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13	CENTRAL DIS	STRICT OF	CALIFORN	ΙΑ
14	SOUT	HERN DIV	ISION	
15				
16	FERNANDO AVILES, BARRY KIERY, MICHAEL KELDER, and	Case	No. 8:17-CV	-00281
17	JAMES COWEN, individually and on behalf of all others similarly	CLAS	SS ACTION	COMPLAINT
18	situated;	JURY	Y TRIAL DE	MANDED
19	Plaintiff,			
20	V.			
21	FORD MOTOR COMPANY,			
22	Defendant.			
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Plaintiffs Fernando Aviles, Barry Kiery, Michael Kelder, and James Cowen
("Plaintiffs"), individually and on behalf of the other members of the below-defined
nationwide class and statewide classes they respectively seek to represent
(collectively, the "Class"), hereby allege against Ford Motor Company
("Defendant" or "Ford"), upon personal knowledge as to themselves and their own
acts, and as to all other matters upon information and belief, based upon the
investigation made by the undersigned attorneys, as follows:

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I.

NATURE OF THE CASE

9 1. Plaintiffs bring this class action seeking redress from Ford on behalf of 10 themselves and the other Class members, each of whom purchased or leased one of 11 the following Ford model vehicles containing a Delphi Sixth Generation ("Delphi Gen 6") electronic throttle body ("ETB"): model years 2011 to 2015 Mustang with 12 13 3.7L TiVCT engines; model years 2011 to 2015 Edge with 3.5L TiVCT and 3.7L 14 TiVCT engines; model years 2011 to 2015 Lincoln MKX with 3.7L TiVCT 15 engines; model years 2011 to 2015 F-150 with 3.5L TiCVT and 3.7L TiVCT 16 engines (the "Class Vehicles").

17 2. A throttle body is a component in fuel-injected engines that controls
18 the amount of air sent to the engine in response to the driver's compression or
19 release of the accelerator. A throttle body includes a throttle plate, which is a
20 butterfly valve that flips open or closed to regulate the amount of air flowing to the
21 engine.

3. In older cars, the driver's compression of the accelerator pedal was
communicated by throttle cable which physically pulled the throttle plate open and
closed. In vehicles with electronic throttle bodies, including the Delphi Gen 6
ETBs at issue in this case, the accelerator pedal communicates through the vehicles'
computer systems to adjust the throttle plate through the use of electronic motors.

4. In 2009, Ford began to equip its vehicles with Delphi Gen 6 ETBs.
Since that time, various Ford models, including the Class Vehicles, have

experienced a rash of potentially disastrous throttle body failures.

5. Owners of Ford vehicles equipped with Delphi Gen 6 ETBs frequently complain that their vehicles spontaneously stall or suddenly decelerate to a near idle speed. These abrupt deceleration incidents often cause near accidents or lifethreatening situations, such as when the incidents occur while driving in a highway passing lane or congested traffic where navigating a disabled vehicle to a shoulder or different lane can be extremely dangerous. The problem frequently manifests at highway speeds.

9 6. The spontaneous stalling and sudden deceleration of the Class 10 Vehicles results from a defect within the Delphi Gen 6 ETBs (the "Throttle 11 Defect"). Specifically, the DC motor component of the Delphi Gen 6 ETB tends to 12 lose electrical connectivity because of the buildup of non-conductive "resistance" 13 materials." When this loss of connectivity occurs, the Powertrain Control Module 14 within the Class Vehicles can no longer determine the position of the throttle. In 15 response, the Powertrain Control Module immediately triggers Failure Mode 16 Effects Management, commonly known as "limp-home mode," which typically 17 restricts the vehicle's speed to a few miles per hour. Even though the vehicles are 18 in "limp-home mode," most drivers interpret this as a stall and complete loss of 19 power.

20 7. Plaintiffs are among the thousands of owners and lessees of the Class 21 Vehicles who reasonably expected that their vehicles' component parts, including 22 the ETB, would function properly, but instead were sold Class Vehicles equipped 23 with defective ETBs. Scores of complaints documenting the effects of the Throttle 24 Defect have been submitted to the National Highway Traffic Safety Administration 25 ("NHTSA"), as well as other websites and Ford owner forums. On information and 26 belief, these complaints represent a small fraction of the number of actual incidents 27 experienced by consumers.

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8. Purchasers who complain to Ford about the effects of the Throttle

Defect are frequently told by Ford service professionals that it is caused by a
 defective throttle body component.

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9. In January 2014, Ford instituted Customer Satisfaction Program 13N03 in response to a NHTSA investigation regarding identical safety complaints about a specific version of the Delphi Gen 6 ETB (part number DS7Z-9E926-A) that was installed in different Ford vehicles than the Class Vehicles. At the conclusion of that investigation, Ford claimed to have discovered and resolved a defect with the throttle body in these vehicles.

9 10. Ford, however, did not resolve the problems with the materially
10 identical versions of the Delphi Gen 6 ETBs within the Class Vehicles. Instead,
11 Ford continued to sell a significant number of vehicles with defective ETBs that
12 present enormous safety risks.

13 11. For example, on June 25, 2016, the owner of a 2015 Ford Edge
14 registered the following complaint with the NHTSA (ID Number: 10881852):

15 ETB ELECTRONIC THROTTLE BODY FAILED WHILE 16 DRIVING PUTTING ME IN DANGER ON THE ROAD AND 17 CAUSING MY CAR TO GO LIMP. I WAS DRIVING 70 MPH IN A 75 AND LOST POWER AND CONTROL OF THE VEHICLE. IT 18 19 WAS ALL I COULD DO TO PUT THE CAR ON THE SHOULDER 20 WITHOUT AN ACCIDENT. THE WRENCH LIGHT CAME ON 21 THE DASHBOARD. IT WAS TOWED TO TEXARKANA AND I 22 AM IN ROCKWALL TX WAITING ON 15000 OF THESE PARTS 23 ARE ON BACK ORDER WITH FORD TO COME IN FOR MY 24 CAR. THIS IS HOPELESS. IT'S DANGEROUS TO HAVE THIS 25 CAR STALL LIKE THAT AND TO KNOW 1.6 MILLION HAVE 26 ALREADY.

27 12. Upon information and belief, Ford has been aware of the problems
28 with the Delphi Gen 6 ETB since at least as early as 2009. Despite this knowledge,

Ford never disclosed the existence of the Throttle Defect and its potential
 consequences to purchasers or owners of the Class Vehicles. Instead, Ford
 concealed and failed to disclose its knowledge of the Throttle Defect in the hope
 that its limited warranty would expire before consumers became aware of this life threatening defect.

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13. Upon information and belief, the Class Vehicles all contain Delphi
Gen 6 ETBs with part numbers AT4Z-9E926-A or AT4Z-9E926-B. Ford possesses
the information necessary to identify accurately all Class Vehicles that were
manufactured with the specific defective parts at issue.

- 10 14. As a result of Ford's unfair, deceptive, and fraudulent business
 11 practices, and its failure to disclose the Throttle Defect, owners and lessees of the
 12 Class Vehicles have suffered losses in money and property.
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II. JURISDICTION AND VENUE

14 15. This Court has subject-matter jurisdiction pursuant to 28 U.S.C.
15 § 1332(d)(2) because the Plaintiffs and one or more of the other Class members are
16 citizens of a different state than Defendant, there are more than 100 class members
17 nationwide, and the aggregate claims of the Class exceed \$5,000,000 exclusive of
18 costs and interest.

19 16. This Court also has subject matter jurisdiction pursuant to 28 U.S.C.
20 § 1331 because Plaintiffs present claims under the Magnuson-Moss Warranty Act,
21 15 U.S.C. §§ 2301, *et seq*.

17. This Court has personal jurisdiction over Ford because Ford
purposefully availed itself of the privilege of conducting business in California by
advertising and selling its manufactured vehicles (including the Class Vehicles at
issue) within California. Additionally, Ford has maintained systematic and
continuous business contacts within California (including with its authorized
dealers within California), and is registered to conduct business in the State.

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18. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because a

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substantial part of the events and/or omissions giving rise to Plaintiffs' claims
 occurred within this District, and because Plaintiff Aviles is a resident of Buena
 Park, California, which is located in this District.

III. <u>PARTIES</u>

A. <u>Plaintiffs</u>

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1. California

7 19. Plaintiff Fernando Aviles is a citizen of California and a resident of
8 Buena Park, California. Mr. Aviles purchased a 2012 Mustang 3.7L TiVCT from
9 Norm Reeves Ford in Cerritos, California on January 3, 2015.

20. Before purchasing his Mustang, Mr. Aviles reviewed Ford's
promotional materials regarding the vehicle and interacted with at least one sales
representative at an authorized Ford dealership.

13 21. Ford failed to disclose the Throttle Defect to Mr. Aviles before he
14 purchased his Mustang, despite Ford's knowledge of the defect, and Mr. Aviles,
15 therefore, purchased his Mustang with the incorrect understanding that it would be
16 a safe and reliable vehicle.

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2. <u>Florida</u>

18 22. Plaintiff Barry Kiery is a citizen of Florida and a resident of Tampa,
19 Florida. Mr. Kiery purchased a 2012 Ford Mustang 3.7L TiVCT from Sarasota
20 Ford in Sarasota, Florida on February 25, 2012.

21 23. Before purchasing his Mustang, Mr. Kiery reviewed Ford's
22 promotional materials regarding the vehicle and interacted with at least one sales
23 representative at an authorized Ford dealership.

24 24. Ford failed to disclose the Throttle Defect to Mr. Kiery before he
25 purchased his Mustang, despite Ford's knowledge of the defect, and Mr. Kiery,
26 therefore, purchased his Mustang with the incorrect understanding that it would be
27 a safe and reliable vehicle.

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25. Plaintiff Michael Kelder is a citizen of Florida and a resident of

Bradenton, Florida. Mr. Kelder purchased a 2014 Ford Mustang 3.7L TiVCT from
 Auto Nation Ford in Bradenton, Florida on December 23, 2013.

3 26. Before purchasing his Mustang, Mr. Kelder reviewed Ford's
4 promotional materials regarding the vehicle and interacted with at least one sales
5 representative at an authorized Ford dealership.

6 27. Ford failed to disclose the Throttle Defect to Mr. Kelder before he
7 purchased his Mustang, despite Ford's knowledge of the defect, and Mr. Kelder,
8 therefore, purchased his Mustang with the incorrect understanding that it would be
9 a safe and reliable vehicle.

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3. <u>Alabama</u>

28. Plaintiff James Cowen is a citizen of Alabama and resident of Opp,
 Alabama. Mr. Cowen purchased a 2013 Ford F-150 3.5L TiVCT from Andalusia
 Ford in Andalusia, Alabama on January 15, 2016.

14 29. Before purchasing his F-150, Mr. Cowen reviewed Ford's promotional
15 materials regarding the vehicle and interacted with at least one sales representative
16 at an authorized Ford dealership.

30. Ford failed to disclose the Throttle Defect to Mr. Cowen before he
purchased his F-150, despite Ford's knowledge of the defect, and Mr. Cowen,
therefore, purchased his F-150 with the incorrect understanding that it would be a
safe and reliable vehicle.

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B. <u>Defendant</u>

31. Defendant Ford Motor Company is a Delaware corporation with its
principal place of business at One American Road in Dearborn, Michigan, 48126.
Ford is in the business of designing, manufacturing, and distributing motor
vehicles. Its vehicles include those sold under the Ford, Lincoln, and Mercury
brands.

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FACTS COMMON TO ALL COUNTS IV.

Α. **The Throttle Defect**

The throttle body is the component in fuel injected engines that 32. 3 4 controls the amount of air sent to the engine in response to the driver's compression 5 or release of the accelerator. Throttle bodies include a throttle plate, which is a butterfly value that flips open or closed to regulate the amount of air flowing to the 6 engine.

33. 8 Starting with model year 2009, Ford equipped several models of its 9 vehicles with Delphi Gen 6 electronic throttle bodies. Unlike older throttle bodies that had throttle plates controlled by physical cables connected to the accelerator, 10 11 electronic throttle bodies, including the Delphi Gen 6, have throttle plates that are opened and closed by small DC motors that are controlled by the vehicles' 12 13 computerized electronic systems.

14 34. Upon information and belief, the Delphi Gen 6 ETBs at issue in this 15 case were manufactured by Delphi Automotive, a "leading global technology" company" in the automotive market. The Delphi Gen 6 ETBs installed in the Class 16 17 Vehicles were defectively designed and are prone to sudden failure. Specifically, components within the Delphi Gen 6 ETBs accumulate high-resistance deposits, 18 19 which in turn cause the Delphi Gen 6 ETBS to lose electrical connectivity with the 20 throttle position sensor of the vehicles in which they are installed.

35. When a Class Vehicle's Powertrain Control Module detects this loss of 21 22 electrical connectivity, it immediately converts the vehicle into what Ford refers to 23 as "Failure Mode Effects Management" (more commonly known as "limp-home 24 mode") which eliminates a driver's ability to control the speed of their vehicle.

25 36. Class Vehicles may experience varying types of limp-home mode 26 depending on the vehicle's interpretation of the throttle malfunction. The Throttle 27 Defect often manifests itself under Diagnostic Trouble Codes ("DTC") P2111 and 28 P2112, which indicate the throttle is either stuck open or stuck closed, respectively. 37. These particular DTCs indicate a severe malfunction, which causes the
 Class Vehicles to shift into Ford's most severe limp-home mode and restricts them
 to 900 RPM, which is practically idle. While the Class Vehicles do not lose all
 power, owners often interpret a sudden shift from highway speeds to 900 RPM as a
 complete loss of power.

6 38. The Class Vehicles are increasingly likely to experience the dangerous 7 consequences of the Throttle Defect as they age because high resistance deposits in 8 the Delphi Gen 6 ETB accumulate over time. Upon information and belief, Ford 9 vehicles containing Delphi Gen 6 ETBs with the part numbers AT4Z-9E926-A and 10 AT4Z-9E926-B include the Throttle Defect. These include the following Ford 11 vehicles: model year 2011-2015 Mustangs with 3.7L TiVCT engines; model year 12 2011-2015 Edges with 3.5L TiVCT and 3.7L TiVCT engines; model year 2011-13 2015 Lincoln MKXs with 3.7L TiVCT engines; and model year 2011-2015 Ford F-14 150s with 3.5L TiVCT and 3.7L TiVCT engines.

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B. <u>The Throttle Defect Presents an Unreasonable Safety Risk</u>

39. The Throttle Defect presents an unreasonable safety risk to Class
Vehicle owners because it causes the Class Vehicles to spontaneously stall or
suddenly decelerate to a near idle speed. Sudden deceleration incidents are
particularly dangerous in congested areas, and on busy highways, where motorists
cannot easily pull over to the side of the road. The Throttle Defect is particularly
dangerous because it often occurs at highway speeds.

40. On NHTSA's official complaint registry, available at
www.safecar.gov,¹ there are hundreds of similar complaints documenting the
Throttle Defect across the four Ford models at issue in this litigation.

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41. For example, on October 3, 2014, the owner of a 2011 Lincoln MKX

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 ¹ All quotations of consumer comments posted on NHTSA and elsewhere are reproduced with spelling and grammatical errors as found in the original. Portions appearing in bold have been modified for emphasis.

1 complained (ID Number: 10641097):

2	THIS IS THE THIRD OF THREE INCIDENTS WITH THIS			
3	VEHICLE. ON THIS OCCASION I WAS TRAVELING 70 MPH IN			
4	THE FAST LANE OF THE EXPRESSWAY, WHEN THE ENGINE			
5	FAILED FOR THE THIRD TIME IN 1 YEAR. ON THIS			
6	OCCASION THE WRENCH SYMBOL CAME ON THE			
7	DASHBOARD. ACCORDING THE VEHICLE'S MANUAL THIS IS			
8	AN INDICATION OF A POWERTRAIN PROBLEM. THIS WAS			
9	THE CLOSEST THAT I CAME TO HAVING AN ACCIDENT.			
10	THERE WAS ONLY ABOUT 1000 FEET TO THE LEFT ON			
11	THE FAST LANE TO STOP THE VEHICLE WITHOUT			
12	HITTING THE GUARD RAIL. THE VEHICLE HAS BEEN AT			
13	THE DEALERSHIP FOR 5 DAYS. WE WERE CALLED THE DAY			
14	AFTER WE DROPPED THE CAR OFF FOR SERVICING. AGAIN			
15	THEY SAID THEY COULD NOT DUPLICATE THE PROBLEM			
16	AND WANTED TO RETURN THE VEHICLE TO US WITHOUT			
17	RESOLVING THE PROBLEM. I INFORMED LINCOLN THAT I			
18	WOULD NOT TAKE THE CAR BACK UNTIL IT WAS SAFE TO			
19	DRIVE. WE ARE CURRENTLY WORKING WITH LINCOLN TO			
20	SEE WHAT CAN BE DONE. *TR			
21	42. On December 8, 2014, the owner of a 2013 Ford Edge complained (ID			
22	Number: 1066221):			
23	THIS HAS NOW HAPPENED TO ME THREE TIMES AND ALL			
24	THREE TIMES WERE DURING RUSH HOUR TRAFFIC AND I			
25	WAS LUCKY TO NOT BE HIT FROM BEHIND. I WILL BE			
26	DRIVING AND I SUDDENLY GET A WRENCH LIGHT ON MY			
27	DASH BOARD AND THEN LOSE THE ABILITY TO			
28	ACCELERATE MY CAR AND IT BASICALLY COASTS TO A			

1	STOP AND I CAN FEEL A SHAKING/RUMBLING FROM THE			
2	ENGINE. WHEN I PUT THE CAR IN PARK AND TURN IT OFF, I			
3	CAN TURN IT BACK ON AND IT IS LIKE NOTHING			
4	HAPPENED AND THE LIGHT GOES AWAY AND I CAN			
5	CONTINUE DRIVING HOME. I CALLED THE DEALER AND			
6	THEY SAID THEY CAN ONLY FIX IT IF THEY SEE THE			
7	WRENCH LIGHT ON SO THEY CAN PULL THE CODE,			
8	MEANING I HAVE TO HAVE MY CAR TOWED TO THE			
9	DEALER WHILE STILL ON. ONLY PROBLEM IS EVERY TIME			
10	IT HAS HAPPENED HAS BEEN AFTER WORK AT NIGHT			
11	WHEN THE DEALERS ARE ALREADY CLOSED. I AM NOW			
12	NERVOUS EVERY TIME I DRIVE THE CAR AND AM			
13	AFRAID TO GET ON HIGHWAYS. *TR			
14	43. The Throttle Defect also represents a clear safety risk while driving at			
15	city speeds. The defect often manifests when cars accelerate from a stop, as			
16	indicated by a further record of complaints submitted to the NHTSA.			
17	44. On November 5, 2015, the owner of a 2011 Ford Mustang complained			
18	(ID Number: 10788529):			
19	CAR RANDOMLY GOES INTO "LIMP HOME" MODE. CODE			
20	COULD NOT BE CAUGHT BY DEALER SO I PURCHASED A			
21	SCANNER. CODE CAUGHT EVERYTIME IS P2111			
22	REPRESENTING THAT THE THROTTLE BODY ACTUATOR IS			
23	STUCK OPEN. THIS CAN HAPPEN WITHIN A FEW MILES OF			
24	DRIVING OR UP TO 20 MILES. IT CAN HAPPEN AT 5 MPH OR			
25	65 MPH. IT CAN HAPPEN WITHIN THE FIRST FEW MINUTES			
26	OF A TRIP OR 30 MINUTES IN. IT CAN HAPPEN ONCE OR			
27	EVERY FEW MINUTES. THIS IS VERY DANGEROUS AS THE			
28	LIMP HOME DOES NOT GET ENOUGH POWER TO GET OFF			

1	ROAD. I ALMOST CAUSED A MULTI CAR ACCIDENT. CAN			
2	YOU IMAGINE DRIVING DOWN THE HIGHWAY AND THE			
3	CAR JUST STOPS? IT DOESN'T EVEN COAST. I SEE THIS			
4	COMPLAINT ON ALOT OF FORD FORUMS. IT IS LIKE FORD IS			
5	JUST WAITING FOR SOMEONE TO BE KILLED OR SUE THEM			
6	BEFORE THEY SOLVE THE ISSUE. I HAVE TAKEN IT TO THE			
7	FORD DEALER AND THEY SAY IT IS MY BATTERY. I WENT			
8	TO AN INDEPENDENT SOURCE AND THEY TESTED MY			
9	BATTERY AND I HAD KNOWN, THE BATTERY IS FINE. I			
10	HAVE BEEN INTO FORD SERVICE NUMEROUS TIMES AND			
11	WHEN I RETURN THEY DO EVERTHING BUT FIX THE ISSUE.			
12	THE DATE BELOW IS THE 1ST TIME EXPERIENCED. IT			
13	DIDN'T HAPPEN OFTEN BUT THIS YEAR IS EVERYTIME I			
14	DRIVE			
15	45. On November 11, 2015, the owner of a 2013 Ford Edge complained			
15 16	45. On November 11, 2015, the owner of a 2013 Ford Edge complained (ID Number: 10789777):			
16	(ID Number: 10789777):			
16 17	(ID Number: 10789777): WHEN DRIVING MY CAR THE ENGINE WILL GO TO IDLE			
16 17 18	(ID Number: 10789777): WHEN DRIVING MY CAR THE ENGINE WILL GO TO IDLE WITH NO WARNING. I CAN BE MAKING A TURN,			
16 17 18 19	(ID Number: 10789777): WHEN DRIVING MY CAR THE ENGINE WILL GO TO IDLE WITH NO WARNING. I CAN BE MAKING A TURN, ACCELERATING, OR JUST CRUISING AT SPEED. THIS HAS			
16 17 18 19 20	(ID Number: 10789777): WHEN DRIVING MY CAR THE ENGINE WILL GO TO IDLE WITH NO WARNING. I CAN BE MAKING A TURN, ACCELERATING, OR JUST CRUISING AT SPEED. THIS HAS BEEN RECALLED ON MOST ALL OTHER FORD VEHICLES. I			
16 17 18 19 20 21	(ID Number: 10789777): WHEN DRIVING MY CAR THE ENGINE WILL GO TO IDLE WITH NO WARNING. I CAN BE MAKING A TURN, ACCELERATING, OR JUST CRUISING AT SPEED. THIS HAS BEEN RECALLED ON MOST ALL OTHER FORD VEHICLES. I COULD JUST GET IT REPLACED, BUT THE ISSUES IS NOT			
 16 17 18 19 20 21 22 	(ID Number: 10789777): WHEN DRIVING MY CAR THE ENGINE WILL GO TO IDLE WITH NO WARNING. I CAN BE MAKING A TURN, ACCELERATING, OR JUST CRUISING AT SPEED. THIS HAS BEEN RECALLED ON MOST ALL OTHER FORD VEHICLES. I COULD JUST GET IT REPLACED, BUT THE ISSUES IS NOT ONLY THE THROTTLE BODY, ITS THE PROGRAMMING. IF IT			
 16 17 18 19 20 21 22 23 	(ID Number: 10789777): WHEN DRIVING MY CAR THE ENGINE WILL GO TO IDLE WITH NO WARNING. I CAN BE MAKING A TURN, ACCELERATING, OR JUST CRUISING AT SPEED. THIS HAS BEEN RECALLED ON MOST ALL OTHER FORD VEHICLES. I COULD JUST GET IT REPLACED, BUT THE ISSUES IS NOT ONLY THE THROTTLE BODY, ITS THE PROGRAMMING. IF IT FINDS AN ISSUE WITH THE THROTTLE BODY IT GIVES UP,			
 16 17 18 19 20 21 22 23 24 	(ID Number: 10789777): WHEN DRIVING MY CAR THE ENGINE WILL GO TO IDLE WITH NO WARNING. I CAN BE MAKING A TURN, ACCELERATING, OR JUST CRUISING AT SPEED. THIS HAS BEEN RECALLED ON MOST ALL OTHER FORD VEHICLES. I COULD JUST GET IT REPLACED, BUT THE ISSUES IS NOT ONLY THE THROTTLE BODY, ITS THE PROGRAMMING. IF IT FINDS AN ISSUE WITH THE THROTTLE BODY IT GIVES UP, AND STALLS. IN THE RECALLED FORDS WITH THIS THEY			
 16 17 18 19 20 21 22 23 24 25 	(ID Number: 10789777): WHEN DRIVING MY CAR THE ENGINE WILL GO TO IDLE WITH NO WARNING. I CAN BE MAKING A TURN, ACCELERATING, OR JUST CRUISING AT SPEED. THIS HAS BEEN RECALLED ON MOST ALL OTHER FORD VEHICLES. I COULD JUST GET IT REPLACED, BUT THE ISSUES IS NOT ONLY THE THROTTLE BODY, ITS THE PROGRAMMING. IF IT FINDS AN ISSUE WITH THE THROTTLE BODY IT GIVES UP, AND STALLS. IN THE RECALLED FORDS WITH THIS THEY HAVE CHANGED THE PROGRAMMING SO IT KEEPS TRYING			
 16 17 18 19 20 21 22 23 24 25 26 	(ID Number: 10789777): WHEN DRIVING MY CAR THE ENGINE WILL GO TO IDLE WITH NO WARNING. I CAN BE MAKING A TURN, ACCELERATING, OR JUST CRUISING AT SPEED. THIS HAS BEEN RECALLED ON MOST ALL OTHER FORD VEHICLES. I COULD JUST GET IT REPLACED, BUT THE ISSUES IS NOT ONLY THE THROTTLE BODY, ITS THE PROGRAMMING. IF IT FINDS AN ISSUE WITH THE THROTTLE BODY IT GIVES UP, AND STALLS. IN THE RECALLED FORDS WITH THIS THEY HAVE CHANGED THE PROGRAMMING SO IT KEEPS TRYING TO ACCELERATE, NOT JUST GIVE UP. WITH THAT BEING			

VERY DANGEROUS! THE FIRST TIME I WAS MAKING A LEFT IN TO TRAFFIC AND IT CUT OUT, LUCKY FOR EVERYONE THEY HAD ENOUGH TIME TO STOP BEFORE I GOT T-BONED MY 3 LANES OF TRAFFIC. FORD WILL NOT RECTIFY THIS ISSUE UNTIL MORE PEOPLE DIE! PLEASE HELP WITH AN INVESTIGATION! CODES GIVEN BY OBD2 ARE P2111 AND P2112. AT THE SAME TIME. THANK YOU. *TR

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C. <u>The NHTSA Investigation</u>

9 46. The defective nature of certain Delphi Gen 6 ETBs was specifically 10 brought to NHTSA's attention around August 30, 2012, when the North Carolina 11 Consumers Council ("NCCC") petitioned the federal agency to initiate a defect 12 investigation into throttle body failures resulting in engine stall or surge on 2005 13 through 2012 model year Ford Escapes. The NCCC petition cited two complaints 14 regarding 2009 Ford Escapes that were diagnosed with failed throttle bodies after 15 showing DTC P2111, indicating Throttle Actuator Control System – Stuck Open, 16 and DTC P2112, indicating Throttle Actuator Control System – Stuck Closed.

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47. On October 2, 2012, the NHTSA's Office of Defects Investigation ("ODI") opened Defect Petition DP12-006 to evaluate whether to investigate the issue.

48. On February 28, 2014, the ODI closed its investigation and provided
the following summary of its conclusions:

On February 21, 2013, the Office of Defects Investigations (ODI) opened
Preliminary Evaluation PE13-003 to investigate allegations of electronic throttle
body (ETB) failures resulting in sudden reduction of engine power in model year
(MY) 2009-2013 Ford Escape, Fusion, Mariner and Milan vehicles. During this
investigation, Ford identified a condition in subject vehicles equipped with 2.5L
and 3.0L engines that may result in a sudden reduction of engine power. According
to Ford, the ETB internal motor contacts may develop a high resistance material

buildup condition on the commutator, resulting in intermittent electrical
connectivity and reduced engine power. When this condition occurs, the
Malfunction Indicator Lamp (MIL) or Wrench light will illuminate and the vehicle
may enter a limited limp home mode. Ford's trade name for the feature is Failure
Mode Effects Management (FMEM) mode. In this mode, engine power and vehicle
speed are reduced, while full function of the power steering, power braking,
lighting, and climate control systems are maintained.

8 ODI's complaint analysis indicate that the predominant failure mode 9 involved reduced motive power associated with the limited limp home mode with 10 engine speeds limited to approximately 900 RPM. Analysis of warranty claims 11 provided by Ford identified 59,807 claims related to ETB replacements and 12 approximately 50 percent of claims are associated with diagnostic trouble codes 13 (DTC) P2111, "Throttle Body Stuck Open," and P2112, "Throttle Body Stuck 14 Closed". Ford described several factors where the ETB motor may fail resulting in 15 DTCs P2111 or P2112 but the failure is not an existing stuck open or closed ETB 16 valve position. According to Ford, the ETB control strategy provides the driver 17 with three FMEM modes that allow varying degrees of vehicle mobility depending 18 on the severity of the fault detected. DTCs associated with stuck open or closed 19 throttle valves are designated the highest failure severity resulting in engine speeds 20 limited to high idle corresponding to the limited limp home mode. Vehicles are not 21 likely to unexpectedly stall as a result of this condition, but drivers may 22 characterize the reduced functionality as a stall, even though their vehicle may still 23 has [sic] motive capability. Other FMEM limp modes may result in reduced engine 24 performance but will maintain vehicle speed above 20mph.

During this investigation, Ford and its suppliers, Delphi and Igarashi,
updated the powertrain control module (PCM) software to include a throttle body
motor cleaning cycle during key-on and modified the ETB internal motor
components design, surface finish and material composition to improve durability.

1 Additionally, Ford developed a remedy procedure and issued a special Customer 2 Satisfaction Program(CSP) 13N03 extending the ETB warranty coverage and 3 instructing dealers to update the powertrain calibration to improve vehicle 4 performance in the event that intermittent electrical connectivity of the throttle body 5 motor contacts occurs. The program extends the coverage for up to 10 years of 6 service or 150,000 miles from the warranty start date of the vehicle, all vehicles are 7 eligible for the program through January 31, 2015 regardless of mileage. Owners of 8 the affected vehicles will be contacted by mail to take their vehicle to a Ford dealer 9 who will reprogram the PCM to the latest calibration. The bulletin was sent to 10 dealers on January 17, 2014 and the owner letter mailing began on January 27, 11 2014. See the investigative file for copies of Ford's bulletin and owner letter.

This preliminary evaluation is closed. The closing of this investigation does
not constitute a finding that a safety-related defect does not exist. For additional
information regarding this investigation, see complete closing resume in the
document file for PE13-003.

49. PE13-003 found 11,960 unique reports of throttle failure in 2009-13
Ford Escape, Mariner, Fusion, and Milan vehicles, all of which originally contained
Delphi Gen 6 ETBs with the part number DS7Z-9E926-A.

19 In response to PE13-003, Ford issued Customer Satisfaction Program 50. 20 13N03 ("CSP 13N03") to remedy only those vehicles covered by the government 21 investigation. Under this program, Ford agreed to: (1) extend the warranty on the 22 vehicles' throttle bodies until 10 years or 150,000 miles; (2) reimburse those who 23 already paid to replace the defective throttle bodies; and (3) update the Powertrain 24 Control Module software. Ford service locations were also instructed to replace the 25 original throttle bodies (part number DS7Z-9E926-A) with replacement parts (part 26 number DS7Z-9E926-D) when owners complained of throttle body failures.

- 27
- 28

51. Dealers were notified of CSP 13N03 in the following communication:SUBJECT: Customer Satisfaction Program 13N03

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1	Certain 200	Certain 2009 Through 2013 Model Year Fusion, Milan, Escape and			
2	Mariner Ve	Mariner Vehicles			
3	Throttle Bo	Throttle Body Extended Coverage			
4	PROGRA	M TERMS			
5	This progra	m extends the co	verage of the Throttle	Body to 10 years of	
6	service or 1	50,000 miles from	n the warranty start da	ate of the vehicle,	
7	whichever	occurs first. This	is a <u>one-time </u> repair pr	ogram. If a vehicle	
8	has already	exceeded the tim	e or mileage limits, th	is coverage will last	
9	through Jan	through January 31, 2015. Coverage is automatically transferred to			
10	new owners	new owners.			
11	NOTE: Th	NOTE: This program applies to affected vehicles which are			
12	beyond the	e terms of the Ne	w Model Vehicle Wa	rranty coverage.	
13	VEHICLE	VEHICLES COVERED BY THIS PROGRAM			
14	Vehicle	Model Years	Assembly Plant	Build Dates	
15	Lines	2010 2012	-		
16	Fusion and Milan	2010-2013	Hermosillo	Job #1 thru July 16, 2013	
17	Escape	2009-2012	Kansas City	Job #1 thru	
18	and Mariner			April 29, 2012	
19	Escape	2013	Louisville	Job #1 thru	
20	A ffootod wa	hicles are identif	ind in OASIS	June 2, 2013	
21					
22			NG ADDITIONAL C		
23		·	op contamination on t y, resulting in intermit		
24		-	-		
25	connectivity. If this condition is present, the Malfunction Indicator				
) or Wrench ligh	t will illuminate and th	ne vehicle may enter	
26	Lamp (MIL	-	t will illuminate and the	-	
	Lamp (MIL a Failure M	ode Effects Mana	t will illuminate and th agement (FMEM) of d this mode, engine pov	lefault throttle	

1	speed are reduced, while full function of the power steering, power
2	braking, lighting, and climate control systems are maintained.
3	SERVICE ACTION
4	If dealer diagnosis of an engine warning lamp on an affected vehicle
5	identifies the Throttle Body as the causal component, dealers are
6	authorized to replace the Throttle Body under this program. This
7	service must be performed at no charge to the vehicle owner.
8	NOTE: Dealers will be notified later this spring when an updated
9	powertrain calibration is available for some affected vehicles, which
10	will improve vehicle performance in the event that contamination of
11	the Throttle Body motor contacts occurs.
12	OWNER NOTIFICATION MAILING SCHEDULE
13	Owner Letters are expected to be mailed the week of January 27, 2014.
14	Dealers should repair any affected vehicles that exhibit the covered
15	condition, whether or not the customer has received a letter.
16	Customer Satisfaction Program 13N03
17	Certain 2009 Through 2013 Model Year Fusion, Milan, Escape and
18	Mariner Vehicles Throttle Body Extended Coverage
19	OASIS ACTIVATED ?
20	Yes, OASIS will be activated on January 17, 2014.
21	FSA VIN LIST ACTIVATED?
22	No, FSA VIN list will not be activated for this service action.
23	STOCK VEHICLES
24	Do not perform this program unless the affected vehicle exhibits the
25	covered condition.
26	SOLD VEHICLES
27	Only owners with affected vehicles that exhibit the covered condition
28	will be directed to dealers for repairs.

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1	TITLE BRANDED / SALVAGED VEHICLES		
2	Affected title branded and salvaged vehicles are eligible for this		
3	service action.		
4	RELATED DAMAGE		
5	If a related damage condition exists that you believe to be caused by		
6	the covered condition, call the Special Service Support Center to		
7	request approval prior to the repair of any related damage. Requests		
8	for approval after completion of the repair will not be granted.		
9	ADDITIONAL LABOR TIME		
10	• If a condition exists that requires additional labor to complete the repair, call		
11	the Special Service Support Center to request approval prior to performing		
12	any additional labor. Requests for approval after completion of the repair will		
13	not be granted.		
14	• If you encounter aftermarket equipment or modifications to the vehicle which		
15	might prevent the repair of the covered condition, call the Special Service		
16	Support Center.		
17	OWNER REFUNDS		
18	• Ford Motor Company is offering a refund for owner-paid repairs covered by		
19	this program if the repair was performed before the date of the Owner		
20	Notification Letter. This refund offer expires July 31, 2014.		
21	• Dealers are also authorized to refund owner-paid emergency repairs that were		
22	performed away from an authorized servicing dealer after the date of the		
23	Owner Notification Letter. There is no expiration date for emergency repair		
24	refunds. Non-covered repairs, or those judged by Ford to be excessive, will		
25	not be reimbursed.		
26	Refunds will only be provided for the cost associated with diagnosis and		
27	replacement of the Throttle Body.		
28			

1

D. <u>CSP 13N03 Did Not Address the Class Vehicles</u>

52. CSP 13N03 only applied to those Ford vehicles equipped with the
DS7Z-9E926 version of the Delphi Gen 6 ETB (the Fusion, Escape, Milan, Mariner
models). It did not address, and did not provide relief to owners of, vehicles
containing the AT4Z-9E926 version of the Delphi Gen 6 ETB, which was installed
in the Class Vehicles at issue in this litigation.

- 53. Upon information and belief, the DS7Z-9E926 and AT4Z-9E926
 Delphi Gen 6 ETBs are materially similar components. Both parts share the same
 Ford base part number—"9E926"—but are otherwise designed to be placed in
 different Ford vehicles equipped with different engines.
- 54. Upon information and belief, both the DS7Z-9E926 ETB, addressed
 by CSP 13N03, and the AT4Z-9E926 ETB, at issue in this litigation, contained
 similar or identical Igarashi DC motor components. Thus, when Ford issued CSP
 13N03, it only addressed a subset of vehicles containing the know-to-be-defective
 Igarashi DC motor.
- 16 55. Class Vehicles owners have consistently complained about being left
 17 out of Ford's customer satisfaction program, despite the fact that their vehicles
 18 contain a similar part that presents an identical safety concern.
- 19 56. On September 23, 2015, the owner of a 2013 Ford Edge complained
 20 (ID Number: 10775456):
- DRIVING FORD EDGE 2013 APPROX. 40 MPH ON HIGHWAY 21 WHEN THE VEHICLE CAME TO ALMOST A DEAD STOP. IT 22 SEEMED AS IF THE BRAKES BECAME FULLY ENGAGED OR 23 THE TRANSMISSION SEIZED. A TRUCK BEHIND US 24 SWERVED AND BRAKED AND ALMOST CRASHED INTO 25 US. MY 2 CHILDREN AND I WOULD HAVE BEEN KILLED. 26 THE VEHICLE SHOOK VIOLENTLY AS IT MOVED ABOUT 2 27 MPH. I BARELY WAS ABLE TO GET IT OVER TO THE RIGHT, 28

OFF THE HIGHWAY. IT WOULD NOT GO ANY FURTHER. A 1 2 RED WRENCH ICON LIT ON THE DASH. I TOWED IT TO 3 MIDWAY FORD. SERVICE MANAGER STATED THE 4 THROTTLE BODY PART IS DEFECTIVE AND RECALLED, BUT 5 RESETS ITSELF IF VEHICLE IS TURNED OFF FOR A WHILE, 6 SO IF I DID NOT TURN OFF THE VEHICLE, FORD WOULD FIX 7 IT FOR FREE. SINCE I TURNED OFF THE VEHICLE AND IT 8 RESET, I HAD TO PAY HIM \$900 TO REPLACE IT. SINCE I DID 9 NOT HAVE \$900, HE ADVISED ME TO DRIVE THE VEHICLE **VERY SLOWLY ON THE RIGHT SIDE OF THE ROAD FROM** 10 NOW ON, AS A PRECAUTION SO MY CHILDREN OR I DO 11 NOT GET INJURED OR KILLED THE NEXT TIME IT 12 13 HAPPENS. IF THIS IS FORD'S CRITERIA FOR REPLACING 14 THIS LIFE THREATENING DEFECTIVE PART, THAT IT MUST 15 BE IN ACTIVE DEFECT STATUS WHEN ARRIVING AT THE DEALER. THEN NOT ONLY HAS FORD HAS FOUND A WAY 16 17 TO BEAT PAYING FOR THE 1.6 MILLION VEHICLES THEY 18 AGREED TO RECALL WITH THIS DEFECT, SINCE YOU CAN'T 19 DRIVE THE VEHICLE AT 900 RPM TO THE DEALER, OR TOW IT WHILE RUNNING, BUT FORD IS GETTING RICH OFF THE 20 21 **RECALL (THE PART IS ABOUT \$185 AND TAKES 15** 22 **MINUTES TO REPLACE), AND 1.6 MILLION PEOPLE MUST** 23 **PAY FORD \$900 TO FIX A RECALLED DEFECTIVE PART.** 24 57. On August 27, 2014, the owner of a 2011 Ford Mustang complained 25 (ID Number: 10628802): DEFECTIVE ELECTRONIC THROTTLE BODY (ETB) AS PER 26 27 DEALERSHIP DIAGNOSIS. FORD CUSTOMER SERVICE IS **EXCLUDING MUSTANGS FROM THE CUSTOMER** 28

1	SATISFACTION PROGRAM 13N03 - WHICH CLEARLY			
2	STATES THERE IS A PROBLEM WITH ETBS DURING THIS			
3	TIME. LOOKING OVER THE INTERNET, IT IS CLEAR THAT			
4	SOME MUSTANGS WHERE BUILT WITH THE SAME TYPE OF			
5	ETB AS THE MODELS COVERED UNDER THE PROGRAM			
6	(FUSION, ESCAPE, MERCURY MARINER AND MERCURY			
7	MILAN). THE PROGRAM EXTENDS THE WARRANTY ON THE			
8	THROTTLE BODY TO A TOTAL OF 10 YEARS OR 150,000			
9	MILES FROM THE WARRANTY START DATE, WHICH EVER			
10	OCCURS FIRST. THIS CAR IS EXTREMELY DANGEROUS TO			
11	DRIVE AS IT BASICALLY STATUS ALLS AND CANNOT BE			
12	RESTARTED WITHOUT TURNING THE IGNITION			
13	COMPLETELY OFF - WHICH IN TURN TURNS OFF POWER			
14	ASSET TO STEERING AND BRAKES. CAR MAY TAKE UP TO 3			
15	OR 4 TRIES TO START NORMALLY. THIS STALLING			
16	CONDITION CAN OCCUR UP TO 5 TIMES IN AN 8 MILE TRIP.			
17	*TR			
18	58. On September 15, 2015, the owner of a 2011 Ford Mustang			
19	complained (ID Number: 10763826):			
20	WHILE DRIVING DOWN THE LEFT LANE OF THE SAWGRASS			
21	EXPRESSWAY, A VERY BUSY HIGHWAY BETWEEN FT.			
22	LAUDERDALE AND MIAMI, I LOST ALL THROTTLE			
23	RESPONSE. THE WRENCH LIGHT CAME ON THE			
24	DASHBOARD AND I WENT FROM 60 MPH DOWN TO			
25	NOTHING BY THE TIME I WAS OFF TO THE SIDE OF THE			
26	ROAD. CARS BEHIND ME WERE OBVIOUSLY BRAKING			
27	HARD TO AVOID SMASHING INTO ME. I TURNED THE CAR			
28	OFF AND WAS ABOUT TO CALL AAA, BUT THE HEAT INDEX			

1	THAT DAY WAS AROUND A MILLION DEGREES SO I			
2	TURNED THE CAR BACK ON. THE THROTTLE RESPONSE			
3	HAD RETURNED SO I CAUTIOUSLY LIMPED THE CAR BACK			
4	HOME IN THE RIGHT HAND LANE THE WHOLE WAY. I			
5	THOUGHT IT WAS SOME FREAK COMPUTER GLITCH UNTIL			
6	IT HAPPENED AGAIN GOING TO THE STORE THE NEXT DAY.			
7	I CALLED THE FORD DEALERSHIP AND BEFORE I EVEN GOT			
8	THE PROBLEM OOUT OF MY MOUTH THE SERVICE TECH			
9	SAID "IT IS YOUR THROTTLE BODY. WE SEE THIS ALL THE			
10	TIME. IT WILL BE ABOUT \$800 TO REPAIR". IF THE TECHS			
11	ARE AWARE OF THIS PROBLEM AND IT IS ALL OVER THE			
12	INTERNET WITH PEOPLE COMPLAINING ABOUT			
13	DANGEROUS SITUATIONS THE HAVE BEEN PLACED IN AS A			
14	RESULT, AND THERE IS ALREADY A RECALL FOR THE			
15	SAME PROBLEM IN OTHER FORD MODELS, THEN WHY			
16	HASN'T THE NHTSA DONE ANYTHING TO FORCE FORD			
17	TO RECALL FOR THE SAME PROBLEM ON THE			
18	MUSTANG? DOES SOMEONE HAVE TO DIE FIRST? HAS			
19	SOMEBODY DIED BECAUSE OF THIS?			
20	59. On August 31, 2015, the owner of a 2011 Ford Edge complained (ID			
21	Number: 10760282):			
22	TL* THE CONTACT OWNS A 2011 FORD EDGE. WHILE			
23	DRIVING APPROXIMATELY 55 MPH, THE SPEED			
24	DECELERATED INDEPENDENTLY WITH THE ILLUMINATION			
25	OF THE WRENCH WARNING LIGHT. THE VEHICLE WAS			
26	TOWED TO AN INDEPENDENT MECHANIC FOR DIAGNOSIS,			
27	WHO CONFIRMED THE ELECTRONIC THROTTLE BODY			
28	FAILED. THE VEHICLE WAS NOT REPAIRED. THE			

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1	MANUFACTURER ISSUED A SPECIAL CUSTOMER			
2	SATISFACTION PROGRAM RELATED TO THE			
3	ELECTRONIC THROTTLE BODY HOWEVER, THEVEHICLE			
4	WAS NOT INCLUDED. THE MANUFACTURER WAS			
5	NOTIFIED OF THE FAILURE. THE APPROXIMATE FAILURE			
6	MILEAGE WAS 40,000.			
7	E. Ford Continued to Sell Class Vehicles With the Throttle Defect			
8	After CSP 13N03			
9	60. Upon information and belief, Ford has failed to remedy the Throttle			
10	Defect in the Class Vehicles since the issuance of CSP 13N03 in January 2014, as			
11	indicated by complaints from owners of Class Vehicles from the 2014 and 2015			
12	model years.			
13	61. Upon information and belief, Ford recognized that both the DS7Z-			
14	9E926-A (covered by CSP 13N03) and AT4Z-9E926-A (not covered) version			
15	Delphi Gen 6 ETBs were subject to the same types of failures caused by the same			
16	defect. As a result, Ford superseded these original part numbers with new versions			
17	in an attempt to address throttle failures.			
18	62. At some point prior to 2014, Ford superseded part DS7Z-9E926-A			
19	with modified versions DS7Z-9E926-B, DSDS7Z-9E926-C, and eventually			
20	DSDS7Z- 9E926- D , which it used to repair those select vehicles covered by CSP			
21	13N03.			
22	63. Similarly, Ford superseded part AT4Z-9E926-A in the Class Vehicles			
23	with AT4Z-9E926-B. Upon information and belief, Ford introduced AT4Z-			
24	9E926-B in a failed attempt to address the Throttle Defect.			
25	64. Upon information and belief, AT4Z-9E926-B did not resolve the			
26	Throttle Defect and Ford has continued to sell model year 2014 and 2015 vehicles			
27	that include the Throttle Defect.			
28	65. For example, on September 11, 2015, the owner of a 2014 MKX			
	- 22 -			

1 complained (ID No. 10763193):

2 ON MONDAY (LABOR DAY), I WAS DRIVING AND STARTED TO MAKE A RIGHT TURN WHEN THE CAR STALLED. I WAS 3 4 BESIDE A GAS STATIONED SO I MANAGED TO PULL IN 5 (VERY HARD TO STEER) AND I NOTICED THE ?LOW OIL 6 PRESSURE? ICON ON. I CAME TO A STOP AND PUSHED THE 7 START BUTTON AND THE CAR STARTED AND DROVE 8 WITHOUT ANY MORE PROBLEMS. MY HUSBAND CHECKED 9 THE OIL WHEN I GOT HOME AND IT IS FULL. WHILE AT 10 LONG LEWIS FORD IN HOOVER. THIS MORNING TO HAVE IT CHECKED WE HEARD A WOMAN DESCRIBE THE SAME 11 SCENARIO WITH HER FORD. SHE STATED IT STALLED 12 13 ABOUT 3 OR 4 TIMES ON HER WHILE DRIVING. I FEEL THIS 14 IS A VERY SERIOUS ISSUE AND SOUNDS SIMILAR TO THE 15 ISSUE ONE OF THE OTHER AUTOMOBILE MODELS HAD CAUSING DEATH AND INJURY. 16 17 Similarly, on June 28, 2016, the owner of a 2015 Ford Edge 66. 18 complained (ID No. 10881847): 19 MY CAR IS FORD EDGE 2015 WITH ONLY 6000 MILES ON IT. I WAS ENTERING THE RAMP ON A FREEWAY AND WHEN 20 21 ATTEMPTED TO ACCELERATE THE CAR JUST SHUT OFF BY 22 ITSELF. I BLOCKED THE WHOLE ROAD BECAUSE COULD 23 NOT MOVE. NO CHECK ENGINE LIGHT WAS ON JUST A 24 MESSAGE DISPLAYED ON THE DASH "FULL ACCESSORY 25 POWER ACTIVE" AND THE GREEN LIGHT ON THE STARTER

BUTTON WAS FLASHING. HAD TO PUT THE CAR IN PARK
AND WAIT 2-3 MIN UNTIL I COULD SUCCESSFULLY

28 RESTART IT. THE NEXT DAY MY CAR DID THE SAME THING

ON A BUSY STREET INTERSECTION. I HAD TO WAIT AGAIN 1 2 A LITTLE BIT TO RESTART IT AND DROVE TO THE 3 DEALERSHIP. THEY TOOK THE CAR TO CHECK FOR ONE 4 DAY, NO RENTAL WAS PROVIDED. I WAS TOLD THAT 5 THEY GET MANY DIFFERENT FORD VEHICLES WITH 6 THIS ISSUE. NEXT DAY I RECEIVED A PHONE CALL THAT 7 THEY RAN A COMPUTER SCAN AND THROTTLE BODY 8 WAS DEFECTIVE. THROTTLE BODY AIR INTAKE WAS 9 REPLACED. VERY SCARY AND DANGEROUS SITUATION 10 THAT CAN HAPPEN ANYTIME, ANYWHERE WITHOUT ANY 11 KIND OF WARNING. I BELIEVE IT NEEDS ATTENTION ...

12

F. Ford's Knowledge of the Throttle Defect

13 67. Upon information and belief, Ford has known of the aforementioned
14 problems with the Delphi Gen 6 electronic throttle body since at least as early as
15 2009, but has failed to disclose this material information to the owners and
16 purchasers of Class Vehicles. Ford first learned that the specific Delphi Gen 6
17 ETBs placed in Class Vehicles were defective soon after the vehicles were released
18 in 2011.

19 68. There have been thousands of consumer complaints made directly to
20 Ford dealerships going back as early as 2011 regarding the Throttle Defect. When
21 the NHTSA/ODI completed its preliminary investigation regarding CSP 13N03
22 vehicles, it concluded that Ford had received 10,999 complaints directly, in addition
23 to the 1,471 complaints filed with the NHTSA, regarding the vehicles ultimately
24 covered by CSP 13N03.

69. As revealed in the NHTSA investigation, on September 26, 2012, Ford
employees exchanged emails acknowledging the existence of a defect in some
vehicles equipped with Delphi Gen 6 ETBs. On that day, one Ford employee,
Derek Harmon, explained the situation: "The intermittent no DTC loss or RPM

problem is getting so much attention on the 10-12 Escape/Fusion I've not put this
 on the QSF emerging deck. We've gotten too many phone calls from dealership
 technicians needing help"

4

5

6

70. Moreover, on or around August 30, 2012, the North CarolinaConsumer Commission petitioned NHTSA to investigate the alternative version of the Delphi Gen 6 ETB (DS7Z-9E926).

7 71. By December 14, 2012, Ford responded to NHTSA's inquiry and
8 formally acknowledged the possibility of a likely defect in certain Delphi Gen 6
9 ETBs after a summary investigation. The existence of a throttle defect in the
10 DS7Z-9E926 version of the Delphi Gen 6 ETB, combined with Ford's knowledge
11 that the AT4Z-9E926 version was substantially similar, as well as information
12 regarding the manifestation of the Throttle Defect obtained from dealers and from
13 the NHTSA, put Ford on notice that the Class Vehicles were also defective.

14 72. Upon information and belief, Ford acquired additional, exclusive
15 knowledge about the Throttle Defect in early 2013 when it collected voluminous
16 amounts of data to respond to the NHTSA investigation regarding Delphi Gen 6
17 ETB failures.

18 73. Upon information and belief, Ford collected and analyzed data
19 regarding Edge, Mustang, Ford F-150, and Lincoln MKX throttle failures, but
20 failed to disclose the existence of the Throttle Defect in the Class Vehicles at issue
21 in this litigation.

22

V. <u>TOLLING OF THE STATUTE OF LIMITATIONS</u>

23

A. <u>Discovery Rule Tolling</u>

74. Plaintiffs could not have discovered through reasonable diligence that
their Class Vehicles were defective within the time period of any applicable statutes
of limitation.

27 75. Among other things, neither Plaintiffs nor the other Class members
28 knew or could have known that the Class Vehicles are equipped with defective

Delphi Gen 6 ETBs which result in sudden and unexpected deceleration and loss of
 throttle control.

3

B. <u>Fraudulent Concealment Tolling</u>

76. Throughout the time period relevant to this action, Ford concealed
from and failed to disclose to Plaintiffs and the other Class members vital
information about the potentially deadly defect described herein. Indeed, Ford kept
Plaintiffs and the other Class members ignorant of vital information essential to the
pursuit of their claims, and as a result, neither Plaintiffs nor the other Class
members could have discovered the Throttle Defect, even upon reasonable exercise
of diligence.

11 77. Specifically, Ford has known that the Delphi Gen 6 ETB it installed in
12 the Class Vehicles is prone to sudden and premature failure, resulting in sudden
13 shift to limp-home mode causing sudden deceleration and loss of throttle control.

14 78. Despite its knowledge of these defects, Ford failed to disclose,
15 concealed, and continues to conceal, this critical information from Plaintiffs and the
16 other members of the Class even though, at any point in time, it could have done so
17 through individual correspondence, media release, or any other means.

18 79. Plaintiffs and the other Class members justifiably relied on Ford to
19 disclose these material defects in the Ford vehicles that they purchased or leased, as
20 such defects were hidden and not discoverable through reasonable efforts by
21 Plaintiffs and the other Class members.

80. Thus, the running of all applicable statutes of limitation have been
tolled and suspended with respect to any claims that the Plaintiffs and the other
Class members have sustained as a result of the defects by virtue of the fraudulent
concealment doctrine.

26

C. <u>Estoppel</u>

81. Ford was under a continuous duty to disclose to Plaintiffs and the other
Class members the true character, quality, and nature of the Class Vehicles.

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1	82. Ford knowingly failed to disclose or concealed the true nature, quality,				
2	and character of the Class Vehicles for consumers.				
3	83. Based on the foregoing, Ford is estopped from relying on any statutes				
4	of limitation in defense of this action.				
5	VI. <u>CLASS ACTION ALLEGATIONS</u>				
6	84. Plaintiffs bring this action pursuant to Rules 23(a), 23(b)(2), and				
7	23(b)(3) of the Federal Rules of Civil Procedure on behalf of themselves and all				
8	others similarly situated.				
9	85. Plaintiffs seek to represent a class ("the Nationwide Class") defined as:				
10	• All current and former owners and lessees of a Class Vehicle (as				
11	defined herein) that was purchased or leased within the United				
12	States (including its Territories and the District of Columbia).				
13	86. Plaintiffs also seek to represent the following statewide classes ("the				
14	Statewide Classes") defined as follows:				
15	• All current and former owners and lessees of a Class Vehicle (as				
16	defined herein) that was purchased or leased within California.				
17	("the California Class").				
18	• All current and former owners and lessees of a Class Vehicle (as				
19	defined herein) that was purchased or leased within Florida. ("the				
20	Florida Class").				
21	• All current and former owners and lessees of a Class Vehicle (as				
22	defined herein) that was purchased or leased within Alabama ("the				
23	Alabama Class").				
24	87. Excluded from each of the Nationwide and Statewide Classes are Ford				
25	and any of its affiliates, parents, subsidiaries, officers, directors, employees,				
26	successors, or assigns; the judicial officers and their immediate family members;				
27	and the Court staff assigned to this case. Plaintiffs reserve the right to amend these				
28	Nationwide and Statewide Class definitions, as appropriate, during the course of				
	- 27 -				

1 this litigation.

2 88. This action has been brought and may properly be maintained on
3 behalf of the Nationwide and Statewide Classes proposed herein under the criteria
4 of Rule 23 of the Federal Rules of Civil Procedure.

5 89. **Numerosity - Federal Rule of Civil Procedure 23(a)(1).** The 6 members of the Nationwide and Statewide Classes are so numerous and 7 geographically disperse that individual joinder of all class members is 8 impracticable. While the precise numbers of the Nationwide and Statewide Classes 9 are unknown to Plaintiffs, Plaintiffs are informed and believe that Ford has sold 10 hundreds of thousands of Class Vehicles from 2011 to 2015. For example, Ford 11 sold approximately 611,000 model year 2011-2015 Ford Edges. The precise 12 number of Nationwide and Statewide Class members may be ascertained from 13 Ford's books and records. Nationwide and Statewide Class members may be 14 notified of the pendency of this action by recognized, Court-approved notice 15 dissemination methods, which may include U.S. Mail, electronic mail, Internet 16 postings, and/or published notice.

17 90. Commonality and Predominance – Federal Rule of Civil
18 Procedure 23(a)(2) and 23(b)(3). This action involves common questions of law
19 and fact, which predominate over any questions affecting individual Nationwide
20 and Statewide Class members, including, without limitation:

20 21 whether Ford engaged in the conduct alleged herein; a. 22 whether Ford's conduct violates applicable law; b. 23 whether Ford designed, advertised, marketed, distributed, c. 24 leased, sold, or otherwise placed the Class Vehicles into the 25 stream of commerce in the United States; whether Ford misled Nationwide and Statewide Class members 26 d. 27 about the quality of the Class Vehicles; 28 whether the Class Vehicles contain the Throttle Defect; e. - 28 -1338964.4

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1 2	f.	whether Ford breached the implied warranty of merchantability when it sold Class Vehicles with defective throttle bodies;
3	g.	whether Ford made express warranties with respect to the Class
4		Vehicles;
5	h.	whether Defendant breached its express warranties to the
6		Nationwide and Statewide Classes with respect to the Class
7		Vehicles;
8	i.	whether Ford knew or should have known about the Throttle
9		Defect, but failed to disclose it to Plaintiffs and the other
10		Nationwide and Statewide Class members;
11	j.	whether Ford omitted and concealed material information
12		regarding the Class Vehicles;
13	k.	whether Ford had and/or has a duty to disclose the Throttle
14		Defect prior to selling the Class Vehicles to the Plaintiffs and
15		the other members of the Nationwide and Statewide Classes;
16	1.	whether Ford's conduct constitutes a deceptive act or practice in
17		violation of the state consumer protection statutes alleged
18		herein;
19	m.	whether Plaintiffs and the other members of the Nationwide and
20		Statewide Classes have suffered monetary damages as a result of
21		Ford's conduct;
22	n.	whether Plaintiffs and the Nationwide and Statewide Classes are
23		entitled to compensatory, exemplary, statutory, or punitive
24		damages, and the amount of any such damages; and
25	0.	whether Ford should be declared financially responsible for
26		notifying Class members about the defective nature of the Class
27		Vehicles.
28	91. Typ	icality – Federal Rule of Civil Procedure 23(a)(3). Plaintiffs'
	1338964.4	- 29 -

1 claims are typical of other Nationwide and Statewide Class members' claims 2 because Plaintiffs and the Nationwide and Statewide Class members purchased or 3 leased Class Vehicles that suffer from the Throttle Defect. Neither Plaintiffs nor 4 the other Nationwide and Statewide Class members would have purchased the 5 Class Vehicles, or they would have paid less for the Class Vehicles, had they 6 known of the Throttle Defect. Plaintiffs and the other Nationwide and Statewide 7 Class members suffered damages as a direct and proximate result of the same 8 wrongful practices in which Ford engaged. Plaintiffs' claims arise from the same 9 practices and course of conduct that give rise to the claims of the other Nationwide 10 and Statewide Class members.

92. Adequacy of Representation – Federal Rule of Civil Procedure
23(a)(4). Plaintiffs are adequate Class representatives because their interests do not
conflict with the interests of the other members of the Nationwide and Statewide
Classes that they respectively seek to represent, Plaintiffs have retained counsel that
is competent and experienced in complex class action litigation, and Plaintiffs
intend to prosecute this action vigorously. The Nationwide and Statewide Classes'
interests will be fairly and adequately protected by Plaintiffs and their counsel.

93. Declaratory and Injunctive Relief – Federal Rule of Civil
Procedure 23(b)(2). Ford has acted or refused to act on grounds generally
applicable to Plaintiffs and the other Nationwide and Statewide Class members,
thereby making appropriate final injunctive and declaratory relief, as described
below, with respect to the Nationwide and Statewide Class members as a whole.

94. Superiority – Federal Rule of Civil Procedure 23(b)(3). A class
action is superior to any other available means for the fair and efficient adjudication
of this controversy, and no unusual difficulties are likely to be encountered in the
management of this class action. The damages or other financial detriment suffered
by Plaintiffs and the other Nationwide and Statewide Class members is relatively
small compared to the burden and expense that would be required to individually

1	litigate their claims against Ford, so it would be impracticable for the Nationwide
2	and Statewide Class members to individually seek redress for Ford's wrongful
3	conduct. Even if the Nationwide and Statewide Class members could afford
4	litigation, the court system could not. Individualized litigation creates a potential
5	for inconsistent and contradictory judgments, and increases the delay and expense
6	to all parties and the court system. By contrast, the class action device presents far
7	fewer management difficulties, and provides the benefits of a single adjudication,
8	economy of scale, and comprehensive supervision by a single court.
9	VII. <u>CLAIMS FOR RELIEF</u>
10	A. <u>Claim Brought on Behalf of the Nationwide Class</u>
11	COUNT 1
12	VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT
13	15 U.S.C. §§ 2301, et seq.
14	95. Plaintiffs repeat and reallege paragraphs 1-94 as if fully set forth
15	herein.
16	96. Plaintiffs bring this Count individually and on behalf of the other
17	members of the Nationwide Class (the "Class," for purposes of this Count).
18	97. This Court has jurisdiction to decide claims brought under 15 U.S.C.
19	§ 2301 by virtue of 28 U.S.C. § 1332(a) and (d).
20	98. Plaintiffs are "consumers" within the meaning of the Magnuson-Moss
21	Warranty Act, 15 U.S.C. 2301(3).
22	99. Ford is a "supplier" and "warrantor" within the meaning of 15 U.S.C.
23	§ 2301(4) and (5).
24	100. The Class Vehicles are "consumer products" within the meaning of the
25	Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).
26	101. 15 U.S.C. § 2310(d)(1) provides a cause of action for any consumer
27	who is damaged by the failure of a warrantor to comply with a written warranty.
28	102. In its New Vehicle Limited Warranty, Ford expressly warranted that it
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would repair or replace defects in material or workmanship free of charge if they
became apparent during the warranty period. Ford provides the following language
in its 2014 Model Year Ford Warranty Guide: "[A]uthorized Ford Motor Company
dealers will, without charge, repair, replace, or adjust all parts on your vehicle that
malfunction or fail during normal use during the applicable coverage period due to
a manufacturing defect in factory-supplied materials or factory workmanship."

7 103. Ford's Limited Warranty constitutes a "written warranty" within the
8 meaning of 15 U.S.C. § 2301(6). The Class Vehicles' implied warranties of
9 merchantability are covered by 15 U.S.C. § 2301(7).

- 10 104. With respect to Class members' purchases or leases of the Class
 11 Vehicles, the terms of Ford's written warranty and implied warranty became part of
 12 the basis of the bargain between Ford, on the one hand, and Plaintiffs and each of
 13 the other Class members, on the other.
- 14 105. Ford breached its written and implied warranties as described in detail
 15 above. The Class Vehicles share a uniform defect in that they are equipped with
 16 defective electronic throttle bodies that are prone to sudden and unexpected failure
 17 during normal operation, leaving occupants vulnerable to accidents, serious
 18 injuries, and/or death. Ford has acknowledged the existence of the Throttle Defect
 19 in other models of vehicles containing Delphi Gen 6 ETBs, but has failed to
 20 acknowledge or correct the Throttle Defect in the Class Vehicles.
- 21 106. Plaintiffs and each of the other Class members have had sufficient 22 direct dealings with either Ford or its agents (including Ford dealerships) to 23 establish privity of contract between Ford and Plaintiffs and each of the other Class 24 members. Nonetheless, privity is not required here because Plaintiffs and each of 25 the other Class members are intended third-party beneficiaries of contracts between 26 Ford and its dealers, and specifically, of Ford's implied warranties. The dealers 27 were not intended to be the ultimate consumers of the Class Vehicles and have no 28 rights under the warranty agreements provided with the Class Vehicles; the

warranty agreements were designed for and intended to benefit the consumers only.
 Finally, privity is also not required because the Class Vehicles are dangerous
 instrumentalities due to the aforementioned defects and nonconformities.

4 107. Plaintiff Aviles, individually and on behalf of the other Class 5 members, notified Ford of the Throttle Defect, and its corresponding breach of 6 warranties, through a notice letter dated December 14, 2016, and delivered by 7 Federal Express to Ford Motor Company in Dearborn, Michigan. Ford was also 8 provided notice of the Throttle Defect through numerous complaints that it received 9 directly and through its dealers, as well as its own internal engineering knowledge. 10 Ford has not taken any measures to cure its warranty breaches to Plaintiffs and the 11 other Class members.

108. At the time of the sale or lease of each Class Vehicle, Ford knew, 12 13 should have known, or was reckless in not knowing of its failure to disclose 14 information concerning the Class Vehicles' inability to perform as warranted, but 15 nonetheless failed to rectify the situation and/or disclose the defective design. Ford 16 has continued to show its refusal to rectify the situation by refusing to address the 17 Throttle Defect. Under the circumstances, the remedies available under any 18 informal settlement procedure would be inadequate and any requirement that 19 Plaintiffs resort to an informal dispute resolution procedure and/or afford Ford a 20 reasonable opportunity to cure its breach of warranties is excused and thereby 21 deemed satisfied.

109. The amount in controversy of the Plaintiffs' individual claims meets or
exceeds \$25.00 in value. In addition, the amount in controversy meets or exceeds
\$75,000 in value, exclusive of interest and costs, computed on the basis of all
claims to be determined in this suit.

26 110. As a direct and proximate result of Ford's breach of the Limited
27 Warranty and the implied warranty of merchantability, Plaintiffs and the other
28 Class members have suffered damages in an amount to be determined at trial.

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1	111. Plaintiffs, individually and on behalf of the other Class members, seek
2	all damages permitted by law, including the diminution in value of their vehicles, in
3	an amount to be proven at trial.

4	B. <u>Claims Brought on Behalf of the Statewide Classes</u>
5	1. <u>Claims Brought on Behalf of the California Class</u>
6	<u>COUNT 2</u>
7	VIOLATION OF THE CALIFORNIA CONSUMER
8	LEGAL REMEDIES ACT
9	Cal Civ. Code §§ 1750, et seq.
10	112. Plaintiff Aviles ("Plaintiff" for purposes of the California Class's
11	Claims) repeats and realleges Paragraphs 1-94 as if fully set forth herein.
12	113. Plaintiff brings this Count individually and on behalf the other
13	members of the California class (the "Class," for purposes of this Count).
14	114. Plaintiff and the other members of the Class were deceived by Ford's
15	failure to disclose that the Class Vehicles share a uniform defect in that they are
16	equipped with defective electronic throttle bodies that are prone to sudden and
17	unexpected failure during normal operation, leaving occupants of the Class
18	Vehicles vulnerable to crashes, serious injury, and death.
19	115. Ford engaged in unfair or deceptive acts or practices when, in the
20	course of its business it, among other acts and practices, knowingly omitted
21	material facts as to the characteristics and qualities of the Class Vehicles.
22	116. Ford failed to disclose material information concerning the Class
23	Vehicles that it had a duty to disclose. Ford had a duty to disclose the Throttle
24	Defect because, as detailed above, (a) Ford knew about the Throttle Defect and the
25	safety concerns it raised; (b) Ford had exclusive knowledge of material facts not
26	known to the general public, Plaintiff, or the other Class members; and (c) Ford
27	actively concealed material facts concerning the Throttle Defect from the general
28	public, Plaintiff, and the other Class members. As detailed above, the information

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concerning the defect was known to Ford at the time of advertising and selling the
 Class Vehicles, all of which was intended to induce consumers to purchase the
 Class Vehicles.

4 117. Ford intended for the Plaintiff and the other Class members to rely on
5 it to provide safe, adequately designed, and adequately manufactured automobiles
6 and to honestly and accurately reveal the problems described throughout this
7 Complaint.

8 118. Ford intentionally failed or refused to disclose the Throttle Defect to9 consumers.

10 119. Ford's conduct and deceptive omissions were intended to induce
11 Plaintiff and the other Class members to believe that the Class Vehicles were safe,
12 adequately designed, and adequately manufactured automobiles.

13 120. Ford's conduct constitutes unfair acts or practices as defined by the
14 California Consumers Legal Remedies Act (the "CLRA").

15 121. Plaintiff and the other members of the Class have suffered injury in
16 fact and actual damages resulting from Ford's material omissions because they paid
17 inflated purchase prices for the Class Vehicles. Plaintiff and the other Class
18 members, however, reserve any claim for damages under the CLRA and by this
19 Complaint bring only an action for injunctive relief under the CLRA pursuant to
20 Section 1782(d) of the Act.

122. Pursuant to Section 1782 of the CLRA, Plaintiff notified Ford on
December 16, 2016, in writing, of its violations of Section 1770 of the CLRA, and
demanded that Defendant rectify the problems associated with the behavior detailed
above and give notice to all affected consumers of Ford's intent to so act. To date,
Ford has not responded to Plaintiff's letter.

123. If Ford fails to rectify or agree to rectify the problems associated with
the actions detailed above and give notice to all affected consumers within 30 days
of the date of written notice pursuant to Section 1782 of the CLRA, Plaintiff will

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1	amend this complaint to add claims for actual, punitive, and statutory damages,					
2	restitution, and disgorgement under the CLRA as appropriate under California Civil					
3	Code § 1780, pursuant to California Civil Code § 1782(d) ("Not less than 30 days					
4	after the commencement of an action for injunctive relief, and after compliance					
5	with subdivision (a), the consumer may amend his or her complaint without leave					
6	of court to include a request for damages).					
7	124. Pursuant to California Civil Code § 1780(d), attached hereto as Exhibit					
8	A is the affidavit showing that this action has been commenced in the proper forum.					
9	<u>COUNT 3</u>					
10	VIOLATION OF THE SONG-BEVERLY CONSUMER WARRANTY ACT					
11	FOR BREACH OF IMPLIED WARRANTY					
12	Cal Civ. Code §§ 1790, et seq.					
13	125. Plaintiff Aviles ("Plaintiff" for purposes of the California Class's					
14	Claims) repeats and realleges Paragraphs 1-94 as if fully set forth herein.					
15	126. Plaintiff brings this Count individually and on behalf of the other					
16	members of the California Class (the "Class," for purposes of this Count).					
17	127. The Class Vehicles are "consumer goods" within the meaning of Cal.					
18	Civ. Code § 1791(a).					
19	128. Ford is a "manufacturer" of the Class Vehicles within the meaning of					
20	Cal. Civ. Code § 1791(j).					
21	129. Ford impliedly warranted to Plaintiff and the other members of the					
22	Class that the Class Vehicles were "merchantable" within the meaning of Cal. Civ.					
23	Code §§ 1791.1(a) & 1792; however, the Class Vehicles are not of the quality that a					
24	buyer would reasonably expect.					
25	130. Cal. Civ. Code § 1791.1(a) states that: "Implied warranty of					
26	merchantability" or "implied warranty that goods are merchantable" means that the					
27	consumer goods meet each of the following:					
28	(1) Pass without objection in the trade under the contract description;					
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1	(2) Are fit for the ordinary purposes for which such goods are used;							
2								
2	 (3) Are adequately contained, packaged, and labeled; and (4) Conform to the promises or effirmations of fact made on the 							
3 4	(4) Conform to the promises or affirmations of fact made on the							
4 5	container or label.							
6	131. Ford breached the implied warranty of merchantability by selling and leasing Class Vehicles with the Throttle Defect.							
0 7	132. The Class Vehicles would not pass without objection in the automotive							
8	trade because they share a common design defect in that they are equipped with							
9	defective throttle bodies, leaving occupants of the Class Vehicles vulnerable to							
10	crashes, serious injury, or death.							
10	133. Because of the Throttle Defect, the Class Vehicles are not safe to drive							
11	and thus are not fit for ordinary purposes.							
12	134. The Class Vehicles were not adequately labeled because the labeling							
13	fails to disclose the Throttle Defect.							
15	135. Plaintiff Aviles, individually and on behalf of the other Class							
16	members, notified Ford of the Throttle Defect, and its corresponding breach of							
17	warranties, through a notice letter dated December 14, 2016, and delivered by							
18	Federal Express to Ford Motor Company in Dearborn, Michigan. Ford was also							
10	provided notice of the Throttle Defect through numerous complaints that it received							
20	directly and through its dealers, as well as its own internal engineering knowledge.							
20	136. Ford has had the opportunity to cure the defect in the Class Vehicles,							
21	but it has chosen not to do so. Giving Ford a chance to cure the defect is not							
22	practicable in this case and would serve only to delay this litigation, and is thus							
23	unnecessary.							
25	137. As a direct and proximate result of Ford's breach of the implied							
25 26	warranty of merchantability, Plaintiff and the other members of the Class received							
20	goods with a substantially impaired value.							
28	138. Plaintiff and the other members of the Class have been damaged as a							
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1	result of the diminished value of the Class Vehicles.						
2	139. Under Cal. Civ. Code §§ 1791.1(d) & 1794, Plaintiff and other						
3	members of the Class are entitled to damages and other legal and equitable relief,						
4	including, at their election, the purchase price of their Class Vehicles, or the						
5	overpayment or diminution in value of their Class Vehicles.						
6	140. Under Cal. Civ. Code § 1794, Plaintiff and the other members of the						
7	Class are entitled to costs and attorneys' fees.						
8	COUNT 4						
9	VIOLATION OF THE SONG-BEVERLY CONSUMER WARRANY ACT						
10	FOR BREACH OF EXPRESS WARRANTY						
11	Cal Civ. Code §§ 1790, et seq.						
12	141. Plaintiff Aviles ("Plaintiff" for purposes of the California Class's						
13	Claims) repeats and realleges Paragraphs 1-94 as if fully set forth herein.						
14	142. Plaintiff brings this Count individually and on behalf of the other						
15	members of the California Class (the "Class," for purposes of this Count).						
16	143. The Class Vehicles are "consumer goods" within the meaning of						
17	California Civil Code § 1791(a).						
18	144. Ford is a "manufacturer" of the Defective Vehicles within the meaning						
19	of California Civil Code § 1791(j).						
20	145. Plaintiff and the other members of the Class bought or leased Class						
21	Vehicles manufactured by Ford.						
22	146. Ford made express warranties to Plaintiff and the other members of the						
23	Class within the meaning of California Civil Code §§ 1791.2 and 1793.2.						
24	147. In its New Vehicle Limited Warranty, Ford expressly warranted that it						
25	would repair or replace defects in material or workmanship free of charge if they						
26	became apparent during the warranty period. Ford provides the following language						
27	in its 2014 Model Year Ford Warranty Guide: "[A]uthorized Ford Motor Company						
28	dealers will, without charge, repair, replace, or adjust all parts on your vehicle that						
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malfunction or fail during normal use during the applicable coverage period due toa manufacturing defect in factory-supplied materials or factory workmanship."

148. As set forth above in detail, the Class Vehicles share a uniform defect in that they are equipped with defective electronic throttle bodies which cause unsafe and unexpectedly sudden deceleration and stalling in the Class Vehicles.

6 149. The Class Vehicles are covered by Ford's express warranty. The
7 defect described herein substantially impairs the use, value, and safety of the Class
8 Vehicles to reasonable consumers, including Plaintiff and the other Class members.

9 150. Plaintiff Aviles, individually and on behalf of the other Class
10 members, notified Ford of the Throttle Defect, and its corresponding breach of
11 warranties, through a notice letter dated December 14, 2016, and delivered by
12 Federal Express to Ford Motor Company in Dearborn, Michigan. Ford was also
13 provided notice of the Throttle Defect through numerous complaints that it received
14 directly and through its dealers, as well as its own internal engineering knowledge.

15 151. Ford has had the opportunity to cure the defect in the Class Vehicles,
but it has chosen not to do so. Giving Ford a chance to cure the defect is not
practicable in this case and would serve only to delay this litigation, and is thus
unnecessary.

19 152. As a result of Ford's breach of its express warranties, Plaintiff and the
20 other members of the Class received goods that are unreasonably dangerous and
21 that have substantially impaired value. Plaintiff and the other members of the Class
22 have been damaged as a result of the diminished value of their Class Vehicles.

153. Pursuant to California Civil Code §§ 1793.2 & 1794, Plaintiff and the
other members of the Class are entitled to damages and other legal and equitable
relief, including, at their election, the purchase price of their Class Vehicles, or the
overpayment or diminution in value of their Class Vehicles.

27 154. Pursuant to California Civil Code § 1794, Plaintiff and the other
28 members of the Class are entitled to costs and attorneys' fees.

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1	<u>COUNT 5</u>								
2	FRAUDULENT OMISSION								
3	155. Plaintiff Aviles ("Plaintiff" for purposes of the California Class's								
4	Claims) repeats and realleges Paragraphs 1-94 as if fully set forth herein.								
5	156. Plaintiff brings this Count individually and on behalf of the other								
6	members of the California Class ("Class," for purposes of this Count).								
7	157. Ford was aware of the Throttle Defect when it marketed and sold the								
8	Class Vehicles to Plaintiff and the other members of the Class.								
9	158. Ford, as manufacturer of consumer products and motor vehicles, has a								
10	duty to disclose known defects and material safety information, such as the Throttle								
11	Defect, to Plaintiff and the other members of the Class.								
12	159. Having been aware of the Throttle Defect, and having known that								
13	Plaintiff and the other members of the Class could not have reasonably been								
14	expected to know of the Throttle Defect, Ford had a duty to disclose the defect to								
15	Plaintiff and other members of the Class in connection with the sale or lease of the								
16	Class Vehicles.								
17	160. Ford did not disclose the Throttle Defect to Plaintiff and the other								
18	members of the Class in connection with the sale and lease of the Class Vehicles.								
19	161. Plaintiff and the other members of the Class reasonably relied on Ford								
20	to perform its duty to disclose the known safety-related defects and other material								
21	defects with respect to the Class Vehicles.								
22	162. For the reasons set forth above, the Throttle Defect constitutes material								
23	information with respect to the sale or lease of the Class Vehicles.								
24	163. Had Plaintiff and the other members of the Class known of the								
25	Throttle Defect, they would not have purchased the Class Vehicles or would have								
26	paid less for the Class Vehicles.								
27	164. Through its omissions regarding the Throttle Defect, Ford intended to								
28	induce, and did induce, Plaintiff and the other members of the Class to either								
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1 purchase or lease a Class Vehicle that they otherwise would not have purchased or 2 leased, or pay more for a Class Vehicle than they otherwise would have paid. 3 165. As a direct and proximate result of Ford's omission, Plaintiff and the 4 other members of the Class have incurred damages in an amount to be proven at 5 trial. 6 COUNT 6 **UNJUST ENRICHMENT** 7 8 166. Plaintiff Aviles ("Plaintiff" for purposes of the California Class's 9 Claims) repeats and realleges Paragraphs 1-94 as if fully set forth herein. 10 167. Plaintiff brings this Count individually and on behalf of the other members of the California Cass (the "Class," for purposes of this Count). 11 12 168. Ford has benefitted from selling and leasing at an unjust profit defective Class Vehicles that had artificially inflated prices due to Ford's 13 14 concealment of the Throttle Defect, and Plaintiff and the other members of the 15 Class have overpaid for these vehicles. 16 169. Ford has received and retained unjust benefits from Plaintiff and the 17 other members of the Class, and inequity has resulted. 18 170. It is inequitable and unconscionable for Ford to retain these benefits. 19 171. Because Ford concealed its fraud and deception, Plaintiff and the other 20 members of the Class were not aware of the true facts concerning the Class 21 Vehicles and did not benefit from Ford's misconduct. 22 172. Ford knowingly accepted the unjust benefits of its wrongful conduct. 23 173. As a result of Ford's misconduct, the amount of its unjust enrichment 24 should be disgorged and returned to Plaintiff and the other members of the Class in 25 an amount to be proven at trial. 26 27 28

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1		<u>COUNT 7</u>						
2	VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW							
3	Cal. Bus. & Prof. Code §§ 17200, et seq.							
4	174.	Plaintiff Aviles ("Plaintiff" for purposes of the California Class's						
5	Claims) rep	eats and realleges Paragraphs 1-94 as if fully set forth herein.						
6	175.	Plaintiff brings this Count individually and on behalf of the other						
7	members of	the California Class ("Class," for purposes of this Count).						
8	176.	California Business and Professions Code § 17200 prohibits any						
9	"unlawful, u	unfair, or fraudulent business acts or practices."						
10	177.	Ford's conduct violated multiple statutes and the common law, as						
11	alleged here	ein.						
12	178.	Ford has violated § 17200 by knowingly selling Class Vehicles that						
13	include the	Throttle Defect that results in unsafe and unexpectedly sudden						
14	deceleration	and stalling.						
15	179.	Ford's conduct was unscrupulous, offended established public policy,						
16	and was fram	udulent.						
17	180.	The harm caused by Ford's conduct greatly outweighs any benefit to						
18	consumers.							
19	181.	Plaintiff relied on the omissions of Ford with respect to the quality and						
20	reliability of	f the Class Vehicles. Plaintiff and the other Class members would not						
21	have purcha	ased or leased their Class Vehicles, or paid as much for them, but for						
22	Ford's omis	ssions.						
23	182.	Ford concealed and failed to disclose material information about the						
24	Class Vehic	eles in a manner that is likely to, and in fact did, deceived consumers and						
25	the public.							
26	183.	All of the wrongful conduct alleged herein occurred in the conduct of						
27	Ford's busin	ness.						
28	184.	Plaintiff, individually and on behalf of the other Class members,						
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1	requests that this Court restore to Plaintiff and the other Class members any money							
2	acquired by unfair competition, including restitution and/or restitutionary							
3	disgorgement.							
4	2. <u>Claims Brought on Behalf of the Florida Class</u>							
5	<u>COUNT 8</u>							
6	VIOLATION OF THE FLORIDA DECEPTIVE							
7	AND UNFAIR TRADE PRACTICES ACT							
8	Fla. Stat. §§ 501.201, et seq.							
9	185. Plaintiffs Kiery and Kelder ("Plaintiffs," for the purposes of the							
10	Florida Class's claims) repeat and reallege paragraphs 1-94 as if fully set forth							
11	herein.							
12	186. Plaintiffs bring this Count individually and on behalf of the other							
13	members of the Florida Class (the "Class," for purposes of this Count).							
14	187. Plaintiffs are "consumers" within the meaning of Florida Deceptive							
15	and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. § 501.203(7).							
16	188. Ford is engaged in "trade or commerce" within the meaning of Fla.							
17	Stat. § 501.203(8).							
18	189. FDUTPA prohibits "[u]nfair methods of competition, unconscionable							
19	acts or practices, and unfair or deceptive acts or practices in the conduct of any							
20	trade or commerce" Fla. Stat. § 501.204(1).							
21	190. By the conduct described in detail above and incorporated herein, Ford							
22	engaged in unfair and deceptive trade practices that violated the FDUTPA.							
23	191. Ford's omissions regarding the Throttle Defect, described above, are							
24	material facts that a reasonable person would have considered in deciding whether							
25	or not to purchase or lease (or to pay the same price for) the Class Vehicles.							
26	192. Ford intended for Plaintiffs and the other members of the Class to rely							
27	on its omissions regarding the Throttle Defect.							
28	193. Plaintiffs and the other members of the Class justifiably acted or relied							
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to their detriment upon Ford's omissions of fact concerning the above-described
 Throttle Defect.

194. Had Ford disclosed all material information regarding the Throttle
Defect to Plaintiffs and the other members of the Class, Plaintiffs and the other
members of the Class would not have purchased or leased Class Vehicles, or would
have paid less to do so.

7 195. Ford's omissions have deceived Plaintiffs and the other members of
8 the Class, and those same business practices have deceived or are likely to deceived
9 members of the consuming public and the other members of the Class.

10 196. In addition to being deceptive, the business practices of Ford were
11 unfair because Ford knowingly sold Plaintiffs and the other members of the Class
12 vehicles that are inherently, and unreasonably, dangerous as a result of the Throttle
13 Defect.

14 197. The injuries to Plaintiffs and the other members of the Class are
15 substantial and greatly outweigh any alleged countervailing benefit to Plaintiffs and
16 the other members of the Class or to competition under all of the circumstances.
17 Moreover, in light of Ford's knowledge of the Throttle Defect, the injury is not one
18 that Plaintiffs or the other members of the Class could have reasonably avoided.

19 198. As a direct and proximate result of Ford's unfair and deceptive trade 20 practices, Plaintiffs and the other members of the Class have suffered ascertainable 21 loss and actual damages. Plaintiffs and the other members of the Class who 22 purchased or leased the Class Vehicles would not have purchased or leased the 23 Class Vehicles, or, alternatively, would have paid less for them had the truth about 24 the Throttle Defect been disclosed. Plaintiffs and the other members of the Class 25 also suffered diminished value of their vehicles. Plaintiffs and the other members 26 of the Class are entitled to recover actual damages, attorneys' fees and costs, and all 27 other relief allowed under Fla. Stat §§ 501.201, et seq.

1	<u>COUNT 9</u>							
2	BREACH OF EXPRESS WARRANTY							
3	Fla. Stat. §§ 672.313 and 680.21							
4	199. Plaintiffs Kiery and Kelder ("Plaintiffs," for the purposes of the							
5	Florida Class's claims) repeat and reallege Paragraphs 1-94 as if fully set forth							
6	herein.							
7	200. Plaintiffs bring this Count individually and on behalf of the other							
8	members of the Florida Class (the "Class," for purposes of this Count).							
9	201. Ford is and was at all relevant times a merchant with respect to the							
10	Class Vehicles.							
11	202. In its New Vehicle Limited Warranty, Ford expressly warranted that it							
12	would repair or replace defects in material or workmanship free of charge if they							
13	became apparent during the warranty period. Ford provides the following language							
14	in its 2014 Model Year Ford Warranty Guide: "[A]uthorized Ford Motor Company							
15	dealers will, without charge, repair, replace, or adjust all parts on your vehicle that							
16	malfunction or fail during normal use during the applicable coverage period due to							
17	a manufacturing defect in factory-supplied materials or factory workmanship."							
18	203. Ford's Limited Warranty was part of the basis of the bargain that was							
19	reached when Plaintiffs and the other Class members purchased or leased their							
20	Class Vehicles equipped with defective electronic throttle bodies.							
21	204. Ford breached the express warranty to repair defects in materials and							
22	workmanship within the Class Vehicles. Ford has not repaired, and has been							
23	unable to repair, the Class Vehicles' materials and workmanship defects.							
24	205. Plaintiff Aviles, individually and on behalf of the other Class							
25	members, notified Ford of the Throttle Defect, and its corresponding breach of							
26	warranties, through a notice letter dated December 14, 2016, and delivered by							
27	Federal Express to Ford Motor Company in Dearborn, Michigan. Ford was also							
28	provided notice of the Throttle Defect through numerous complaints that it received							

1 directly and through its dealers, as well as its own internal engineering knowledge. 2 Ford has not taken any measures to cure its warranty breaches to Plaintiffs and the 3 other Class members.

4 206. Furthermore, the Limited Warranty fails in its essential purpose 5 because the contractual remedy is insufficient to make Plaintiffs and the other Class 6 members whole and because Ford has failed and/or has refused to adequately provide the promised remedies within a reasonable time.

207. Accordingly, recovery by Plaintiffs and the other Class members is not 8 9 limited to the limited warranty of repair to parts defective in materials and 10 workmanship, and Plaintiffs, individually and on behalf of the other Class 11 members, seek all remedies allowable by law.

12 208. Also, and as alleged in more detail herein, at the time that Ford 13 warranted and sold the Class Vehicles it knew that the Class Vehicles did not 14 conform to the warranty and were inherently defective, and Ford improperly 15 concealed material facts regarding its Class Vehicles. Plaintiffs and the other Class 16 members were, therefore, induced to purchase or lease the Class Vehicles under 17 false pretenses.

18 209. Moreover, much of the damage flowing from the Class Vehicles 19 cannot be resolved through the limited remedy of repairs, as those incidental and 20 consequential damages have already been suffered due to Ford's improper conduct 21 as alleged herein, and due to its failure and/or continued failure to provide such 22 limited remedy within a reasonable time, and any limitation on Plaintiffs and the 23 other Class members' remedies would be insufficient to make them whole.

24 210. As a direct and proximate result of Ford's breach of its express 25 warranty, Plaintiffs and the other Class members have been damaged in an amount to be determined at trial. 26

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1	<u>COUNT 10</u>								
2	FRAUDULENT OMISSION								
3	211. Plaintiffs Kiery and Kelder ("Plaintiffs," for the purposes of the								
4	Florida Class's claims) repeat and reallege paragraphs 1-94 as if fully set forth								
5	herein.								
6	212. Plaintiffs bring this Count individually and on behalf of the other								
7	members of the Florida Class (the "Class," for purposes of this Count).								
8	213. Ford was aware of the Throttle Defect when it marketed and sold the								
9	Class Vehicles to Plaintiffs and the other members of the Class.								
10	214. Ford, as a manufacturer of consumer products and motor vehicles, has								
11	a duty to disclose known defects and material safety information, such as the								
12	Throttle Defect, to Plaintiffs and the other members of the Class.								
13	215. Having been aware of the Throttle Defect, and having known that								
14	Plaintiffs and the other members of the Class could not have reasonably been								
15	expected to know of the Throttle Defect, Ford had a duty to disclose the defect to								
16	Plaintiffs and other members of the Class in connection with the sale or lease of the								
17	Class Vehicles.								
18	216. Ford did not disclose the Throttle Defect to Plaintiffs and the other								
19	members of the Class in connection with the sale and lease of the Class Vehicles.								
20	217. Plaintiffs and the other members of the Class reasonably relied on Ford								
21	to perform its duty to disclose the known safety-related defects and other material								
22	defects with respect to the Class Vehicles.								
23	218. For the reasons set forth above, the Throttle Defect constitutes material								
24	information with respect to the sale or lease of the Class Vehicles.								
25	219. Had Plaintiffs and the other members of the Class known of the								
26	Throttle Defect, they would not have purchased the Class Vehicles or would have								
27	paid less for the Class Vehicles.								
28	220. Through its omissions regarding the Throttle Defect, Ford intended to								

1	induce, and did induce, Plaintiffs and the other members of the Class to either						
2	purchase or lease a Class Vehicle that they otherwise would not have purchased or						
3	leased, or pay more for a Class Vehicle than they otherwise would have paid. As a						
4	direct and proximate result of Ford's omission, Plaintiffs and the other members of						
5	the Class have incurred damages in an amount to be proven at trial.						
6	<u>COUNT 11</u>						
7	UNJUST ENRICHMENT						
8	221. Plaintiffs Kiery and Kelder ("Plaintiffs," for the purposes of the						
9	Florida Class's claims) repeat and reallege paragraphs 1-94 as if fully set forth						
10	herein.						
11	222. Plaintiffs bring this Count individually and on behalf of the other						
12	members of the Florida Class (the "Class," for purposes of this Count).						
13	223. Ford has benefitted from selling and leasing at an unjust profit						
14	defective Class Vehicles that had artificially inflated prices due to Ford's						
15	concealment of the Throttle Defect, and Plaintiffs and the other members of the						
16	Class have overpaid for these vehicles.						
17	224. Ford has received and retained unjust benefits from Plaintiffs and the						
18	other members of the Class, and inequity has resulted.						
19	225. It is inequitable and unconscionable for Ford to retain these benefits.						
20	226. Because Ford concealed its fraud and deception, Plaintiffs and the						
21	other members of the Class were not aware of the true facts concerning the Class						
22	Vehicles and did not benefit from Ford's misconduct.						
23	227. Ford knowingly accepted the unjust benefits of its wrongful conduct.						
24	228. As a result of Ford's misconduct, the amount of its unjust enrichment						
25	should be disgorged and returned to Plaintiffs and the other members of the Class in						
26	an amount to be proven at trial.						
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G	ase 8:17-cv-00281 Document 1 Filed 02/15/17 Page 50 of 57 Page ID #:50							
1	3. <u>Claims Brought on Behalf of the Alabama Class</u>							
2	5. <u>Claims Brought on Benan of the Alabama Class</u> <u>COUNT 12</u>							
2	BREACH OF EXPRESS WARRANTY							
4	Ala. Code. §§ 7-2-313 and 7-2A-210							
5	229. Plaintiff Cowen ("Plaintiff," for purposes of the Alabama Class's							
6	claims) repeats and realleges paragraphs 1-94 as if fully set forth herein.							
7	230. Plaintiff brings this Count individually and on behalf of the other							
8	members of the Alabama Class (the "Class," for purposes of this Count).							
9	231. Ford is and was at all relevant times a merchant with respect to the							
10	Class Vehicles.							
11	232. In its New Vehicle Limited Warranty, Ford expressly warranted that it							
12	would repair or replace defects in material or workmanship free of charge if they							
13	became apparent during the warranty period. Ford provides the following language							
14	in its 2014 Model Year Ford Warranty Guide: "[A]uthorized Ford Motor Company							
15	dealers will, without charge, repair, replace, or adjust all parts on your vehicle that							
16	malfunction or fail during normal use during the applicable coverage period due to							
17	a manufacturing defect in factory-supplied materials or factory workmanship."							
18	233. Ford's Limited Warranty was part of the basis of the bargain that was							
19	reached when Plaintiffs and the other Class members purchased or leased their							
20	Class Vehicles equipped with defective electronic throttle bodies.							
21	234. Ford breached its express warranty to repair defects in materials and							
22	workmanship within the Class Vehicles. Ford has not repaired, and has been							
23	unable to repair, the Class Vehicles' materials and workmanship defects.							
24	235. Plaintiff Aviles, individually and on behalf of the other Class							
25	members, notified Ford of the Throttle Defect, and its corresponding breach of							
26	warranties, through a notice letter dated December 14, 2016, and delivered by							
27	Federal Express to Ford Motor Company in Dearborn, Michigan. Ford was also							
28	provided notice of the Throttle Defect through numerous complaints that it received							
	- 49 -							

1 directly and through its dealers, as well as its own internal engineering knowledge. 2 Ford has not taken any measures to cure its warranty breaches to Plaintiff and the 3 other Class members.

4 236. Furthermore, the Limited Warranty fails in its essential purpose 5 because the contractual remedy is insufficient to make Plaintiff and the other Class 6 members whole and because Ford has failed and/or has refused to adequately provided the promised remedies within a reasonable time.

8 237. Accordingly, recovery by Plaintiff and the other Class members is not 9 limited to the limited warranty of repair to parts defective in materials and 10 workmanship, and Plaintiff, individually and on behalf of the other Class members, 11 seeks all remedies as allowed by law.

12 238. Also, as alleged in more detail herein, at the time that Ford warranted 13 and sold the Class Vehicles it knew that the Class Vehicles did not conform to the 14 warranty and were inherently defective, and Ford improperly concealed material 15 facts regarding its Class Vehicles. Plaintiff and the other Class members were 16 therefore induced to purchase or lease the Ford Vehicles under false pretenses.

17 239. Moreover, much of the damage flowing from the Class Vehicles 18 cannot be resolved through the limited remedy of repairs, as those incidental and 19 consequential damages have already been suffered due to Ford's improper conduct 20 as alleged herein, and due to its failure and/or continued failure to provide such 21 limited remedy within a reasonable time, and any limitation on Plaintiff and the 22 other Class members' remedies would be insufficient to make them whole.

23 240. As a direct and proximate result of Ford's breach of its express 24 warranty, Plaintiff and the other Class members have been damaged in an amount 25 to be determined at trial.

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1 COUNT 13 2 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY** 3 Ala. Code §§ 7-2-314 and 7-2A-212 4 241. Plaintiff Cowen ("Plaintiff," for purposes of the Alabama Class's 5 claims) repeats and realleges paragraphs 1-94 as if fully set forth herein. 6 242. Plaintiff brings this Count individually and on behalf of the other 7 members of the Alabama Class (the "Class," for purposes of this Count). 8 243. Ford is and was at all relevant times a merchant with respect to motor 9 vehicles under Ala. Code §§ 7-2-104 and 7-2A-103. 10 244. Pursuant to Ala. Code §§ 7-2-314 and 7-2A-212, a warranty that the 11 Class Vehicles were in merchantable condition was implied by law, and the Class 12 Vehicles were sold and leased subject to an implied warranty of merchantability. 13 245. The Class Vehicles did not comply with the implied warranty of 14 merchantability because, at the time of sale and at all times thereafter, they were 15 defective and not in merchantable condition, would not pass without objection in 16 the trade, and were not fit for the ordinary purpose for which vehicles were used. 17 Specifically, the Class Vehicles suffer from the Throttle Defect which causes stall 18 events and "limp home" engine throttle settings. 19 246. Plaintiff Aviles, individually and on behalf of the other Class 20 members, notified Ford of the Throttle Defect, and its corresponding breach of 21 warranties, through a notice letter dated December 14, 2016, and delivered by 22 Federal Express to Ford Motor Company in Dearborn, Michigan. Ford was also 23 provided notice of the Throttle Defect through numerous complaints that it received directly and through its dealers, as well as its own internal engineering knowledge. 24 25 Ford has not taken any measures to cure its warranty breaches to Plaintiffs and the 26 other Class members.

27 247. Plaintiff and the other Class members suffered injuries due to the
28 defective nature of the Class Vehicles and Ford's breach of the implied warranty of

1	merchantability.						
2	248. As a direct and proximate result of Ford's breach of the implied						
3	warranty of merchantability, Plaintiff and the other Class members have been						
4	damaged in an amount to be proven at trial.						
5	<u>COUNT 14</u>						
6	FRAUDULENT OMISSION						
7	249. Plaintiff Cowen ("Plaintiff," for purposes of the Alabama Class's						
8	claims) repeats and realleges paragraphs 1-94 as if fully set forth herein.						
9	250. Plaintiff brings this Count individually and on behalf of the other						
10	members of the Alabama Class (the "Class," for purposes of this Count).						
11	251. Ford was aware of the Throttle Defect within the Class Vehicles when						
12	it marketed and sold the Class Vehicles to Plaintiffs and the other members of the						
13	Class.						
14	252. Having been aware of the Throttle Defect within the Class Vehicles,						
15	and having known that Plaintiff and the other members of the Class could not have						
16	reasonably been expected to know of the Throttle Defect, Ford had a duty to						
17	disclose the defect to Plaintiff and the other members of the Class in connection						
18	with the sale or lease of the Class Vehicles.						
19	253. Ford did not disclose the Throttle Defect within the Class Vehicles to						
20	Plaintiff and the other members of the Class in connection with the sale or lease of						
21	the Class Vehicles.						
22	254. For the reasons set forth above, the Throttle Defect within the Class						
23	Vehicles comprises material information with respect to the sale or lease of the						
24	Class Vehicles.						
25	255. In purchasing and leasing the Class Vehicles, Plaintiff and the other						
26	members of the Class reasonably relied on Ford to disclose known material defects						
27	with respect to the Class Vehicles.						
28	256. Had Plaintiff and the other members of the Class known of the						

Throttle Defect within the Class Vehicles, they would have not purchased or leased
 the Class Vehicles, or would have paid less for the Class Vehicles.

257. Through its omissions regarding the Throttle Defect within the Class
Vehicles, Ford intended to induce, and did induce, Plaintiff and the other members
of the Class to either purchase or lease a Class Vehicle that they otherwise would
not have purchased, or pay more for a Class Vehicle than they otherwise would
have paid.

8 258. As a direct and proximate result of Ford's omissions, Plaintiff and the
9 other members of the Class either overpaid for the Class Vehicles or would not
10 have purchased the Class Vehicles at all if the Throttle Defect had been disclosed to
11 them, and, therefore, have incurred damages in an amount to be determined at trial.

<u>COUNT 15</u>

UNJUST ENRICHMENT

14 259. Plaintiff Cowen ("Plaintiff," for purposes of the Alabama Class's15 claims) repeats and realleges paragraphs 1-94 as if fully set forth herein.

16 260. Plaintiff brings this Count individually and on behalf of the other
17 members of the Alabama Class (the "Class," for purposes of this Count).

18 261. Ford has benefitted from selling and leasing at an unjust profit
19 defective Class Vehicles that had artificially inflated prices due to Ford's
20 concealment of the Throttle Defect, and Plaintiff and the other members of the
21 Class have overpaid for these vehicles.

22 262. Ford has received and retained unjust benefits from Plaintiff and the23 other members of the Class, and inequity has resulted.

263. It is inequitable and unconscionable for Ford to retain these benefits.264. Because Ford concealed its fraud and deception, Plaintiff and the other

26 members of the Class were not aware of the true facts concerning the Class27 Vehicles and did not benefit from Ford's misconduct.

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265. Ford knowingly accepted the unjust benefits of its wrongful conduct.

266. As a result of Ford's misconduct, the amount of its unjust enrichment
 should be disgorged and returned to Plaintiff and the other members of the Class in
 an amount to be proven at trial.

VIII. PRAYER FOR RELIEF

5 WHEREFORE, Plaintiffs, individually and on behalf of the other members
6 of the Nationwide and the Statewide Classes that they respectively seek to
7 represent, respectfully request that the Court enter judgment in their favor and
8 against Defendant Ford Motor Company, as follows:

9 a. Declare that the claims alleged herein may be maintained as a class
10 action under Rule 23 of the Federal Rules of Civil Procedure, and issue an order
11 certifying one or more Classes as defined above;

b. Appoint Plaintiffs as the representatives of the Classes and theircounsel as Class counsel;

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c. Award Plaintiffs and Class members actual damages sustained;

d. Award Plaintiffs and Class members such additional damages over and
above the amount of their actual damages, such as punitive and statutory damages,
that are authorized and warranted by law;

18 e. Grant restitution to Plaintiffs and the other Class members and require
19 Defendants to disgorge inequitable gains;

f. Grant appropriate injunctive and/or declaratory relief, including,
without limitation, an order that requires Ford to repair, recall, and/or replace the
Class Vehicles;

g. Award Plaintiffs and the other Class members both pre- and postjudgment interest on any amounts awarded;

h. Award Plaintiffs and the other Class members their reasonable
attorneys' fees and reimbursement of all costs for the prosecution of this action; and
i. Award such other relief as this Court deems just and appropriate.

ç	ase 8::	17-cv-00281	Document 1	Filed 02/15/17	Page 56 of 57	Page ID #:56				
1	IX. JURY DEMAND									
2	Plaintiffs hereby demand a trial by jury on all issues so triable.									
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4										
5	DAT	ED: Februa	ary 15, 2017	\mathcal{A}	700					
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7				David S. Stel	lings					
8				David S. Stel	lings (<i>pro hac</i>	<i>vice</i> to be filed)				
9				Jason L. Lich	ntman (<i>pro hac</i>	vice to be filed)				
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18				-	(415) 956-1000					
19				fvincent@lch	<u>ib.com</u>					
20					*	ac vice to be filed)				
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23				Nashville, TN	N 37212					
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1		
		W. Daniel "Dee" Miles, III (<i>pro hac vice</i> motion to be filed)
2		H. Clay Barnett, III (<i>pro hac vice</i>
3		motion to be filed)
4		Archie I. Grubb, II (pro hac vice
5		motion to be filed)
		Andrew E. Brashier (<i>pro hac vice</i>
6		motion to be filed) BEASLEY, ALLEN, CROW,
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