and pre-existing) defect.

6 178. In or about Spring 2011, Plaintiff SanSouci first observed the Cracked Tailgate on her
7 vehicle.

8 179. As a result of the defect, the Cracked Tailgate has resulted in the diminution of the
9 Ford Vehicle's value.

10 **O. Ronald Caunt**

11 180. On or about June 24, 2003, Plaintiff Caunt purchased a new 2003 Ford Explorer from
12 a Ford dealership in Michigan.

13 181. Unknown to Plaintiff Caunt at the time, but known to Ford, 2003 Ford Explorer were
14 subject to, and would almost certainly experience during the life of the vehicle, the Cracked Tailgate
15 Problem.

16 182. By June 2003, Ford had specific knowledge that Plaintiff Caunt's vehicle would likely
17 experience the Cracked Tailgate Problem.

18 183. Despite this knowledge, Ford sold Plaintiff Caunt the Ford Vehicle, and associated
19 Ford new vehicle warranty, without disclosing the vehicle's inherent (and pre-existing) defect.

20 184. In or about January 2010, Plaintiff Caunt first observed the Cracked Tailgate on his
21 vehicle.

22 185. Upon discovering the damage, Plaintiff Caunt requested that Ford repair the Cracked
23 Tailgate Problem on his vehicle, but Ford refused.

24 186. As a result of the defect, the Cracked Tailgate has resulted in the diminution of the
25 Ford Vehicle's value.

1 **P. Joshua Carson**

2 187. On or about December 14, 2009, Plaintiff Carson purchased a used 2005 Lincoln
3 Aviator from a dealership in Mississippi.

4 188. Unknown to Plaintiff Carson at the time, but known to Ford, 2005 Lincoln Aviators
5 were subject to, and would almost certainly experience during the life of the vehicle, the Cracked
6 Tailgate Problem.

7 189. At the time Plaintiff Carson's vehicle was initially placed onto the market by Ford,
8 Ford had specific knowledge that Plaintiff Carson's vehicle would likely experience the Cracked
9 Tailgate Problem.

10 190. Despite this knowledge, Ford placed Plaintiff Carson's Ford Vehicle on the market
11 without disclosing the vehicle's inherent (and pre-existing) defect.

12 191. In or about November 13, 2011, Plaintiff first Carson observed the Cracked Tailgate
13 and smashed rear liftgate window on his vehicle. He telephoned police who came out to examine the
14 vehicle and determined it was not vandalism but that it was a "manufacturing flaw."

15 192. Upon discovering the damage, Plaintiff Carson requested that Ford repair the Cracked
16 Tailgate Problem on his vehicle, but Ford refused.

17 193. As a result of the defect, the Cracked Tailgate has resulted in the diminution of the
18 Ford Vehicle's value.

19 **Q. Michael Andosca**

20 194. On or about June 5, 2009, Plaintiff Andosca purchased a used 2005 Mercury
21 Mountaineer from a Lincoln-Mercury dealership in New Hampshire.

22 195. Unknown to Plaintiff Andosca at the time, but known to Ford, 2005 Mercury
23 Mountaineers were subject to, and would almost certainly experience during the life of the vehicle,
24 the Cracked Tailgate Problem.

1 196. At the time Plaintiff Andosca's vehicle was placed onto the market by Ford, Ford had
2 specific knowledge that Plaintiff Andosca's vehicle would likely experience the Cracked Tailgate
3 Problem.

4 197. Despite this knowledge, Ford sold Plaintiff Andosca the Ford Vehicle, and associated
5 Ford new vehicle and extended warranty, without disclosing the vehicle's inherent (and pre-existing)
6 defect.

7 198. In or about September 2011, Plaintiff Andosca first observed the Cracked Tailgate on
8 his vehicle.

9 199. Upon discovering the damage, Plaintiff Andosca requested that Ford repair the
10 Cracked Tailgate Problem on his vehicle, but Ford refused on the grounds that the Ford's extended
11 warranty, which was still in full-effect, did not cover this repair.

12 200. As a result of the defect, the Cracked Tailgate has resulted in the diminution of the
13 Ford Vehicle's value.

14 **R. Spencer Ware**

15 201. On or about July 19, 2007, Plaintiff Ware purchased a used 2004 Ford Explorer from a
16 Ford dealership in New Jersey.

17 202. Unknown to Plaintiff Ware at the time, but known to Ford, 2004 Ford Explorers were
18 subject to, and would almost certainly experience during the life of the vehicle, the Cracked Tailgate
19 Problem.

20 203. At the time Plaintiff Ware's vehicle was placed onto the market by Ford, Ford had
21 specific knowledge that Plaintiff Ware's vehicle would likely experience the Cracked Tailgate
22 Problem.

23 204. Despite this knowledge, Ford sold Plaintiff Ware the Ford Vehicle, along with an
24 extended vehicle warranty issued by Ford, without disclosing the vehicle's inherent (and pre-existing)
25 defect.

1 205. In or about January 2011, Plaintiff Ware first observed the Cracked Tailgate on his
2 vehicle.

3 206. As a result of the defect, the Cracked Tailgate presents a continuing safety hazard to
4 Plaintiff Ware and has resulted in the diminution of the Ford Vehicle's value.

5 **S. Brian Martin**

6 207. On or about August 26, 2003, Plaintiff Martin purchased a new 2002 Mercury
7 Mountaineer from a Mercury dealership in New Jersey.

8 208. Unknown to Plaintiff Martin at the time, but known to Ford, 2002 Mercury
9 Mountaineers were subject to, and would almost certainly experience during the life of the vehicle,
10 the Cracked Tailgate Problem.

11 209. By August 2003, Ford had specific knowledge that Plaintiff Martin's vehicle would
12 likely experience the Cracked Tailgate Problem.

13 210. Despite this knowledge, Ford sold Plaintiff Martin the Ford Vehicle, and associated
14 Ford new vehicle limited warranty, without disclosing the vehicle's inherent (and pre-existing)
15 defect.

16 211. In or about early 2008, Plaintiff Martin first observed the Cracked Tailgate on his
17 vehicle.

18 212. As a result of the defect, the Cracked Tailgate presents a continuing safety hazard to
19 Plaintiff Martin and has resulted in the diminution of the Ford Vehicle's Value.

20 **T. Keith Bova**

21 213. On or about December 30, 2002, Plaintiff Bova purchased a new 2002 Ford Explorer
22 from a Ford dealership in New York.

23 214. Unknown to Plaintiff Bova at the time, but known to Ford, 2002 Ford Explorers were
24 subject to, and would almost certainly experience during the life of the vehicle, the Cracked Tailgate
25 Problem.

1 215. By December 2002, Ford had specific knowledge that Plaintiff Bova vehicle would
2 likely experience the Cracked Tailgate Problem.

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

6 217. In or about Spring 2005, Plaintiff Bova first observed the Cracked Tailgate on his
7 vehicle. The crack worsened until by 2012, two cracks had developed.

8 218. On August 12, 2011, as Plaintiff Bova was operating the vehicle, with his child in the
9 vehicle, the rear tailgate window imploded from the Cracked Tailgate Problem weakening the sealant
10 surrounding the window, causing shattered glass to spray all over plaintiff Bova and the inside of the
11 vehicle.

12 219. Plaintiff Bova requested that Ford repair the Cracked Tailgate Problem and resulting
13 damage on his vehicle, but Ford refused, claiming that it was outside of the warranty so Bova
14 incurred the expense of repairing the damage.

15 **U. Mark Giunto**

16 220. On or about January 21, 2003, Plaintiff Giunto's mother purchased a new 2003 Ford
17 Explorer from a Ford dealership in Long Island, New York, for use by Plaintiff Giunto. Following
18 the purchase of the vehicle, Plaintiff Giunto made all payments on the vehicle.

19 221. Unknown to Plaintiff Giunto or his mother at the time, but known to Ford, 2003 Ford
20 Explorers were subject to, and would almost certainly experience during the life of the vehicle, the
21 Cracked Tailgate Problem.

22 222. By January 21, 2003, Ford had specific knowledge that Plaintiff Giunto's vehicle
23 would likely experience the Cracked Tailgate Problem.

24 223. Despite this knowledge, Ford sold Plaintiff Giunto's mother the Ford Vehicle, and
25 associated Ford new vehicle limited warranty, without disclosing the vehicle's inherent (and pre-
26 existing) defect.

1 224. In or around July 2006, Plaintiff Giunto's mother transferred title to the vehicle to
2 Plaintiff Giunto.

3 225. In or about February 18, 2014, Plaintiff Giunto first observed the Cracked Tailgate on
4 his vehicle.

5 226. On or about April 25, 2014, as Plaintiff Giunto closed the liftgate after removing items
6 from the rear area of the vehicle, the rear tailgate window shattered, causing shattered glass to spray
7 all over Plaintiff Giunto and the inside and outside of the vehicle. Pieces of the shattered glass
8 caused three cuts to Plaintiff Giunto's arm.

9 227. Plaintiff Giunto had the rear liftgate of the vehicle replaced at a cost to him of
10 \$681.00, excluding the cost of repainting the replacement applique, which has not yet been done.

11 **V. Dennis Daughtery**

12 228. On or about March 2004, Plaintiff Daughtery purchased a new 2004 Ford Explorer
13 from a Ford dealership in North Carolina.

14 229. Unknown to Plaintiff Daughtery at the time, but known to Ford, 2004 Ford Explorers
15 were subject to, and would almost certainly experience during the life of the vehicle, the Cracked
16 Tailgate Problem.

17 230. By March 2004, Ford had specific knowledge that Plaintiff Daughtery's vehicle would
18 likely experience the Cracked Tailgate Problem.

19 231. Despite this knowledge, Ford sold Plaintiff Daughtery the Ford Vehicle, and
20 associated Ford new vehicle warranty, without disclosing the vehicle's inherent (and pre-existing)
21 defect.

22 232. In or about January 2010, Plaintiff Daughtery first observed the Cracked Tailgate on
23 his vehicle.

24 233. Upon discovering the damage, Plaintiff Daughtery requested that Ford repair the
25 Cracked Tailgate Problem on his vehicle, but Ford refused on the grounds that the Ford Vehicle was
26 out of warranty.

1 234. As a result of the defect, the Cracked Tailgate presents a continuing safety hazard to
2 Plaintiff Daughtery and has resulted in the diminution of the Ford Vehicle's value.

3 **W. Diana Brunner**

4 235. On or about December 4, 2006, Plaintiff Brunner purchased a used 2004 Ford
5 Explorer from a Ford dealership in Ohio.

6 236. Unknown to Plaintiff Brunner at the time, but known to Ford, 2004 Ford Explorers
7 were subject to, and would almost certainly experience during the life of the vehicle, the Cracked
8 Tailgate Problem.

9 237. At the time Plaintiff Brunner's vehicle was placed onto the market by Ford, Ford had
10 specific knowledge that Plaintiff Brunner's vehicle would likely experience the Cracked Tailgate
11 Problem.

12 238. Despite this knowledge, Ford sold Plaintiff Brunner the Ford Vehicle, without
13 disclosing the vehicle's inherent (and pre-existing) defect.

14 239. In or about March 2012, Plaintiff Brunner first observed the Cracked Tailgate on his
15 vehicle.

16 240. As a result of the defect, the Cracked Tailgate presents a continuing safety hazard to
17 Plaintiff Brunner and has resulted in the diminution of the Ford Vehicle's value.

18 **X. Melia Douglas**

19 241. In or about 2008, Plaintiff Douglas purchased a used 2005 Mercury Mountaineer from
20 a Ford dealership in Oklahoma.

21 242. Unknown to Plaintiff Douglas at the time, but known to Ford, 2005 Mercury
22 Mountaineers were subject to, and would almost certainly experience during the life of the vehicle,
23 the Cracked Tailgate Problem.

24 243. At the time Plaintiff Douglas's vehicle was placed onto the market by Ford, Ford had
25 specific knowledge that Plaintiffs Douglas's vehicle would likely experience the Cracked Tailgate
26 Problem.

1 244. Despite this knowledge, Ford sold Plaintiff Douglas the Ford Vehicle, without
2 disclosing the vehicle's inherent (and pre-existing) defect.

3 245. In or about 2010, Plaintiff Douglas first observed the Cracked Tailgate on her vehicle.

4 246. Upon discovering the damage, Plaintiff Douglas requested that Ford repair the
5 Cracked Tailgate Problem on her vehicle, but Ford refused.

6 247. As a result of the defect, the Cracked Tailgate presents a continuing safety hazard to
7 Plaintiff Douglas and has resulted in the diminution of the Ford Vehicle's value.

8 **Y. Connie Garsey**

9 248. In or about 2004, Plaintiff Garsey purchased a new 2004 Ford Explorer from a Ford
10 dealership in Pennsylvania.

11 249. Unknown to Plaintiff Garsey at the time, but known to Ford, 2004 Ford Explorers
12 were subject to, and would almost certainly experience during the life of the vehicle, the Cracked
13 Tailgate Problem.

14 250. By November 2003, Ford had specific knowledge that Plaintiff Garsey's vehicle
15 would likely experience the Cracked Tailgate Problem.

16 251. Despite this knowledge, Ford sold Plaintiff Garsey the Ford Vehicle, and associated
17 Ford new vehicle warranty, without disclosing the vehicle's inherent (and pre-existing) defect.

18 252. In or about 2010, Plaintiff Garsey first observed the Cracked Tailgate on her vehicle.

19 253. Upon discovering the damage, Plaintiff Garsey requested that Ford repair the Cracked
20 Tailgate Problem on her vehicle, but Ford refused.

21 254. Plaintiff Garsey then repaired the crack at her own expense.

22 255. Shortly after repairing the first crack, a second crack appeared.

23 256. On August 11, 2010, as Plaintiff Garsey's husband gently opened the liftgate, the rear
24 window exploded, showering glass on him and inside and outside of the vehicle.

25 257. As a result of the defect, the Cracked Tailgate presents a continuing safety hazard to
26 Plaintiff Garsey and has resulted in the diminution of the Ford Vehicle's value.

1 **Z. Andrew Stalnecker**

2 258. In or around December of 2004, Plaintiff Stalnecker purchased a new 2004 Lincoln
3 Aviator from a Ford dealership in Pennsylvania.

4 259. Unknown to Plaintiff Stalnecker at the time, but known to Ford, 2004 Lincoln
5 Aviators were subject to, and would almost certainly experience the Cracked Tailgate Problem during
6 the life of the vehicle.

7 260. By December of 2004, Ford had specific knowledge that Plaintiff Stalnecker's vehicle
8 would likely experience the Cracked Tailgate Problem.

9 261. Despite this knowledge, Ford sold Plaintiff Stalnecker the Ford Vehicle, and
10 associated Ford new vehicle limited warranty, without disclosing the vehicle's inherent (and pre-
11 existing) defect.

12 262. In or around 2011-2012, Plaintiff Stalnecker observed the Cracked Tailgate on his
13 vehicle.

14 263. On January 25, 2013, as Plaintiff Stalnecker was driving home from a business trip on
15 a busy highway, he heard a loud noise, sounding like a gunshot, and the backlite of Plaintiff
16 Stalnecker's vehicle shattered.

17 264. Plaintiff Stalnecker requested that Ford repair the Cracked Tailgate and shattered
18 backlite, but Ford refused.

19 265. In or around February of 2013, Plaintiff Stalnecker replaced the rear tailgate assembly.

20 266. In or around November of 2013, Plaintiff Stalnecker observed a second crack
21 appeared on the recently replaced tailgate.

22 267. As a result of the defect, the Cracked Tailgate presents a continuing safety hazard to
23 Plaintiff Stalnecker and has resulted in the diminution of the Ford Vehicle's value

24 **AA. Gary T. Buck**

25 268. On or about September 21, 2004, Plaintiff Buck purchased a new 2004 Ford Explorer
26 from a Ford dealership in Tennessee.

1 269. Unknown to Plaintiff Buck at the time, but known to Ford, 2004 Ford Explorers were
2 subject to, and would almost certainly experience during the life of the vehicle, the Cracked Tailgate
3 Problem.

4 270. By September 2004, Ford had specific knowledge that Plaintiff Buck's vehicle would
5 likely experience the Cracked Tailgate Problem.

6 271. Despite this knowledge, Ford sold Plaintiff Buck the Ford Vehicle, and associated
7 Ford new vehicle warranty, without disclosing the vehicle's inherent (and pre-existing) defect.

8 272. Upon discovering the Cracked Tailgate in February 2011, Plaintiff Buck informed
9 Ford about the damage. When Ford refused to repair the Cracked Tailgate at its expense, Plaintiff
10 Buck paid to have the Cracked Tailgate repaired on his Ford Vehicle.

11 273. As a result of the defect and Ford's refusal to fix the Cracked Tailgate at its expense,
12 Plaintiff Buck incurred the expense of repairing the Cracked Tailgate.

13 **BB. Heather S. Hardee**

14 274. On or about April 7, 2010, Plaintiff Hardee purchased a used 2004 Ford Explorer in
15 Texas which, at the time of purchase, did not yet have a cracked tailgate.

16 275. Unknown to Plaintiff at the time, but known to Ford, 2004 Ford Explorers were
17 subject to, and would almost certainly experience during the life of the vehicle, the Cracked Tailgate
18 Problem.

19 276. At the time Plaintiff Hardee's vehicle placed onto the market by Ford, Ford had
20 specific knowledge that Plaintiff Hardee's vehicle would likely experience the Cracked Tailgate
21 Problem.

22 277. Despite this knowledge, Ford sold Plaintiff Hardee's Ford Vehicle to the original
23 owner, along with the associated Ford new vehicle warranty, without disclosing the vehicle's inherent
24 (and pre-existing) defect.

25 278. In or about January 2011, Plaintiff Hardee first observed the Cracked Tailgate on her
26 vehicle.

1 279. Upon discovering the damage, Plaintiff Hardee requested that Ford repair the Cracked
2 Tailgate Problem on her vehicle, but Ford refused.

3 280. As a result of the defect, the Cracked Tailgate presents a continuing safety hazard to
4 Plaintiff Hardee and has resulted in the diminution of the Ford Vehicle's value.

5 **CC. Ruben Wilson**

6 281. In or about 2005, Plaintiff Wilson purchased a new 2005 Lincoln Aviator from a Ford
7 dealership in Virginia.

8 282. Unknown to Plaintiff Wilson at the time, but known to Ford, 2005 Lincoln Aviators
9 were subject to, and would almost certainly experience during the life of the vehicle, the Cracked
10 Tailgate Problem.

11 283. By 2005, Ford had specific knowledge that Plaintiff Wilson's vehicle would likely
12 experience the Cracked Tailgate Problem.

13 284. Despite this knowledge, Ford sold Plaintiff Wilson the Ford Vehicle, and associated
14 Ford new vehicle warranty, without disclosing the vehicle's inherent (and pre-existing) defect.

15 285. In or about the Fall of 2011, Plaintiff Wilson first observed the Cracked Tailgate on
16 his vehicle.

17 286. Upon discovering the damage, Plaintiff Wilson requested that Ford repair the Cracked
18 Tailgate Problem on his vehicle, but Ford refused.

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

21 **DD. Fredrick Gregg**

22 288. On or about 2008, Plaintiff Gregg purchased a used 2002 Ford Explorer from a
23 dealership in Washington.

24 289. Unknown to Plaintiff Gregg at the time, but known to Ford, 2002 Ford Explorers were
25 subject to, and would almost certainly experience during the life of the vehicle, the Cracked Tailgate
26 Problem.

1 290. At the time Plaintiff Gregg's vehicle was placed onto the market by Ford, Ford had
2 specific knowledge that Plaintiff Gregg's vehicle would likely experience the Cracked Tailgate
3 Problem.

4 291. Despite this knowledge, Ford placed Plaintiff Gregg's Ford Vehicle on the market
5 without disclosing the vehicle's inherent (and pre-existing) defect.

6 292. In or about 2009, Plaintiff Gregg first observed the Cracked Tailgate on his vehicle.

7 293. As a result of the defect, the Cracked Tailgate presents a continuing safety hazard to
8 Plaintiff Gregg and has resulted in the diminution of the Ford Vehicle's value.

9 **EE. Dean Olack**

10 294. On or about February 22, 2005, Plaintiff Olack purchased a used 2004 Lincoln Aviator
11 from a Lincoln dealership in West Virginia.

12 295. Unknown to Plaintiff Olack at the time, but known to Ford, 2004 Lincoln Aviators
13 were subject to, and would almost certainly experience during the life of the vehicle, the Cracked
14 Tailgate Problem.

15 296. At the time Plaintiff Olack's vehicle placed onto the market by Ford, Ford had specific
16 knowledge that Plaintiff Olack's vehicle would likely experience the Cracked Tailgate Problem.

17 297. Despite this knowledge, Ford sold Plaintiff Olack the Ford Vehicle, and associated
18 Ford new vehicle warranty and extended warranty, without disclosing the vehicle's inherent (and pre-
19 existing) defect.

20 298. In or about December 2011, Plaintiff Olack first observed the Cracked Tailgate on his
21 vehicle.

22 299. Upon discovering the damage, Plaintiff Olack requested that Ford repair the Cracked
23 Tailgate Problem on his vehicle, but Ford refused on grounds that the Ford Vehicle was out of
24 warranty.

25 300. As a result of the defect, the Cracked Tailgate presents a continuing safety hazard to
26 Plaintiff Olack and has resulted in the diminution of the Ford Vehicle's value.

VII. CLASS ACTION ALLEGATIONS

301. Plaintiffs bring this action pursuant to Rules 23(a), 23(b)(2), and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of themselves and all others similarly situated. Plaintiffs seek to represent a Class (the “Nationwide Class” or “Class”) initially defined as:

All current and former owners or lessees of a model 2002 through model 2005 Ford Explorer or Mercury Mountaineer, or model 2003 through 2005 Lincoln Aviator, in the United States.

302. Additionally, Plaintiffs seek to represent the following sub-classes (collectively, the “State Sub-Classes”) initially defined as follows:

a. All current and former owners or lessees of a model 2002 through model 2005 Ford Explorer or Mercury Mountaineer, or model 2003 through 2005 Lincoln Aviator, residing in the State of Alabama and/or who purchased or leased said vehicle in Alabama (“the Alabama Sub-Class”)

b. All current and former owners or lessees of a model 2002 through model 2005 Ford Explorer or Mercury Mountaineer, or model 2003 through 2005 Lincoln Aviator, residing in the State of California and/or who purchased or leased said vehicle in California (“the California Sub-Class”)

c. All current and former owners or lessees of a model 2002 through model 2005 Ford Explorer or Mercury Mountaineer, or model 2003 through 2005 Lincoln Aviator, residing in the State of Colorado and/or who purchased or leased said vehicle in Colorado (“the Colorado Sub-Class”)

d. All current and former owners or lessees of a model 2002 through model 2005 Ford Explorer or Mercury Mountaineer, or model 2003 through 2005 Lincoln Aviator, residing in the State of Connecticut and/or who purchased or leased said vehicle in Connecticut (“the Connecticut Sub-Class”)

1 e. All current and former owners or lessees of a model 2002 through model 2005
2 Ford Explorer or Mercury Mountaineer, or model 2003 through 2005 Lincoln Aviator,
3 residing in the State of Florida and/or who purchased or leased said vehicle in Florida (“the
4 Florida Sub-Class”)

5 f. All current and former owners or lessees of a model 2002 through model 2005
6 Ford Explorer or Mercury Mountaineer, or model 2003 through 2005 Lincoln Aviator,
7 residing in the State of Georgia and/or who purchased or leased said vehicle in Georgia (“the
8 Georgia Sub-Class”)

9 g. All current and former owners or lessees of a model 2002 through model 2005
10 Ford Explorer or Mercury Mountaineer, or model 2003 through 2005 Lincoln Aviator,
11 residing in the State of Illinois and/or who purchased or leased said vehicle in Illinois (“the
12 Illinois Sub-Class”).

13 h. All current and former owners or lessees of a model 2002 through model 2005
14 Ford Explorer or Mercury Mountaineer, or model 2003 through 2005 Lincoln Aviator,
15 residing in the State of Indiana and/or who purchased or leased said vehicle in Indiana (“the
16 Indiana Sub-Class”)

17 i. All current and former owners or lessees of a model 2002 through model 2005
18 Ford Explorer or Mercury Mountaineer, or model 2003 through 2005 Lincoln Aviator,
19 residing in the State of Maryland and/or who purchased or leased said vehicle in Maryland
20 (“the Maryland Sub-Class”)

21 j. All current and former owners or lessees of a model 2002 through model 2005
22 Ford Explorer or Mercury Mountaineer, or model 2003 through 2005 Lincoln Aviator,
23 residing in the State of Massachusetts and/or who purchased or leased said vehicle in
24 Massachusetts (“the Massachusetts Sub-Class”)

25 k. All current and former owners or lessees of a model 2002 through model 2005
26 Ford Explorer or Mercury Mountaineer, or model 2003 through 2005 Lincoln Aviator,

1 residing in the State of Michigan and/or who purchased or leased said vehicle in Michigan
2 (“the Michigan Sub-Class”)

3 l. All current and former owners or lessees of a model 2002 through model 2005
4 Ford Explorer or Mercury Mountaineer, or model 2003 through 2005 Lincoln Aviator,
5 residing in the State of Mississippi and/or who purchased or leased said vehicle in Mississippi
6 (“the Mississippi Sub-Class”)

7 m. All current and former owners or lessees of a model 2002 through model 2005
8 Ford Explorer or Mercury Mountaineer, or model 2003 through 2005 Lincoln Aviator,
9 residing in the State of New Hampshire and/or who purchased or leased said vehicle in New
10 Hampshire (“the New Hampshire Sub-Class”)

11 n. All current and former owners or lessees of a model 2002 through model 2005
12 Ford Explorer or Mercury Mountaineer, or model 2003 through 2005 Lincoln Aviator,
13 residing in the State of New Jersey and/or who purchased or leased said vehicle in New Jersey
14 (“the New Jersey Sub-Class”)

15 o. All current and former owners or lessees of a model 2002 through model 2005
16 Ford Explorer or Mercury Mountaineer, or model 2003 through 2005 Lincoln Aviator,
17 residing in the State of New York and/or who purchased or leased said vehicle in New York
18 (“the New York Sub-Class”)

19 p. All current and former owners or lessees of a model 2002 through model 2005
20 Ford Explorer or Mercury Mountaineer, or model 2003 through 2005 Lincoln Aviator,
21 residing in the State of North Carolina and/or who purchased or leased said vehicle in North
22 Carolina (“the North Carolina Sub-Class”)

23 q. All current and former owners or lessees of a model 2002 through model 2005
24 Ford Explorer or Mercury Mountaineer, or model 2003 through 2005 Lincoln Aviator,
25 residing in the State of Ohio and/or who purchased or leased said vehicle in Ohio (“the Ohio
26 Sub-Class”)

1 r. All current and former owners or lessees of a model 2002 through model 2005
2 Ford Explorer or Mercury Mountaineer, or model 2003 through 2005 Lincoln Aviator,
3 residing in the State of Oklahoma and/or who purchased or leased said vehicle in Oklahoma
4 (“the Oklahoma Sub-Class”)

5 s. All current and former owners or lessees of a model 2002 through model 2005
6 Ford Explorer or Mercury Mountaineer, or model 2003 through 2005 Lincoln Aviator,
7 residing in the State of Pennsylvania and/or who purchased or leased said vehicle in
8 Pennsylvania (“the Pennsylvania Sub-Class”)

9 t. All current and former owners or lessees of a model 2002 through model 2005
10 Ford Explorer or Mercury Mountaineer, or model 2003 through 2005 Lincoln Aviator,
11 residing in the State of Tennessee and/or who purchased or leased said vehicle in Tennessee
12 (“the Tennessee Sub-Class”)

13 u. All current and former owners or lessees of a model 2002 through model 2005
14 Ford Explorer or Mercury Mountaineer, or model 2003 through 2005 Lincoln Aviator,
15 residing in the State of Texas and/or who purchased or leased said vehicle in Texas (“the
16 Texas Sub-Class”)

17 v. All current and former owners or lessees of a model 2002 through model 2005
18 Ford Explorer or Mercury Mountaineer, or model 2003 through 2005 Lincoln Aviator,
19 residing in the State of Virginia and/or who purchased or leased said vehicle in Virginia (“the
20 Virginia Sub-Class”)

21 w. All current and former owners or lessees of a model 2002 through model 2005
22 Ford Explorer or Mercury Mountaineer, or model 2003 through 2005 Lincoln Aviator,
23 residing in the State of Washington and/or who purchased or leased said vehicle in
24 Washington (“the Washington Sub-Class”)

25 x. All current and former owners or lessees of a model 2002 through model 2005
26 Ford Explorer or Mercury Mountaineer, or model 2003 through 2005 Lincoln Aviator,

1 residing in the State of West Virginia and/or who purchased or leased said vehicle in West
2 Virginia (“the West Virginia Sub-Class”)

3 303. Excluded from the Class and each of the State Sub-Classes are Defendant Ford Motor
4 Company and any of its affiliates, parents, subsidiaries, officers, directors, employees, successors, or
5 assigns; any Judge to whom this case is assigned as well as his or her immediate family and staff; and
6 anyone who purchased a Ford Vehicle for the purpose of resale.

7 304. This action has been brought and may properly be maintained on behalf of the Class
8 and the State Sub-Classes proposed herein under the criteria of Federal Rule of Civil Procedure Rule
9 23.

10 305. Numerosity. Members of the Nationwide Class and State Sub-Classes are so
11 numerous that their individual joinder herein is impracticable. Upon information and belief, Ford has
12 sold or leased approximately 1.6 million Ford Vehicles in the United States. Although the exact
13 number of Class members and their addresses are unknown to Plaintiffs, they are readily
14 ascertainable from Ford’s records. Class members may be notified of the pendency of this action by
15 mail and/or electronic mail, supplemented (if deemed necessary or appropriate by the Court) by
16 published notice.

17 306. Existence and predominance of common questions. Common questions of law and
18 fact exist as to Plaintiffs and all other members of the Nationwide Class and State Sub-Classes and
19 predominate over questions affecting only individual Class members. These common questions
20 include:

- 21 a. Whether Ford provided Plaintiffs and the other Class and State Sub-Class
22 members with a vehicle installed with a defective tailgate;
- 23 b. Whether Plaintiffs and Class members’ vehicles have a lower market value as a
24 result of the defective tailgates manufactured and/or installed on their vehicles;
- 25 c. Whether Ford knew or should have known that the tailgates were destined to
26 crack;

1 d. Whether the defective nature of the tailgates or the costly repairs necessary for
2 cracked tailgates constitute material facts;

3 e. Whether Ford has a duty to disclose the defective nature of the tailgates to
4 Plaintiffs and Class and State Sub-Class members;

5 f. Whether the tailgate defect leads to damage to other component parts;

6 g. Whether Ford has engaged in unlawful, unfair, or fraudulent business
7 practices;

8 h. Whether Plaintiffs and the other Class and State Sub-Class members are
9 entitled to equitable relief, including but not limited to restitution or injunctive relief; and

10 i. Whether Plaintiff and the other Class and State Sub-Class members are entitled
11 to damages and other monetary relief and, if so, in what amount.

12 307. Typicality. Plaintiffs' claims are typical of the claims of the Nationwide Class and
13 State Sub-Classes because, among other things, Plaintiffs purchased or leased a Ford Vehicle with the
14 same defective tailgate found in other Ford Vehicles.

15 308. Adequacy. Plaintiffs are adequate representatives of the Nationwide Class and State
16 Sub-Classes because their interests do not conflict with the interests of the members of the Class and
17 State Sub-Classes they respectively seek to represent. Plaintiffs have retained counsel competent and
18 experienced in complex class action litigation, and Plaintiffs intend to prosecute this action
19 vigorously. The interests of members of the Class and State Sub-Classes will be fairly and
20 adequately protected by Plaintiffs and their counsel.

21 309. Superiority. The class action is superior to other available means for the fair and
22 efficient adjudication of the claims of Plaintiffs. While substantial, the damages suffered by each
23 individual Class and State Sub-Class member do not justify the burden and expense of individual
24 prosecution of the complex and extensive litigation necessitated by Defendant's conduct. Further, it
25 would be virtually impossible for the members of the Nationwide Class and State Sub-Classes to
26 individually and effectively redress the wrongs done to them. Even if the members of the Nationwide

1 Class and State Sub-Classes themselves could afford such individual litigation, the court system
 2 could not. Individualized litigation presents a potential for inconsistent or contradictory judgments.
 3 Individualized litigation increases the delay and expense to all parties and the court system presented
 4 by the complex legal and factual issues of the case. By contrast, the class action device presents far
 5 fewer management difficulties, and provides the benefits of single adjudication, economy of scale,
 6 and comprehensive supervision by a single court.

7 310. In the alternative, the Nationwide Class and State Sub-Classes may be certified
 8 because:

9 a. The prosecution of separate actions by the individual members of the
 10 Nationwide Class and State Sub-Classes would create a risk of inconsistent or varying
 11 adjudication with respect to individual Class members which would establish incompatible
 12 standards of conduct for Ford;

13 b. The prosecution of separate actions by individual Class members would create
 14 a risk of adjudications with respect to them which would, as a practical matter, be dispositive
 15 of the interests of other Class members not parties to the adjudications, or substantially impair
 16 or impede their ability to protect their interests; and

17 c. Ford has acted or refused to act on grounds generally applicable to the
 18 Nationwide Class and State Sub-Classes, thereby making appropriate final and injunctive
 19 relief with respect to the members of the Nationwide Class and State Sub-Classes as a whole.

20 **VIII. CLAIMS ALLEGED**

21 **A. Nationwide**

22 **COUNT ONE**

23 **Violations Of Magnuson-Moss Act (15 U.S.C. §§ 2301-2312) – Written Warranty**

24 **(On Behalf of the Nationwide Class)**

25 311. Paragraphs 1-310 of this Consolidated Complaint are expressly incorporated as if fully
 26 re-written and re-alleged herein.

1 312. Defendant’s Ford Vehicles are “consumer products” as that term is defined by 15
2 U.S.C. § 2301(1).

3 313. Plaintiffs and the Class are “consumers” as that term is defined by 15 U.S.C. §
4 2301(3), and utilized the Ford Vehicles at issue for personal use and not specifically for resale or
5 other commercial purposes.

6 314. Defendant is a “warrantor[s]” and “supplier[s]” as those terms are defined by 15
7 U.S.C. § 2301(4) and (5).

8 315. Defendant provided Plaintiffs and the other Class members with “written warranties”
9 as that term is defined by 15 U.S.C. § 2301(6).

10 316. Defendant also provided Plaintiffs and the other Class members with “implied
11 warranties” as that term is defined by 15 U.S.C. § 2301(6).

12 317. In its capacity as a warrantor, as Ford had knowledge of the inherent defect in the Ford
13 Vehicles, Ford’s effort to limit the express and implied warranties in a manner that would exclude
14 coverage of the Ford Vehicles is unconscionable and any such effort to disclaim, or otherwise limit,
15 liability for the Ford Vehicles is null and void.

16 318. Ford’s limitations on its warranties are procedurally unconscionable. There was
17 unequal bargaining power between Ford and Plaintiffs and the other Class members. At the time of
18 purchase and lease as Plaintiffs and the other Class members had no other options for purchasing
19 warranty coverage other than directly from Ford.

20 319. Ford’s limitations on its warranties are substantively unconscionable. Ford knew that
21 the Ford Vehicles were defective and would likely experience cracked tailgates and pose consequent
22 safety risks after the warranties purportedly expired. Ford failed to disclose these defects to Plaintiffs
23 and the other Class members. Thus, Ford’s enforcement of the durational limitations on those
24 warranties is harsh and shocks the conscience.

25 320. All jurisdictional prerequisites have been satisfied.
26

1 321. By Defendant’s conduct as described herein, including Defendant’s knowledge of the
2 Cracked Tailgate Problem and Ford’s action, and inaction, in the face of that knowledge, Defendants
3 have failed to comply with their obligations under their written and implied promises, warranties, and
4 representations.

5 322. As a result of Defendant’s breach of express and implied warranties, Plaintiffs and the
6 Class are entitled to obtain damages, equitable relief, and attorneys’ fees and costs pursuant to 15
7 U.S.C. § 2310.

8 **B. Alabama**

9 **COUNT TWO**

10 **Unjust Enrichment**

11 **(On Behalf of the Alabama Sub-Class)**

12 323. On behalf of herself and the Alabama Sub-Class members, Alabama Plaintiff Hough
13 expressly incorporates by reference and realleges the foregoing Paragraphs 1-310 of this
14 Consolidated Complaint.

15 324. Plaintiff Hough and the Alabama Sub-Class members paid money to Ford for the
16 purchase of Ford Vehicles, which Ford received and currently holds.

17 325. Ford was aware of the defective nature of the Ford Vehicles and the Cracked Tailgate
18 Problem, but failed to disclose this knowledge and misled Plaintiff Hough and the Alabama Sub-
19 Class members regarding the nature and quality of the Ford Vehicles while profiting from its
20 deception.

21 326. As a result of Ford’s deceptive conduct, Ford has been unjustly enriched by the
22 purchases of Ford Vehicles by Plaintiff Hough and the Alabama Sub-Class members.

23 327. Further, even though Ford was aware of the defective nature of the Ford Vehicles and
24 Cracked Tailgate Problem, Ford sold Plaintiff Hough and the Alabama Sub-Class members defective
25 products for the price of non-defective products.

1 328. As a result of Ford's conduct, the Ford Vehicles of Plaintiff Hough and the Alabama
2 Sub-Class members now have a lower market value.

3 329. In direct contrast to the harm to Plaintiffs, as a result of Ford's conduct in selling the
4 defective Ford Vehicles for the price of non-defective products, Ford has been unjustly enriched by
5 the purchases of Ford Vehicles by Plaintiff Hough and the Alabama Sub-Class members at an
6 increased rate.

7 330. In the alternative, the Ford new Vehicle Warranty and extended Ford service plan are
8 unenforceable as a result of Ford's fraudulent behavior and/or unconscionable terms. Thus, Ford's
9 voluntarily acceptance and retention of the purchase price from Plaintiff Hough and the Alabama
10 Sub-Class for the purchase of Ford Vehicles installed with a defective tailgate, unknown and
11 undisclosed to Plaintiff Hough and the Alabama Sub-Class members, constitutes further unjust
12 enrichment to Ford at the expense of Plaintiff Hough and the Alabama Sub-Class Members.

13 331. In addition, to the extent any member of the Alabama Sub-Class was forced to
14 purchase the Ford replacement parts and/or were serviced for the repair by authorized Ford
15 dealerships, Ford realized an additional direct benefit from such sale and repair.

16 332. The circumstances are such that the money currently held by Ford should, in equity
17 and good conscience, belong to Plaintiff Hough and the Alabama Sub-Class members, and should be
18 returned to them.

19 333. The circumstances are also such that the money currently held by Ford was improperly
20 paid to Ford by Plaintiff Hough and the Alabama Sub-Class members because of Ford's mistake or
21 fraud.

22 334. Plaintiff Hough and the Alabama Sub-Class members, having been damaged by Ford's
23 conduct, are entitled to recover damages as a result of the unjust enrichment of Ford to the detriment
24 of Plaintiff Hough and the Alabama Sub-Class members.
25
26

1 **C. California**

2 **COUNT THREE (FORMERLY COUNT FOUR)**

3 **Unlawful Business Acts and Practices in Violation of**

4 **California Business and Professions Code Section 17200 et seq.**

5 **(On Behalf of the California Sub-Class)**

6 335. On behalf of themselves and the California Sub-Class members, California Plaintiffs
7 Denning, Morelli, and Nettleton expressly incorporate by reference and reallege the foregoing
8 Paragraphs 1-310 of this Consolidated Complaint.

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

11 337. Ford committed unlawful business practices by:

12 a. Engaging in conduct, as alleged herein, that violates the Consumer Legal
13 Remedies Act ("CLRA"), Cal. Civ. Code §§ 1750, *et seq.*;

14 b. Engaging in conduct, as alleged herein, that violates the Magnuson-Moss
15 Warranty Act, 15 U.S.C. §§2301, *et seq.*; and

16 c. Engaging in conduct, as alleged herein, that breaches Ford's express
17 warranties.

18 338. Ford committed unfair business practices by:

19 a. Engaging in conduct where the utility of such conduct, if any, is outweighed by
20 the gravity of the consequences to Plaintiffs and the California Sub-Class;

21 b. Engaging in conduct that is immoral, unethical, oppressive, unscrupulous, or
22 substantially injurious to Plaintiffs and the California Sub-Class;

23 c. Engaging in conduct that undermines or violates the stated policies underlying
24 the CLRA, Civ. Code §§ 1750 *et seq.*; the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301
25 *et seq.*; and the False Advertising Law, Cal. Bus. and Prof. Code §§ 17500 *et seq.*, each of
26 which seek to protect consumers against unfair business practices and to promote a basic level

1 of honesty and reliability in the marketplace and, thus, provide a sufficient predicate for
2 Plaintiffs' claims for unfair business practices.

3 339. Ford committed fraudulent business practices by engaging in conduct that deceived
4 consumers acting reasonably under the circumstances. Specifically, Ford's fraudulent practices
5 include, but are not limited to:

6 a. Failing to disclose or concealing from Plaintiffs and the California Sub-Class
7 that Ford Vehicles suffer from a defect that causes the tailgate to crack (*i.e.*, the Cracked
8 Tailgate Problem);

9 b. Advertising and representing that Ford's warranties would cover problems to
10 Ford Vehicles caused by manufacturing or design defects when, in fact, Ford's policy and
11 practice was not cover the Cracked Tailgate Problem; and

12 c. Failing to disclose or concealing from Plaintiffs and the California Sub-Class
13 that Cracked Tailgates are covered under express warranties;

14 340. Plaintiffs and the California Sub-Class have suffered injury in fact and have lost
15 money and property as a result of Ford's unlawful, unfair, or fraudulent practices, in that, among
16 other things:

17 a. Plaintiffs and the California Sub-Class would not have bought Ford Vehicles at
18 the prices they paid;

19 b. Ford Vehicles have a lower market value than they otherwise would have if not
20 for the Cracked Tailgate Problem;

21 c. Plaintiffs and the California Sub-Class have paid for repairs and replacement
22 parts that they would not and should not have paid for;

23 d. Plaintiffs and the California Sub-Class have sold their Ford Vehicles at
24 diminished prices due to the Cracked Tailgate Problem; and

25 e. Plaintiffs and the California Sub-Class were denied their right to receive the
26 Ford Vehicles free from defects.

1 341. Plaintiffs and the California Sub-Class reserve the right to allege other violations of
2 law which constitute other unlawful business acts or practices. Such conduct is ongoing and
3 continues to this date.

4 342. Plaintiffs, on behalf of themselves and the California Sub-Class, seek declaratory and
5 injunctive relief, restitution, disgorgement of all monies obtained from the unfair competition alleged
6 herein, attorneys’ fees, costs of suit, and other relief as appropriate.

7 **COUNT FOUR (FORMERLY COUNT FIVE)**

8 **Violations of the Consumer Legal Remedies Act, Civil Code § 1750 et seq.**

9 **(On Behalf of the California Sub-Class)**

10 343. On behalf of themselves and the California Sub-Class members, California Plaintiffs
11 Denning, Morelli, and Nettleton expressly incorporate by reference and reallege the foregoing
12 Paragraphs 1-310 of this Consolidated Complaint.

13 344. Ford has violated the Consumers Legal Remedies Act (CLRA), California Civil Code
14 §1750, et seq., by engaging in unfair methods of competition and unfair and deceptive acts and
15 practices in connections with transactions, specifically, the marketing and sale of Ford Vehicles with
16 a latent defect (the Cracked Tailgate Problem), of which Ford was aware, which are intended to result
17 and have resulted in the sale of goods and services to consumers. Plaintiffs are consumers as defined
18 by California Civil Code §1761(d). The subject products are goods within the meaning of the CLRA.

19 345. Plaintiffs served Ford with written notice of Ford’s unfair methods of competition and
20 unfair and deceptive acts and practices and a demand for repair and restitution.

21 346. In connection with the sale of Ford Vehicles to Plaintiffs and the California Sub-
22 Class, Ford omitted material information about a known defect (the Cracked Tailgate Problem) that it
23 was legally obliged to disclose. Ford did not inform, and has never informed, Plaintiffs or the
24 California Sub-Class that Ford Vehicles suffer from a defect that causes the tailgate to crack, leaving
25 prominent damage to the rear of the Ford Vehicle. Ford has also refused to repair the damage for
26 which it is wholly responsible.

1 347. The Cracked Tailgate Problem poses an unreasonable safety risk to Plaintiffs and the
2 California Sub-Class. Ford had exclusive knowledge of the defect and actively concealed it from
3 Plaintiffs and the California Sub-Class.

4 348. The existence of the Cracked Tailgate Problem in the Ford Vehicles is a fact that a
5 reasonable consumer deciding whether to purchase a Ford Vehicle would consider material.

6 349. Had Ford adequately disclosed material information about the Cracked Tailgate
7 Problem, no reasonable consumer (including Plaintiffs and the California Sub-Class) would have
8 purchased the Ford Vehicles at issue.

9 350. As a result of Ford's refusal to repair the defect in the Ford Vehicles, or to honor or
10 extend the warranties associated therewith, Plaintiffs and the California Sub-Class are entitled to
11 injunctive and equitable relief, restitution, and an order for the disgorgement of funds by which Ford
12 was unjustly enriched.

13 **COUNT FIVE (FORMERLY COUNT SIX)**

14 **Violation of California Civil Code Section 1795.92**

15 **(On Behalf of the California Sub-Class)**

16 351. On behalf of themselves and the California Sub-Class members, California Plaintiffs
17 Denning, Morelli, and Nettleton expressly incorporate by reference and reallege the foregoing
18 Paragraphs 1-310 of this Consolidated Complaint.

19 352. California Civil Code Section 1795.90, *et seq.*, sets forth what is commonly known as
20 the Secret Warranty Law. California Civil Code Section 1795.92 requires notification by
21 manufacturers to purchasers and lessees of their products of an "adjustment program."

22 353. California Civil Code Section 1795.90 defines an "adjustment program" as a program
23 where the original warranty is expanded or extended, or where a manufacturer offers to pay or
24 reimburse for repairs to a condition affecting durability or reliability of a vehicle.

25 354. As set forth herein, Ford issued at least three Technical Service Bulletins relating to
26 the defective tailgates. Plaintiffs are informed and believe, and thereon allege, that these Technical

1 Services Bulletins were part of a program set forth by Ford where Ford's dealers would repair the
2 defective tailgates free of charge only when certain undisclosed conditions were met. Plaintiffs are
3 informed and believe, and thereon allege, that this program expanded and/or extended the original
4 warranty, and therefore constitutes an "adjustment program" within the meaning of California Civil
5 Code Section 1795.90.

6 355. As set forth herein, the defect on the tailgate affected the durability and reliability of
7 the Ford Vehicles, in that it caused the tailgate to crack and potentially affected other components of
8 the Ford Vehicles, such as the glass on the tailgate. Plaintiffs are informed and believe, and thereon
9 allege, that, in some situations, Ford agreed to pay or give reimbursements for repairs to the tailgates.
10 This practice constitutes an "adjustment program" within the meaning of California Civil Code
11 Section 1795.90.

12 356. As the manufacturer of the Ford Vehicles, Ford had a duty to notify all owners or
13 lessees of the Ford Vehicles eligible under the adjustment program described above of the terms and
14 conditions of the program within 90 days of the program's implementation. Plaintiffs are informed
15 and believe, and thereon allege, that Ford failed to provide this required notification.

16 357. As the manufacturer of the Ford Vehicles, Ford had a duty to notify the California
17 Department of Motor Vehicles and its own dealers of the terms and conditions of the above-described
18 adjustment program. Plaintiffs are informed and believe, and thereon allege, that Ford failed to
19 provide this required notification.

20 358. As the manufacturer of the Ford Vehicles, Ford had a duty to ensure that each
21 California Sub-Class member who incurred an expense for repair of the defective tailgate prior to
22 acquiring knowledge of the program would be reimbursed. Plaintiffs are informed and believe, and
23 thereon allege, that Ford failed to provide this reimbursement.

24 359. As a result of the aforementioned conduct by Ford with regard to its secret warranty,
25 Plaintiffs and the other California Sub-Class members have suffered damages in an amount to be
26 proven at trial.

1 **D. Colorado**

2 **COUNT SIX (FORMERLY COUNT EIGHT)**

3 **Violation of the Colorado Consumer Protection Act**

4 **(On Behalf of the Colorado Sub-Class)**

5 360. On behalf of himself and the Colorado Sub-Class members, Colorado Plaintiff Lipkin
6 expressly incorporates by reference and realleges the foregoing Paragraphs 1-310 of this
7 Consolidated Complaint.

8 361. Defendant is a “person[s]” as defined under the Colorado Consumer Protection Act
9 (“CCPA”). Colo. Rev. Stat. §6-1-102(6).

10 362. Plaintiff Lipkin is a “consumer” under the CCPA.

11 363. The Ford Vehicles that are the subject of this Complaint are “goods” under the CCPA.

12 364. Ford engaged in deceptive and misleading trade practices when, in the course of its
13 business it, among other acts and practices:

14 a. Knowingly made false representations as to the characteristics, uses and
15 benefits of the Ford Vehicles;

16 b. Represented that the Ford Vehicles were of a particular standard, quality, or
17 grade, or that that they were of a particular style or model, when it knew or should have
18 known that they were of another;

19 c. Advertised Ford Vehicles with intent not to sell them as advertised;

20 d. Advertised or otherwise represented that Ford Vehicles were warranted when,
21 under normal conditions, the warranties could not be practically fulfilled or which were for
22 such a period of time or were otherwise of such a nature as to have had the capacity and the
23 tendency to mislead purchasers or prospective purchasers into believing that the Ford
24 Vehicles had a greater degree of serviceability, durability, or performance capability in actual
25 use than was true in fact; and
26

1 e. Failed to disclose material information concerning Ford Vehicles, which
2 information was known to it at the time of advertising and selling Ford Vehicles, all of which
3 was intended to induce consumers to purchase Ford Vehicles.

4 365. Ford's conduct significantly impacts the public as actual or potential consumers of
5 Ford Vehicles because, upon information and belief, and as will be borne out through discovery, Ford
6 sold thousands of Ford Vehicles in the particular model years at issue in the State of Colorado, the
7 consumers who purchased the vehicles were unsophisticated, the consumers who purchased the
8 vehicles had no bargaining power, and the defective tailgates have impacted consumers and have
9 significant potential to do so in the future.

10 366. Additionally, this is a matter of public concern and the state has a strong interest in
11 protecting purchasers from the conduct in which Ford engaged.

12 367. Plaintiff Lipkin and the prospective Colorado Sub-Class Members suffered injury in
13 fact to their legally protected interest under the CCPA in not being subjected to deceptive trade
14 practices when purchasing goods.

15 368. Plaintiff Lipkin's and the prospective Colorado Sub-Class Members' injuries were
16 proximately caused by Ford's deceptive trade practices set forth above.

17 **E. Connecticut**

18 **COUNT SEVEN (FORMERLY COUNT ELEVEN)**

19 **Violation of the Connecticut Consumer Protection Law, Conn. Code 6-1-105 et seq.**

20 **(On Behalf of the Connecticut Sub-Class)**

21 369. On behalf of himself and the Connecticut Sub-Class members, Connecticut Plaintiff
22 Cohen expressly incorporates by reference and realleges the foregoing Paragraphs 1-310 of this
23 Consolidated Complaint.

24 370. Plaintiffs repeat and re-allege the allegations contained in the paragraphs above as if
25 fully set forth herein.

1 371. The Connecticut Consumer Protection Law, Conn. Gen. Stat. § 42-110b *et seq.*,
2 prohibits unfair or deceptive acts or practices in the conduct of any trade or commerce.

3 372. As described herein, the rear tailgates of the Ford Vehicles were made of defective
4 materials and were assembled using inadequate techniques. As a result, the rear tailgates were
5 defective at the moment of sale and throughout the present day.

6 373. Ford concealed the defect that caused the rear tailgate of the Ford Vehicles to crack.
7 Ford also sold the Ford Vehicles with knowledge of the defect that caused the rear tailgate of the
8 Ford Vehicles to crack.

9 374. Ford's acts and practices described herein constitute unfair and deceptive acts and
10 practices within the meaning of the Connecticut Consumer Protection Law, Conn. Gen. Stat. § 42-
11 110b *et seq.*, as Ford's acts and practices herein described offend established public policy, because
12 the harm they cause to consumers outweighs any benefits associated with those practices, and
13 because Ford fraudulently concealed the defect in the tailgate from consumers.

14 375. Plaintiffs are informed and believe, and thereon allege, that Ford concealed the
15 existence of the defect with the intention of inducing the Connecticut Sub-Class to purchase the Ford
16 Vehicles. This concealment was likely to deceive a reasonable consumer.

17 376. The defect in the tailgate that resulted in a crack in the tailgate as well as the danger of
18 the tailgate glass falling out was a material fact unknown to Plaintiffs and the Connecticut Sub-Class,
19 who purchased the Ford Vehicles, in that they would not have purchased the Ford Vehicles had this
20 information been disclosed upon Ford's discovery of this information.

21 377. As a result of Ford's unfair and deceptive business practices, Plaintiffs and the
22 Connecticut Sub-Class were deceived and purchased the Ford Vehicles, resulting in an ascertainable
23 loss of money and/or property.

24 378. As a result of Ford's unfair and deceptive business practices, Plaintiffs and the
25 Connecticut Sub-Class have been damaged in an amount to be proven at trial. Plaintiffs and the
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1 Connecticut Sub-Class are further entitled to injunctive relief, restitution, and disgorgement of profits
2 obtained by Ford as a result of its fraudulent and unfair business acts and practices.

3 379. Plaintiffs and the Connecticut Sub-Class are entitled to costs and reasonable attorneys'
4 fees incurred in bringing this action, as provided under Conn. Gen. Stat. § 42-110g(d).

5 **COUNT EIGHT (FORMERLY COUNT THIRTEEN)**

6 **Unjust Enrichment**

7 **(On Behalf of the Connecticut Sub-Class)**

8 380. On behalf of herself and the Connecticut Sub-Class members, Connecticut Plaintiff
9 Cohen expressly incorporates by reference and realleges the foregoing Paragraphs 1-310 of this
10 Consolidated Complaint.

11 381. Plaintiff Cohen and Connecticut Sub-Class members paid money to Ford for the
12 purchase/lease a Ford Vehicle manufactured by Ford with the defective tailgate, which Ford received
13 and currently holds.

14 382. Ford was aware of the defective nature of the Ford Vehicles and Cracked Tailgate
15 Problem but sold Plaintiff Cohen and the Connecticut Sub-Class members defective products for the
16 price of non-defective products.

17 383. As a result of Ford's conduct, the Ford Vehicles of Plaintiff Cohen and the
18 Connecticut Sub-Class members now have a lower market value.

19 384. In direct contrast to the harm to Plaintiffs, as a result of Ford's conduct in selling
20 defective Ford Vehicles for the price of non-defective product, Ford has been unjustly enriched by the
21 purchases of Ford Vehicles by Plaintiff Cohen and the Connecticut Sub-Class members at an
22 increased rate.

23 385. In the alternative, the Ford new Vehicle Warranty and extended Ford service plan are
24 unenforceable as a result of Ford's fraudulent behavior and/or unconscionable terms. Thus, Ford's
25 voluntarily acceptance and retention of the purchase price from Plaintiff Cohen and the Connecticut
26 Sub-Class members for the purchase of Ford Vehicles installed with a defective tailgate, unknown

1 and undisclosed to Plaintiff Cohen and the Connecticut Sub-Class Members, constitutes further
2 unjust enrichment to Ford at the expense of Plaintiff Cohen and the Connecticut Sub-Class Members.

3 386. In addition, to the extent any member of the Connecticut Sub-Class was forced to
4 purchase the Ford replacement parts and/or were serviced for the repair by authorized Ford
5 dealerships, Ford realized an additional direct benefit from such sale and repair.

6 387. The circumstances are such that the money currently held by Ford should, in equity
7 and good conscience, belong to Plaintiff Cohen and the Connecticut Sub-Class members, and should
8 be returned to them.

9 388. Plaintiff Cohen and the Connecticut Sub-Class members, having been damaged by
10 Ford's conduct, are entitled to recover damages as a result of the unjust enrichment of Ford to the
11 detriment of Plaintiff Cohen and the Connecticut Sub-Class members.

12 **F. Florida**

13 **COUNT NINE (FORMERLY COUNT FOURTEEN)**

14 **Violation of the Florida Deceptive and Unfair Trade Practices Act,**

15 **Fla. Stat. §§ 501.201-.213**

16 **(On Behalf of the Florida Sub-Class)**

17 389. On behalf of himself and the Florida Sub-Class members, Florida Plaintiff Dery
18 expressly incorporate by reference and reallege the foregoing Paragraphs 1-310 of this Consolidated
19 Complaint.

20 390. The Florida Deceptive and Unfair Trade Practices Act, Title XXXIII, Chapter 501,
21 Part II of the Florida Statutes was enacted to protect the consuming public from those who engage in
22 unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the
23 conduct of any trade or commerce.

24 391. As described herein, the rear tailgates of the Ford Vehicles were made of defective
25 materials and were assembled using inadequate techniques. As a result, the rear tailgates were
26 defective at the moment of sale and throughout the present day.

1 392. Ford concealed the defect that caused the rear tailgate of the Ford Vehicles to crack.
2 Ford also sold the Ford Vehicles with knowledge of the defect that caused the rear tailgate of the
3 Ford Vehicles to crack.

4 393. Ford's acts and practices described herein constitute unfair business acts and practices
5 within the meaning of the Florida Deceptive and Unfair Trade Practices Act as Ford's acts and
6 practices herein described offend established public policy, because the harm they cause to
7 consumers outweighs any benefits associated with those practices, and because Ford fraudulently
8 concealed the defect in the tailgate from consumers.

9 394. Plaintiffs are informed and believe, and thereon allege, that Ford concealed the
10 existence of the defect with the intention of inducing the Florida Sub-Class purchase the Ford
11 Vehicles. This concealment was likely to deceive a reasonable consumer.

12 395. The defect in the tailgate that resulted in a crack in the tailgate as well as the danger of
13 the tailgate glass falling out was a material fact for Plaintiff Dery and the Florida Sub-Class, who
14 purchased the Ford Vehicles, in that they would not have purchased the Ford Vehicles had this
15 information been disclosed upon Ford's discovery of this information.

16 396. As a result of Ford's unfair business practices, Plaintiff Dery and the Florida Sub-
17 Class were deceived and purchased the Ford Vehicles.

18 397. As a result of Ford's unfair business practices, Plaintiff Dery and the Florida Sub-
19 Class have been damaged in an amount to be proven at trial. Plaintiff Dery and the Florida Sub-Class
20 are further entitled to injunctive relief, restitution, and disgorgement of profits obtained by Ford as a
21 result of its fraudulent and unfair business acts and practices.

COUNT TEN (FORMERLY COUNT SIXTEEN)

Unjust Enrichment

(On Behalf of the Florida Sub-Class)

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4 398. On behalf of themselves and the Florida Sub-Class members, Florida Plaintiff Dery
5 expressly incorporate by reference and reallege the foregoing Paragraphs 1-310 of this Consolidated
6 Complaint.

7 399. Plaintiff Dery and other Florida Sub-Class members bought and/or leased a Ford
8 Vehicle manufactured by Ford with the defective tailgate.

9 400. Ford was aware of the defective nature of the Ford Vehicles and Cracked Tailgate
10 Problem but sold Plaintiff Dery and the Florida Sub-Class members defective products for the price
11 of non-defective products.

12 401. As a result of Ford's conduct, the Ford Vehicles of Plaintiff Dery and the Florida Sub-
13 Class members now have a lower market value without any corresponding injury to Ford.

14 402. In direct contrast to the harm to Plaintiffs as a result of Ford's conduct in selling the
15 defective Ford Vehicles for the price of non-defective products, Ford has been unjustly enriched by
16 the purchases of Ford Vehicles by Plaintiff Dery and the Florida Sub-Class members at an increased
17 rate.

18 403. By purchasing and/or leasing Ford Vehicles and otherwise, Plaintiff Dery and other
19 Florida Sub-Class members conferred a benefit on Ford, which it appreciated when it received the
20 monetary compensation for the Ford Vehicles and other benefits conferred by Plaintiff Dery and
21 other Florida Sub-Class members.

22 404. In the alternative, the Ford new Vehicle Warranty and extended Ford service plan are
23 unenforceable as a result of Ford's fraudulent behavior and/or unconscionable terms. Thus, Ford's
24 voluntarily acceptance and retention of the purchase price from Plaintiff Dery and the Florida Sub-
25 Class for the purchase of Ford Vehicles installed with a defective tailgate, unknown and undisclosed
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1 to Plaintiff Dery and the Florida Sub-Class members, constitutes further unjust enrichment to Ford at
2 the expense of Plaintiff Dery and the Florida Sub-Class Members.

3 405. In addition, to the extent any member of the Florida Sub-Class was forced to purchase
4 the Ford replacement parts and/or were serviced for the repair by authorized Ford dealerships, Ford
5 realized an additional direct benefit from such sale and repair.

6 406. The circumstances are such that the money currently held by Ford should, in equity
7 and good conscience, belong to Plaintiff Dery and the Florida Sub-Class members, and should be
8 returned to them.

9 407. The circumstances are such that Plaintiff Dery and the Florida Sub-Class members
10 have no adequate remedy at law.

11 408. As such, Ford has accepted and retained benefits conferred from the Plaintiff Dery and
12 Florida Sub-Class Members under circumstances that make it inequitable for Defendant to retain it
13 without paying the value of the benefit conferred.

14 **G. Georgia**

15 **COUNT ELEVEN (FORMERLY COUNT EIGHTEEN)**

16 **Violations of Georgia's Uniform Deceptive Trade Practices Act**

17 **(On Behalf of the Georgia Sub-Class)**

18 409. On behalf of herself and the Georgia Sub-Class members, Georgia Plaintiff Heywood
19 expressly incorporates by reference and realleges the foregoing Paragraphs 1-310 of this
20 Consolidated Complaint.

21 410. Georgia's Uniform Deceptive Trade Practices Act defines a deceptive trade practice to
22 include, inter alia, the following:

- 23 a. "Represent[ing] that goods or services have sponsorship, approval,
24 characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person
25 has a sponsorship, approval, status, affiliation, or connection that he does not have," Ga. Code
26 Ann. § 10-1-372(a)(5); and

1 b. “Represent[ing] that goods or services are of a particular standard, quality, or
2 grade or that goods are of a particular style or model, if they are of another,” Ga. Code Ann. §
3 10-1-372(a)(7).

4 411. Ford’s conduct, as set forth herein, constitutes unfair or deceptive acts or practices
5 under the Uniform Deceptive Trade Practices Act, including, but not limited to Ford’s manufacture
6 and sale of vehicles with a tailgate defect that Ford failed to adequately investigate, disclose, and
7 remedy, and its misrepresentations and omissions regarding the safety and reliability of its vehicles.

8 412. Ford’s actions as set forth above occurred in the conduct of trade or commerce.

9 413. Ford’s actions impact the public interest because Plaintiff Heywood was injured in
10 exactly the same way as thousands of others purchasing and/or leasing Ford Vehicles as a result of
11 Ford’s generalized course of deception. All of the wrongful conduct alleged herein occurred, and
12 continues to occur, in the conduct of Ford’s business.

13 414. Plaintiff Heywood and the other Georgia Sub-class members were injured as a result
14 of Ford’s conduct. Plaintiff Heywood and the other Sub-class members overpaid for their defective
15 vehicles and did not receive the benefit of their bargain, and their vehicles have suffered a diminution
16 in value. Further, Plaintiff Heywood and the other Georgia Sub-class members are very likely to
17 experience cracking in the future in their vehicle’s tailgate, if they have not done so already.

18 415. In light of Ford’s conduct as alleged herein, an injunction should be entered requiring
19 Ford to stop the unlawful, unfair, and deceptive conduct alleged herein and/or requiring Ford to
20 inspect and/or replace all of the defective tailgates in the Ford Vehicles.

21 **COUNT TWELVE (FORMERLY COUNT NINETEEN)**

22 **Unjust Enrichment**

23 **(On Behalf of the Georgia Sub-Class)**

24 416. On behalf of herself and the Georgia Sub-Class members, Georgia Plaintiff Heywood
25 expressly incorporates by reference and realleges the foregoing Paragraphs 1-310 of this
26 Consolidated Complaint.

1 417. Plaintiff Heywood and the other Georgia Sub-class members leased and/or purchased
2 Ford Vehicles from Ford.

3 418. Ford was aware of the defective nature of the Ford Vehicles and Cracked Tailgate
4 Problem but sold Plaintiff Heywood and the Georgia Sub-Class members defective products for the
5 price of non-defective products.

6 419. As a result of Ford's conduct, the Ford Vehicles of Plaintiff Heywood and the Georgia
7 Sub-Class members now have a lower market value.

8 420. In direct contrast to the harm to Plaintiffs, as a result of Ford's conduct in selling the
9 defective Ford Vehicles for the price of non-defective products, Ford has been unjustly enriched by
10 the purchases of Ford Vehicles by Plaintiff Heywood and the Georgia Sub-Class members at an
11 increased rate.

12 421. In the alternative, the Ford new Vehicle Warranty and extended Ford service plan are
13 unenforceable as a result of Ford's fraudulent behavior and/or unconscionable terms. Thus, Ford's
14 voluntarily acceptance and retention of the purchase price from Plaintiff Heywood and the Georgia
15 Sub-Class for the purchase of Ford Vehicles installed with a defective tailgate, unknown and
16 undisclosed to Plaintiff Heywood and the Georgia Sub-Class members, constitutes further unjust
17 enrichment to Ford at the expense of Plaintiff Heywood and the Georgia Sub-Class Members.

18 422. In addition, to the extent any member of the Georgia Sub-Class was forced to purchase
19 the Ford replacement parts and/or were serviced for the repair by authorized Ford dealerships, Ford
20 realized an additional direct benefit from such sale and repair.

21 423. The circumstances are such that the money currently held by Ford should, in equity
22 and good conscience, belong to Plaintiff Heywood and the Georgia Sub-Class members, and should
23 be returned to them.

24 424. Ford has knowingly appreciated and accepted these benefits, which have resulted and
25 continuing and/or may continue to result in an inequity to Plaintiff Heywood and the other Georgia
26 Sub-class members.

1 425. Ford's appreciation and acceptance of these benefits is inequitable

2 426. As a result of Ford's unjust enrichment, Plaintiff Heywood and the other Georgia Sub-
3 class members have sustained damages, in an amount to be determined at trial.

4 427. Plaintiff Heywood and the other Georgia Sub-class members seek full disgorgement
5 and restitution of Ford's enrichment, benefits, and ill-gotten gains acquired as a result of the unlawful
6 and/or wrongful conduct alleged herein.

7 **H. Illinois**

8 **COUNT THIRTEEN (FORMERLY COUNT TWENTY)**

9 **Violations of the Illinois Consumer Fraud and Deceptive Practices Act**

10 **(On Behalf of the Illinois Sub-Class)**

11 428. On behalf of themselves and the Illinois Sub-Class members, Illinois Plaintiffs Linder
12 and Procento expressly incorporates by reference and realleges the foregoing Paragraphs 1-310 of
13 this Consolidated Complaint.

14 429. The Illinois Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp.
15 Stat. 505/1, *et seq.*, prohibits unfair methods of competition and unfair and deceptive acts or
16 practices, including, among other things, "the use or employment of any deception, fraud, false
17 pretense, false promise, misrepresentation or the concealment, suppression or omission of any
18 material fact, . . . whether any person has in fact been misled, deceived or damaged thereby." The
19 Illinois Consumer Fraud and Deceptive Business Practices Act is to be liberally construed.

20 430. 815 Ill. Comp. Stat. 505/1(b) of the Illinois Consumer Fraud and Deceptive Business
21 Practices Act defines the term "merchandise" to include the Ford Vehicles at issue.

22 431. 815 Ill. Comp. Stat. 505/1(c) of the Illinois Consumer Fraud and Deceptive Business
23 Practices Act defines the term "person" to include Ford.

24 432. 815 Ill. Comp. Stat. 505/1(e) of the Illinois Consumer Fraud and Deceptive Business
25 Practices Act defines the term "consumer" to include Plaintiffs Linder and Procento and the other
26 Illinois Sub-class members.

1 433. Ford's acts and practices, as alleged herein, constitute unfair, deceptive, and/or
2 fraudulent business practices in violation of the Illinois Consumer Fraud and Deceptive Business
3 Practices Act, including, but not limited to, Ford's manufacture and sale of vehicles with a tailgate
4 defect that Ford failed to adequately investigate, disclose, and remedy, and its misrepresentations and
5 omissions regarding the safety and reliability of its vehicles.

6 434. Ford intended for Plaintiffs Linder and Procento and the other Illinois Sub-class
7 members to rely on its aforementioned deceptive acts and practices, and such deceptive acts and
8 practices occurred in the course of conduct involving trade or commerce.

9 435. Plaintiffs Linder and Procento and the other Illinois Sub-class members did rely on
10 such misrepresentations or were deceived.

11 436. Ford's violations of the Illinois Consumer Fraud and Deceptive Business Practices Act
12 caused Plaintiffs Linder and Procento and the other Illinois Sub-class members to sustain substantial
13 and ascertainable losses of money and/or property and other damages, in an amount to be determined
14 at trial.

15 437. Ford's conduct in this regard was wanton, willful, outrageous, and in reckless
16 indifference to the rights of Plaintiffs Linder and Procento and the other Illinois Sub-class members
17 and, as such, warrants the imposition of punitive damages.

18 438. 815 Ill. Comp. Stat. 505/10 permits the Court to enter injunctive relief to require Ford
19 to stop the unlawful, unfair, and deceptive conduct alleged herein and/or inspect and replace all of the
20 defective tailgates in the Ford Vehicles, and award Plaintiffs Linder and Procento and the other
21 Illinois Sub-class members their costs and reasonable attorneys' fees.

1 **COUNT FOURTEEN (FORMERLY COUNT TWENTY-ONE)**

2 **Unjust Enrichment**

3 **(On Behalf of the Illinois Sub-Class)**

4 439. On behalf of themselves and the Illinois Sub-Class members, Illinois Plaintiffs Linder
5 and Procento expressly incorporates by reference and realleges the foregoing Paragraphs 1-310 of
6 this Consolidated Complaint.

7 440. Plaintiffs Linder and Procento and the other Illinois Sub-class members paid money to
8 Ford for the lease and/or purchased Ford Vehicles from Ford.

9 441. Ford was aware of the defective nature of the Ford Vehicles and Cracked Tailgate
10 Problem but sold/leased Plaintiffs Linder and Procento and the Illinois Sub-Class members defective
11 products for the price of non-defective products.

12 442. As a result of Ford's conduct, the Ford Vehicles of Plaintiffs Linder and Procento and
13 the Illinois Sub-Class members now have a lower market value.

14 443. In direct contract to the harm to Plaintiffs, as a result of Ford's conduct in
15 selling/leasing the defective Ford Vehicles for the price of non-defective products, Ford has been
16 unjustly enriched by the purchases/leases of Ford Vehicles by Plaintiffs Linder and Procento and the
17 Illinois Sub-Class members at an increased rate without justification.

18 444. In the alternative, the Ford new Vehicle Warranty and extended Ford service plan are
19 unenforceable as a result of Ford's fraudulent behavior and/or unconscionable terms. Thus, Ford's
20 voluntarily acceptance and retention of the purchase/lease price from Plaintiffs Linder and Procento
21 and the Illinois Sub-Class for the purchase/lease of Ford Vehicles installed with a defective tailgate,
22 unknown and undisclosed to Plaintiffs Linder and Procento and the Illinois Sub-Class members,
23 constitutes further unjust enrichment to Ford at the expense of Plaintiffs Linder and Procento and the
24 Illinois Sub-Class Members.

1 445. In addition, to the extent any member of the Illinois Sub-Class was forced to purchase
2 the Ford replacement parts and/or were serviced for the repair by authorized Ford dealerships, Ford
3 realized an additional unjust direct benefit from such sale and repair.

4 446. Ford has knowingly appreciated and accepted these benefits, which have resulted and
5 is continuing and/or may continue to result in an inequity to Plaintiffs Linder and Procento and the
6 Illinois Sub-class members.

7 447. Ford's appreciation and acceptance of said benefits is inequitable.

8 448. As a result of Ford's unjust enrichment, Plaintiffs Linder and Procento and the Illinois
9 Sub-class members have sustained damages, in an amount to be determined at trial.

10 449. The circumstances are such that Plaintiffs Linder and Procento and the Illinois Sub-
11 Class members have no adequate remedy at law.

12 450. Plaintiffs Linder and Procento and the other Illinois Sub-class members seek full
13 disgorgement and restitution of Defendant's enrichment, benefits, and ill-gotten gains acquired as a
14 result of the unlawful and/or wrongful conduct alleged herein.

15 **I. Indiana**

16 **COUNT FIFTEEN (FORMERLY COUNT TWENTY-TWO)**

17 **Violation of the Indiana Consumer Protection Law, Ind. Code Ann. 24-5-0.5-1 et seq.**

18 **(On Behalf of the Indiana Sub-Class)**

19 451. On behalf of himself and the Indiana Sub-Class members, Indiana Plaintiff Farson
20 expressly incorporates by reference and realleges the foregoing Paragraphs 1-310 of this
21 Consolidated Complaint.

22 452. The Indiana Consumer Protection Law, Ind. Code Ann. 24-5-0.5-1 et seq., prohibits
23 deceptive acts in the conduct of any trade or commerce.

24 453. As described herein, the rear tailgates of the Ford Vehicles were made of defective
25 materials and were assembled using inadequate techniques. As a result, the rear tailgates were
26 defective at the moment of sale and throughout the present day.

1 454. Ford concealed the defect that caused the rear tailgate of the Ford Vehicles to crack.
2 Ford also sold the Ford Vehicles with knowledge of the defect that caused the rear tailgate of the
3 Ford Vehicles to crack.

4 455. Ford's acts and practices described herein constitute deceptive acts within the meaning
5 of the Indiana Consumer Protection Law, Ind. Code Ann. 24-5-0.5-1 *et seq.*, by representing that the
6 Ford Vehicles were of a particular standard, quality, grade, style, or model, when Ford knew or
7 reasonably should have known that they were not, and by committing or performing other deceptive
8 acts or practices described in Ind. Code § 24-5-0.5-3.

9 456. Plaintiffs are informed and believe, and thereon allege, that Ford concealed the
10 existence of the defect with the intention of inducing the Indiana Sub-Class to purchase the Ford
11 Vehicles. This concealment was likely to deceive a reasonable consumer.

12 457. The defect in the tailgate that resulted in a crack in the tailgate as well as the danger of
13 the tailgate glass falling out was a material fact for Plaintiffs and the Indiana Sub-Class, who
14 purchased the Ford Vehicles, in that they would not have purchased the Ford Vehicles had this
15 information been disclosed upon Ford's discovery of this information.

16 458. As a result of Ford's unfair and deceptive business practices, Plaintiffs and the Indiana
17 Sub-Class were deceived and purchased the Ford Vehicles.

18 459. As a result of Ford's unfair and deceptive business practices, Plaintiffs and the Indiana
19 Sub-Class have been damaged in an amount to be proven at trial. Plaintiffs and the Indiana Sub-
20 Class are further entitled to injunctive relief, restitution, and disgorgement of profits obtained by Ford
21 as a result of its fraudulent and unfair business acts and practices.

COUNT SIXTEEN (FORMERLY COUNT TWENTY-FOUR)

Unjust Enrichment

(On Behalf of the Indiana Sub-Class)

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4 460. On behalf of himself and the Indiana Sub-Class members, Indiana Plaintiff Farson
5 expressly incorporates by reference and realleges the foregoing Paragraphs 1-310 of this
6 Consolidated Complaint.

7 461. At the request of Ford, Plaintiff Farson and the Indiana Sub-Class members conferred
8 a measurable benefit on Ford and paid money to Ford for the purchase/lease of Ford Vehicles which
9 Ford received and currently holds.

10 462. Ford was aware of the defective nature of the Ford Vehicles and Cracked Tailgate
11 Problem but sold Plaintiff Farson and the Indiana Sub-Class members defective products for the price
12 of non-defective products.

13 463. As a result of Ford's conduct, the Ford Vehicles of Plaintiff Farson and the Indiana
14 Sub-Class members now have a lower market value.

15 464. In direct contrast to the harm to Plaintiffs, as a result of Ford's conduct in selling the
16 defective Ford Vehicles for the price of non-defective products, Ford has been unjustly enriched by
17 the purchases of Ford Vehicles by Plaintiff Farson and the Indiana Sub-Class members at an
18 increased rate.

19 465. Plaintiff Farson and the Indiana Sub-Class members unknowingly conferred a benefit
20 on Ford of which Ford had knowledge since Ford was aware of the defective nature of the Ford
21 Vehicles and the Cracked Tailgate Problem, but failed to discount the price of the Ford Vehicles to
22 account for the defective product.

23 466. In the alternative, the Ford new Vehicle Warranty and extended Ford service plan are
24 unenforceable as a result of Ford's fraudulent behavior and/or unconscionable terms. Thus, Ford's
25 voluntarily acceptance and retention of the purchase price from Plaintiff Farson and the Indiana Sub-
26 Class for the purchase of Ford Vehicles installed with a defective tailgate, unknown and undisclosed

1 to Plaintiff Farson and the Indiana Sub-Class members, constitutes further unjust enrichment to Ford
2 at the expense of Plaintiff Farson and the Indiana Sub-Class Members.

3 467. In addition, to the extent any member of the Indiana Sub-Class was forced to purchase
4 the Ford replacement parts and/or were serviced for the repair by authorized Ford dealerships, Ford
5 requested and realized an additional direct benefit from such sale and repair.

6 468. The circumstances are such that it would be inequitable, unconscionable, and unjust to
7 permit Ford to retain the benefit of these profits that it unfairly obtained from Plaintiff Farson and the
8 Indiana Sub-Class members.

9 469. Plaintiff Farson and the Indiana Sub-Class members, having been damaged by Ford's
10 conduct, are entitled to recover damages as a result of the unjust enrichment of Ford to the detriment
11 of Plaintiff Farson and the Indiana Sub-Class members.

12 **J. Maryland**

13 **COUNT SEVENTEEN (FORMERLY COUNT TWENTY-NINE)**

14 **Violations of the Maryland Consumer Protection Act, Md. Code, Com. Law 13-101 et seq.**

15 **(On Behalf of the Maryland Sub-Class)**

16 470. On behalf of herself and the Maryland Sub-Class members, Maryland Plaintiff
17 Buchanan expressly incorporates by reference and realleges the foregoing Paragraphs 1-310 of this
18 Consolidated Complaint.

19 471. Ford's conduct complained of herein constitutes acts, uses or employment by Ford of
20 unconscionable commercial practices, deception, fraud, false pretenses, false promises,
21 misrepresentations or knowing concealment, suppression, or omission of material facts with the intent
22 that Plaintiff Buchanan and the Maryland Sub-Class members would rely upon such concealment,
23 suppression, or omission in connection with the sale, marketing, and advertisement of the Ford
24 Vehicles. Ford's conduct herein is an unfair practice that has the capacity to, and did, deceive
25 consumers, as alleged herein.

1 472. All of the conduct alleged herein occurred in the course of Ford's business. Ford's
2 conduct is part of a pattern or generalized course of conduct repeated on tens of thousands (if not
3 hundreds of thousands) of occasions.

4 473. Ford's actions, as complained of herein, constitute unfair or deceptive trade practices
5 in violation of the Maryland Consumer Protection Act, as follows:

- 6 a. Ford used false or misleading statements, descriptions, and representations to mislead
7 Plaintiff Buchanan and the Maryland Sub-Class members into purchasing the Ford
8 Vehicles;
- 9 b. Ford falsely represented that the Ford Vehicles were of a standard and quality that
10 they were not;
- 11 c. Despite having knowledge of the Cracked Tailgate Problem, Ford failed to inform
12 Plaintiff Buchanan and the Maryland Sub-Class members of the Problem, thus
13 deceiving them into purchasing the Ford Vehicles;
- 14 d. Ford used deception, fraud, false pretense, false premise, misrepresentation, and/or
15 knowing concealment, suppression, or omission of material facts with the intent that
16 Plaintiff Buchanan and the Maryland Sub-Class members rely on them in their
17 purchases of the Ford Vehicles; and
- 18 e. Ford committed other deceptive or unfair trade practices described in Md. Code.,
19 Comm. L. § 13-301.

20 474. Plaintiff Buchanan and the Maryland Sub-Class members were injured by Ford's
21 conduct. As a direct and proximate result of Ford's unfair methods of competition and unfair or
22 deceptive acts or practices, Plaintiff Buchanan and the Maryland Sub-Class members have suffered
23 actual economic losses.

24 475. Ford, through its acts of unlawful and unfair competition, has wrongfully acquired
25 money from Plaintiff Buchanan and the Maryland Sub-Class members. Thus, Plaintiff Buchanan and
26

1 the Maryland Sub-Class members seek both monetary damages and to enjoin Ford from continuing to
2 violate the law.

3 476. Such conduct is ongoing and continues to this date. Plaintiff Buchanan and the
4 Maryland Sub-Class members are therefore entitled to the relief described herein.

5 477. Plaintiff Buchanan and the Maryland Sub-Class members seek damages, together with
6 appropriate exemplary damages, attorneys' fees, and costs of suit pursuant to the Maryland Consumer
7 Protection Act.

8 **COUNT EIGHTEEN (FORMERLY COUNT THIRTY-ONE)**

9 **Unjust Enrichment**

10 **(On Behalf of the Maryland Sub-Class)**

11 478. On behalf of herself and the Maryland Sub-Class members, Maryland Plaintiff
12 Buchanan expressly incorporates by reference and realleges the foregoing Paragraphs 1-310 of this
13 Consolidated Complaint.

14 479. Plaintiff Buchanan and the Maryland Sub-Class members paid money to Ford for the
15 purchase of Ford Vehicles which Ford received and currently holds.

16 480. Ford was aware of the defective nature of the Ford Vehicles and Cracked Tailgate
17 Problem but sold Plaintiff Buchanan and the Maryland Sub-Class members defective products for the
18 price of non-defective products.

19 481. As a result of Ford's conduct, the Ford Vehicles of Plaintiff Buchanan and the
20 Maryland Sub-Class members now have a lower market value.

21 482. In direct contract to the harm to Plaintiffs, as a result of Ford's conduct in selling the
22 defective Ford Vehicles for the price of non-defective products, Ford has been unjustly enriched by
23 the purchases of Ford Vehicles by Plaintiff Buchanan and the Maryland Sub-Class members at an
24 increased rate.

25 483. Plaintiff Buchanan and the Maryland Sub-Class members unknowingly conferred a
26 benefit on Ford of which Ford had knew and appreciated since Ford was aware of the defective

1 nature of the Ford Vehicles and the Cracked Tailgate Problem, but failed discount the price of the
2 Ford Vehicles to account for the defective product.

3 484. In the alternative, the Ford new Vehicle Warranty and extended Ford service plan are
4 unenforceable as a result of Ford's fraudulent behavior and/or unconscionable terms. Thus, Ford's
5 voluntarily acceptance and retention of the purchase price from Plaintiff Buchanan and the Maryland
6 Sub-Class for the purchase of Ford Vehicles installed with a defective tailgate, unknown and
7 undisclosed to Plaintiff Buchanan and the Maryland Sub-Class members, constitutes further unjust
8 enrichment to Ford at the expense of Plaintiff Buchanan and the Maryland Sub-Class Members.

9 485. In addition, to the extent any member of the Maryland Sub-Class was forced to
10 purchase the Ford replacement parts and/or were serviced for the repair by authorized Ford
11 dealerships, Ford realized an additional direct benefit from such sale and repair.

12 486. Ford had appreciation and knowledge of each of the benefits received from Plaintiff
13 Buchanan and the Maryland Sub-Class members.

14 487. The circumstances are such that it would be inequitable, unconscionable, and unjust to
15 permit Ford to retain the benefit of these profits that it unfairly obtained from Plaintiff Buchanan and
16 the Maryland Sub-Class members without payment.

17 488. Plaintiff Buchanan and the Maryland Sub-Class members, having been damaged by
18 Ford's conduct, are entitled to recover damages as a result of the unjust enrichment of Ford to the
19 detriment of Plaintiff Buchanan and the Maryland Sub-Class members.

20 **K. Massachusetts**

21 **COUNT NINETEEN (FORMERLY COUNT THIRTY-TWO)**

22 **Violations of the Massachusetts Consumer Protection Act, Mass Gen. L. Ann. 93A et seq.**

23 **(On Behalf of the Massachusetts Sub-Class)**

24 489. On behalf of herself and the Massachusetts Sub-Class members, Massachusetts
25 Plaintiffs SanSouci and Everett expressly incorporate by reference and reallege the foregoing
26 Paragraphs 1-310 of this Consolidated Complaint.

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

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

11 492. Ford's actions, as complained of herein, constitute unfair methods of competition or
12 unfair or deceptive acts or practices in the conduct of trade or commerce, in violation of the
13 Massachusetts Consumer Protection Act, Mass Gen. L. Ann. 93A *et seq.*

14 493. At least thirty days before this Complaint was filed, Plaintiffs SanSouci and Everett
15 and the Massachusetts Sub-Class members provided multiple written demands to Ford identifying
16 themselves, reasonably describing the unfair or deceptive acts, and describing the injury suffered.
17 Ford has failed to adequately respond to these demands, or to repair the defects complained of in the
18 Ford Vehicles.

19 494. Plaintiffs SanSouci and Everett and the Massachusetts Sub-Class members were
20 injured by Ford's conduct. As a direct and proximate result of Ford's unfair methods of competition
21 and unfair or deceptive acts or practices, Plaintiffs SanSouci and Everett and the Massachusetts Sub-
22 Class members have suffered actual economic losses.

23 495. Ford, through its acts of unlawful and unfair competition, has wrongfully acquired
24 money from Plaintiffs SanSouci and Everett and the Massachusetts Sub-Class members. Thus,
25 Plaintiffs SanSouci and Everett and the Massachusetts Sub-Class members seek both monetary
26 damages and to enjoin Ford from continuing to violate the law.

1 496. Such conduct is ongoing and continues to this date. Plaintiffs SanSouci and Everett
2 and the Massachusetts Sub-Class members are therefore entitled to the relief described herein.

3 497. Plaintiffs SanSouci and Everett and the Massachusetts Sub-Class members seek
4 damages, together with appropriate exemplary damages, attorneys' fees, and costs of suit pursuant to
5 the Massachusetts Consumer Protection Act.

6 **COUNT TWENTY (FORMERLY COUNT THIRTY-FOUR)**

7 **Unjust Enrichment**

8 **(On Behalf of the Massachusetts Sub-Class)**

9 498. On behalf of herself and the Massachusetts Sub-Class members, Massachusetts
10 Plaintiffs SanSouci, and Everett expressly incorporate by reference and reallege the foregoing
11 Paragraphs 1-310 of this Consolidated Complaint.

12 499. Plaintiffs SanSouci, and Everett and the Massachusetts Sub-Class members paid
13 money to Ford for the purchase of Ford Vehicles which Ford received and currently holds.

14 500. Ford was aware of the defective nature of the Ford Vehicles and Cracked Tailgate
15 Problem but sold Plaintiffs SanSouci, and Everett and the Massachusetts Sub-Class members
16 defective products for the price of non-defective products.

17 501. As a result of Ford's conduct, the Ford Vehicles of Plaintiffs SanSouci, and Everett
18 and the Massachusetts Sub-Class members now have a lower market value.

19 502. In direct contrast to the harm to Plaintiffs, as a result of Ford's conduct in selling the
20 defective Ford Vehicles for the price of non-defective products, Ford has been unjustly enriched by
21 the purchases of Ford Vehicles by Plaintiffs SanSouci, and Everett and the Massachusetts Sub-Class
22 members at an increased rate.

23 503. Plaintiffs SanSouci, and Everett and the Massachusetts Sub-Class members
24 unknowingly conferred a benefit on Ford of which Ford had knowledge since Ford was aware of the
25 defective nature of the Ford Vehicles and the Cracked Tailgate Problem, but failed to discount the
26 price of the Ford Vehicles to account for the defective product.

1 504. In the alternative, the Ford new Vehicle Warranty and extended Ford service plan are
 2 unenforceable as a result of Ford's fraudulent behavior and/or unconscionable terms. Thus, Ford's
 3 voluntarily acceptance and retention of the purchase price from Plaintiff SanSouci, and Everett and
 4 the Massachusetts Sub-Class for the purchase of Ford Vehicles installed with a defective tailgate,
 5 unknown and undisclosed to Plaintiffs SanSouci, and Everett and the Massachusetts Sub-Class
 6 members, constitutes further unjust enrichment to Ford at the expense of Plaintiffs SanSouci, and
 7 Everett and the Massachusetts Sub-Class Members.

8 505. In addition, to the extent any member of the Massachusetts Sub-Class was forced to
 9 purchase the Ford replacement parts and/or were serviced for the repair by authorized Ford
 10 dealerships, Ford realized an additional direct benefit from such sale and repair.

11 506. Ford had appreciation and knowledge of each of the benefits received from Plaintiffs
 12 SanSouci and Everett and the Massachusetts Sub-Class members.

13 507. There is no justification for permitting Ford to retain the benefit of these profits that it
 14 unfairly obtained from Plaintiffs SanSouci and Everett and the Massachusetts Sub-Class members.

15 508. Plaintiffs SanSouci and Everett and the Massachusetts Sub-Class members, having
 16 been damaged by Ford's conduct, are entitled to recover damages as a result of the unjust enrichment
 17 of Ford to the detriment of Plaintiff SanSouci and Everett and the Massachusetts Sub-Class members.

18 **L. Michigan**

19 **COUNT TWENTY-ONE (FORMERLY COUNT THIRTY-FIVE)**

20 **Violations of the Michigan Consumer Protection Act**

21 **(On Behalf of the Michigan Sub-Class)**

22 509. On behalf of himself and the Michigan Sub-Class members, Michigan Plaintiff Caunt
 23 expressly incorporates by reference and realleges the foregoing Paragraphs 1-310 of this
 24 Consolidated Complaint.

25 510. At all times relevant to this suit, Ford was conducting trade or commerce, as defined
 26 under MCL 445.902(1)(g), which is also known as the Michigan Consumer Protection Act (MCPA).

1 511. A party to a transaction covered under the MCPA must provide the other party the
2 promised benefits of the transaction.

3 512. Michigan courts, and federal courts applying Michigan law, have held that implied
4 warranties contain a “promised benefit” that the product is fit for its intended and foreseeable use.

5 513. The defective tailgates in the Ford Vehicles failed to provide Plaintiff Caunt and the
6 other Michigan Sub-Class members the promised benefits of the implied warranties.

7 514. Ford has committed unfair and deceptive acts by knowingly placing into the stream of
8 commerce defectively designed Ford Vehicles, which were and are likely to result in cracked
9 tailgates.

10 515. In addition, Ford refused to pay for or contribute to the cost of repairing, replacing, or
11 retrofitting the defective tailgates.

12 516. Ford committed these and other unfair and deceptive acts with regard to the marketing
13 and sale of its Ford Vehicles. For instance, Ford has made representations and/or public statements
14 about the durability of its vehicles, which are unfair and deceptive in violation of Michigan law.

15 517. Ford knew that the tailgates installed in its Ford Vehicles in the years referenced
16 above were defective.

17 518. Ford concealed and/or failed to warn Plaintiff Caunt and the other Michigan Sub-Class
18 members that the tailgates in its Ford Vehicles were defective for these model years.

19 519. Along with other examples listed above, such concealment and/or failure to warn
20 constitutes an unfair, unconscionable, or deceptive act or practice within the meaning of the MCPA.

21 520. Based upon all of these allegations, Ford violated MCL 445.903(d), (p), and (s), as
22 well as other sections of MCL 445.903 to be developed during the course of discovery.

23 521. The unfair, unconscionable, and deceptive acts committed by Ford caused damages to
24 Plaintiff Caunt and the other Michigan Sub-Class members.

25 522. Ford is liable to Plaintiff Caunt and the other Michigan Sub-Class members under the
26 MCPA for damages for breaching its implied warranties, for the aforesaid unfair, unconscionable,

1 and deceptive acts and for failing to pay for the cost of repairing or replacing Ford's defective
2 tailgates.

3 523. Plaintiff Caunt and the other Michigan Sub-Class members are entitled to
4 compensatory damages, injunctive/equitable relief, and attorneys' fees under the MCPA.

5 524. The allegations made by Plaintiff and prospective Michigan Sub-Class Members meet
6 the requirements of MCL 445.911(11)(3) because the acts and/or practices of Ford violate MCL
7 445.903, have been declared unlawful by an appellate court of the state which is either officially
8 reported or made available for public dissemination in accordance with the MCPA, and/or have been
9 declared by a circuit court and/or the United States Supreme Court to constitute unfair or deceptive
10 acts under the specified standards set forth by the Federal Trade Commission.

11 **M. Mississippi**

12 **COUNT TWENTY-TWO (FORMERLY COUNT THIRTY-EIGHT)**

13 **Unjust Enrichment**

14 **(On Behalf of the Mississippi Sub-Class)**

15 525. On behalf of himself and the Mississippi Sub-Class members, Mississippi Plaintiff
16 Carson expressly incorporates by reference and realleges the foregoing Paragraphs 1-310 of this
17 Consolidated Complaint.

18 526. Plaintiff Carson and the Mississippi Sub-Class members paid money to Ford for the
19 purchase of Ford Vehicles, which Ford received and currently holds.

20 527. Ford was aware of the defective nature of the Ford Vehicles and Cracked Tailgate
21 Problem but sold Plaintiff Carson and the Mississippi Sub-Class members defective products for the
22 price of non-defective products.

23 528. As a result of Ford's conduct, the Ford Vehicles of Plaintiff Carson and the
24 Mississippi Sub-Class members now have a lower market value.

25 529. In direct contrast to the harm to Plaintiffs, as a result of Ford's conduct in selling the
26 defective Ford Vehicles for the price of non-defective products, Ford has been unjustly enriched by

1 the purchases of Ford Vehicles by Plaintiff Carson and the Mississippi Sub-Class members at an
2 increased rate.

3 530. Plaintiff Carson and the Mississippi Sub-Class members unknowingly conferred a
4 benefit on Ford of which Ford had knowledge since Ford was aware of the defective nature of the
5 Ford Vehicles and the Cracked Tailgate Problem, but failed to discount the price of the Ford Vehicles
6 to account for the defective product.

7 531. In the alternative, the Ford new Vehicle Warranty and extended Ford service plan are
8 unenforceable as a result of Ford's fraudulent behavior and/or unconscionable terms. Thus, Ford's
9 voluntarily acceptance and retention of the purchase price from Plaintiff Carson and the Mississippi
10 Sub-Class for the purchase of Ford Vehicles installed with a defective tailgate, unknown and
11 undisclosed to Plaintiff Carson and the Mississippi Sub-Class members, constitutes further unjust
12 enrichment to Ford at the expense of Plaintiff Carson and the Mississippi Sub-Class Members.

13 532. In addition, to the extent any member of the Mississippi Sub-Class was forced to
14 purchase the Ford replacement parts and/or were serviced for the repair by authorized Ford
15 dealerships, Ford realized an additional direct benefit from such sale and repair.

16 533. The circumstances are such that that the money unjustly received by Ford in equity
17 and good conscience belongs to Plaintiff Carson and the Mississippi Sub-Class members.

18 534. In good conscious and justice, Ford should not retain, but refund to Plaintiff Carson
19 and the Mississippi Sub-Class Members the benefit unjustly received.

20 535. Plaintiff Carson and the Mississippi Sub-Class members, having been damaged by
21 Ford's conduct, are entitled to recover damages as a result of the unjust enrichment of Ford to the
22 detriment of Plaintiff Carson and the Mississippi Sub-Class members.

1 N. New Hampshire

2 COUNT TWENTY-THREE (FORMERLY COUNT THIRTY-NINE)

3 Violations of the New Hampshire Consumer Protection Act, N.H. Rev. Stat. 358-A:1 et seq.

4 (On Behalf of the New Hampshire Sub-Class)

5 536. On behalf of himself and the New Hampshire Sub-Class members, New Hampshire
6 Plaintiff Andosca expressly incorporates by reference and realleges the foregoing Paragraphs 1-310
7 of this Consolidated Complaint.

8 537. Ford's conduct complained of herein constitutes acts, uses or employment by Ford of
9 unconscionable commercial practices, deception, fraud, false pretenses, false promises,
10 misrepresentations or knowing concealment, suppression, or omission of material facts with the intent
11 that Plaintiff Andosca and the New Hampshire Sub-Class members would rely upon such
12 concealment, suppression, or omission in connection with the sale, marketing, and advertisement of
13 the Ford Vehicles. Ford's conduct herein is an unfair practice that has the capacity to, and did,
14 deceive consumers, as alleged herein.

15 538. All of the conduct alleged herein occurred in the course of Ford's business. Ford's
16 conduct is part of a pattern or generalized course of conduct repeated on tens of thousands (if not
17 hundreds of thousands) of occasions.

18 539. Ford's actions, as complained of herein, constitute unfair competition or unfair,
19 unconscionable, deceptive, or fraudulent acts or practices in violation of the New Hampshire
20 Consumer Protection Act, N.H. Rev. Stat. 358-A:1 et seq., including, but not limited to, the
21 following:

- 22 a. Representing that the Ford Vehicles have characteristics, uses, or benefits that they do
23 not have;
- 24 b. Representing that the Ford Vehicles are of a particular standard, quality, or grade
25 when they are not;
- 26 c. Committing other actions prohibited by N.H. Rev. Stat. § 358-A:2.

1 540. Plaintiff Andosca and the New Hampshire Sub-Class members were injured by Ford's
2 conduct. As a direct and proximate result of Ford's unfair methods of competition and unfair or
3 deceptive acts or practices, Plaintiff Andosca and the New Hampshire Sub-Class members have
4 suffered actual economic losses.

5 541. Ford, through its acts of unlawful and unfair competition, has wrongfully acquired
6 money from Plaintiff Andosca and the New Hampshire Sub-Class members. Thus, Plaintiff Andosca
7 and the New Hampshire Sub-Class members seek both monetary damages and to enjoin Ford from
8 continuing to violate the law.

9 542. Such conduct is ongoing and continues to this date. Plaintiff Andosca and the New
10 Hampshire Sub-Class members are therefore entitled to the relief described herein.

11 543. Plaintiff Andosca and the New Hampshire Sub-Class members seek damages, together
12 with appropriate exemplary damages, attorneys' fees, and costs of suit pursuant to the New
13 Hampshire Consumer Protection Act.

14 **COUNT TWENTY-FOUR (FORMERLY COUNT FORTY-ONE)**

15 **Unjust Enrichment**

16 **(On Behalf of the New Hampshire Sub-Class)**

17 544. On behalf of himself and the New Hampshire Sub-Class members, New Hampshire
18 Plaintiff Andosca expressly incorporates by reference and realleges the foregoing Paragraphs 1-310
19 of this Consolidated Complaint.

20 545. Plaintiff Andosca and the New Hampshire Sub-Class members paid money to Ford for
21 the purchase of Ford Vehicles, which Ford received and currently holds.

22 546. Ford was aware of the defective nature of the Ford Vehicles and Cracked Tailgate
23 Problem but sold Plaintiff Andosca and the New Hampshire Sub-Class members defective products
24 for the price of non-defective products.

25 547. As a result of Ford's conduct, the Ford Vehicles of Plaintiff Andosca and the New
26 Hampshire Sub-Class members now have a lower market value.

1 548. In direct contrast to the harm to Plaintiffs, as a result of Ford's conduct in selling the
2 defective Ford Vehicles for the price of non-defective products, Ford has been unjustly enriched by
3 the purchases of Ford Vehicles by Plaintiff Andosca and the New Hampshire Sub-Class members at
4 an increased rate.

5 549. Plaintiff Andosca and the New Hampshire Sub-Class members unknowingly conferred
6 a benefit on Ford of which Ford had knowledge since Ford was aware of the defective nature of the
7 Ford Vehicles and the Cracked Tailgate Problem, but failed to discount the price of the Ford Vehicles
8 to account for the defective product.

9 550. In the alternative, the Ford new Vehicle Warranty and extended Ford service plan are
10 unenforceable as a result of Ford's fraudulent behavior and/or unconscionable terms. Thus, Ford's
11 voluntarily acceptance and retention of the purchase price from Plaintiff Andosca and the New
12 Hampshire Sub-Class for the purchase of Ford Vehicles installed with a defective tailgate, unknown
13 and undisclosed to Plaintiff Andosca and the New Hampshire Sub-Class members, constitutes further
14 unjust enrichment to Ford at the expense of Plaintiff Andosca and the New Hampshire Sub-Class
15 Members.

16 551. In addition, to the extent any member of the New Hampshire Sub-Class was forced to
17 purchase the Ford replacement parts and/or were serviced for the repair by authorized Ford
18 dealerships, Ford realized an additional direct benefit from such sale and repair.

19 552. The circumstances are such that it would be contrary to equity and unconscionable to
20 permit Ford to retain the benefit of these profits that it unfairly obtained from Plaintiff Andosca and
21 the New Hampshire Sub-Class members.

22 553. Plaintiff Andosca and the New Hampshire Sub-Class members, having been damaged
23 by Ford's conduct, are entitled to recover damages as a result of the unjust enrichment of Ford to the
24 detriment of Plaintiff Andosca and the New Hampshire Sub-Class members.

1 **O. New Jersey**

2 **COUNT TWENTY-FIVE (FORMERLY COUNT FORTY-TWO)**

3 **Violation of the New Jersey Consumer Protection Law, N.J. Stat. Ann. 56:8-1 et seq.**

4 **(On Behalf of the New Jersey Sub-Class)**

5 554. On behalf of themselves and the New Jersey Sub-Class members, New Jersey
6 Plaintiffs Ware and Martin expressly incorporate by reference and reallege the foregoing Paragraphs
7 1-310 of this Consolidated Complaint.

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

10 556. The New Jersey Consumer Protection Law, N.J. Stat. Ann. 56:8-1 et seq., prohibits
11 unfair or deceptive acts or practices in the conduct of any trade or commerce.

12 557. As described herein, the rear tailgates of the Ford Vehicles were made of defective
13 materials and were assembled using inadequate techniques. As a result, the rear tailgates were
14 defective at the moment of sale and throughout the present day.

15 558. Ford concealed the defect that caused the rear tailgate of the Ford Vehicles to crack.
16 Ford also sold the Ford Vehicles with knowledge of the defect that caused the rear tailgate of the
17 Ford Vehicles to crack.

18 559. Ford's acts and practices described herein constitute unfair and deceptive acts and
19 practices within the meaning of the New Jersey Consumer Protection Law, N.J. Stat. Ann. 56:8-1 et
20 seq. as Ford's acts and practices herein described offend established public policy, because the harm
21 they cause to consumers outweighs any benefits associated with those practices, and because Ford
22 fraudulently concealed the defect in the tailgate from consumers.

23 560. Plaintiffs are informed and believe, and thereon allege, that Ford concealed the
24 existence of the defect with the intention of inducing the New Jersey Sub-Class to purchase the Ford
25 Vehicles. This concealment was likely to deceive a reasonable consumer.

1 561. The defect in the tailgate that resulted in a crack in the tailgate as well as the danger of
2 the tailgate glass falling out was a material fact for Plaintiffs and the New Jersey Sub-Class, who
3 purchased the Ford Vehicles, in that they would not have purchased the Ford Vehicles had this
4 information been disclosed upon Ford's discovery of this information.

5 562. As a result of Ford's unfair and deceptive business practices, Plaintiffs and the New
6 Jersey Sub-Class were deceived and purchased the Ford Vehicles.

7 563. As a result of Ford's unfair and deceptive business practices, Plaintiffs and the New
8 Jersey Sub-Class have been damaged in an amount to be proven at trial. Plaintiffs and the New
9 Jersey Sub-Class are further entitled to injunctive relief, restitution, and disgorgement of profits
10 obtained by Ford as a result of its fraudulent and unfair business acts and practices.

11 **P. New York**

12 **COUNT TWENTY-SIX (FORMERLY COUNT FORTY-FOUR)**

13 **Violation of the New York Consumer Protection From Deceptive Acts And Practices Act,**

14 **N.Y. Gen. Bus. § 349, et seq.**

15 **(On Behalf of the New York Sub-Class)**

16 564. On behalf of himself and the New York Sub-Class members, New York Plaintiffs
17 Bova and Giunto expressly incorporate by reference and reallege the foregoing Paragraphs 1-310 of
18 this Consolidated Complaint.

19 565. The New York Consumer Protection Act, Chapter 20, Article 22-A, of the
20 Consolidated Laws of New York, prohibits deceptive acts or practices in the conduct of any business,
21 trade or commerce. N.Y. Gen. Bus. § 349 provides that "deceptive acts or practices in the conduct of
22 any business, trade or commerce or in the furnishing of any service in this state are hereby declared
23 unlawful."

24 566. The New York Consumer Protection Act, Chapter 20, Article 22-A, of the
25 Consolidated Laws of New York, prohibits false advertising in the conduct of any business, trade or
26 commerce. N.Y. Gen. Bus. § 350-a provides that "[t]he term 'false advertising' means advertising,

1 including labeling, of a commodity, or of the kind, character, terms or conditions of any employment
2 opportunity if such advertising is misleading in a material respect.”

3 567. As described herein, the rear tailgates of the Ford Vehicles were made of defective
4 materials and were assembled using inadequate techniques. As a result, the rear tailgates were
5 defective at the moment of sale and throughout the present day.

6 568. Ford concealed the defect that caused the rear tailgate of the Ford Vehicles to crack.
7 Ford also sold the Ford Vehicles with knowledge of the defect that caused the rear tailgate of the
8 Ford Vehicles to crack.

9 569. Ford’s acts and practices described herein constitute deceptive acts and practices and
10 false advertising within the meaning of the New York Consumer Protection Act as Ford fraudulently
11 concealed the defect in the tailgate from consumers.

12 570. Plaintiffs are informed and believe, and thereon allege, that Ford concealed the
13 existence of the defect with the intention of inducing the New York Sub-class members to purchase
14 the Ford Vehicles. This concealment was likely to deceive a reasonable consumer.

15 571. The defect in the tailgate that resulted in a crack in the tailgate as well as the danger of
16 the tailgate glass falling out was a material fact for Plaintiffs and the New York Sub-Class, who
17 purchased the Ford Vehicles, in that they would not have purchased the Ford Vehicles had this
18 information been disclosed upon Ford’s discovery of this information.

19 572. As a result of Ford’s deceptive business practices and false advertising, Plaintiffs and
20 the New York Sub-Class were deceived and purchased the Ford Vehicles.

21 573. As a result of Ford’s deceptive business practices and false advertising, Plaintiffs and
22 the New York Sub-Class have been damaged in an amount to be proven at trial. Plaintiffs and the
23 New York Sub-Class are further entitled to injunctive relief, restitution, and disgorgement of profits
24 obtained by Ford as a result of its fraudulent and unfair business acts and practices. Because Ford
25 acted willfully or knowingly, Plaintiffs and the New York Sub-Class are entitled to recover punitive
26 damages.

COUNT TWENTY-SEVEN (FORMERLY COUNT FORTY-FIVE)

Unjust Enrichment

(On Behalf of the New York Sub-Class)

574. On behalf of themselves and the New York Sub-Class members, New York Plaintiffs Bova and Giunto expressly incorporate by reference and reallege the foregoing Paragraphs 1-310 of this Consolidated Complaint.

575. Plaintiffs Bova and Giunto and the other New York Sub-Class members bought or leased their Ford Vehicles, which were manufactured with defective tailgates.

576. Plaintiffs Bova and Giunto and the New York Sub-Class members paid money to Ford for the purchase/lease of Ford Vehicles, which Ford received and currently holds.

577. Ford was aware of the defective nature of the Ford Vehicles and Cracked Tailgate Problem, Ford sold Plaintiffs Bova and Giunto and the New York Sub-Class members defective products for the price of non-defective products

578. As a result of Ford's practices, Plaintiffs Bova and Giunto and the other New York Sub-Class members were overcharged by Ford for their vehicles.

579. The Ford Vehicles of Plaintiffs Bova and Giunto and the New York Sub-Class members now have a lower market value, and Plaintiffs Bova and Giunto and the other New York Sub-Class members incurred, or will incur, expensive repairs that they should not have to bear.

580. In direct contrast to the harm to Plaintiffs and at Plaintiffs Bova and Giunto and the New York Sub-Class members' expense, as a result of Ford's conduct in selling the defective Ford Vehicles for the price of non-defective products, Ford has been unjustly enriched by the purchases of Ford Vehicles by Plaintiffs Bova and Giunto and the New York Sub-Class members at an increased rate.

581. In the alternative, the Ford new Vehicle Warranty and extended Ford service plan are unenforceable as a result of Ford's fraudulent behavior and/or unconscionable terms. Thus, Ford's voluntarily acceptance and retention of the purchase price from Plaintiffs Bova and Giunto and the

1 New York Sub-Class for the purchase of Ford Vehicles installed with a defective tailgate, unknown
 2 and undisclosed to Plaintiffs Bova and Giunto and the New York Sub-Class members, constitutes
 3 further unjust enrichment to Ford at the expense of Plaintiffs Bova and Giunto and the New York
 4 Sub-Class Members.

5 582. In addition, to the extent that any member of the New York Sub-Class was forced to
 6 purchase the Ford replacement parts and/or were serviced for the repair by authorized Ford
 7 dealerships, Ford realized an additional direct benefit because it was paid for such sale and repair.

8 583. As a result of Ford's concealment and deceptive practices, Ford was unjustly enriched.

9 584. The circumstances are such that the money currently held by Ford should, in equity
 10 and good conscience, belong to Plaintiffs Bova and Giunto and the New York Sub-Class members,
 11 and should be returned to them.

12 585. Plaintiffs Bova and Giunto and the other New York Sub-Class members have no
 13 remedy provided by law and for these reasons, Plaintiff and the other New York Sub-Class members
 14 are entitled to full restitution.

15 **Q. North Carolina**

16 **COUNT TWENTY-EIGHT (FORMERLY COUNT FORTY-SIX)**

17 **Violation of the North Carolina Consumer Protection Law, N.C. Gen. Stat. 75-1.1 et seq.**

18 **(On Behalf of the North Carolina Sub-Class)**

19 586. On behalf of himself and the North Carolina Sub-Class members, North Carolina
 20 Plaintiff Daughtery expressly incorporates by reference and realleges the foregoing Paragraphs 1-310
 21 of this Consolidated Complaint.

22 587. The North Carolina Consumer Protection Law, N.C. Gen. Stat. 75-1.1 *et seq.*,
 23 prohibits unfair or deceptive acts or practices in the conduct of any trade or commerce.

24 588. As described herein, the rear tailgates of the Ford Vehicles were made of defective
 25 materials and were assembled using inadequate techniques. As a result, the rear tailgates were
 26 defective at the moment of sale and throughout the present day.

1 589. Ford concealed the defect that caused the rear tailgate of the Ford Vehicles to crack.
2 Ford also sold the Ford Vehicles with knowledge of the defect that caused the rear tailgate of the
3 Ford Vehicles to crack.

4 590. Ford's acts and practices described herein constitute unfair and deceptive acts and
5 practices within the meaning of the North Carolina Consumer Protection Law, N.C. Gen. Stat. 75-1.1
6 *et seq.* as Ford's acts and practices herein described offend established public policy, because the
7 harm they cause to consumers outweighs any benefits associated with those practices, and because
8 Ford fraudulently concealed the defect in the tailgate from consumers.

9 591. Plaintiffs are informed and believe, and thereon allege, that Ford concealed the
10 existence of the defect with the intention of inducing the North Carolina Sub-Class to purchase the
11 Ford Vehicles. This concealment was likely to deceive a reasonable consumer.

12 592. The defect in the tailgate that resulted in a crack in the tailgate as well as the danger of
13 the tailgate glass falling out was a material fact for Plaintiffs and the North Carolina Sub-Class, who
14 purchased the Ford Vehicles, in that they would not have purchased the Ford Vehicles had this
15 information been disclosed upon Ford's discovery of this information.

16 593. As a result of Ford's unfair and deceptive business practices, Plaintiffs and the North
17 Carolina Sub-Class were deceived and purchased the Ford Vehicles.

18 594. As a result of Ford's unfair and deceptive business practices, Plaintiffs and the North
19 Carolina Sub-Class have been damaged in an amount to be proven at trial. Plaintiffs and the North
20 Carolina Sub-Class are further entitled to injunctive relief, restitution, and disgorgement of profits
21 obtained by Ford as a result of its fraudulent and unfair business acts and practices.

COUNT TWENTY-NINE (FORMERLY COUNT FORTY-EIGHT)

Unjust Enrichment

(On Behalf of the North Carolina Sub-Class)

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4 595. On behalf of himself and the North Carolina Sub-Class members, North Carolina
5 Plaintiff Daughtery expressly incorporates by reference and realleges the foregoing Paragraphs 1-310
6 of this Consolidated Complaint.

7 596. Plaintiff Daughtery and the North Carolina Sub-Class members paid money to Ford
8 for the purchase of Ford Vehicles, which Ford received and currently holds.

9 597. Ford was aware of the defective nature of the Ford Vehicles and Cracked Tailgate
10 Problem but sold Plaintiff Daughtery and the North Carolina Sub-Class members defective products
11 for the price of non-defective products.

12 598. As a result of Ford's conduct, the Ford Vehicles of Plaintiff Daughtery and the North
13 Carolina Sub-Class members now have a lower market value.

14 599. In direct contrast to the harm to Plaintiffs, as a result of Ford's conduct in selling the
15 defective Ford Vehicles for the price of non-defective products, Ford consciously accepted the benefit
16 and has been unjustly enriched by the purchases of Ford Vehicles by Plaintiff Daughtery and the
17 North Carolina Sub-Class members at an increased rate.

18 600. In the alternative, the Ford new Vehicle Warranty and extended Ford service plan are
19 unenforceable as a result of Ford's fraudulent behavior and/or unconscionable terms. Thus, Ford's
20 conscious voluntarily acceptance and retention of the purchase price from Plaintiff Daughtery and the
21 North Carolina Sub-Class for the purchase of Ford Vehicles installed with a defective tailgate,
22 unknown and undisclosed to Plaintiff Daughtery and the North Carolina Sub-Class members,
23 constitutes further unjust enrichment to Ford at the expense of Plaintiff Daughtery and the North
24 Carolina Sub-Class Members.

1 601. In addition, to the extent any member of the North Carolina Sub-Class was forced to
2 purchase the Ford replacement parts and/or were serviced for the repair by authorized Ford
3 dealerships, Ford consciously realized an additional direct benefit from such sale and repair.

4 602. The benefits conferred on Ford was part of the sale of goods and were measurable.
5 The benefits were not gratuitously or officiously conferred.

6 603. The circumstances are such that it would be inequitable, unconscionable, and unjust to
7 permit Ford to retain the benefit of these profits that it unfairly obtained from Plaintiff Daughtery and
8 the North Carolina Sub-Class members.

9 604. Plaintiff Daughtery and the North Carolina Sub-Class members, having been damaged
10 by Ford’s conduct, are entitled to recover damages as a result of the unjust enrichment of Ford to the
11 detriment of Plaintiff Daughtery and the North Carolina Sub-Class members.

12 **R. Ohio**

13 **COUNT THIRTY (FORMERLY COUNT FIFTY)**

14 **Unjust Enrichment**

15 **(On Behalf of the Ohio Sub-Class)**

16 605. On behalf of herself and the Ohio Sub-Class members, Ohio Plaintiff Brunner
17 expressly incorporates by reference and realleges the foregoing Paragraphs 1-310 of this
18 Consolidated Complaint.

19 606. This claim is asserted in the alternative on behalf of the members of the Ohio Sub-
20 Class, to the extent that the other claims herein do not govern all of the Ohio Plaintiff’s and Ohio
21 Sub-Class members’ claims.

22 607. Ford has been unjustly enriched by the purchases of Ford Vehicles by the Ohio
23 Plaintiff and the other members of the Ohio Sub-Class.

24 608. Plaintiff Brunner and the Ohio Sub-Class members paid money to Ford for the
25 purchase of Ford Vehicles, which Ford received and currently holds.

1 609. Ford was aware of the defective nature of the Ford Vehicles and the Cracked Tailgate
2 Problem, but failed to disclose this knowledge and misled Plaintiff Brunner and the Ohio Sub-Class
3 members regarding the nature and quality of the Ford Vehicles while profiting from its deception.

4 610. Plaintiff Brunner and the other members of the Ohio Sub-Class unknowingly
5 conferred a benefit on Ford of which Ford had knowledge, since Ford was aware of the defective
6 nature of Ford Vehicles and the Cracked Tailgate Problem, but failed to disclose this knowledge and
7 misled the Ohio Plaintiff and the other members of the Ohio Sub-Class regarding the nature and
8 quality of Ford Vehicles while profiting from this deception.

9 611. As a result of Ford's deceptive conduct, Ford has been unjustly enriched by the
10 purchases of Ford Vehicles by Plaintiff Brunner and the Ohio Sub-Class members.

11 612. Further, even though Ford was aware of the defective nature of the Ford Vehicles and
12 Cracked Tailgate Problem, Ford sold Plaintiff Brunner and the Ohio Sub-Class members defective
13 products for the price of non-defective products.

14 613. As a result of Ford's conduct, the Ford Vehicles of Plaintiff Brunner and the Ohio
15 Sub-Class members now have a lower market value.

16 614. In direct contrast to the harm to Plaintiffs, as a result of Ford's conduct in selling the
17 defective Ford Vehicles for the price of non-defective products, Ford has been unjustly enriched by
18 the purchases of Ford Vehicles by Plaintiff Brunner and the Ohio Sub-Class members at an increased
19 rate.

20 615. In the alternative, the Ford new Vehicle Warranty and extended Ford service plan are
21 unenforceable as a result of Ford's fraudulent behavior and/or unconscionable terms. Thus, Ford's
22 voluntarily acceptance and retention of the purchase price from Plaintiff Brunner and the Ohio Sub-
23 Class for the purchase of Ford Vehicles installed with a defective tailgate, unknown and undisclosed
24 to Plaintiff Brunner and the Ohio Sub-Class members, constitutes further unjust enrichment to Ford at
25 the expense of Plaintiff Brunner and the Ohio Sub-Class Members.

1 616. In addition, to the extent any member of the Ohio Sub-Class was forced to purchase
2 the Ford replacement parts and/or were serviced for the repair by authorized Ford dealerships, Ford
3 realized an additional direct benefit from such sale and repair.

4 617. Ford had knowledge of each of the benefits unjustly conferred upon it.

5 618. The circumstances are such that it would be inequitable, unconscionable, and unjust to
6 permit Ford to retain the benefit of profits that it unfairly has obtained from the Ohio Plaintiff and the
7 other members of the Ohio Sub-Class.

8 619. The Ohio Plaintiff and the other members of the Ohio Sub-Class, having been
9 damaged by Ford's conduct, are entitled to recover or recoup damages as a result of the unjust
10 enrichment of Ford to their detriment.

11 **S. Oklahoma**

12 **COUNT THIRTY-ONE (FORMERLY COUNT FIFTY-TWO)**

13 **Violation of the Oklahoma Consumer Protection Act, 15 Okla. Stat. Ann. § 751, et seq.**

14 **(On Behalf of the Oklahoma Sub-Class)**

15 620. On behalf of themselves and the Oklahoma Sub-Class members, Oklahoma Plaintiff
16 Douglas expressly incorporates by reference and realleges the foregoing Paragraphs 1-310 of this
17 Consolidated Complaint.

18 621. As described herein, the rear tailgates of the Ford Vehicles were made of defective
19 materials and were assembled using inadequate techniques. As a result, the rear tailgates were
20 defective at the moment of sale and throughout the present day.

21 622. Ford concealed the defect that caused the rear tailgate of the Ford Vehicles to crack.
22 Ford also sold the Ford Vehicles with knowledge of the defect that caused the rear tailgate of the
23 Ford Vehicles to crack.

24 623. Ford's acts and practices described herein constitute unlawful business acts and
25 practices within the meaning of the Oklahoma Consumer Protection Act.

1 624. Plaintiff is informed and believes, and thereon alleges, that Ford concealed the
2 existence of the defect with the intention of inducing the Oklahoma Sub-class members to purchase
3 the Ford Vehicles. This concealment was likely to deceive a reasonable consumer.

4 625. The defect in the tailgate that resulted in a crack in the tailgate as well as the danger of
5 the tailgate glass falling out was a material fact for Plaintiff and the other members of the Oklahoma
6 Sub-Class, who purchased the Ford Vehicles, in that they would not have purchased the Ford
7 Vehicles had this information been disclosed upon Ford's discovery of this information.

8 626. As a result of Ford's unlawful business practices, Plaintiff and the other members of
9 the Oklahoma Sub-Class were deceived and purchased the Ford Vehicles.

10 627. As a result of Ford's unlawful business practices, Plaintiff and the other members of
11 the Oklahoma Sub-Class have been damaged in an amount to be proven at trial. Plaintiff and the
12 members of the Oklahoma Sub-Class are further entitled to injunctive relief, restitution, and
13 disgorgement of profits obtained by Ford as a result of its fraudulent and unfair business acts and
14 practices.

15 **COUNT THIRTY-TWO (FORMERLY COUNT FIFTY-SIX)**

16 **Unjust Enrichment**

17 **(On Behalf of the Oklahoma Sub-Class)**

18 628. On behalf of herself and the Oklahoma Sub-Class members, Oklahoma Plaintiff
19 Douglas expressly incorporates by reference and realleges the foregoing Paragraphs 1-310 of this
20 Consolidated Complaint.

21 629. Plaintiff Douglas and the other Oklahoma Sub-class members leased and/or purchased
22 Ford Vehicles from Ford.

23 630. Plaintiff Douglas and the Oklahoma Sub-Class members paid money to Ford for the
24 purchase of Ford Vehicles, which Ford received and currently holds.

1 631. Ford was aware of the defective nature of the Ford Vehicles and Cracked Tailgate
2 Problem and wrongfully sold Plaintiff Douglas and the Oklahoma Sub-Class members defective
3 products for the price of non-defective products.

4 632. As a result of Ford's conduct, the Ford Vehicles of Plaintiff Douglas and the
5 Oklahoma Sub-Class members now have a lower market value.

6 633. In direct contrast to the harm to Plaintiffs, as a consequence of the conduct described
7 above, Ford has been unjustly enriched and received a benefit in the form of higher payments from
8 Plaintiff Douglas and the other Oklahoma Sub-class members for Ford Vehicles than if the defect had
9 been known.

10 634. In the alternative, the Ford new Vehicle Warranty and extended Ford service plan are
11 unenforceable as a result of Ford's fraudulent behavior and/or unconscionable terms. Thus, Ford's
12 voluntarily acceptance and retention of the purchase price from Plaintiff Douglas and the Oklahoma
13 Sub-Class for the purchase of Ford Vehicles installed with a defective tailgate, unknown and
14 undisclosed to Plaintiff Douglas and the Oklahoma Sub-Class members, constitutes further unjust
15 enrichment to Ford at the expense of Plaintiff Douglas and the Oklahoma Sub-Class Members.

16 635. In addition, to the extent any member of the Oklahoma Sub-Class was forced to
17 purchase the Ford replacement parts and/or were serviced for the repair by authorized Ford
18 dealerships, Ford wrongfully realized an additional direct benefit from such sale and repair.

19 636. Ford knowingly appreciated and accepted these benefits, which have resulted and is
20 continuing and/or may continue to result in inequity to Plaintiff Douglas and the other Oklahoma
21 Sub-class members.

22 637. Ford's appreciation and acceptance of these benefits is inequitable.

23 638. As a result of Ford's unjust enrichment, Plaintiff Douglas and the other Oklahoma
24 Sub-class members have sustained damages, in an amount to be determined at trial.

1 639. Plaintiff Douglas and the other Oklahoma Sub-class members seek full disgorgement
2 and restitution of Ford's enrichment, benefits, and ill-gotten gains acquired as a result of the unlawful
3 and/or wrongful conduct alleged herein.

4 **T. Pennsylvania**

5 **COUNT THIRTY-THREE (FORMERLY COUNT FIFTY-SEVEN)**

6 **Violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law**

7 **Pa. Stat. Ann. 201-1, et seq.**

8 **(On Behalf of the Pennsylvania Sub-Class)**

9 640. On behalf of themselves and the Pennsylvania Sub-Class members, Pennsylvania
10 Plaintiff Garsey and Plaintiff Stalnecker expressly incorporate by reference and reallege the
11 foregoing Paragraphs 1-310 of this Consolidated Complaint.

12 641. The Pennsylvania Unfair Trade Practices and Consumer Protection Law, Title 73,
13 Chapter 4 of the Pennsylvania Statutes, prohibits unfair or deceptive acts or practices in the conduct
14 of any trade or commerce.

15 642. As described herein, the rear tailgates of the Ford Vehicles were made of defective
16 materials and were assembled using inadequate techniques. As a result, the rear tailgates were
17 defective at the moment of sale and throughout the present day.

18 643. Ford concealed the defect that caused the rear tailgate of the Ford Vehicles to crack.
19 Ford also sold the Ford Vehicles with knowledge of the defect that caused the rear tailgate of the
20 Ford Vehicles to crack.

21 644. Ford's acts and practices described herein constitute unfair and deceptive acts and
22 practices within the meaning of the Pennsylvania Unfair Trade Practices and Consumer Protection
23 Law as Ford's acts and practices herein described offend established public policy, because the harm
24 they cause to consumers outweighs any benefits associated with those practices, and because Ford
25 fraudulently concealed the defect in the tailgate from consumers.

1 645. Plaintiffs are informed and believe, and thereon allege, that Ford concealed the
2 existence of the defect with the intention of inducing the Pennsylvania Sub-class members to
3 purchase the Ford Vehicles. This concealment was likely to deceive a reasonable consumer.

4 646. The defect in the tailgate that resulted in a crack in the tailgate as well as the danger of
5 the tailgate glass falling out was a material fact for Plaintiffs and the Pennsylvania Sub-Class, who
6 purchased the Ford Vehicles, in that they would not have purchased the Ford Vehicles had this
7 information been disclosed upon Ford's discovery of this information.

8 647. As a result of Ford's unfair and deceptive business practices, Plaintiffs and the
9 Pennsylvania Sub-Class were deceived and purchased the Ford Vehicles.

10 648. As a result of Ford's unfair and deceptive business practices, Plaintiffs and the
11 Pennsylvania Sub-Class have been damaged in an amount to be proven at trial. Plaintiffs and the
12 Pennsylvania Sub-Class members are further entitled to injunctive relief, restitution, and
13 disgorgement of profits obtained by Ford as a result of its fraudulent and unfair business acts and
14 practices.

15 **COUNT THIRTY-FOUR (FORMERLY COUNT SIXTY)**

16 **Unjust Enrichment**

17 **(On Behalf of the Pennsylvania Sub-Class)**

18 649. On behalf of themselves and the Pennsylvania Sub-Class members, Pennsylvania
19 Plaintiff Garsey and Plaintiff Stalnecker expressly incorporate by reference and reallege the
20 foregoing Paragraphs 1-310 of this Consolidated Complaint.

21 650. Plaintiff Garsey, Plaintiff Stalnecker and the other Pennsylvania Sub-class members
22 leased and/or purchased Ford Vehicles from Ford.

23 651. Plaintiff Garsey, Plaintiff Stalnecker and the Pennsylvania Sub-Class members
24 conferred a benefit on Ford and paid money to Ford for the purchase/lease of Ford Vehicles, which
25 Ford received and currently holds.

1 652. Ford was aware of the defective nature of the Ford Vehicles and Cracked Tailgate
2 Problem, Ford sold Plaintiff Garsey, Plaintiff Stalnecker and the Pennsylvania Sub-Class members
3 defective products for the price of non-defective products.

4 653. As a result of Ford's conduct, the Ford Vehicles of Plaintiff Garsey, Plaintiff
5 Stalnecker and the Pennsylvania Sub-Class members now have a lower market value.

6 654. In direct contrast to the harm to Plaintiffs, as a consequence of the conduct described
7 above, Ford has received a benefit in the form of higher payments from Plaintiff Garsey, Plaintiff
8 Stalnecker and the other Pennsylvania Sub-class members for Ford Vehicles than if the products were
9 non-defective.

10 655. Plaintiff Garsey, Plaintiff Stalnecker and the Pennsylvania Sub-Class members
11 unknowingly conferred a benefit on Ford of which Ford had knowledge and appreciated since Ford
12 was aware of the defective nature of the Ford Vehicles and the Cracked Tailgate Problem, but failed
13 to discount failed to charge a fair market rate for the defective Ford Vehicle, and instead obtained the
14 price of a non-defective product.

15 656. In the alternative, the Ford new Vehicle Warranty and extended Ford service plan are
16 unenforceable as a result of Ford's fraudulent behavior and/or unconscionable terms. Thus, Ford's
17 voluntarily acceptance and retention of the purchase price from Plaintiff Garsey, Plaintiff Stalnecker
18 and the Pennsylvania Sub-Class for the purchase of Ford Vehicles installed with a defective tailgate,
19 unknown and undisclosed to Plaintiff Garsey, Plaintiff Stalnecker and the Pennsylvania Sub-Class
20 members, constitutes further unjust enrichment to Ford at the expense of Plaintiff Garsey, Plaintiff
21 Stalnecker and the Pennsylvania Sub-Class Members.

22 657. In addition, to the extent any member of the Pennsylvania Sub-Class was forced to
23 purchase the Ford replacement parts and/or were serviced for the repair by authorized Ford
24 dealerships, Ford realized an additional direct benefit from such sale and repair.

1 658. Ford has knowingly appreciated and accepted these benefits, which have resulted and
2 is continuing and/or may continue to result in an inequity to Plaintiff Garsey, Plaintiff Stalnecker and
3 the other Pennsylvania Sub-class members.

4 659. Ford's appreciation and acceptance of these benefits is inequitable.

5 660. As a result of Ford's unjust enrichment, Plaintiff Garsey, Plaintiff Stalnecker and the
6 other Pennsylvania Sub-class members have sustained damages, in an amount to be determined at
7 trial.

8 661. Plaintiff Garsey, Plaintiff Stalnecker and the other Pennsylvania Sub-class members
9 seek full disgorgement and restitution of Ford's enrichment, benefits, and ill-gotten gains acquired as
10 a result of the unlawful and/or wrongful conduct alleged herein.

11 **U. Tennessee**

12 **COUNT THIRTY-FIVE (FORMERLY COUNT SIXTY-THREE)**

13 **Unjust Enrichment**

14 **(On Behalf of the Tennessee Sub-Class)**

15 662. On behalf of himself and the Tennessee Sub-Class members, Tennessee Plaintiff Buck
16 expressly incorporates by reference and realleges the foregoing Paragraphs 1-310 of this
17 Consolidated Complaint.

18 663. Plaintiff Buck and the Tennessee Sub-Class members paid money to Ford for the
19 purchase of Ford Vehicles, which Ford received and currently holds.

20 664. Ford was aware of the defective nature of the Ford Vehicles and the Cracked Tailgate
21 Problem, but failed to disclose this knowledge and misled Plaintiff Buck and the Tennessee Sub-
22 Class members regarding the nature and quality of the Ford Vehicles while profiting from its
23 deception.

24 665. Plaintiff Buck the other members of the Tennessee Sub-Class unknowingly conferred
25 a benefit on Ford of which Ford had knowledge, since Ford was aware of the defective nature of Ford
26 Vehicles and the Cracked Tailgate Problem, but failed to disclose this knowledge and misled the

1 Tennessee Plaintiff and the other members of the Tennessee Sub-Class regarding the nature and
2 quality of Ford Vehicles while profiting from this deception.

3 666. As a result of Ford's deceptive conduct, Ford has been unjustly enriched by the
4 purchases of Ford Vehicles by Plaintiff Buck and the Tennessee Sub-Class members.

5 667. Further, even though Ford was aware of the defective nature of the Ford Vehicles and
6 Cracked Tailgate Problem, Ford sold Plaintiff Buck and the Tennessee Sub-Class members defective
7 products for the price of non-defective products.

8 668. As a result of Ford's conduct, the Ford Vehicles of Plaintiff Buck and the Tennessee
9 Sub-Class members now have a lower market value.

10 669. In direct contrast to the harm to Plaintiffs, as a result of Ford's conduct in selling the
11 defective Ford Vehicles for the price of non-defective products, Ford has been unjustly enriched by
12 the purchases of Ford Vehicles by Plaintiff Buck and the Tennessee Sub-Class members at an
13 increased rate.

14 670. Plaintiff Buck and the Tennessee Sub-Class members unknowingly conferred a benefit
15 on Ford of which Ford had knowledge and appreciated since Ford was aware of the defective nature
16 of the Ford Vehicles and the Cracked Tailgate Problem, but failed to discount failed to charge a fair
17 market rate for the defective Ford Vehicle, and instead obtained the price of a non-defective product.

18 671. In the alternative, the Ford new Vehicle Warranty and extended Ford service plan are
19 unenforceable as a result of Ford's fraudulent behavior and/or unconscionable terms. Thus, Ford's
20 voluntarily acceptance and retention of the purchase price from Plaintiff Buck and the Tennessee
21 Sub-Class for the purchase of Ford Vehicles installed with a defective tailgate, unknown and
22 undisclosed to Plaintiff Buck and the Tennessee Sub-Class members, constitutes further unjust
23 enrichment to Ford at the expense of Plaintiff Buck and the Tennessee Sub-Class Members.

24 672. In addition, to the extent any member of the Tennessee Sub-Class was forced to
25 purchase the Ford replacement parts and/or were serviced for the repair by authorized Ford
26 dealerships, Ford realized an additional direct benefit from such sale and repair.

1 673. Ford received the benefit conferred by Plaintiff Buck and the Tennessee Sub-Class
2 members on Ford through the purchase of replacement parts and/or repair services of which it had
3 knowledge and appreciated as Ford was aware of the defective nature of the Ford Vehicles.

4 674. The circumstances are such that it would be inequitable, unconscionable, and unjust to
5 permit Ford to retain the benefit of these profits that it unfairly obtained from Plaintiff Buck and the
6 Tennessee Sub-Class members without payment of the value of the benefit.

7 675. Plaintiff Buck and the Tennessee Sub-Class members have exhausted all other
8 remedies available to them against Ford, but have been unable to obtain payment or other
9 compensation for the injury described herein.

10 676. Plaintiff Buck and the Tennessee Sub-Class members, having been damaged by Ford's
11 conduct, are entitled to recover damages as a result of the unjust enrichment of Ford to the detriment
12 of Plaintiff Buck and the Tennessee Sub-Class members.

13 **V. Texas**

14 **COUNT THIRTY-SIX (FORMERLY COUNT SIXTY-FOUR)**

15 **Violation of the Texas Consumer Protection Law, Tex. Bus. Com. Code 17.41, et seq.**

16 **(On Behalf of the Texas Sub-Class)**

17 677. On behalf of himself and the Texas Sub-Class members, Texas Plaintiff Hardee
18 expressly incorporates by reference and realleges the foregoing Paragraphs 1-310 of this
19 Consolidated Complaint.

20 678. The Texas Consumer Protection Law, Tex. Bus. Com. Code 17.41, *et seq.*, prohibits
21 unfair or deceptive acts or practices in the conduct of any trade or commerce.

22 679. As described herein, the rear tailgates of the Ford Vehicles were made of defective
23 materials and were assembled using inadequate techniques. As a result, the rear tailgates were
24 defective at the moment of sale and throughout the present day.

1 680. Ford concealed the defect that caused the rear tailgate of the Ford Vehicles to crack.
2 Ford also sold the Ford Vehicles with knowledge of the defect that caused the rear tailgate of the
3 Ford Vehicles to crack.

4 681. Ford's acts and practices described herein constitute unfair and deceptive acts and
5 practices within the meaning of the Texas Consumer Protection Law, Tex. Bus. Com. Code 17.41 *et*
6 *seq.* as Ford's acts and practices herein described offend established public policy, because the harm
7 they cause to consumers outweighs any benefits associated with those practices, and because Ford
8 fraudulently concealed the defect in the tailgate from consumers.

9 682. Plaintiffs are informed and believe, and thereon allege, that Ford concealed the
10 existence of the defect with the intention of inducing the Class to purchase the Ford Vehicles. This
11 concealment was likely to deceive a reasonable consumer.

12 683. The defect in the tailgate that resulted in a crack in the tailgate as well as the danger of
13 the tailgate glass falling out was a material fact for Plaintiffs and the Class, who purchased the Ford
14 Vehicles, in that they would not have purchased the Ford Vehicles had this information been
15 disclosed upon Ford's discovery of this information.

16 684. As a result of Ford's unfair and deceptive business practices, Plaintiffs and the Class
17 were deceived and purchased the Ford Vehicles.

18 685. As a result of Ford's unfair and deceptive business practices, Plaintiffs and the Class
19 have been damaged in an amount to be proven at trial. Plaintiffs and the Class are further entitled to
20 injunctive relief, restitution, and disgorgement of profits obtained by Ford as a result of its fraudulent
21 and unfair business acts and practices.

COUNT THIRTY-SEVEN (FORMERLY COUNT SIXTY-SEVEN)

Unjust Enrichment

(On Behalf of the Texas Sub-Class)

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4 686. On behalf of himself and the Texas Sub-Class members, Texas Plaintiff Hardee
5 expressly incorporates by reference and realleges the foregoing Paragraphs 1-310 of this
6 Consolidated Complaint.

7 687. Plaintiff Hardee and the Texas Sub-Class members paid money to Ford for the
8 purchase of Ford Vehicles, which Ford received and currently holds.

9 688. Ford was aware of the defective nature of the Ford Vehicles and Cracked Tailgate
10 Problem but sold Plaintiff Hardee and the Texas Sub-Class members defective products for the price
11 of non-defective products.

12 689. As a result of Ford's conduct, the Ford Vehicles of Plaintiff Hardee and the Texas
13 Sub-Class members now have a lower market value.

14 690. In direct contrast to the harm to Plaintiffs, as a result of Ford's conduct in selling the
15 defective Ford Vehicles for the price of non-defective products, Ford has been unjustly enriched by
16 the purchases of Ford Vehicles by Plaintiff Hardee and the Texas Sub-Class members at an increased
17 rate.

18 691. Under the circumstances, it would be contrary to equity and good conscience to permit
19 Ford to retain the entirety of the benefits conferred on it given that Ford has, at all relevant times,
20 known and should have known that the tailgates installed in the Ford Vehicles are defective but failed
21 to charge a fair market rate for the defective Ford Vehicle, and instead obtained the price of a non-
22 defective product.

23 692. In the alternative, the Ford new Vehicle Warranty and extended Ford service plan are
24 unenforceable as a result of Ford's fraudulent behavior and/or unconscionable terms. Thus, Ford's
25 voluntarily acceptance and retention of the purchase price from Plaintiff Hardee and the Texas Sub-
26 Class for the purchase of Ford Vehicles installed with a defective tailgate, unknown and undisclosed

1 to Plaintiff Hardee and the Texas Sub-Class members, constitutes further unjust enrichment to Ford at
2 the expense of Plaintiff Hardee and the Texas Sub-Class Members.

3 693. In addition, to the extent any member of the Texas Sub-Class was forced to purchase
4 the Ford replacement parts and/or were serviced for the repair by authorized Ford dealerships, Ford
5 realized an additional direct benefit from such sale and repair.

6 694. Ford received benefits from Plaintiff Hardee and the Texas Sub-Class members by
7 fraud, duress, and taking unfair advantage of Plaintiffs.

8 695. Plaintiff Hardee and the Texas Sub-Class members relied on Ford to truthfully and
9 accurately represent all facts relating to the vehicle to them prior to their purchases of the class
10 vehicles.

11 696. It would be unjust and inequitable for Ford to retain the benefits it received and not
12 provide restitution to Plaintiff Hardee and the Texas Sub-Class members.

13 697. The amount of restitution to which Plaintiff Hardee and the Texas Sub-Class members
14 are entitled should be measured by the extent of Defendant's unjust enrichment.

15 698. Plaintiff Hardee, individually and on behalf of the Class, demands judgment against
16 Ford for restitution, reasonable attorneys' fees, and costs.

17 **W. Virginia**

18 **COUNT THIRTY-EIGHT (FORMERLY COUNT SIXTY-EIGHT)**

19 **Violation of the Virginia Consumer Protection Law, Va. Code 59.1-196, et seq.**

20 **(On Behalf of the Virginia Sub-Class)**

21 699. On behalf of himself and the Virginia Sub-Class members, Virginia Plaintiff Wilson
22 expressly incorporates by reference and realleges the foregoing Paragraphs 1-310 of this
23 Consolidated Complaint.

24 700. The Virginia Consumer Protection Law, Va. Code 59.1-196 *et seq.*, prohibits
25 fraudulent acts or practices in the conduct of any trade or commerce.

1 701. As described herein, the rear tailgates of the Ford Vehicles were made of defective
2 materials and were assembled using inadequate techniques. As a result, the rear tailgates were
3 defective at the moment of sale and throughout the present day.

4 702. Ford concealed the defect that caused the rear tailgate of the Ford Vehicles to crack.
5 Ford also sold the Ford Vehicles with knowledge of the defect that caused the rear tailgate of the
6 Ford Vehicles to crack.

7 703. Ford's acts and practices described herein constitute unfair and deceptive acts and
8 practices within the meaning of the Virginia Consumer Protection Law, Va. Code 59.1-196 *et seq.* as
9 follows:

- 10 a. Misrepresenting that the Ford Vehicles have characteristics, uses, or benefits;
- 11 b. Misrepresenting that the Ford Vehicles are of a particular standard, quality, or grade;
- 12 c. Using deception, fraud, false pretense, false promise, or misrepresenting in connection
13 with a consumer transaction;
- 14 d. Committing other acts or practices prohibited under Va. Code § 59.1-200.

15 704. Plaintiffs are informed and believe, and thereon allege, that Ford concealed the
16 existence of the defect with the intention of inducing the Class to purchase the Ford Vehicles. This
17 concealment was likely to deceive a reasonable consumer.

18 705. The defect in the tailgate that resulted in a crack in the tailgate as well as the danger of
19 the tailgate glass falling out was a material fact for Plaintiffs and the Class, who purchased the Ford
20 Vehicles, in that they would not have purchased the Ford Vehicles had this information been
21 disclosed upon Ford's discovery of this information.

22 706. As a result of Ford's unfair and deceptive business practices, Plaintiffs and the Class
23 were deceived and purchased the Ford Vehicles.

24 707. As a result of Ford's unfair and deceptive business practices, Plaintiffs and the Class
25 have been damaged in an amount to be proven at trial. Plaintiffs and the Class are further entitled to
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1 injunctive relief, restitution, and disgorgement of profits obtained by Ford as a result of its fraudulent
2 and unfair business acts and practices.

3 **COUNT THIRTY-NINE (FORMERLY COUNT SEVENTY)**

4 **Unjust Enrichment**

5 **(On Behalf of the Virginia Sub-Class)**

6 708. On behalf of himself and the Virginia Sub-Class members, Virginia Plaintiff Wilson
7 expressly incorporates by reference and realleges the foregoing Paragraphs 1-310 of this
8 Consolidated Complaint.

9 709. Plaintiff Wilson and the Virginia Sub-Class members conferred a benefit on Ford by
10 paying money to Ford for the purchase of Ford Vehicles, which Ford received and currently holds. .

11 710. Ford was aware of the defective nature of the Ford Vehicles and Cracked Tailgate
12 Problem but sold Plaintiff Wilson and the Virginia Sub-Class members defective products for the
13 price of non-defective products.

14 711. As a result of Ford's conduct, the Ford Vehicles of Plaintiff Wilson and the Virginia
15 Sub-Class members now have a lower market value.

16 712. In direct contrast to the harm to Plaintiffs, as a result of Ford's conduct in selling the
17 defective Ford Vehicles for the price of non-defective products, Ford has been unjustly enriched by
18 the purchases of Ford Vehicles by Plaintiff Wilson and the Virginia Sub-Class members at an
19 increased rate.

20 713. Plaintiff Wilson and the Virginia Sub-Class members unknowingly conferred a benefit
21 on Ford of which Ford had knowledge since Ford was aware of the defective nature of the Ford
22 Vehicles and the Cracked Tailgate Problem, but failed to discount the price to account for the
23 defective product.

24 714. Ford should reasonably have expected to repay or compensate Plaintiff Wilson and the
25 Virginia Sub-Class members for the benefit Ford obtained through the sale of defective Ford
26 Vehicles.

1 715. In the alternative, the Ford new Vehicle Warranty and extended Ford service plan are
2 unenforceable as a result of Ford's fraudulent behavior and/or unconscionable terms. Thus, Ford's
3 voluntarily acceptance and retention of the purchase price from Plaintiff Wilson and the Virginia
4 Sub-Class for the purchase of Ford Vehicles installed with a defective tailgate, unknown and
5 undisclosed to Plaintiff Wilson and the Virginia Sub-Class members, constitutes further unjust
6 enrichment to Ford at the expense of Plaintiff Wilson and the Virginia Sub-Class Members.

7 716. In addition, to the extent any member of the Virginia Sub-Class was forced to
8 purchase the Ford replacement parts and/or were serviced for the repair by authorized Ford
9 dealerships, Ford realized an additional direct benefit from such sale and repair.

10 717. Ford knew of the benefit received in receiving compensation for replacements party
11 and or services and should reasonably have expected to repay or compensate Plaintiff Wilson and the
12 Virginia Sub-Class members for the benefit Ford obtained through replacement of parts and/or
13 services by authorized Ford dealership resulting from the defective tailgate.

14 718. Ford accepted and retained the benefits conferred on it by Plaintiff Wilson and the
15 Virginia Sub-Class members without paying for their value.

16 719. The circumstances are such that the money currently held by Ford should, in equity
17 and good conscience, belong to Plaintiff Wilson and the Virginia Sub-Class members, and should be
18 returned to them.

19 720. Plaintiff Wilson and the Virginia Sub-Class members, having been damaged by Ford's
20 conduct, are entitled to recover damages as a result of the unjust enrichment of Ford to the detriment
21 of Plaintiff Wilson and the Virginia Sub-Class members.

1 **X. Washington**

2 **COUNT FORTY (FORMERLY COUNT SEVENTY-ONE)**

3 **Violations of Washington's Consumer Protection Act, RCW 19.86 et seq.**

4 **(On Behalf of the Washington Sub-Class)**

5 721. On behalf of himself and the Washington Sub-Class members, Washington Plaintiff
6 Gregg expressly incorporates by reference and realleges the foregoing Paragraphs 1-310 of this
7 Consolidated Complaint.

8 722. Ford engaged in unfair and/or deceptive acts or practices by, inter alia:

9 a. failing to disclose that the Ford Vehicles were not of a particular standard,
10 quality or grade;

11 b. failing to disclose at and after the time of purchase, lease or repair known
12 material defects or material non-conformity with respect to the tailgates;

13 c. failing to disclose that the tailgates were destined to crack, were not in good
14 working order, were defective, and/or were not fit for their intended purpose;

15 d. failing to give warning regarding the defects with the Ford Vehicles' tailgates
16 to customers who purchased or leased the Ford Vehicles;

17 e. actively concealing the defect from customers despite having knowledge that
18 the tailgates were defective;

19 f. causing Plaintiff Gregg and other members of the Washington Sub-Class to
20 expend sums of money to repair or replace the tailgates and other affected parts.

21 723. Ford knew or should have known that the Ford Vehicles and their tailgates were
22 defectively designed and/or manufactured, would fail prematurely, were not suitable for their
23 intended use and were not as warranted, promised or marketed by Ford.

24 724. Ford's unfair and deceptive acts and practices repeatedly occurred in Ford's trade and
25 business and were capable of deceiving the purchasing public, and actually did deceive Plaintiff
26 Gregg and other members of the Washington Sub-Class.

1 725. As a direct and proximate cause of Ford's unfair and/or deceptive acts or practices,
2 Plaintiff Gregg and other members of the Washington Sub-Class have suffered and will continue to
3 suffer actual damages, including, but not limited to:

4 a. paying for repairs of the tailgates, replacement of the tailgates, repairs of the
5 damage caused when the tailgates crack and loss of use of their vehicle during the time the
6 repairs are being made;

7 b. suffering diminution of resale value of the Ford Vehicles as a result of the
8 defective tailgates.

9 726. As a result of Ford's unfair and deceptive practices, Plaintiff Gregg and other
10 members of the Washington Sub-Class are entitled to injunctive relief, restitution of funds paid to
11 repair the Ford Vehicles' tailgates and other damage caused by their malfunction; disgorgement of
12 funds paid to Ford to repair the Ford Vehicles' tailgates and other damage caused by their
13 malfunction, as well as compensatory and treble damages in an amount to be proven at trial.

14 727. Plaintiff Gregg and other members of the Washington Sub-Class are also entitled to
15 attorneys' fees and costs pursuant to the Consumer Protection Act. RCW 19.86.090.

16 **Y. West Virginia**

17 **COUNT FORTY-ONE (FORMERLY COUNT SEVENTY-TWO)**

18 **Violations of the West Virginia Consumer Credit and Protection Act,**

19 **W. Va. Code 46A-6-101 et seq.**

20 **(On Behalf of the West Virginia Sub-Class)**

21 728. On behalf of himself and the West Virginia Sub-Class members, West Virginia
22 Plaintiff Olack expressly incorporates by reference and realleges the foregoing Paragraphs 1-310 of
23 this Consolidated Complaint.

24 729. Ford's conduct complained of herein constitutes acts, uses or employment by Ford of
25 unconscionable commercial practices, deception, fraud, false pretenses, false promises,
26 misrepresentations or knowing concealment, suppression, or omission of material facts with the intent

1 that Plaintiff Olack and the West Virginia Sub-Class members would rely upon such concealment,
2 suppression, or omission in connection with the sale, marketing, and advertisement of the Ford
3 Vehicles. Ford's conduct herein is an unfair practice that has the capacity to, and did, deceive
4 consumers, as alleged herein.

5 730. All of the conduct alleged herein occurred in the course of Ford's business. Ford's
6 conduct is part of a pattern or generalized course of conduct repeated on tens of thousands (if not
7 hundreds of thousands) of occasions.

8 731. As a proximate result of Ford's misrepresentations, Plaintiff Olack and the West
9 Virginia Sub-Class members have suffered an ascertainable loss and are entitled to relief, in an
10 amount to be determined at trial.

11 732. Ford's actions, as complained of herein, constitute unfair competition or unfair,
12 unconscionable, deceptive, or fraudulent acts or practices in violation of the West Virginia Consumer
13 Credit and Protection Act, W. Va. Code 46A-6-101, *et seq.*

14 733. Plaintiff Olack and the West Virginia Sub-Class members were injured by Ford's
15 conduct. As a direct and proximate result of Ford's unfair methods of competition and unfair or
16 deceptive acts or practices, Plaintiff Olack and the West Virginia Sub-Class members have suffered
17 actual economic losses.

18 734. Ford, through its acts of unlawful and unfair competition, has wrongfully acquired
19 money from Plaintiff Olack and the West Virginia Sub-Class members. Thus, Plaintiff Olack and the
20 West Virginia Sub-Class members seek both monetary damages and to enjoin Ford from continuing
21 to violate the law.

22 735. Such conduct is ongoing and continues to this date. Plaintiff Olack and the West
23 Virginia members are therefore entitled to the relief described herein.

24 736. Plaintiff Olack and the West Virginia Sub-Class members seek damages, together with
25 appropriate exemplary damages, attorneys' fees, and costs of suit pursuant to the West Virginia
26 Consumer Credit and Protection Act.

1 **COUNT FORTY-TWO (FORMERLY COUNT SEVENTY-FOUR)**

2 **Unjust Enrichment**

3 **(On Behalf of the West Virginia Sub-Class)**

4 737. On behalf of himself and the West Virginia Sub-Class members, West Virginia
5 Plaintiff Olack expressly incorporates by reference and realleges the foregoing Paragraphs 1-310 of
6 this Consolidated Complaint.

7 738. Plaintiff Olack and the West Virginia Sub-Class members paid money to Ford for the
8 purchase of Ford Vehicles, which Ford received and currently holds.

9 739. Ford was aware of the defective nature of the Ford Vehicles and Cracked Tailgate
10 Problem but sold Plaintiff Olack and the West Virginia Sub-Class members defective products for the
11 price of non-defective products.

12 740. As a result of Ford's conduct, the Ford Vehicles of Plaintiff Olack and the West
13 Virginia Sub-Class members now have a lower market value.

14 741. In direct contrast to the harm to Plaintiffs, as a result of Ford's conduct in selling the
15 defective Ford Vehicles for the price of non-defective products, Ford has been unjustly enriched by
16 the purchases of Ford Vehicles by Plaintiff Olack and the West Virginia Sub-Class members at an
17 increased rate.

18 742. Ford has been unjustly and mistakenly enriched by the purchases of Ford Vehicles by
19 Plaintiff Olack and the West Virginia Sub-Class members.

20 743. Plaintiff Olack and the West Virginia Sub-Class members unknowingly and
21 mistakenly conferred a benefit on Ford of which Ford had knowledge since Ford was aware of the
22 defective nature of the Ford Vehicles and the Cracked Tailgate Problem, but failed to discount the
23 price of the Ford Vehicles to account for the defective product.

24 744. In the alternative, the Ford new Vehicle Warranty and extended Ford service plan are
25 unenforceable as a result of Ford's fraudulent behavior and/or unconscionable terms. Thus, Ford's
26 voluntarily acceptance and retention of the purchase price from Plaintiff Olack and the West Virginia

1 Sub-Class for the purchase of Ford Vehicles installed with a defective tailgate, unknown and
2 undisclosed to Plaintiff Olack and the West Virginia Sub-Class members, constitutes further unjust
3 enrichment to Ford at the expense of Plaintiff Olack and the West Virginia Sub-Class Members.

4 745. In addition, to the extent any member of the West Virginia Sub-Class was forced to
5 purchase the Ford replacement parts and/or were serviced for the repair by authorized Ford
6 dealerships, Ford realized an additional direct benefit from such sale and repair.

7 746. The circumstances of the payment include an unintentional act or error by Plaintiff
8 Olack and the West Virginia Sub-Class members arising from their ignorance of the defective nature
9 of the Ford Vehicles and their misplaced confidence in the representations of Ford. The unjust
10 enrichment is the type for which equity would give relief.

11 747. The circumstances are such that the money currently held by Ford should, in equity
12 and good conscience, belong to Plaintiff Olack and the West Virginia Sub-Class members, and
13 should be returned to them.

14 748. Plaintiff Olack and the West Virginia Sub-Class members, having been damaged by
15 Ford's conduct, are entitled to recover damages as a result of the unjust enrichment of Ford to the
16 detriment of Plaintiff Olack and the West Virginia Sub-Class members.

17 **IX. REQUEST FOR RELIEF**

18 WHEREFORE, Plaintiffs, individually and on behalf of the other members of the Class and
19 Sub-Classes proposed in this Consolidated Complaint, respectfully requests that the Court enter
20 judgment in their favor and against Defendant, Ford Motor Company, as follows:

21 1. Declaring that this action is a proper class action, certifying the nationwide Class and
22 State Sub-Classes as requested herein, designating Plaintiffs as Class and Sub-Class Representatives,
23 and appointing Plaintiffs' attorneys as Class Counsel;

24 2. Enjoining Defendant from continuing the unfair business practices alleged in this
25 Complaint and requiring Defendant to institute a recall or free replacement program;

1 3. Ordering Defendant to pay actual damages (including punitive damages) to Plaintiffs
2 and the other Class and Sub-Class members, as allowable by law;

3 4. Ordering Defendant to pay both pre- and post-judgment interest on any amounts
4 awarded;

5 5. Ordering Defendant to pay attorney fees and costs of suit; and

6 6. Ordering such other and further relief as may be just and proper.

7 **X. JURY DEMAND**

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

9 DATED: May 6, 2014
10 Levitt

_____/s/ Adam J.

11 Adam J. Levitt (*pro hac vice*)
12 John E. Tangren (*pro hac vice*)
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Plaintiffs' Executive Committee

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CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2014, a copy of the foregoing document was filed electronically using the CM/ECF System. Notice of this filing will be sent by operation of the Court's electronic filing system to all counsel of record.

/s/ Adam J. Levitt
Adam J. Levitt