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9 **UNITED STATES DISTRICT COURT**

10 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

11 SILVIA FRANCO, individually and
on behalf of all others similarly
12 situated,

13 Plaintiff,

14 v.

15 FORD MOTOR COMPANY,

16 Defendant.

Case No. '17CV161 GPC MDD

CLASS ACTION

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

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1 Plaintiff Silvia Franco (“Plaintiff”), individually and on behalf of all others
2 similarly situated, upon personal knowledge of the facts pertaining to herself and
3 on information and belief as to all other matters, by and through undersigned
4 counsel, hereby brings this Class Action Complaint against Defendant Ford
5 Motor Company (“Ford” or “Defendant”), and alleges as follows:

6 **NATURE OF THE CASE**

7 1. The Ford, Lincoln and Mercury automobiles at issue are prone to
8 rapid unintended deceleration, which poses a serious safety risk to the vehicle’s
9 occupants and other motorists.

10 2. Since the release of certain of its 2009 model year vehicles, Ford
11 has marketed, sold and equipped Ford, Lincoln, and Mercury vehicles with
12 defective electronic throttle body control systems (“ETB”). Ford has also failed
13 to install appropriate features to mitigate the risk of sudden unintended
14 deceleration (“SUD”). Ford has not fixed the SUD problem, adequately warned
15 purchasers of the SUD hazard, nor adequately instructed drivers about how to
16 handle SUD. Rather, it has downplayed and covered up the problem, has not
17 repaired the Defective Vehicles, and has not offered to reimburse the Defective
18 Vehicle owners for costs they incurred to identify and repair the defect.

19 3. Ford has long known of the SUD defect, yet has failed to disclose
20 the existence of this defect to Plaintiff, other Class members, or the public.
21 Instead, Ford has engaged in a secret recall, euphemistically called a “customer
22 satisfaction program.” The program, which covered only some of the affected
23 models, provided inadequate relief. The customer satisfaction program also
24 continued to mislead Defective Vehicle owners because owners whose vehicles
25 were not included in the program were lead to believe their vehicles were not
26 affected, when they were. Not only that, Ford continues to equip the subject
27 vehicles with the defective and dangerous ETBs. As a result, Ford continues to
28 leave millions of drivers at a heightened risk of an SUD event. Even with its

1 extended warranty program for some vehicles, Ford downplays its significance.
2 Rather than admitting its vehicles are actually dangerous and defective or
3 announcing a recall for all Defective Vehicles, Ford deemed the warranty
4 program a “customer satisfaction program” resulting from electrical
5 contamination that did not present an “unreasonable risk to motor vehicle
6 safety.” Ford does this because if it were to admit the problem, it would have to
7 fix far more vehicles at considerable cost and further negative publicity.

8 4. Ford’s conduct has had the effect of denying those who own or lease
9 Ford and Lincoln vehicles their full rights under the law. These rights include
10 consumers’ pre-purchase or lease rights to fair and reasonable information as
11 well as post-purchase or lease rights, including rights under the Song-Beverly
12 Consumer Warranty Act, commonly known as California’s lemon law. Ford also
13 has failed to fully, adequately, and effectively tell consumers what they must do
14 if the vehicles they are driving unintentionally and suddenly decelerate. To do so,
15 and to do so effectively, would protect lives, but would also constitute an
16 admission of a problem, so Ford refuses to act responsibly and morally, choosing
17 profit instead. Ford has chosen to deceive its customers rather than educate them
18 with life-saving information about its vehicles.

19 5. This is a class action brought on behalf of all consumers who
20 purchased or leased a Ford, Lincoln, or Mercury vehicle equipped with the
21 defective electronic throttle body system at issue (the “Defective Vehicles”).
22 Upon information and belief, the Defective Vehicles include:

- 23 • 2011-2014 Lincoln Mark LT with 3.5L and 3.7L engines;
- 24 • 2011-2016 Lincoln MKX with 3.7L engine;
- 25 • 2013-2016 Lincoln MKZ with 3.7L engine (base and Black label
26 models);
- 27 • 2013-2016 Lincoln MKT with 3.7L engine (base model);
- 28 • 2013-2015 Lincoln MKS with 3.7L engine (base model);

- 1 • 2011-2016 Ford Edge with 3.5L engine;
- 2 • 2011-2014 Ford Edge with 3.7L engine;
- 3 • 2015-2016 Ford Mustang with 3.7L engine;
- 4 • 2011-2014 Ford Mustang (base, GT and Shelby models);
- 5 • 2013-2015 Ford Taurus with 3.5L engine;
- 6 • 2011-2014 Ford F-150 with 3.7L engine;
- 7 • 2015-2016 Ford F-150 with 3.5L Duratec V6 engine; and
- 8 • 2011-2016 Ford Explorer with 3.5L Duratec V6 engine.

9 Excluded from the proposed Class are those who have claims for personal injury
10 or wrongful death as a result of the SUD of their Defective Vehicle.

11 6. Plaintiff, on behalf of herself, all others similarly situated, and the
12 general public, seeks damages and equitable relief, including an injunction
13 requiring Ford to fix all Defective Vehicles, replace the dangerous and defective
14 ETB, educate consumers through a corrective advertising campaign about the
15 true nature and dangers posed by SUD in the Defective Vehicles, educate
16 consumers about what they should do in the event they experience an SUD
17 event, and educate consumers about their pre-purchase (or lease) legal rights and
18 their post-purchase (or lease) legal rights once the true facts are known to them
19 so that Class members can take advantage of those rights.

20 **JURISDICTION AND VENUE**

21 7. The Court has jurisdiction over Plaintiff's claims pursuant to
22 28 U.S.C. §1332(d), because: (a) this action is brought as a proposed class action
23 under Fed. R. Civ. P. 23; (b) the proposed Class includes more than 100
24 members; (c) many of the proposed Class members are citizens of states that are
25 diverse from Ford's citizenship; and (d) the matter in controversy exceeds
26 \$5,000,000, exclusive of interest and costs.

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28

1 8. Venue is proper in this judicial District under 28 U.S.C. §1391(a)
 2 because a substantial part of the challenged conduct or omissions giving rise to
 3 claims occurred and/or emanated from this District, and Ford has caused harm to
 4 Class members residing in this District.

5 PARTIES

6 9. Plaintiff Silvia Franco is a resident of the County of San Diego,
 7 State of California. In 2014, Ms. Franco purchased a 2012 Ford Explorer with a
 8 3.5L Duratec V6 engine from Perry Ford, located at 2050 National City Blvd.,
 9 National City, CA 91950. In or around June 2016, Ms. Franco was driving her
 10 Ford Explorer South on Interstate 5 when the vehicle suddenly and without
 11 warning experienced an SUD event. Since that first time, Ms. Franco has
 12 experienced two other SUD events while driving her Ford Explorer. Ms. Franco
 13 purchased her vehicle believing it was safe. She lost money and property as a
 14 result of Ford's conduct. She would not have purchased her Ford Explorer if she
 15 knew it was unsafe and potentially deadly to her and others because it contains a
 16 defective ETB that leads to SUD without warning.

17 10. Defendant Ford Motor Company ("Ford") is incorporated in the
 18 State of Delaware and is headquartered in Dearborn, Michigan. Ford sells,
 19 markets, distributes, and services the Defective Vehicles.

20 FACTUAL BACKGROUND

21 *Electronic Throttle Control Systems and Electronic Throttle Bodies*

22 11. An electronic throttle control ("ETC") electronically connects the
 23 accelerator pedal to the throttle to control the airflow to the engine. A butterfly
 24 valve in the ETC opens and closes to increase or decrease the amount of air
 25 flowing into the engine.

26 12. When working correctly, if the driver presses on the accelerator
 27 pedal, the throttle plate rotates within the throttle body, allowing more air into
 28 the engine. As the driver presses down on the gas pedal to accelerate, a sensor

1 called a “throttle position” sensor receives a signal relative to where the pedal is,
2 ranging from all the way up (zero acceleration), to all the way down (full
3 acceleration). This sensor relays this pedal position information to the car’s main
4 computer, which is how the computer knows what to tell the fuel injection
5 system in terms of how much more or less fuel to inject into the system.

6 13. The ETC computer technology replaced safe and reliable cabling,
7 which mechanically connected the accelerator pedal to the throttle valve.

8 14. An ETC system has three components: (1) an accelerator pedal
9 module; (2) the ETB throttle valve that can be opened and closed by an electric
10 motor; and (3) an engine control module (“ECM”).

11 15. The ECM uses software to determine the required throttle opening
12 position by calculating data measured by other sensors, including the accelerator
13 pedal position sensor, engine speed sensor, vehicle speed sensor, and cruise
14 control mechanism.

15 16. The ETB has position sensors, which provide electronic signals to
16 the ECM indicating the position of the vehicle’s throttle. Accordingly, the ETB
17 controls the position of the throttle valve, which in turn manages the amount of
18 air entering the engine.

19 17. If the ETC is not working properly, including as a result of
20 problems with computer code or electrical connectivity, the signal misinterprets
21 the vehicle’s throttle position, which causes the vehicle to unintentionally
22 decelerate.

23 18. When a major system in the Defective Vehicles fails, the vehicle’s
24 onboard computer causes the vehicle to go into the Failure Mode Effects
25 Management (“FMEM”) mode. The vehicle goes into the FNEM mode when
26 electrical connectivity fails, the ETB becomes stuck, the Malfunction Indicator
27 Lamp (“MIL”) or Wrench light will illuminate, the vehicle may enter a “limp
28 home” mode, and engine power and vehicle speed are reduced by the vehicle’s

1 onboard computer, which is programmed to limit the engine's RPMs in the event
2 of a failure. Ford's trade name for this feature is Failure Mode Effect
3 Management ("FMEM") mode.

4 19. Delphi is Ford's ETB supplier for the Defective Vehicles at issue.

5 20. Beginning in 2009, Ford began using Delphi Gen 6 ETBs. The
6 Defective Vehicles at issue all contain Delphi Gen 6 ETBs (parts numbers
7 AT4Z-9E926-A and AT4Z-9E926-B), one of which is pictured below:



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18
**Delphi Gen 6 Electronic Throttle Control Valve
with Non-Contacting Throttle Position Sensor**

19
The Defective ETBs Render the Ford Vehicles Unsafe

20 21. Including because of investigations by the National Highway Traffic
21 Safety Administration ("NHTSA"), the North Carolina Consumers Council
22 ("NCCC"), thousands of online complaints, and tens of thousands of claims
23 made by Defective Vehicle owners to Ford and its authorized dealers, Ford has
24 known about the ETB defect and resulting SUD events for many years.

25 22. Despite being on notice of the widespread problem and uniform
26 defect, Ford has never issued a recall or told owners or lessees about the
27 dangerous propensity of the Defective Vehicles to fail and experience harrowing
28 SUD events. Instead, Ford has attempted to sweep this life-threatening issue

1 under the rug, and continues to manufacture cars with the defective ETBs.

2 23. In August 2012, the North Carolina Consumers Council officially
3 petitioned NHTSA for a defect investigation into ETB failures in 2005-2012
4 Ford Escape vehicles. According to NCCC, it had received numerous complaints
5 of repeated SUD incidents, which Ford dealers diagnosed as failed throttle
6 bodies.¹ Ford dealers also attributed the defect to the same trouble codes – P2111
7 and P2112 – present in the onboard computer system. These trouble codes
8 identified by Ford indicate the electronic throttle actuator control sticking open
9 or closed.

10 24. In February 2013, NHTSA announced an investigation into 725,000
11 model year Ford Escape and Fusion, and Mercury Mariner and Milan vehicles
12 over engine surging and stalling due to the defective ETBs. According to
13 NHTSA, its Office of Defect Investigation identified 123 unique reports of
14 reduced motive power or vehicle stall, with an increasing trend.²

15 25. On May 10, 2013, Ford responded to NHTSA by flatly rejecting any
16 seriousness of sudden unintended deceleration: “Ford does not believe that a
17 vehicle experiencing a throttle body issue that results in FMEM [failure mode
18 effects management] mode presents an unreasonable risk to motor vehicle safety.
19 Ford’s electronic throttle control strategy allows the engine to operate and
20 provides the driver with some amount of vehicle mobility to maneuver their
21 vehicle to a safe location, even in the most severe FMEM mode.”

22 26. Despite 12,000 complaints about SUD in Ford vehicles (over 10,000
23 of which Ford admitted previously possessing), including with Ford Escape and
24 Ford Fusion vehicles, in February 2014, NHTSA announced it would not force
25 Ford to issue a recall. Instead, it relied on Ford’s assurances that a customer
26

27 ¹ <http://www.prweb.com/releases/2012/9/prweb9923793.htm>

28 ² <http://www-odi.nhtsa.dot.gov/acms/cs/jaxrs/download/doc/UCM433980/INOA-PE13003-8737.PDF>

1 satisfaction program would fully address the danger and defect. Nevertheless,
2 NHTSA made clear “the closing of this investigation does not constitute a
3 finding that a safety-related defect does not exist.”

4 27. Through the issuance of two limited Customer Satisfaction
5 Programs in 2014, Ford has admitted the ETB on certain of the Defective
6 Vehicles leads to sudden unintended deceleration. However, Ford has failed to
7 adequately inform consumers of the true nature of the defect, the number of
8 vehicles and models actually affected, and continues to offer inadequate
9 remedies.

10 28. To appease NHTSA, in March 2014, Ford issued “Customer
11 Satisfaction Program 13N03.” The 13N03 program applied only to limited
12 vehicles with the defective ETBs (2009-2013 model year Ford Escape, Ford
13 Fusion, Mercury Mariner, and Mercury Milan vehicles), did not automatically
14 reimburse owners for expenses relating to SUD events, did not notify all affected
15 vehicle owners of the dangerous propensity of their vehicles to experience SUD,
16 and was not a mandatory recall providing all vehicles with non-defective ETBs.
17 The program merely extended warranty coverage of the ETB – forcing
18 consumers to wait for their ETBs to break before the warranty coverage has any
19 impact. That leaves drivers at risk of SUD. Ford never admitted its ETB was
20 dangerous or defective. Instead, Ford blamed the issue on material buildup for
21 ETB contacts that results in losing connectivity and engine power. In its letter to
22 owners, Ford disguised what would happen when losing connectivity: “Your
23 vehicle may develop contamination on the internal motor contacts of the Throttle
24 Body, resulting in intermittent electrical connectivity.” Ford’s “fix” of providing
25 a software update – and only then to complaining owners – did nothing to correct
26 the root cause of the problem, the defective ETB.

27 29. In or around May 2014, Ford announced a follow-up “customer
28 satisfaction program” – 13B17. Ford’s letter accompanying the 13B17 program

1 continued to downplay and disguise the seriousness of SUD and root cause of the
2 ETB defect:

3 In the interest of your satisfaction, Ford Motor Company has
4 developed an updated powertrain calibration strategy that will
5 allow more engine power based on driver input and vehicle
6 performance. Ford is providing the updated calibration to you at
7 no charge. This program is in addition to the CSB 13N03
8 announced earlier this year, which extends the warranty on the
Throttle Body to a total of 10 years or 150,000 miles from the
warranty start date, whichever occurs first.

9 The May 2014 program also did not include all vehicles with the defective ETBs.
10 Furthermore, Ford continued to blame the defect and SUD on contamination
11 resulting in intermittent connectivity, and it did not offer to address the root
12 cause of the dangerous deceleration by replacing the defective ETBs.

13 30. Customer Satisfaction Programs 13N03 and 13B17 did not cover
14 many of the Defective Vehicles (*e.g.*, Ford Explorer vehicles) even though they
15 contain the materially identical and defective ETB.

16 31. The 2014 Customer Satisfaction Programs were not formal recalls
17 and were not widely publicized. Rather, Ford's efforts to notify affected
18 individuals of the 2014 programs consisted solely of sending letters to certain
19 owners of certain affected Defective Vehicles based on address information
20 obtained from a third party. Accordingly, by design, the 2014 programs did not
21 reach numerous affected Class members. Additionally, the relief provided under
22 the 2014 programs was inadequate and unnecessarily limited.

23 32. Contrary to Ford's statements to NHTSA and in its customer
24 satisfaction letter, there are widespread complaints about unsafe SUD events
25 with the Defective Vehicles:

- 26 • i have 2011 ford edge limited with 54k mileage. Im going
27 through same situation right now. car starts to decelerate all of
28 a sudden and it comes with message all wheel drive off and a
ranch sign. first time i had this issue was on 2/20/16 when i

1 was 7 month pregnant and on my way to my baby shower. i
 2 called my dealer ad they said they can check the car but unless
 3 they can replicate the issue they might not be able to help at
 4 all. my husband started driving the car and it seemed problem
 5 just went away. well we were wrong because the problem
 6 came back again from last week and this time we were in
 7 highway and we had our 12 weeks old son in the car. the car
 8 is at the dealer currently and apparently they think the issue is
 9 related to throttle body and its going to cost me at least
 10 \$700.00 and not covered by any types of warranty. I'm
 11 surprise ford hasn't been sued multiple times already since its
 12 a known issue and lots of ford owner been affected by it. the
 13 service and customer satisfaction department are not willing
 14 to help or acknowledge that its a safety issue. i think they are
 15 waiting for something really bad to happen to their client
 16 before they are willing to fix it.³

- 17 • While riding on highway 441 in McIntyre, GA on my way
 18 back from a funeral, all of a sudden my car stops accelerating
 19 and low engine oil pressure message displays. Cars and big 18
 20 wheelers are zooming by, however I was able to coast to the
 21 side of the road where the car shut off. I tried starting the car
 22 back up several times and it would just shut back off. The
 23 police officer that stopped to assist checked the oil and
 24 confirm I had plenty of oil as I'd just had an oil change the
 25 day before. The car had to be towed to a nearby shop where it
 26 remains. I had to pay for a rental, now going on a week. I
 27 contacted Ford and described the problem. The representative
 28 was very quick to tell me...oh I see that you no longer have a
 warranty but let me look to see if I can find any recalls
 associated. After a very brief pause he came back online to
 tell me there are no recalls that would be associated with
 anything like this happening to the vehicle. This is absolutely
 ridiculous. I look online and see many other owners
 experience the same/very similar thing....come on Ford this is

³ http://www.carcomplaints.com/Ford/Edge/2011/engine/loses_power_wrench_light_on.shtml

1 not just some freak thing that happened to me. This could
 2 very well have been a FAR MORE serious situation had those
 3 vehicles not been able to go around me in time to miss hitting
 4 my vehicle. Take some responsibility here. I've been a loyal
 5 FORD customer for YEARS!!!! And there is nothing they are
 6 willing to do other than shrug it off. Well I'm afraid that one
 7 day (if not already) your conscientious is going to be full of
 "we should have or we could have". Lives are at stake here,
 give me a break!⁴

- 8 • While driving in the interstate at 45mph, out of nowhere, awd
 9 off light then wrench light comes on, vehicle loses all
 10 acceleration, engine idles rough, had to turn hazard light on,
 11 coast to a stop, put in park, turn off engine, and restart. Did
 12 this 3 separate times today alone....very dangerous on the
 13 interstate. Has done this in the past several times as well.
 14 Stopped at Advance Auto, the hooked up computer and code
 15 read, "throttle body" . I have read dozens more complaints
 16 about this same problem. Needs recalled before someone is
 hurt or killed. Very dangerous problem, not to mention
 expensive.⁵
- 17 • My wife drove this 2016 Explorer for about 10 months and
 18 put only 5500 miles on it. A couple weeks ago, the vehicle
 19 lost power in the middle of a busy intersection. Luckily, she
 20 was able to pull to the side of the road without being
 21 clobbered by another car. The now infamous "wrench" light
 22 came on and the vehicle would only idle at about 2 mph. No
 23 response to the gas pedal at all. We had the vehicle towed to
 24 the Ford dealer. They told us it was a issue with the software
 25 that controls the electronic throttle. The dealer flashed some
 26 new control code and called it good ("16B32D Reprogram
 PCM using IDS release 102.02 or higher"). The vehicle has
 27 exhibited some strange quirks, like an erratic idle at stop
 28 lights, since getting the new software. Took it back to the
 dealer, but they insist it can take up to 500 miles before the

4 *Id.*

5 *Id.*

1 computer learns our driving style again and that it will start
 2 performing normal sooner or later. My wife won't drive the
 3 vehicle anymore. I don't blame her. What if the vehicle loses
 4 power again turning left in front of a semi or trying to pass
 5 someone on a two lane road. I've been a Ford man my whole
 6 life, but I think that's about to change. Thinking hard about
 7 trading in the 2016 Explorer on a 2017 Four Runner, despite
 8 having to take a \$12,000 bath on the Explorer.⁶

- 9 • Nothing quite like driving home from Lowes on I-95 going
 10 70MPH and having your new car JOLT and then lose power.
 11 The Wrench symbol appeared and said "Check Manual" and
 12 then all power was gone. The Airbag light also lit up. We
 13 pulled off into some gas station and restarted the vehicle a few
 14 times. Eventually, it allowed the power back on and we
 15 managed to drive it home. It was towed out of my driveway
 16 this morning to the dealership to be checked. They said they
 17 know of the issue and will get back to us with an estimated
 18 repair date. AND NOW... though making payments on a new
 19 car- i YET AGAIN do not have a car!! (This is the second
 20 issue with this vehicle)

21 The entire reason we purchased a new car was so that when
 22 traveling with our 18 month old we did not have these types
 23 of issues. It is completely unacceptable that you type the
 24 problem into google and it is a COMMON PROBLEM WITH
 25 THIS CAR? why are you selling these vehicles without fixing
 26 this problem? If it had been a busier time of day.. we would
 27 have easily been in an accident.... Glad Ford Motor Company
 28 is really concerned about the safety of their vehicles. We
 purchased based on safety ratings... perhaps whoever rates
 them needs to be on this website to see just how NOT SAFE
 this car really is. How am I supposed to put my baby in the
 backseat and know this wont occur??⁷

⁶ http://www.carcomplaints.com/Ford/Explorer/2016/engine/wrench_light_on.shtml

⁷ *Id.*

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- Wife was on the highway on the way home at night when the same thing happened to everyone else. Luckily she didn't get rear ended from the sudden slow down on the highway. If this is a recurring problem (which it seems to be) not sure why more isn't being done to make owners more aware and to bring in to fix the problem.⁸
- Just bought a new 2016 Ford Explored Limited last March 2016. Today July 14, 2016 while I was driving with my wife and 2 sons on a 45 mile/hr busy road the engine just turned off and a wrench and air bag light appeared on the screen with a message to see owner's manual. The gas pedal would not work but the AC and radio was still on, it seemed like the car was on "neutral" mode, thankfully it was after rush hour so the traffic was light and I was able to steer the car to the middle center lane. Turned the car on and off maybe 3 times before it went away and we were able to drive the car. As soon as we got home, got online and saw all these posts about the same issue. Will call the dealership tomorrow, I don't trust driving on the highway and this happens. Hopefully they can shed some light as to what needs to be done, but by the recent posts here it seems like this is a major issue that Ford is dealing with. I just don't understand why they still sell these cars if they know there is an issue with the "powertrain".⁹
- I'm from Central California and a new owner of a 2016 Explorer 4wd which I purchased from our Ford dealership here in town back at the end of January. I truly love the suv but I have a problem with it, about three and a half weeks ago it stalled: on my entering the freeway it lost all power and floored would only travel 5 mph max. To make a long story short I pulled off and turned it off and restarted and it ran fine straight to the dealership. After about a day and a half they notified me that the problem was the throttle body, needed replacing. The part was on back order and it would not arrive

⁸ *Id.*
⁹ *Id.*

1 possibly until the end of April. The Explorer only has 5,000
2 miles. Anyone else encounter that problem?¹⁰

- 3 • While driving on the highway at approx. 60mph my Ford
4 2016 F150 3.5L V6 lurched and stalled, experiencing a
5 complete loss of power, throttle control and acceleration. This
6 was the 7th throttle malfunction my F150 has experienced in
7 the past 5 months. Each malfunction exactly the same. Since I
8 am now forced to only travel in the far right lanes for safety, I
9 had enough remaining momentum to veer my F150 off of the
10 highway and bring it to a complete stop. With some effort my
11 F150 struggled but was able to restart and traveling a low
12 speeds I made it safely home. Due to the dangerous nature of
13 this incident I have taken my F150 to the dealership twice so
14 far. Ford believes the issue is the electronic throttle body, but
15 they have been unable to fix the problem. Most recently I
16 received my F150 from the dealer only 4 short days ago
17 where they replaced the electronic throttle body, but it had no
18 effect, the problem still exists. The malfunction only occurs
19 during the most dangerous periods of driving, while on the
20 highway/freeway. This malfunction puts the safety of the
21 drivers and their families at risk unnecessarily. I have avoided
22 collisions only by driving and staying in the far right lane at
23 all times. It is only a matter of time before someone else
24 experiences this problem traveling at 65mph on the highway
25 and due to a sudden loss of power and complete acceleration
26 causes a significant traffic accident. I hope this never happens
27 but it is my grave and real concern for my own welfare every
28 time I drive my 2016 F150.¹¹
- Was stopped at red light in greensboro nc. Light turned green
and I started to drive straight through the intersection when
there was a complete loss of throttle response. I had to finish
going through the intersection by momentum of the vehicle
and gravity since there was no power. Fortunately there was

¹⁰ <http://www.explorerforum.com/forums/index.php?threads/2016-explorer-throttle-body-problems.444245/>

¹¹ <http://www.carcomplaints.com/Ford/F-150/2016/engine/engine.shtml>

1 no one else at the intersection or I'm sure I would have been
 2 hit. Was told by local Ford dealer, green Ford, problem was a
 3 defective "throttle body". 2nd Ford vehicle I have been in, in
 4 less than a month, that this has happened (2015 F150-same
 5 defect - throttle body). Huge concern for safety of those of us
 who drive Ford.¹²

6 33. Ford warrants, represents and emphasizes "safety" as a key feature
 7 of its vehicles. Ford has engaged in a long term advertising campaign in which it
 8 promised using advanced technology to produce very safe vehicles, that it
 9 prioritizes safety, and that it continually strives to make its vehicles safer. For
 10 example, Ford has continually utilized an advertising and branding campaign
 11 focused on safety, which is highlighted throughout vehicles brochures, and
 12 throughout Ford's websites, social media, television advertisements,
 13 nontraditional marketing, and even branding slogans ("Quality, Green, Safe and
 14 Smart") that are designed to increase customer awareness of Ford's purported
 15 emphasis on safety.

16 34. Ford is aware that safety is of primary importance to car purchasers,
 17 and is therefore "particularly focused on improving consumers' awareness of the
 18 Company's excellent quality, safety, environmental and social performance."
 19 Ford has utilized advertising campaigns which highlight safety, one of "Ford's
 20 four key brand pillars."

21 **CLASS ACTION ALLEGATIONS**

22 35. Plaintiff brings this class action pursuant to Fed. R. Civ. P. 23 on
 23 behalf of a proposed Nationwide Class defined as:

24 All persons, entities or organizations who own or owned,
 25 purchase(d) or lease(d) a Defective Vehicle in any of the fifty
 26 States, the District of Columbia, Puerto Rico and all other United
 States territories and possessions.

27
 28 ¹² *Id.*

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1 36. In the alternative to the Nationwide Class, Plaintiff brings this class
2 action pursuant to Fed. R. Civ. P. 23 on behalf of a proposed California Class
3 defined as:

4 All persons, entities or organizations who own or owned,
5 purchase(d) or lease(d) a Defective Vehicle in California.

6 37. Excluded from the Classes are: (a) Ford, its officers, directors and
7 employees; its affiliates and affiliates' officers, directors and employees; its
8 distributors and distributors' officers, directors and employees; and Ford Dealers
9 and Ford Dealers' officers and directors; (b) Plaintiff's Counsel; (c) judicial
10 officers and their immediate family members and associated court staff assigned
11 to this case; and (d) persons or entities who or which timely and properly
12 excluded themselves from the Class.

13 38. Certification of Plaintiff's claims for classwide treatment is
14 appropriate because Plaintiff can prove the elements of her claims on a classwide
15 basis using the same evidence as would be used to prove those elements in
16 individual actions alleging the same claims.

17 39. **Numerosity – Federal Rule of Civil Procedure 23(a)(1).** The
18 Class consists of more than one million people. Therefore, the Class is so
19 numerous that joinder of all members would be impracticable. The sheer number
20 of Class members makes joinder of all members impracticable.

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

- 25 a. whether the Defective Vehicles are defective;
- 26 b. whether Ford misrepresented the standard, quality, and
27 characteristics of the Defective Vehicles;
- 28

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- 1 c. whether Ford’s misrepresentations regarding the standard,
- 2 quality and characteristics of the Defective Vehicles were
- 3 likely to mislead reasonable consumers;
- 4 d. whether Ford’s omission that the ETBs on the Defective
- 5 Vehicles were defective and prone to SUD was a material fact
- 6 that a reasonable consumer would be expected to rely on
- 7 when deciding whether to purchase a vehicle;
- 8 e. whether Plaintiff and the other Class members have been
- 9 damaged and, if so, the extent of such damages; and
- 10 f. whether Plaintiff and the other Class members are entitled to
- 11 equitable relief, including but not limited to, restitution and
- 12 injunctive relief.

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

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

25 43. **Adequacy of Representation – Federal Rule of Civil Procedure**
 26 **23(a)(4).** Plaintiff is an adequate representative of the Class because her interests
 27 do not conflict with the interests of the other Class members. Additionally,
 28 Plaintiff has retained counsel competent and experienced in complex class action

1 litigation. Thus, the Class' interests will be fairly and adequately protected by
2 Plaintiff and her counsel.

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

18 CAUSES OF ACTION

19 **COUNT I**

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

21 45. Plaintiff repeats and realleges all other paragraphs as if fully set
22 forth herein.

23 46. Ford is a "person," under Cal. Civ. Code §1761(c).

24 47. Plaintiff and Class members are "consumers," as defined by
25 Cal. Civ. Code §1761(d), who purchased or leased one more Defective Vehicles.

26 48. Defendant's conduct, as described herein, in misrepresenting the
27 safety of its vehicles, and omitting the fact that it failed to install adequate and
28 reasonable ETBs, and manufactured the Defective Vehicles with a uniform

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1 defect that caused SUD events, violates the California Consumers Legal
2 Remedies Act (“CLRA”), Cal. Civ. Code §1750, *et seq.* Specifically, Defendant
3 violated the CLRA by omitting material facts and misrepresenting the safety of
4 its Defective Vehicles, and by engaging in the following practices proscribed by
5 Civil Code §1770(a) in transactions that were intended to result in, and did result
6 in, the sale of the product:

- 7 a. representing that the Defective Vehicles have approval,
8 characteristics, ingredients, uses, benefits, or quantities which they
9 do not have (Civil Code §1770(a)(5));
- 10 b. representing that the Defective Vehicles are of a particular standard,
11 quality, or grade if they are of another (Civil Code §1770(a)(7));
- 12 c. advertising the Defective Vehicles with intent not to sell them as
13 advertised (Civil Code §1770(a)(9)); and
- 14 d. representing that the Defective Vehicles have been supplied in
15 accordance with previous representations when they have not (Civil
16 Code §1770(a)(16)).

17 49. Defendant violated the Act by selling Defective Vehicles that it
18 knew did not have adequate ETBs, possessed uniform defects that caused the
19 Defective Vehicles’ to experience dangerous and deadly SUD events, and
20 exposed the public to an unreasonable safety risk. Defendant omitted from
21 Plaintiff and the other Class members the material fact it had a duty to disclose
22 that Defective Vehicles were sold with defective ETBs that caused dangerous
23 SUD events. This is a fact that a reasonable consumer would consider important
24 in selecting a vehicle to purchase or lease.

25 50. Ford’s Customer Satisfaction Programs were false, deceptive and
26 purposely dissuaded customers from bringing their Defective Vehicles in for
27 inspection and/or provided them with a false sense of security by representing
28 that the Defective Vehicles were not subject to dangerous SUD, but merely may

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1 experience “reduced” engine power and vehicle speed, while maintaining “full
2 function” of steering, braking and lighting systems. The limited Customer
3 Satisfaction Programs instituted by Ford were not adequate and the Defective
4 Vehicles are still defective.

5 51. Pursuant to Civil Code §1782(d), Plaintiff, individually and on
6 behalf of the other members of the Class, seeks a Court order enjoining the
7 above-described wrongful acts and practices of Defendant, ordering Defendant to
8 extend repair and replacement remedies to all Class members, and awarding
9 restitution and disgorgement.

10 52. Pursuant to §1782 of the Act, Plaintiff notified Defendant in writing
11 by certified mail of the particular violations of §1770 of the Act and demanded
12 that Defendant rectify the problems associated with the actions detailed above
13 and give notice to all affected consumers of Defendant’s intent to so act. A copy
14 of the letter is attached hereto as Exhibit A.

15 53. If Defendant fails to rectify or agree to rectify the problems
16 associated with the actions detailed above and give notice to all affected
17 consumers within 30 days of the date of written notice pursuant to §1782 of the
18 Act, Plaintiff will amend this complaint to add claims for actual, punitive and
19 statutory damages, as appropriate.

20 54. Defendant’s conduct is fraudulent, wanton, and malicious.

21 55. Pursuant to §1782(d) of the Act, attached hereto as Exhibit B is the
22 affidavit showing that this action has been commenced in the proper forum.

23 **COUNT II**

24 **VIOLATION OF CALIFORNIA’S UNFAIR COMPETITION LAW**

25 56. Plaintiff repeats and realleges all other paragraphs as if fully set
26 forth herein.

27 57. The Unfair Competition Law, Business & Professions Code
28 §17200, *et seq.* (“UCL”), and similar laws in other states, prohibits any

1 “unlawful,” “fraudulent,” or “unfair” business act or practice and any false or
 2 misleading advertising. In the course of conducting business, Defendant
 3 committed “unlawful” business practices by, among other things, making the
 4 representations and omissions of material facts, as set forth more fully herein,
 5 and violating Civil Code §§1572, 1573, 1709, 1711, 1770(a)(5), 1770(a)(7),
 6 1770(a)(9), 1770(a)(16), 1793.2 *et seq.*, and Business & Professions Code
 7 §§17200, *et seq.*, 17500, *et seq.*, and the common law. Plaintiff, individually and
 8 on behalf of the other Class members, reserves the right to allege other violations
 9 of the law, which constitute other unlawful business acts or practices. Such
 10 conduct is ongoing and continues to this date.

11 58. In the course of conducting business, Defendant committed “unfair”
 12 business practices by, among other things, making the representations and
 13 omissions of material facts regarding the safety on the Defective Vehicles, as
 14 alleged. There is no societal benefit from such false and misleading
 15 representations and omissions – only harm. While Plaintiff and the other Class
 16 members were harmed by this conduct, Defendant was unjustly enriched. As a
 17 result, Defendant’s conduct is “unfair” as it has offended an established public
 18 policy. Further, Defendant engaged in immoral, unethical, oppressive, and
 19 unscrupulous activities that are substantially injurious to consumers.

20 59. Further, as set forth in this Complaint, Plaintiff alleges violations of
 21 consumer protection, unfair competition, and truth in advertising laws in
 22 California and other states, resulting in harm to consumers. Defendant’s acts and
 23 omissions also violate and offend the public policy against engaging in false and
 24 misleading advertising, unfair competition, and deceptive conduct towards
 25 consumers. This conduct constitutes violations of the unfair prong of Business &
 26 Professions Code §17200, *et seq.* There were reasonably available alternatives to
 27 further Defendant’s legitimate business interests other than the conduct described
 28 herein.

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1 60. Business & Professions Code §17200, *et seq.*, also prohibits any
2 “fraudulent business act or practice.” In the course of conducting business,
3 Defendant committed “fraudulent business act[s] or practices” by among other
4 things, prominently making the representations (which also constitute advertising
5 within the meaning of §17200) and omissions of material facts regarding the
6 safety, characteristics, and production quality of the Defective Vehicles.

7 61. Defendant’s actions, claims, omissions, and misleading statements,
8 as more fully set forth above, were also false, misleading and likely to deceive
9 the consuming public within the meaning of Business & Professions
10 Code §17200, *et seq.*

11 62. Plaintiff has in fact been deceived as a result of her reliance on
12 Defendant’s material representations and omissions, which are described above.
13 Plaintiff has suffered injury in fact and lost money as a result of purchasing one
14 of the deceptively advertised Defective Vehicles.

15 63. Unless restrained and enjoined, Defendant will continue to engage
16 in the above-described conduct. Accordingly, injunctive relief is appropriate.

17 64. Plaintiff, on behalf of herself, all others similarly situated, and the
18 general public, seeks restitution from Defendant of all money obtained from
19 Plaintiff and the other members of the Class collected as a result of unfair
20 competition, an injunction prohibiting Defendant from continuing such practices,
21 corrective advertising, and all other relief this Court deems appropriate,
22 consistent with Business & Professions Code §17203.

23 **COUNT III**

24 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

25 65. Plaintiff repeats and realleges all other paragraphs as if fully set
26 forth herein.

27 66. Ford is and was at all relevant times a merchant with respect to
28 motor vehicles under Cal. Com. Code §2104.

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1 67. A warranty that the Defective Vehicles were in merchantable
2 condition was implied by law in the instant transaction, pursuant to Cal. Com.
3 Code §2314.

4 68. Plaintiff and the other Class members purchased the Defective
5 Vehicles that were manufactured and sold by Defendant in consumer
6 transactions. Defendant was and is in the business of selling vehicles and was
7 and is a merchant of the Defective Vehicles.

8 69. The Defective Vehicles, when sold and at all times thereafter, were
9 not in merchantable condition and were not fit for the ordinary purpose for which
10 cars are used. The Defective Vehicles left Defendant's possession and control
11 equipped with defective ETBs that rendered them at all times thereafter
12 unmerchantable, unfit for ordinary use, unsafe, and a threat to public safety.
13 Plaintiff and the other Class members used their Defective Vehicles in the
14 normal and ordinary manner for which the Defective Vehicles were designed and
15 advertised.

16 70. Ford knew before the time of sale to Plaintiff or earlier, that the
17 Defective Vehicles were produced with defective ETBs that lacked adequate
18 protection from dangerous, sudden unintended deceleration events, rendering the
19 Defective Vehicles unfit for their ordinary purpose.

20 71. Despite Plaintiff's and the other Class members' normal and
21 ordinary use, maintenance, and upkeep, the ETBs of the Defective Vehicles
22 experienced an unusually high propensity for SUD events as a result of a
23 manufacturing or design defect that existed at the time Defendant transferred the
24 Defective Vehicles from its possession or control. The defect rendered the
25 Defective Vehicles unfit for their ordinary use and incapable of performing the
26 tasks they were designed, advertised, and sold to perform.

27 72. As a result, the Defective Vehicles' ETBs are not of fair average
28 quality. Nor would they pass without objection in the automotive industry.

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1 Defective ETBs with an unusually high propensity for SUD renders the vehicle
2 unsafe to drive and requires substantial repairs or even replacement of the
3 Vehicle's entire ETB before safe, ordinary use can resume.

4 73. All conditions precedent have occurred or been performed.

5 74. Defendant has actual notice of its breach of warranty. Through
6 consumer complaints and regulatory agencies' investigations, Defendant learned
7 that the defect, the existence and ubiquity of which it knew much earlier, has
8 been the subject of publicized consumer disputes nationwide. Its implementation
9 of the Customer Satisfaction Programs directed to Defective Vehicles shows
10 actual notice. Prior related lawsuits also establish that Defendant had actual
11 notice of its breach of warranty.

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

25 76. As a direct and foreseeable result of the defect in the Defective
26 Vehicles' ETBs, Plaintiff and the other Class members suffered diminution in the
27 value of the Defective Vehicles, out-of-pocket losses related to repairing,
28 maintaining, and servicing their Defective Vehicles, costs associated with

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1 arranging and obtaining alternative means of transportation, and other incidental
2 and consequential damages recoverable under the law.

3 77. Plaintiff and Class members have had sufficient direct dealings with
4 either the Ford or its agents (dealerships) to establish privity of contract between
5 Plaintiff and the Class members. Notwithstanding this, privity is not required in
6 this case because Plaintiff and Class members are intended third-party
7 beneficiaries of contracts between Ford and its dealers; specifically, they are the
8 intended beneficiaries of Ford's implied warranties. The dealers were not
9 intended to be the ultimate consumers of the Defective Vehicles; the warranty
10 agreements were designed for and intended to benefit the ultimate consumers
11 only. Finally, privity is also not required because Plaintiff's and Class members'
12 Fords are inherently dangerous due to the aforementioned defects and
13 nonconformities.

14 **COUNT IV**

15 **BREACH OF EXPRESS WARRANTY**

16 78. Plaintiff repeats and realleges all other paragraphs as if fully set
17 forth herein.

18 79. Ford is and was at all relevant times a merchant with respect to
19 motor vehicles under Cal. Com. Code §2104.

20 80. When marketing, distributing, and selling the Defective Vehicles,
21 Ford expressly warranted that it provided 36 months or 36,000 miles of
22 comprehensive coverage, whichever occurred first, during which time Ford
23 represented it would cover the cost of any repair or replacement necessary due to
24 a defect in materials or workmanship relating to the Defective Vehicles.

25 81. Defendant also represented and affirmed, contrary to facts, that it
26 delivered safe vehicles. In actuality, the ETBs on the Defective Vehicles
27 experience an unnatural and excessive propensity for SUD. The SUD is a result
28 of a defect in the manufacture or design of the Defective Vehicles.

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1 82. Ford knew that the ETBs on the Defective Vehicles were defective
2 at the time of sale. Indeed, Ford was well aware of the ETB problems on the
3 Defective Vehicles. Defendant breached express warranties when Defendant
4 delivered the Defective Vehicles that did not conform to its affirmations of fact
5 and industry standards for ETBs.

6 83. Ford breached the express warranty to repair the defects in the
7 Defective Vehicles, because it failed to repair or replace the ETBs on the
8 Defective Vehicles to ensure such vehicles function properly and did not exhibit
9 excessive propensity for SUD events.

10 84. Despite Ford's knowledge of the problem and opportunity to cure
11 (as evidenced by the Customer Satisfaction Programs), Ford failed to notify
12 Plaintiff and the other members of the Class of the defect and to repair or replace,
13 at no charge to the Class, the ETBs and otherwise remedy the Defective
14 Vehicles' excessive and unreasonable propensity for SUD events.

15 85. All conditions precedent have occurred or been performed.

16 86. Defendant had actual notice of its breaches of express warranty.
17 Through consumer complaints and regulatory agencies' investigations Defendant
18 learned that the defect, the existence and ubiquity of which it knew much earlier,
19 was the subject of consumer disputes nationwide. Its implementation of the
20 Customer Satisfaction Programs directed at Defective Vehicles shows actual
21 notice. Prior related lawsuits also establish that Defendant had actual notice of its
22 breach of warranty.

23 87. Defendant's warranty disclaimers, exclusions, and limitations, to the
24 extent that they may be argued to apply, were, at the time of sale, and continue to
25 be unconscionable and unenforceable to disclaim liability for a known, latent
26 defect. Defendant knew when it first made these warranties and their limitations
27 that the defect existed and that the warranties would expire before a reasonable
28 consumer would notice or observe the defect. Defendant also failed to take any

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1 actions to adequately disclose or cure the defect after the existence of the defect
2 came to the public’s attention and sat on its reasonable opportunity to cure or
3 remedy the defect, its breaches of warranty, and consumers’ losses. Under these
4 circumstances, it would be futile to enforce any informal resolution procedures or
5 give Defendant any more time to cure the defect, its breaches of warranty, or
6 otherwise attempt to resolve or address Plaintiff’s and the other Class members’
7 claims.

8 88. Plaintiff and the other Class members were damaged as a result of
9 Ford’s breach of express warranty because the ETBs on the Defective Vehicles
10 are defective, compromising the safety and reliability of the vehicles, and
11 requiring repair and even replacement of the Defective Vehicles’ ETBs.

12 89. As a direct and foreseeable result of Defendant’s failure to repair or
13 replace the Defective Vehicles’ ETBs, Plaintiff and the other Class members
14 suffered damages, including diminution in the value of the Defective Vehicles,
15 out-of-pocket losses related to the repairing, maintaining, and servicing their
16 Defective Vehicles, costs associated with arranging other forms of transportation,
17 and other incidental and consequential damages recoverable under the law.

18 **COUNT V**

19 **DECLARATORY RELIEF**

20 **Claim Brought on Behalf of the Declaratory Relief Class**

21 90. Plaintiff repeats and realleges all paragraphs as if fully set forth
22 herein.

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

26 92. Defendant marketed, distributed, and sold the Defective Vehicles
27 equipped with ETBs prone to excessive and dangerous sudden unintended
28 deceleration events on account of Defendant’s failure to install ETBs on such

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1 vehicles free of manufacturing defects and with adequate SUD countermeasures.

2 93. Accordingly, Plaintiff seeks entry of the following declarations:
3 (1) the Defective Vehicles lack adequate ETBs and are defective; (2) all persons
4 who purchased or leased the Defective Vehicles are to be provided the best
5 practicable notice of the defect, which cost shall be borne by Defendant; and
6 (3) Defendant must establish an inspection, repair, and replacement program and
7 protocol and notify Class members of such program, pursuant to which
8 Defendant, including its authorized representatives, and at no cost to Class
9 members, will inspect, repair or replace the ETBs on all Defective Vehicles.

10 **REQUESTS FOR RELIEF**

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

- 13 a. certifying the Class under Federal Rule of Civil Procedure 23(a),
- 14 23(b)(2), and 23(b)(3), as requested herein;
- 15 b. appointing Plaintiff as Class Representative and undersigned
- 16 counsel as Class Counsel;
- 17 c. finding that Ford engaged in the unlawful conduct as alleged herein;
- 18 d. awarding Plaintiff and the other Class members damages;
- 19 e. awarding Plaintiff and the other Class members restitution and
- 20 disgorgement of monies Defendant acquired through its violations
- 21 of the law;
- 22 f. awarding Plaintiff and the other Class members declaratory and
- 23 injunctive relief;
- 24 g. requiring Ford to repair or replace the ETBs on the Defective
- 25 Vehicles;
- 26 h. awarding Plaintiff and the other Class members pre-judgment and
- 27 post-judgment interest on all amounts awarded;
- 28

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- 1 i. awarding Plaintiff and the other Class members reasonable
- 2 attorneys' fees, costs, and expenses; and
- 3 j. granting such other relief as the Court deems just and appropriate.

JURY TRIAL DEMAND

4 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a
5 trial by jury on all claims in this Class Action Complaint so triable.

6 Respectfully Submitted,

7 Dated: January 26, 2017

BLOOD HURST & O'REARDON, LLP
TIMOTHY G. BLOOD (149343)
THOMAS J. O'REARDON II (247952)
PAULA R. BROWN (254142)

8 By: *s/ Timothy G. Blood*

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Attorneys for Plaintiff

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JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
 SILVIA FRANCO, individually and on behalf of all others similarly situated,

(b) County of Residence of First Listed Plaintiff San Diego County, CA
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Timothy G. Blood / Thomas J. O'Reardon II [SEE ATTACHMENT]
 Blood Hurst & O'Reardon, LLP
 701 B Street, Suite 1700, San Diego, CA 92101 Tel: (619) 338-1100

DEFENDANTS
 FORD MOTOR COMPANY,

County of Residence of First Listed Defendant _____
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from Another District (specify)

6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 28 USC 1332(d) (Diversity)

Brief description of cause:
 Violation of Civ. Code sec. 1750 (CLRA); B&P Code sec. 17200 (UCL); and breach of implied warranty

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ 5,000,000.00

CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE 01/26/2017 SIGNATURE OF ATTORNEY OF RECORD s/ Timothy G. Blood

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

Silvia Franco v. Ford Motor Company
United States District Court, Southern District of California

ATTACHMENT TO CIVIL COVER SHEET (JS 44)

Attorneys for Plaintiff Silvia Franco

BLOOD HURST & O'REARDON LLP	NICHOLAS & TOMASEVIC, LLP
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Thomas J. O'Reardon, II (247952)	ALEX M. TOMASEVIC (245598)
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Exhibit A



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www.bholaw.com

Timothy G. Blood
tblood@bholaw.com

January 26, 2017

VIA CERTIFIED MAIL (RETURN RECEIPT)
(RECEIPT NO. 7014 0150 0000 6250 7369)

Mr. Mark Fields, President and CEO
Ford Motor Company
1 American Road
P.O. Box 6248
Dearborn, MI 48126

Dear Mr. Fields:

We represent Silvia Franco (“Plaintiff”) and all other consumers similarly situated in an action against Ford Motor Company (“Ford” or “Defendant”), arising out of, *inter alia*, failure to deliver safe and reliable vehicles. The full claims, including the facts and circumstances surrounding these claims, are detailed in the Class Action Complaint, a copy of which is attached hereto and incorporated by this reference. As described in the Class Action Complaint, Ford has marketed, sold and equipped certain 2011-2016 model year Ford, Lincoln and Mercury vehicles with defective electronic throttle body control systems (“ETB”), which defect leads to sudden unintended deceleration (“SUD”).

Defendant’s representations and omissions are false and misleading and constitute unfair methods of competition and unlawful, unfair, and fraudulent acts or practices, undertaken by Defendant with the intent to result in the sale of the defective Ford vehicles to the consuming public. These practices constitute violations of the Consumers Legal Remedies Act, California Civil Code §1750, *et seq.* Specifically, Defendant’s practices violate California Civil Code §1770(a) under, *inter alia*, the following subdivisions:

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

* * *

- (7) Representing that the Defective Vehicles are of a particular standard, quality, or grade if they are of another.

* * *

- (9) Advertising the Defective Vehicles with intent not to sell them as advertised.

* * *

- (16) Representing that the Defective Vehicles have been supplied in accordance with previous representations when they have not.



BLOOD
HURST &
O'REARDON | LLP

Mr. Mark Fields, President and CEO

Ford Motor Company

January 26, 2017

Page 2

As detailed in the attached Complaint, Defendant's practices also violate California Business and Professions Code §17200, *et seq.*, and constitutes a breach of express and implied warranty.

While the Complaint constitutes sufficient notice of the claims asserted, pursuant to California Civil Code §1782 and California Commercial Code §2607, we hereby demand on behalf of our clients and all others similarly situated that Defendant immediately correct and rectify these violations by ceasing dissemination of false and misleading information as described in the enclosed Complaint, properly informing consumers of the defects present in the vehicles, obtaining redress for those who have purchased or leased the vehicles, and initiating a corrective advertising campaign to re-educate consumers regarding the truth of the vehicles at issue. In addition, Defendant must offer to refund the purchase or lease price to all consumer owners and lessees of the vehicles at issue, plus provide reimbursement for interest, costs, and fees.

We await your response.

Sincerely,

TIMOTHY G. BLOOD

TGB;jk

Enclosure

Exhibit B

1 BLOOD HURST & O'REARDON, LLP
TIMOTHY G. BLOOD (149343)
2 THOMAS J. O'REARDON II (247952)
PAULA R. BROWN (254142)
3 701 B Street, Suite 1700
San Diego, CA 92101
4 Telephone: (619) 338-1100
Facsimile: (619) 338-1101
5 tblood@bholaw.com
toreardon@bholaw.com
6 pbrown@bholaw.com

7 [Additional Counsel Appear on Signature Page]

8 Attorneys for Plaintiff

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 SILVIA FRANCO, individually and
on behalf of all others similarly
12 situated,

13 Plaintiff,

14 v.

15 FORD MOTOR COMPANY,

16 Defendant.

Case No.

CLASS ACTION

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

JURY TRIAL DEMANDED

BLOOD HURST & O'REARDON, LLP

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Ford Hit with Class Action Over 'Rapid Unintended Deceleration' Woes](#)
