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and Christopher Wooten

[Additional Counsel on Signature Page]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ERIC GREGORIO, BRANDON
LEMONS, JOHN WALKER,
JOSEPH PLIS, AND
CHRISTOPHER WOOTEN,
individually, and on behalf of a class
of similarly situated individual,

Plaintiff,

v.

FORD MOTOR COMPANY, a
Delaware corporation,

Defendant.

Case No.: 2:19-cv-09773-JAK-E

**SECOND AMENDED CLASS
ACTION COMPLAINT**

- (1) Violation of California Consumers Legal Remedies Act
- (2) Breach of Implied Warranty (California) pursuant to Song-Beverly Consumer Warranty Act
- (3) Breach of Express Warranty (California) under Cal. Com. Code § 2313
- (4) Violation of California Unfair Competition Law
- (5) Breach of Warranty under the Magnuson-Moss Warranty Act
- (6) Unjust Enrichment
- (7) Violation of the Florida Deceptive and Unfair Trade Practice Act
- (8) Breach of Express Warranty (Florida) under F.S.A. §§ 672.313 and 680.21
- (9) Breach of Implied Warranty

(Florida) under F.S.A. §§ 672.314 and 680.212

(10) Deceptive Acts or Practices in Violation of New York's General Business Law section 349

(11) Breach of Express Warranty (New York) under N.Y. U.C.C. LAW §§2-213 AND 2A-210

(12) Violation of the Delaware Consumer Fraud Act

(13) Breach of Express Warranty (Delaware) under 6 Del. Code §§ 2-313 and 2A-210

(14) Breach of the Implied Warranty of Merchantability (Delaware) under 6 Del. Code §§ 2-314 and 2A-212

DEMAND FOR JURY TRIAL

INTRODUCTION

1. Plaintiffs Eric Gregorio, Brandon Lemons, John Walker, Joseph Plis, and Christopher Wooten (“Plaintiffs”) bring this action for themselves and on behalf of all persons in the United States who purchased or leased any 2011-2019 model year Ford Mustang vehicle designed, manufactured, marketed, distributed, sold, warranted and serviced by Ford Motor Company (“Ford” or “Defendant”) and equipped with an MT82 Manual Transmission (“Transmission”) (collectively, “Class Vehicles”). These Class Vehicles were delivered to consumers by Ford with inherent defects in design, manufacturing process and/or materials.

2. Plaintiffs are informed and believe and based thereon allege that the MT82 Transmission is defective. These transmissions have a common defect. The defect, which was latent, but existed at the time that the Class Vehicles left Ford’s possession and control, manifests itself over time. The Transmission is defective in its design, manufacturing, and or materials in that, among other problems, the transmission slips, jerks, clashes gears, and harshly engages; has premature internal wear, increased shift efforts, inability to drive, and eventually suffers a catastrophic failure (the “Transmission Defect”).

3. The Transmission Defect does not merely result in an uncomfortable driving condition. The slips, jerks, gear clashes, harsh, difficult and inability to shift are related to internal issues within the transmission and clutch components causing hydraulic systems and gears not to function properly, resulting in decomposition/failure of parts throughout the transmission. This damage to the transmission imposes escalating repairs on consumers, including having to replace the defective transmission with a new transmission. Based on Ford’s inability to resolve the Defect, it appears all consumers will need replacement of transmission components including the shift forks, shift shaft, synchronizers, clutch assembly, or even the entire transmission.

1 4. Whereas Ford used Tremec and Borg Warner transmissions in
2 predecessor vehicles, for the Class Vehicles, Ford changed suppliers, opting for
3 cheaper Chinese made Getrag transmissions to reduce cost. It was Ford's
4 incorporation of the Chinese made Getrag MT82 and MT82-D4 transmissions
5 into the Class Vehicles that caused substantial transmission defects, and it was
6 Ford's decision to continue using the MT82 and MT82-D4 transmissions, with
7 knowledge of the Defect that would result.

8 5. Manual transmissions use forks to move a collar to the desired gear.
9 Dog teeth on the collar mesh up with the gear in order to engage it. Modern
10 manual transmissions use synchronizers (also known as a "synchro") to enable
11 the collar and gear to synchronize their speeds while they are already in contact,
12 but before the dog teeth engage. In other words, the synchronizer assists the
13 clutch assembly on gear changes by synchronizing rotational speeds of
14 components within the transmission.

15 6. In the MT82 and MT82-D4 transmissions, the synchronizer consists
16 of a hub splined to the main shaft. It has insert keys, springs, outer sleeves, and
17 blocking rings. Grooves machined into the sleeves capture the shift forks, which
18 transfer the motion from the gear shift linkage. The sleeve moves along the
19 splined inner hub in response to the shift fork, forcing the blocking ring against
20 the gear cone. When the gear is at the same speed, the sleeve slides over the
21 blocking ring and gear engagement teeth, locking the gear to the synchronizer
22 hub and shaft.

23 7. On information and belief, the MT82 and MT82-D4 transmissions
24 were adapted from an application in smaller vehicles, including four-cylinder
25 vehicles with much lower horsepower than the Class Vehicles; the rated
26 horsepower rating on the 2011 Mustang GT was 412 horsepower with 390
27 pound-feet of torque, and the 2018 Mustang GT is rated at 460 hp with 420
28 pound-feet of torque. Because the synchronizers were designed for lower-

1 horsepower applications, they are insufficiently robust for use in the high-
2 horsepower Ford Mustang vehicles. Accordingly, the synchronizers fail to spin
3 up the shaft quickly enough to engage the gears, causing failures.

4 8. As detailed below, due to the Transmission Defect, the Class
5 Vehicles are prone to and do exhibit premature transmission failures at rates and
6 in a manner that do not conform to industry standards. The Transmission Defect
7 substantially decreases the value of the Class Vehicles, forcing owners/lessees
8 of the vehicles to potentially spend significant money—or to hope that Ford will
9 cover the cost—to have the transmission repaired or replaced. Even then,
10 repairing or replacing the defective parts does not resolve the Transmission
11 Defect, because the customer is left with inherently defective parts or receives
12 another defective part in its place. For the same reason, repairing the Class
13 Vehicles does not cure the Transmission Defect, but merely leaves the vehicles
14 with the same defective parts that permanently decrease the Vehicle's value.
15 Based on Ford's inability to resolve the Defect so far, it appears that all
16 consumers will need replacement of transmission components including, but not
17 limited to the shift forks, clutch, synchronizer parts, or the entire transmission.
18 As such, the Transmission Defect endangers the drivers and passengers of the
19 vehicles. It creates uncertainty for the drivers of the Class Vehicles, who cannot
20 rely on their vehicles to operate consistently, reliably, or safely. Ford's
21 deliberate non-disclosure of these defects artificially inflated the purchase and
22 lease price for these vehicles. Had Ford disclosed the Transmission Defect,
23 Plaintiff and the Class members would not have purchased their vehicles or
24 would have paid less for them.

25 9. As described more fully below, Ford has been aware of the
26 Transmission Defect since the introduction of the transmission. Ford repeatedly
27 failed to disclose and actively concealed the Defect from Class members and the
28 public and continues to market the Class Vehicles without disclosing the

1 Transmission Defect. Since 2011, Ford has issued a total of seven (7) Special
2 Service Messages (“SSM”) and Technical Service Bulletins (TSB), relating to
3 the shifting issues and other inherent transmission defects. A TSB is an alert to
4 dealerships, informing them of a potential problem in a Ford product and
5 advising them how to address the problem when customers complain to Ford
6 dealerships. The TSBs related to the Transmission Defect have advised
7 dealerships to, among other things:

- 8 a. Drain and Refill the Transmission;
- 9 b. Remove the transmission from the vehicle, disassemble;
- 10 c. Replace 3rd/4th shift fork, the countershaft 3rd gear, and the 3rd/4th
11 gear synchronizer hub and sleeve;
- 12 d. Replace the gearshift lever;
- 13 e. Inspect and Replace the clutch pedal position (CCP) switch and
14 bracket.
- 15 f. Remove the shift rail detents;
- 16 g. Replace the 1st/2nd shift for, the main shaft 2nd gear, the 1st/2nd
17 gear synchronizer hub and sleeve; and
- 18 h. Reassemble the transmission.

19 Nevertheless, Ford has never notified consumers of the Transmission Defect, as
20 TSBs and SSMs are not provided to owners as a matter of course.

21 10. Ford has exclusive knowledge of, and has been in exclusive
22 possession of, information pertaining to the Transmission Defect, which was
23 material to Plaintiffs and Class members, who could not reasonably know of the
24 Defect. Ford has not disclosed the Transmission Defect to purchasers or lessees
25 like Plaintiffs at the point of purchase or through advertisements. Such
26 disclosures would have influenced purchase decisions and purchase price. Under
27 all circumstances, Ford had a duty to disclose the latent Transmission Defect at
28 the point of sale of the Class Vehicles. Instead, Ford failed and refused—and

1 continues to refuse—to provide a meaningful remedy to those who have suffered
2 economic harm as a result of the Transmission Defect.

3 11. Despite Ford’s awareness and knowledge of the Transmission
4 Defect, at Ford’s direction, its employees and agents often continue to deny that
5 the defect even exists and have developed standard answers to dispel expected
6 complaints made by Plaintiffs and Class members. Specifically, on information
7 and belief, when customers complain to Ford about the Transmission Defect,
8 customers are told that Transmission Defect is caused by wear and tear, user
9 error, or aggressive driving.

10 12. The Ford MT82 and MT82-D4 Transmission Defect has a latent
11 defect that presents a safety risk to riders, causes damage to components over
12 time, and makes vehicles equipped with the defective transmission dangerous
13 and uncomfortable to ride. It makes the Class Vehicles unfit for their ordinary
14 use of providing safe and reliable transportation. As such, the Transmission
15 Defect presents a breach of the implied warranty of merchantability.

16 13. Additionally, because Ford concealed and failed to disclose the
17 Transmission Defect, owners have suffered and continue to suffer substantial
18 damages and should be entitled to the benefits of all tolling and estoppel
19 doctrines.

20 14. As a direct and proximate result of Ford’s concealment of, and
21 failure to disclose, the Transmission Defect, Plaintiffs and Class members: (1)
22 overpaid for the Class Vehicles because the Defect significantly diminishes the
23 value of the Vehicles; (2) have Vehicles that suffer premature transmission
24 failures, which also sometimes render them unsafe to drive; and (3) have and/or
25 must expend significant money to have their Vehicles (inadequately) repaired.

26 15. Ford’s decision to sell the Class Vehicles without disclosing its
27 specialized knowledge of the Transmission Defect violates state consumer
28 protection laws.

16. Plaintiffs and Class members have purchased and leased Class Vehicles that they would not otherwise have purchased or leased, or would have paid less for, had they known of the Transmission Defect and the point of sale. Plaintiff and Class members have consequently suffered ascertainable losses and actual damages. Moreover, Plaintiffs seek equitable remedies, including *inter alia*, an order that the Class Vehicles are defective and injunctive relief preventing Ford from continuing its wrongful conduct as alleged herein.

PARTIES

Plaintiff Eric Gregorio

17. Plaintiff Eric Gregorio is a California citizen who resides in San Bernardino, California.

18. On or about October 24, 2019, Mr. Gregorio purchased a new 2019 Ford Mustang GT from Sunrise Ford, an authorized Ford dealer in Fontana, California. His vehicle had a total sales price of approximately \$37,000.

19. Plaintiff purchased his vehicle primarily for personal, family, or household use. Ford manufactured, sold, distributed, advertised, marketed, and warranted the vehicle.

20. Passenger safety, vehicle performance, and reliability were all factors in Plaintiff's decision to purchase his vehicle. Prior to purchasing his Class Vehicle, Plaintiff researched the vehicle on Ford's official website, conducted online research via various auto publications (*i.e.*, Road and Track, Motor Trend, and Edmunds), visited dealership websites, and subsequently test drove the vehicle. In all, Plaintiff conducted approximately a year's worth of research prior to his purchase. Before purchase, Plaintiff discussed his vehicle with employees of the selling Ford dealership, including the salesperson that assisted him in his decision to purchase his vehicle.

21. Plaintiff did not know and was never informed by Ford prior to

1 purchasing his Class Vehicle that it had a defective Transmission.

2 22. Had Ford disclosed its knowledge of the Transmission Defect and
3 the fact that it posed a safety concern when Plaintiff purchased his 2019 Ford
4 Mustang GT, Plaintiff would have seen such disclosures and been aware of
5 them. Indeed, Ford's omissions were material to Plaintiff. Like all members of
6 the putative classes, Plaintiff would not have purchased his 2019 Ford Mustang
7 GT or would not have paid the purchase price charged by Ford had he known
8 that the Transmission suffered from the Transmission Defect.

9 23. Within the first few months after purchase, Plaintiff's transmission
10 was exhibiting the Transmission Defect.

11 24. Specifically, on or around August 19, 2019, with approximately
12 3,540 miles on the odometer of his Ford Mustang, Mr. Gregorio delivered his
13 vehicle to Sunland Ford in Victorville California complaining that the
14 transmission in his 2019 mustang clunks and locks him out of gear. However,
15 the problem remained uncorrected.

16 25. Despite the transmission concerns presented to the dealership,
17 Plaintiff's vehicle continues to exhibit all of the problems he had previously
18 complained about to authorized Ford dealer.

19 26. At all times, Plaintiff has driven his vehicle in a foreseeable manner
20 and in the manner in which it was intended to be used.

21 **Plaintiff Brandon Lemons**

22 27. Plaintiff Brandon Lemons is a Florida citizen who resides in Delray
23 Beach, Florida.

24 28. On or about October 24, 2018, Mr. Lemons purchased a preowned
25 2014 Ford Mustang GT from AutoNation Ford Margate, an authorized Ford
26 dealer in Margate, Florida. His vehicle had a total sales price of \$33,770.91.

27 29. Plaintiff purchased his vehicle primarily for personal, family, or
28 household use. Ford manufactured, sold, distributed, advertised, marketed, and

1 warranted the vehicle.

2 30. Passenger safety, vehicle performance, and reliability were all
3 factors in Plaintiff's decision to purchase his vehicle. Prior to purchasing his
4 Class Vehicle, Plaintiff researched the vehicle on Ford's official website,
5 conducted online research via various auto publications (*i.e.*, Road and Track,
6 Motor Trend, and Edmunds), visited dealership websites, and subsequently test
7 drove the vehicle. In all, Plaintiff conducted approximately a year's worth of
8 research prior to his purchase. Before purchase, Plaintiff discussed his vehicle
9 with employees of the selling Ford dealership, including the salesperson that
10 assisted him in his decision to purchase his vehicle.

11 31. Plaintiff did not know and was never informed by Ford prior to
12 purchasing his Class Vehicle that it had a defective Transmission.

13 32. Had Ford disclosed its knowledge of the Transmission Defect and
14 the fact that it posed a safety concern when Plaintiff purchased his 2014 Ford
15 Mustang GT, Plaintiff would have seen such disclosures and been aware of
16 them. Indeed, Ford's omissions were material to Plaintiff. Like all members of
17 the putative classes, Plaintiff would not have purchased his 2014 Ford Mustang
18 GT or would not have paid the purchase price charged by Ford had he known
19 that the Transmission suffered from the Transmission Defect.

20 33. Within the first few months after purchase, Plaintiff's transmission
21 was exhibiting the Transmission Defect.

22 34. Specifically, on or around August 8, 2019, with approximately
23 49,678 miles on the odometer of his Ford Mustang, Mr. Lemons delivered his
24 vehicle to AutoNation Ford Valencia Margate complaining, as recorded on his
25 repair order, of a "grinding noise and a vibration through the shift knob."
26 However, the problem remained uncorrected as Mr. Lemons was told there was
27 nothing wrong.

28 35. Despite Plaintiff's complaint about the transmission, Plaintiff's

1 vehicle continues to exhibit all of the problems he had previously complained
2 about to authorized Ford dealer.

3 At all times, Plaintiff has driven his vehicle in a foreseeable manner and
4 in the manner in which it was intended to be used.

5 **Plaintiff John Walker**

6 36. Plaintiff John Walker is a Florida citizen who resides in Niceville,
7 Florida.

8 37. On or about July 16, 2019, Mr. Walker purchased a new 2019 Ford
9 Mustang GT from Gary Smith Ford, an authorized Ford dealer in Fort Walton
10 Beach, Florida. His vehicle had a total sales price of \$60,790.21.

11 38. Plaintiff purchased his vehicle primarily for personal, family, or
12 household use. Ford manufactured, sold, distributed, advertised, marketed, and
13 warranted the vehicle.

14 39. Passenger safety, vehicle performance, and reliability were all
15 factors in Plaintiff's decision to purchase his vehicle. Prior to purchasing his
16 Class Vehicle, Plaintiff researched the vehicle on Ford's official website,
17 conducted online research via various auto publications (*i.e.*, Road and Track,
18 Motor Trend, and Edmunds), visited dealership websites, and subsequently test
19 drove the vehicle. In all, Plaintiff conducted approximately a year's worth of
20 research prior to his purchase. Before purchase, Plaintiff discussed his vehicle
21 with employees of the selling Ford dealership, including the salesperson that
22 assisted him in his decision to purchase his vehicle.

23 40. Plaintiff did not know and was never informed by Ford prior to
24 purchasing his Class Vehicle that it had a defective Transmission.

25 41. Had Ford disclosed its knowledge of the Transmission Defect and
26 the fact that it posed a safety concern when Plaintiff purchased his 2019 Ford
27 Mustang GT, Plaintiff would have seen such disclosures and been aware of
28 them. Indeed, Ford's omissions were material to Plaintiff. Like all members of

1 the putative classes, Plaintiff would not have purchased his 2019 Ford Mustang
2 GT or would not have paid the purchase price charged by Ford had he known
3 that the Transmission suffered from the Transmission Defect.

4 42. Within the first few months after purchase, Plaintiff's transmission
5 was exhibiting the Transmission Defect.

6 43. On March 3, 2020, with 7,485 miles on the odometer, Mr. Walker,
7 delivered his vehicle to Gary Smith Ford due to continuing problems with the
8 MT82 transmission in his 2019 Mustang. The repair order prepared by the Ford
9 dealership during this visit confirms, that Mr. Walker was complaining that the
10 Transmission was slipping between 3rd and 4th gear. The technician reported
11 the following: "Unable to verify concern at this time. No current service
12 messages for this concern." Thus, Gary Smith Ford sent Mr. Walker home
13 without repairing the Transmission Defect.

14 44. Despite Ford's contention that there is no defect with the vehicle,
15 Plaintiff's vehicle continues to exhibit all of the problems he had previously
16 complained about to the authorized Ford dealer.

17 45. At all times, Plaintiff has driven his vehicle in a foreseeable manner
18 and in the manner in which it was intended to be used.

19 **Plaintiff Joseph Plis**

20 46. Plaintiff Joseph Plis is a New York citizen who resides in Auburn,
21 New York.

22 47. On or about August 19, 2019, Mr. Plis purchased a new 2017 Ford
23 Mustang GT from Summit Ford, an authorized Ford dealer in Auburn, New
24 York. His vehicle had a total sales price of \$36,218.69.

25 48. Plaintiff purchased his vehicle primarily for personal, family, or
26 household use. Ford manufactured, sold, distributed, advertised, marketed, and
27 warranted the vehicle.

28 49. Passenger safety, vehicle performance, and reliability were all

1 factors in Plaintiff's decision to purchase his vehicle. Prior to purchasing his
2 Class Vehicle, Plaintiff researched the vehicle on Ford's official website,
3 conducted online research via various auto publications (*i.e.*, Road and Track,
4 Motor Trend, and Edmunds), visited dealership websites, and subsequently test
5 drove the vehicle. In all, Plaintiff conducted approximately a year's worth of
6 research prior to his purchase. Before purchase, Plaintiff discussed his vehicle
7 with employees of the selling Ford dealership, including the salesperson that
8 assisted him in his decision to purchase his vehicle.

9 50. Plaintiff did not know and was never informed by Ford prior to
10 purchasing his Class Vehicle that it had a defective Transmission.

11 51. Had Ford disclosed its knowledge of the Transmission Defect and
12 the fact that it posed a safety concern when Plaintiff purchased his 2017 Ford
13 Mustang GT, Plaintiff would have seen such disclosures and been aware of
14 them. Indeed, Ford's omissions were material to Plaintiff. Like all members of
15 the putative classes, Plaintiff would not have purchased his 2017 Ford Mustang
16 GT or would not have paid the purchase price charged by Ford had he known
17 that the Transmission suffered from the Transmission Defect.

18 52. Within the first few months after purchase, Plaintiff's transmission
19 was exhibiting the Transmission Defect.

20 53. On or around October 2019, Mr. Plis started to experience the
21 transmission defect in his 2017 Ford Mustang, which includes hard shifting,
22 difficulty shifting gears and/or mechanical resistance from the transmission
23 during shifts. Plaintiff immediately contacted Summit Ford Lincoln
24 telephonically about the transmission defect and the authorized Ford
25 dealership's representative advised Mr. Plis that the above-referenced
26 transmission defect and accompanying vehicle behavior was normal.

27 54. That said, Mr. Plis has a good faith basis to believe that
28 Ford representatives will again tell him that nothing is wrong with his

1 Transmission as they have done so telephonically.

2 55. At all times, Plaintiff has driven his vehicle in a foreseeable manner
3 and in the manner in which it was intended to be used.

4 **Plaintiff Christopher Wooten**

5 56. Plaintiff Christopher Wooten is a Pennsylvania citizen who resides
6 in Lincoln University, Pennsylvania.

7 57. On or about May 4, 2018, Mr. Wooten purchased a certified
8 preowned 2016 Ford Mustang GT from Sheridan Ford, an authorized Ford
9 dealer in Wilmington, Delaware. His vehicle had a total sales price of
10 \$30,722.00.

11 58. Plaintiff purchased his vehicle primarily for personal, family, or
12 household use. Ford manufactured, sold, distributed, advertised, marketed, and
13 warranted the vehicle.

14 59. Passenger safety, vehicle performance, and reliability were all
15 factors in Plaintiff's decision to purchase his vehicle. Prior to purchasing his
16 Class Vehicle, Plaintiff researched the vehicle on Ford's official website,
17 conducted online research via various auto publications (*i.e.*, Road and Track,
18 Motor Trend, and Edmunds), visited dealership websites, and subsequently test
19 drove the vehicle. In all, Plaintiff conducted approximately a year's worth of
20 research prior to his purchase. Before purchase, Plaintiff discussed his vehicle
21 with employees of the selling Ford dealership, including the salesperson that
22 assisted him in his decision to purchase his vehicle.

23 60. Plaintiff did not know and was never informed by Ford prior to
24 purchasing his Class Vehicle that it had a defective Transmission.

25 61. Had Ford disclosed its knowledge of the Transmission Defect and
26 the fact that it posed a safety concern when Plaintiff purchased his 2016 Ford
27 Mustang GT, Plaintiff would have seen such disclosures and been aware of
28 them. Indeed, Ford's omissions were material to Plaintiff. Like all members of

1 the putative classes, Plaintiff would not have purchased his 2016 Ford Mustang
2 GT or would not have paid the purchase price charged by Ford had he known
3 that the Transmission suffered from the Transmission Defect.

4 62. Within the first few months after purchase, Plaintiff's transmission
5 was exhibiting the Transmission Defect.

6 63. On or around April 2019, Mr. Wooten started experiencing
7 transmission grinds in third and fourth gear in his 2016 mustang. Mr. Wooten
8 felt that the transmission grinds were not a normal function of the vehicle.

9 64. On or about May 6, 2019 with 23,456 miles on the odometer, Mr.
10 Wooten, delivered his vehicle to Sheridan Ford since his vehicle would not go
11 into gear. "Won't move into gear" is recorded as an entry within his repair
12 order. The Ford authorized technician also documented within Mr.
13 Wooten's repair order the following: "r&i trans to insp. Found clutch disc in
14 pieces" and "shifter bezel broke during service and was replaced." However,
15 the problem remained uncorrected and Mr. Wooten had to return for repairs.

16 65. On or about July 24, 2019 with approximately 24,000 miles on the
17 odometer, Mr. Wooten, again delivered his vehicle to Sheridan Ford with the
18 following issue as documented within the repair order: transmission "grinds
19 when shifting." The technician also documented within the repair order,
20 "grinding noise/feel while shifting. Road test verify. Pinpoint multiple gears
21 clunk and third gear grinds going into."

22 66. Despite Ford's contention that there is no defect with the vehicle,
23 Plaintiff's vehicle continues to exhibit all of the problems he had previously
24 complained about to the authorized Ford dealer, despite any attempt by Ford to
25 repair.

26 67. At all times, Plaintiff has driven his vehicle in a foreseeable manner
27 and in the manner in which it was intended to be used.
28

Defendant

68. Defendant Ford Motor Company is a corporation organized and in existence under the laws of the State of Delaware and registered with the California Department of Corporations to conduct business in California. Ford Motor Company's Corporate Headquarters is located at 1 American Road, Dearborn, Michigan 48126. Ford Motor Company designs and manufactures motor vehicles, parts, and other products for sale in the United States and throughout the world. Ford Motor Company is the warrantor and distributor of the Class Vehicles in California and throughout the United States.

69. At all relevant times, Defendant was and is engaged in the business of designing, manufacturing, constructing, assembling, marketing, distributing, and/or selling automobiles and motor vehicle components in California and throughout the United States.

JURISDICTION AND VENUE

70. This class action is brought pursuant to Rule 23 of the Federal Rules of Civil Procedure. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2) and based on 28 U.S.C. §§ 1441 and 1453.

71. Venue properly lies in the United States District Court for the Central District of California pursuant to 28 U.S.C. §§ 84(a), 1391(a) and (c) and 1441(a). In addition, under 28 U.S.C. § 1367, this Court may exercise supplemental jurisdiction over the state law claims because all of the claims are derived from a common nucleus of operative facts and are such that Plaintiff would ordinarily expect to try them in one judicial proceeding.

72. In addition, the original Plaintiff in this action resides in the County of Los Angeles, California, and Plaintiff Eric Gregorio, resides in the County of San Bernardino, California, within the Central District of California, and the acts and omissions alleged herein took place in within the Central District of California. Plaintiff Gregorio's Declaration, as required under Cal. Civ. Code

1 section 1780(d), which reflects that a substantial part of property that is the
2 subject of this action is situated in San Bernardino County, and that Defendant is
3 doing business in San Bernardino County, California, is attached as Exhibit 1.

4 **FACTUAL ALLEGATIONS**

5 73. Since 2011, Ford has designed, manufactured, distributed, sold, and
6 leased the Class Vehicles. Ford has sold, directly or indirectly, through dealers
7 and other retail outlets, tens of thousands of Class Vehicles equipped with the
8 Transmission in California and throughout the United States.

9 74. Plaintiffs are informed and believe, and based thereon, allege that
10 the MT82 Transmission (including its MT82-D4 variant) is defective. These
11 transmissions have a common defect. The Transmission Defect was latent, but
12 existed at the time that the Class Vehicles left Ford's possession and control,
13 manifests itself over time. The Transmission is defective in its design,
14 manufacturing, and or materials in that, among other problems, the transmission
15 slips, jerks, clashes gears, and harshly engages; has premature internal wear,
16 increased shift efforts including inability to engage gears, inability to drive, and
17 eventually suffers a catastrophic failure.

18 75. The problem does not merely result in an uncomfortable driving
19 condition, but instead constitutes a serious safety issue that requires repairs
20 and/or leads to failures. The slips, jerks, gear clashes, harsh, difficulty with
21 shifting and inability to shift are related to internal issues within the
22 transmission and clutch components causing hydraulic systems and gears not to
23 function properly, resulting in decomposition/failure of parts throughout the
24 transmission. This damage to the transmission imposes escalating repairs on
25 consumers, including having to replace the defective transmission with a new
26 transmission. Based on Ford's inability to resolve the Transmission Defect, it
27 appears all consumers will need replacement of transmission components,
28 including the shift forks, shift shaft, synchronizers, clutch assembly, or even the

1 entire transmission.

2 76. Due to the Transmission Defect, the Class Vehicles are prone to and
3 exhibit premature transmission failures at rates and in a manner that do not
4 conform to industry standards. The Transmission Defect substantially decreases
5 the value of the Class Vehicles, forcing owners/lessees of the vehicles to
6 potentially spend significant money—or to hope that Ford will cover the cost—
7 to have the transmission repaired or replaced. Even then, repairing or replacing
8 the defective parts does not resolve the Transmission Defect, because the
9 customer is left with inherently defective parts or simply receives another
10 defective part in its place. For the same reason, repairing the Class Vehicles
11 does not cure the Transmission Defect, but merely leaves the vehicle with the
12 same defective parts that permanently decreases the Vehicle's value. Based on
13 Ford's inability to resolve the Transmission Defect so far, it appears that all
14 consumers will need replacement of transmission components such as the shift
15 forks, clutch, synchronizer parts or the entire transmission. As such, the
16 Transmission Defect endangers the drivers and passengers of the vehicles. It
17 creates uncertainty for the drivers of the Class Vehicles, who cannot rely on
18 their vehicles to operate consistently, reliably, or safely. Ford's deliberate non-
19 disclosure of these defects artificially inflated the purchase and lease price for
20 these vehicles.

21 77. The Ford MT82 and MT82-D4 Transmission Defect is a latent
22 defect that presents a safety risk to riders, causes damage to components
23 overtime, and makes vehicles equipped with the defective transmission
24 dangerous and uncomfortable to ride. It makes the Class Vehicles unfit for their
25 ordinary use of providing safe and reliable transportation. As such, the
26 Transmission Defect presents a breach of the implied warranty of
27 merchantability.

28 78. The Transmission Defect in the Class Vehicles is a problem

1 associated with the design, materials and/or manufacturing that was caused by a
2 confluence of business decisions and choices Ford knowingly made, and
3 continues to make, in designing and managing the production of the Class
4 Vehicles.

5 **The Transmission Defect Poses an Unreasonable Safety Hazard**

6 79. The Transmission Defect causes unsafe conditions in the Class
7 Vehicles, including but not limited to slips, jerks, gear clashes, harsh, difficult
8 and inability to shift or to engage another gear when attempting to shift. These
9 conditions are caused by issues within the transmission and clutch components
10 that prevent proper hydraulic system and gears function, which in turn results in
11 decomposition and failure of parts throughout the transmission. These
12 conditions present a safety hazard because they severely affect the driver's
13 ability to control the vehicle's speed, acceleration, and deceleration.

14 **Ford Has Exclusive Knowledge of the Transmission Defect**

15 80. Ford had superior and exclusive knowledge of the Transmission
16 Defect and knew or should have known that the defect was not known or
17 reasonably discoverable by Plaintiffs and Class Members before they purchased
18 or leased the Class Vehicles.

19 81. Upon information and belief, Ford began using the Getrag MT82
20 transmission in the Ford Mustang in or around 2010.

21 82. Plaintiffs are informed and believe and based thereon allege that
22 before Plaintiffs purchased their Class Vehicles, and since at least 2010, Ford
23 knew about the Transmission Defect through sources not available to
24 consumers, including: pre-release testing data; early consumer complaints about
25 the Transmission Defect to Defendant's dealers who are their agents for vehicle
26 repairs; warranty claim data related to the defect; aggregate data from Ford's
27 dealers; consumer complaints to the NHTSA and resulting notice from NHTSA;
28 dealership repair orders; testing conducted in response to owner or lessee

1 complaints; TSBs applicable to the Class Vehicles; and other internal sources of
2 aggregate information about the problem.

3 83. Only Ford had access to its pre-release testing data, aggregate data
4 from Ford's dealers, testing conducted in response to owner or lessee
5 complaints, and other internal sources of aggregate information about the
6 problem. Ford did not make this information available to customers, and
7 customers had no way to access it.

8 84. Ford became further aware of the problems stemming from the
9 Transmission Defects soon after it began implementation of the Getrag MT82 in
10 the Class Vehicles. On August 3, 2011, the National Highway Traffic Safety
11 Administration (hereinafter "NHTSA") initiated an investigation. The Office of
12 Defects Investigations ("ODI") found that there were, at the time, 364 unique
13 reports from owners, 307 of which were provided directly by Ford to ODI.

14 85. The alleged Transmission Defect was inherent in each Class
15 Vehicles' Transmission and was present in each Class Vehicles' Transmission at
16 the time of sale.

17 86. The existence of the Transmission Defect is a material fact that a
18 reasonable consumer would consider when deciding whether to purchase or
19 lease a vehicle that was equipped with a transmission. Had Plaintiffs and other
20 Class Members known that the Class Vehicles were equipped with defective
21 transmissions, they would not have purchased or leased the Class Vehicles
22 equipped with the Transmissions or would have paid less for them.

23 87. Irrespective of all the aggregate information, both internal and
24 external, that clearly provided Ford with knowledge that the Transmission is
25 dangerously defective, Ford has never disclosed to owners or prospective
26 purchasers that there is a safety defect in the Class Vehicles. In fact, Ford
27 intentionally and actively concealed the existence of a safety defect in the Class
28 Vehicles.

1 88. Reasonable consumers, like Plaintiffs, reasonably expect that a
2 vehicle's transmission is safe, will function in a manner that will not pose a
3 safety hazard, and is free from defects. Plaintiff and Class Members further
4 reasonably expect that Ford will not sell or lease vehicles with known safety
5 defects, such as the Transmission Defect, and will disclose any such defects to
6 its consumers when it learns of them. They did not expect Ford to fail to
7 disclose the Transmission Defect to them and to continually deny the defect.

8 **NHTSA Complaints**

9 89. Besides whatever internal testing Ford likely conducted, Ford must
10 have learned of the Transmission Defect through customer complaints. These
11 include an extensive list of complaints on the NHTSA website.

12 90. NHTSA is a federal agency responsible for ensuring safe roadways
13 and enforcing federal motor vehicle safety standards.¹ Consumers may file
14 vehicle safety-related complaints through the NHTSA website, where they are
15 logged and published. They may be easily sorted by make, model, and year of
16 vehicle. Upon information and belief, Ford and/or Ford personnel would review
17 NHTSA's website for complaints.

18 91. Federal law requires automakers like Ford to be in close contact
19 with NHTSA regarding potential auto defects, including imposing a legal
20 requirement (backed by criminal penalties) compelling the confidential
21 disclosure of defects and related data by automakers to NHTSA, including field
22 reports, customer complaints, and warranty data. *See TREAD Act*, Pub. L. No.
23 106-414, 114 Stat.1800 (2000).

24 92. Automakers have a legal obligation to identify and report emerging
25 safety-related defects to NHTSA under the Early Warning Report
26 requirements. *Id.* Similarly, automakers monitor NHTSA databases for
27

28 ¹ <https://www.nhtsa.gov/about-nhtsa>, last accessed April 29, 2019.

1 consumer complaints

2 regarding their automobiles as part of their ongoing obligation to identify
3 potential defects in their vehicles, including safety-related defects. *Id.* Thus,
4 Ford knew or should have known of the many complaints about the
5 Transmission Defect logged by NHTSA Office of Defect Investigation (ODI),
6 and the content, consistency, and large number of those complaints alerted, or
7 should have alerted, Ford to the Transmission Defect.

8 93. A search for “2011 Ford Mustang” on the NHTSA website yields a
9 large volume of complaints from consumers experiencing the transmission
10 defect². Below are some examples:

11 a. A consumer in Charlotte, NC wrote on **January 18, 2011**:

12 WHEN THE AMBIENT TEMPERATURE IS COLD (BELOW 35
13 DEGREES) 1ST, 2ND AND 3RD GEARS ARE EXTREMELY
14 DIFFICULT TO ENGAGE. I HAVE A MANUAL
15 TRANSMISSION VEHICLE AND HAVE ALMOST BEEN REAR
16 ENDED TWICE WHEN TRYING TO ENGAGE 2ND GEAR IN
17 MY NEW 2011 FORD MUSTANG. I HAVE VISITED KEITH
18 HAWTHORNE FORD ONCE FOR SERVICE SINCE REALIZING
19 THE ISSUE. THEY DID ACKNOWLEDGE THAT FORD IS
20 AWARE OF THE ISSUE BUT BASICALLY SHRUGGED THEIR
21 SHOULDERS ABOUT IT. I CALLED BACK YESTERDAY TO
22 KEITH HAWTHORNE'S SERVICE DEPARTMENT AND THERE
23 IS STILL NO RESOLUTION.

24 I AM EXTREMELY CONCERNED ABOUT GETTING HIT AS
25 ALL LOWER GEARS ARE DIFFICULT TO ENGAGE IN COLD
26 WEATHER. OFTEN I HAVE JUST HAD TO SKIP 2ND GEAR
27 ALL TOGETHER. *TR

28 b. A consumer in Palmyra, PA wrote on **February 10, 2011**:

OCCASIONAL AND SOMETIMES SEVERE

2

<https://www.nhtsa.gov/vehicle/2011/FORD/MUSTANG/2%252520DR/RWD#c>
complaints. last accessed January 31, 2020.

SHUDDER/VIBRATION WHEN DOWNSHIFTING, PARTICULARLY WHEN GOING DOWN HILL, FELT THROUGHOUT THE CAR, SEAT AND SHIFTER. WHEN IT HAPPENS, IT FEELS LIKE THE VIBRATION IS IN THE DRIVETRAIN AREA. SEEMS LIKE IT ALWAYS HAPPENS ABOVE 40MPH. THE SHUDDER/VIBRATION CLOSELY RESEMBLES GOING OVER RUMBLE STRIPS. IT CAN BE UNNERVING AS IT FEELS LIKE SOMETHING IS GOING WRONG WITH THE CAR! I HAVE READ FORUMS AND IT SEEMS LIKE I AM NOT THE ONLY PERSON THAT HAS BEEN EXPERIENCING THIS PROBLEM WITH THE 2011 MUSTANG. THIS PROBLEM CAN BE DISTACTING AS YOU DRIVE AND THE VIBRATION CAN NOT BE GOOD FOR THE DRIVETRAIN. SOME OR ALL OF THESE 2011 MUATANG MANUAL CARS HAVE A PROBLEM AND FORD MUST ADDRESS THIS ISSUE NOW! *TR

c. A consumer in Fort Walton Beach, FL wrote on **January 20, 2011:**

WHEN THE OUTSIDE TEMPERATURE IS IN THE 30'S 1ST TO 2ND IS VERY HARD TO SHIFT INTO AND FROM 2ND TO 3RD IS ABOUT THE SAME. I HAVE TAKING MY CAR TO GARY SMITH FORD AND THE SERVICE ADVISOR INFORMED ME THAT FORD AWARE OF THE PROBLEM AND THAT THE ENGINEERS WERE WORKING ON THE PROBLEM. THAT WAS 30 DAYS AGO AND ALMOST 2 REAR ENDS AND STILL NO FIX SOME TIMES IT IS JUST BETTER TO GO FROM FIRST TO THIRD TO AVOID TRYING TO GET IT INTO SECOND. *TR

d. A consumer in Columbia, SC wrote on **February 17, 2011:**

MANUAL TRANSMISSION IS CLUNKY AND DOES NOT SHIFT PROPERLY. FEELS LIKE THE SYNCHROS ARE GRINDING ESPECIALLY FROM 1ST-2ND GEAR. HAVE HAD THE SHIFTER POP OUT OF GEAR WHICH I FIND TO BE DANGEROUS. IT IS WORSE WHEN COLD, BUT STILL HAS HAPPENED EVEN WHEN WARMED UP. *TR

e. A consumer in Carrollton, TX wrote on **February 17, 2011:**

1 I HAVE BEEN EXPERIENCING INTERMITTENT
2 TRANSMISSION PROBLEMS SINCE I BOUGHT MY 2011
3 MUSTANG V6 EQUIPPED WITH A MT82 MANUAL
4 TRANSMISSION.

5 AT FIRST THE CAR WOULD RESIST SHIFTING INTO 1ST
6 GEAR WHILE FULLY STOPPED, EVEN WITH THE CLUTCH
7 PRESSED TO THE FLOOR. SOON AFTER 2ND GEAR BEGAN
8 RESISTING SHIFTS AND I HAD OCCASIONAL "LOCK-OUTS"
9 WHERE IT WOULD NOT GO INTO 2ND GEAR FREQUENTLY
10 WHILE TURNING LEFT. WHEN THIS HAPPENS I HAD TO
11 UPSHIFT TO 3RD OF IF THERE WAS TRAFFIC IN FRONT I
12 WOULD COAST UNTIL I CAN SAFELY DOWNSHIFT TO 1ST.

13 I HAD THE CAR DIAGNOSED AND SERVICED AT THE
14 DEALERSHIP AND THEY FELT THE PROBLEM WAS
15 CAUSED BY STRETCHED BOLTS IN THE PRESSURE PLATE
16 THAT KEPT THE CLUTCH FROM DISENGAGING.
17 UNFORTUNATELY THIS DIDN'T HELP AND THE SHIFT
18 FEEL CONTINUED TO DEGRADE.

19 TODAY I EXPERIENCED A NEW PROBLEM: I WAS STOPPED
20 AT AN INTERSECTION AND WHEN THE LIGHT TURNED
21 GREEN I ATTEMPTED TO SHIFT INTO 1ST BUT THE
22 SHIFTER ONLY MOVED 90% OF THE WAY FORWARD AND
23 DIDN'T ENGAGE ANY GEARS. IT DIDN'T GRIND EVEN
24 WHEN I LET THE CLUTCH OUT IT JUST WAS AS IF THERE
25 WAS NO 1ST GEAR. I ATTEMPTED TO PULL IT BACK INTO
26 NEUTRAL AND IT RESISTED; IT FELT LOCKED IN.
27 EVENTUALLY I PULLED HARD ENOUGH THAT IT CAME
28 BACK TO NEUTRAL BUT THE SAME THING HAPPENED
WHEN I TRIED TO SHIFT INTO 1ST AGAIN. IT WOULDN'T
FIND THE GEAR AND GOT STUCK. ALL DURING THIS TIME
OF ABOUT 30 SECONDS THERE WERE OTHER DRIVERS
THAT HAD EXITED THE HIGHWAY AND HAD TO STOP
AND GO AROUND ME WHILE I WAS STUCK AT THE
INTERSECTION. I COULD HAVE EASILY BEEN
REARENDED. I'VE HAD OTHER NEAR MISSES WHEN I'VE
PULLED OUT IN FRONT OF TRAFFIC AND BEEN LOCKED
OUT OF 2ND GEAR AS WELL.

1 THE OFFICIAL WORD IS THAT FORD IS AWARE OF THE
 2 PROBLEM BUT THEY DON'T HAVE A FIX YET. I HAD BEEN
 3 BIDDING MY TIME UNTIL A SOLUTION IS FOUND BUT IT
 4 APPEARS THAT THIS MAY RESULT IN AN ACCIDENT IF
 5 NOT RESOLVED SOON. *TR

6 94. A search for "2012 Ford Mustang" on the NHTSA website yields a
 7 large volume of complaints from consumers experiencing the transmission
 8 defect³. Below are but a few examples:

9 a. A consumer wrote on **March 26, 2011**:

10 I CURRENTLY DRIVE A 2012 FORD MUSTANG GT COUPE
 11 (THIS SITE WILL NOT LET ME SELECT A 2012 MUSTANG
 12 FROM THE DROP DOWN MENU, ONLY 2011), PURCHASED
 13 3/11/11. IT IS CURRENTLY EXPERIENCING A "CLUTCH
 14 STAY OUT" PROBLEM. IT IS A SIX SPEED MANUAL
 15 TRANSMISSION. WHEN SHIFTING FROM FIRST TO SECOND
 16 GEAR AT HIGH RPM, THE CLUTCH WILL NOT RELEASE
 17 FOR THE SHIFT UNTIL THE RPMS FALL BACK BELOW A
 18 CERTAIN LEVEL. I AM UNSURE IF THIS HOLDS TRUE FOR
 19 ALL THE GEARS AS MY CAR IS STILL FAIRLY NEW AND IN
 20 BREAK-IN AND I HAVEN'T TAKEN ANY GEAR PAST 5K
 21 RPM. THAT SAID, THE PHYSICAL EXPERIENCE GOES LIKE
 22 THIS, "TAKE FIRST GEAR PAST 3K RPM, SHIFT TO SECOND,
 23 CAR BUCKS, RPMS FALL, SECOND IS THEN ENGAGED,
 24 CAR LURCHES/LUNGES FORWARD AFTER THE CLUTCH
 25 "CATCHES" AND THEN IT LAUNCHES ONE FORWARD
 26 UNPREDICTABLY." THIS HAS HAPPENED TO ME EVERY
 27 TIME I HAVE SHIFTED THE CAR INTO SECOND GEAR
 28 AFTER TAKING FIRST GEAR PAST 3K RPM. *TR

23 b. A consumer in Jackson, WI wrote on **May 28, 2011**:

24 BRAND NEW 2012 FORD MUSTANG BOSS 302, 5.0L, MT82 6-
 25 SPD TRANSMISSION. MY UNDERSTANDING IS THIS CAR
 26 HAS A REVISED CLUTCH MECHANISM VS. THE 2011

27 ³

28 <https://www.nhtsa.gov/vehicle/2012/FORD/MUSTANG/2%252520DR/RWD>.
 last accessed January 31, 2020.

1 MODEL YEAR. REGARDLESS, I'VE BEGUN TO EXPERIENCE
2 THE SAME ISSUES 2011 MODEL YEAR OWNERS REPORT.
3 I'VE OWNED THE CAR LESS THAN TWO WEEKS AND WITH
4 LESS THAN 200 MILES ON THE CAR AT A STOP LIGHT THE
5 TRANSMISSION FAILED TO ENGAGE INTO FIRST GEAR
6 FULLY. THIS RESULTS IN A GRINDING COMING FROM THE
7 TRANSMISSION. NEARLY REAR ENDED, VEHICLE WAS AT
8 A LIGHT AT THE END OF A FREEWAY RAMP AND WAS
9 UNABLE TO ACCELERATE UNTIL THE CAR WAS PLACED
10 INTO NEUTRAL AND RE-SHIFTED TO 1ST. 1ST TO 2ND AND
11 2ND TO 3RD SHIFTS TEND TO BE HARD, ROUGH OR
12 CLUNKY. ON OCCASION SHIFTS TO 5TH EXHIBIT A
13 CLUNKY SENSATION AS WELL. AT 295 MILES WAS
14 UNABLE TO SHIFT INTO 2ND GEAR, YOU COULD HEAR
15 THE SYNCHROS WINDING UP IN THE TRANSMISSION
16 DURING THE ATTEMPT. LIKEWISE MOVING BACK TO
17 FIRST, EVEN AT SPEEDS OF LESS THAN 5MPH IN THIS
18 INSTANCE, RESULTED IN A ROUGH ENGAGEMENT AND
19 SYNCHRO WHINE FROM THE TRANNY. DRIVING IN 2ND
20 GEAR AT 20MPH AND PUSHING THE CLUTCH IN TO COAST
21 RESULTS IN A RATTLING NOISE INTERMITTENTLY. THIS
22 RATTLING JUST STARTED WITHIN THE LAST 50 MILES OF
23 DRIVING. THE BUILD DATE ON THE VEHICLE WAS
24 3/31/2011. I'VE NOT YET REPORTED THIS ISSUE TO MY
25 FORD DEALER BUT INTEND TO SHORTLY! VERY VERY
26 WORRIED AT OVER \$42,000 THIS IS THE MOST EXPENSIVE
27 VEHICLE I'VE EVER PURCHASED AND AM GRAVELY
28 CONCERNED I MAY HAVE A LEMON ON MY HANDS. MY
PREVIOUS MUSTANG WITH A 5 SPD MANUAL NEVER
EXHIBITED THESE TENDENCIES. FORD MUST RESOLVE
THE ISSUES THE MT-82 6 SPEED TRANSMISSION
IMMEDIATELY OR REPLACE IT WITH A PROPERLY
DESIGNED ALTERNATE UNIT. I WON'T ENTERTAIN
HAVING MY SPECIAL EDITION VEHICLE DAMAGED DUE
TO A FAULTY TRANSMISSION. LIKEWISE I UNDERSTAND
THE FIX OFFERED TO 2011 OWNERS ONLY MAKES
MATTERS WORSE, I REFUSE TO TRY ANYTHING THAT
WILL WORSEN THE CURRENT SITUATION. DEEPLY
FEARFUL THAT CONTINUED USE OF MY 2012 VEHICLE
WILL RESULT IN CONSIDERABLE DRIVETRAIN DAMAGE
OR ACCIDENT. *TR

1
2 c. A consumer in Mesa, AZ wrote on **June 2, 2011:**

3 2012 MUSTANG GT 5.0

4 1.MERGING ONTO THE FREEWAY, COULD NOT GET THE
5 CAR IN 2ND GEAR.

6 2.THIS HAPPENS ALL THE TIME. AND COULD BE DEADLY,
7 1 OF THESE TIMES, IF THE DRIVERS DON'T RECOGNIZE I
8 CAN NOT ACCELERATE UP TO SPEED, BECAUSE IM STUCK
9 TRYING TO GET MY CAR INTO GEAR IN A PANIC.

10 3.NOTHING HAS BEEN DONE BY FORD OR THE DEALER
11 BECAUSE THE SAY NOTHING IS WRONG AND IT IS
12 NORMAL! *TR

13 d. A consumer in Tarzana, CA wrote on **June 15, 2011:**

14 2012 MUSTANG V6 MANUAL 6 SPEED TRANSMISSION.
15 HARD TO SHIFT INTO 1ST GEAR.

16 STOPPED AT A RED LIGHT ON PCH AND TOPANGA
17 CANYON WITH MY 3 YEAR OLD IN A BABY DAUGHTER IN
18 THE BABY SEAT IN THE BACK BEHIND ME. I SAW A
19 DRIVER BEHIND ME COMING IN TOO FAST. I STARTED
20 PREPPING IF I HAD TO MOVE FORWARD INTO THE
21 INTERSECTION THAT HAD NO TRAFFIC JUST IN CASE.
22 WOULD NOT SHIFT INTO 1ST GEAR NO MATTER WHAT I
23 TRIED. QUICKLY I SHIFTED INTO 2ND AND SAW THE
24 DRIVER SMASH THE BREAKS WHILE HIS TIRES WERE
25 SMOKING AS HE WAS APPROACHING MY REAR END IN A
26 SLIDE. CAR HAD ENOUGH POWER TO MOVE ME
27 FORWARD 10 FEET AND AVOID A COLLISION. *TR

28 e. A consumer in Denville, NJ wrote on **June 20, 2011:**

I OWN A 2012 MUSTANG GT WITH MANUAL
TRANSMISSION. THE CAR HAS EXHIBITED VERY ROUGH
SHIFTING ABOUT A WEEK AFTER PURCHASE.
ADDITIONALLY THE CLUTCH AND DRIVETRAIN ARE

1 VERY NOISY - LOT'S OF CLANGS AND SEEMINGLY LOOSE
2 PARTS. THE CAR WILL POP OUT OF GEAR OCCASIONALLY
3 WHEN IN 1ST. SHIFTING FROM 1ST TO 2ND IS SOMETIMES
4 SMOOTH, SOMETIMES VERY ROUGH AND SOMETIMES
5 GRINDS. ATTEMPTING TO SHIFT INTO 2ND WHEN MAKING
6 A LEFT HAND TURN SEEMS TO MAKE ROUGH SHIFTING
7 WORSE. I WAS AT A LIGHT MAKING A LEFT TURN ON A
8 FOUR LANE ROAD. I WAS IN THE LEFT HAND LANE WITH
9 A TRACTOR TRAILER TO MY RIGHT. THE LIGHT CHANGED
10 AND WE BOTH STARTED MOVING. I TRIED TO SHIFT
11 FROM 1ST TO 2ND AND WAS NOT ABLE TO ENGAGE THE
12 GEAR AND LOST SPEED. THE TRACTOR TRAILER
13 HOWEVER CONTINUED WITH THE TURN AND HAD TO
14 SLAM ON HIS BREAKS TO AVOID SIDE SWIPING MY CAR.
15 IF THE DRIVER HADN'T REACTED, HE WOULD HAVE HIT
16 THE CAR. IF I HAD A PASSENGER IN THE FRONT SEAT
17 AND HAD BEEN HIT THEY COULD HAVE BEEN INJURED
18 OR WORSE. THIS CAR IS EQUIPPED WITH SKIP SHIFT
19 TECHNOLOGY HOWEVER THE DASHBOARD MESSAGE
20 THAT LIGHTS WHEN IT IS ACTIVE DID NOT LIGHT. THIS
21 CAR HAS A SERIOUS SAFETY ISSUE WHICH SEEMS TO BE
22 GETTING PROGRESSIVELY WORSE. THE FIRST TIME THE
23 CAR WAS BROUGHT TO THE DEALER WAS FOR THE NOISY
24 CLUTCH/TRANS - THEY FELT IT WAS "LOUDER THAN
25 NORMAL" AND AFTER DISCUSSING WITH THEM THEY
26 FELT IT WOULD NOT BREAK DOWN. WITH THIS MOST
27 RECENT ISSUE OF NOT BEING ABLE TO SHIFT INTO GEAR
28 AND A NEAR-MISS ACCIDENT, I'M SCHEDULING THE CAR
TO BE SERVICED. THIS IS IN MY OPINION PRIMARILY A
MAJOR SAFETY FLAW AND SECONDLY A RED FLAG FOR
DURABILITY FOR THE LIFE OF THIS DRIVETRAIN. A
TRANSMISSION THAT IS GRINDING GEARS / GETTING
LOCKED OUT OF GEARS AFTER A COUPLE OF HUNDRED
MILES CAN'T LAST FOR WHAT YOU WOULD NORMALLY
EXPECT A TRANSMISSION TO LAST FOR. OVER THE LIFE
OF THE CAR, HOW MANY MORE SITUATIONS WHERE YOU
NEED TO MANEUVER THE CAR TO AVOID AN ACCIDENT
WILL ARISE. HOW MANY OF THOSE TIMES WILL THE
TRANSMISSION NOT RESPOND? *TT

f. A consumer in Jamestown, NY wrote on **July 7, 2011**:

1 BRAND NEW 2012 BOSS 302 MUSTANG WITH MT-82
 2 TRANSMISSION. FAILURE TO SHIFT INTO 3RD & 5TH
 3 GEARS IN REGULAR DRIVING CYCLE TRANSMISSION
 4 GRINDS /POPS OUT OF 3RD & 5TH GEARS RENDERING CAR
 5 MISSION DISABLED/ REQUESTED A REPLACEMENT
 6 TRANSMISSION AFTER TAKING BACK TO DEALER , AND
 7 FORD WILL NOT REPLACE, ONLY REPAIR/ MEANWHILE,
 8 PARTS HAVE BEEN ON BACK ORDER FOR 2+ WEEKS, BAR
 9 IS AT DEALER FOR 3 WEEKS NOW/ FORD IS AWARE OF
 10 THESE TRANSMISSION ISSUES WITH THE MT-82 MODEL
 11 TRANSMISSIONS, AND WILL NOT ADMIT TO THEIR
 12 DESIGN/BUILD ISSUES.

13 g. A consumer wrote on **June 18, 2011:**

14 TL* THE CONTACT OWNS A 2012 FORD MUSTANG. THE
 15 CONTACT STATED

16 THAT THE TRANSMISSION WOULD NOT SHIFT WHEN
 17 ATTEMPTING TO SHIFT IN AND OUT OF FIFTH GEAR. THE
 18 VEHICLE WAS TAKEN TO AN AUTHORIZED DEALER
 19 WHERE THE CONTACT WAS INFORMED THAT THIS WAS A
 20 KNOWN FAILURE, BUT THERE WAS NO REMEDY
 21 AVAILABLE. THE FAILURE MILEAGE WAS 1,700. THE VIN
 22 WAS UNKNOWN.

23 95. A search for “2013 Ford Mustang” on the NHTSA website yields a
 24 large volume of complaints from consumers experiencing the transmission
 25 defect⁴. Below are but a few examples:

26 a. A consumer in Prattville, AL wrote on **January 7, 2013:**

27 OWNER OF A 2013 MUSTANG GT PREMIUM 5.0 WITH 6
 28 SPEED TRANSMISSION. HAVE HAD PROBLEMS WITH
 ROUGH SHIFTING SINCE SHORTLY AFTER BUYING. HAVE
 TAKEN IT INTO MY LOCAL FORD DEALERSHIP 2 TIMES SO
 FAR AND MADE MENTION OF MY PROBLEMS SEVERAL

⁴

<https://www.nhtsa.gov/vehicle/2013/FORD/MUSTANG/2%252520DR/RWD>,
 last accessed April 29, 2019.

1 OTHER TIMES. FORD HAS BEEN UNABLE TO CORRECT
2 THE ROUGH SHIFTING WITH BOTH TRIPS TO THE
3 SERVICE DEPARTMENT TELLING ME THAT THEY CAN
4 NOT DUPLICATE THE PROBLEM. THE ROUGH SHIFTING
5 OCCURS IN 1ST-2ND AND 3RD GEARS MOST OF THE TIME,
6 ESPECIALLY IN COLDER TEMPERATURES. SOMETIMES I
7 ALSO HAVE A HARD TIME DOWN-SHIFTING INTO LOWER
8 GEAR AND JUST HAVE TO WAIT UNTIL I REACH A
9 COMPLETE STOP BEFORE BEING ABLE TO DOWN-SHIFT.
10 CURRENTLY HAVE ABOUT 7200 MILES ON THE CAR AND
11 WOULD LOVE FOR THIS ROUGH SHIFTING TO BE
12 RESOLVED. THESE SAME ISSUES REMIND ME OF THE 2011
13 AND 2012 MUSTANG'S WITH MANUAL TRANSMISSION
14 THAT FORD RELEASED A FIX FOR THAT WOULD ACT THE
15 SAME WAY. *TR

16 b. A consumer wrote on **January 21, 2013:**

17 TL* THE CONTACT OWNS A 2013 FORD MUSTANG. WHILE
18 DRIVING APPROXIMATELY 60 MPH, THE VEHICLE FAILED
19 TO SHIFT INTO THIRD GEAR. THE VEHICLE WAS NOT
20 TAKEN TO THE DEALER FOR DIAGNOSTIC TESTING. THE
21 VEHICLE WAS NOT REPAIRED. THE APPROXIMATE
22 FAILURE MILEAGE WAS 300. ..UPDATED 03/18/13 *BF

23 THE CONSUMER STATED THE VEHICLE FAILED TO SHIFT
24 INTO 3RD GEAR, WHICH HAD OCCURRED SEVERAL
25 TIMES. THE CONSUMER STATED THE VEHICLE DID NOT
26 SHIFT INTO SECOND GEAR ONCE. UPDATED 03/27/13

27 c. A consumer from Phoenix, AZ wrote on **March 6, 2013:**

28 WHEN SHIFTING FROM 2ND TO 3RD GEAR. THE VEHICLE
WOULD NOT SHIFT INTO 3RD WITH THE CLUTCH FULLY
DEPRESSED. THE VEHICLE WAS TAKEN TO THE DEALER
IMMEDIATELY. THE DEALER ACKNOWLEDGE THE ISSUE
BUT WAS UNABLE TO REPAIR THE ISSUE STATING THAT
THEY WERE TOLD FROM FORD MOTOR COMPANY THAT
IT WAS NORMAL OPERATION. *TR

d. A consumer wrote on **June 25, 2013:**

TL* THE CONTACT OWNS A 2013 FORD MUSTANG. THE
CONTACT STATED THAT WHILE DRIVING 30 MPH, HE
BEGAN TO SHIFT GEARS AND HEARD A GRINDING NOISE.

1 THE VEHICLE WAS TAKEN TO THE DEALER FOR
2 INSPECTION AND THEY STATED THAT THE
3 TRANSMISSION NEEDED TO BE REBUILT. THE VEHICLE
4 WAS REPAIRED BUT THE FAILURE RECURRED. THE
5 MANUFACTURER WAS NOTIFIED OF THE FAILURE. THE
6 FAILURE MILEAGE WAS 222.

7 e. A consumer wrote on **December 10, 2013:**

8 12-9-13 TRANSMISSION ISSUE BROUGHT TO FORD DEALE
9 EMAIL TO FORD:

10 SUBJECT: REPAIR ORDER 43617

11 I WOULD APPRECIATE FORD TO HAVE A CONSIDERATION
12 OF THE FOLLOWING:

13 1. I WOULD LIKE TO SEE A NEW TRANSMISSION PUT INTO
14 THIS 2013 BOSS 302 LAGUNA SAGA WITH UNDER 6000
15 MILES.

16 2. RESURFACE FLY WHEEL.

17 3. REPLACING THE CLUTCH AND PRESSURE PLATE.

18 I PAID OVER \$66,000K FOR THIS VEHICLE.

19 AND FOR FORD TO HAVE THE NERVE OF PLACING A
20 MADE IN CHINA "GETRAG" MT-82 INTO AN AMERICAN
21 MUSCLE CAR IS IN MY OPINION IS DESPICABLE. *TR

22 f. A consumer from Brooklyn Park, MN wrote on **June 10, 2015:**

23 CANNOT SHIFT FROM FORTH TO FIFTH IN MY CAR AND
24 2ND GEAR EXPERIENCES A LOCK OUT / MISSED SHIFT
25 AND WILL NOT GO IN TO 2ND. BAD TRANSMISSION AND
26 SYNCRO. PROBLEMS

27 g. A consumer from Phoenix, AZ wrote on **August 31, 2015:**

28 NOTICED I COULDN'T GET THE CAR (2013 BOSS 302 -
BOUGHT NEW) TO SHIFT INTO 3RD GEAR AT HIGHER
RPMS. (NOT ON THE TRACK, JUST ON THE FREEWAY).
MENTIONED TO LOCAL DEALER AND IT WAS BRUSHED
OFF BECAUSE THE CAR WAS SO NEW. WELL, IT STILL
HAPPENS AND SEEMS TO BE WORSENING. ONLY 3RD
GEAR AND ONLY HIGHER RPMS. WHEN TRYING TO GET
INTO 3RD IT JUST GRINDS AND DOES'T LATCH.

1 h. A consumer from Phoenix, AZ wrote on **April 19, 2016:**

2 I WAS UNABLE TO SHIFT GEARS WHILE DRIVING AND
 3 THE SERVICE DEPT ADVISED I HAD BAD SYNCHROS AND
 4 WAS FIXED UNDER WARRANTY. FAST FORWARD A
 5 COUPLE OF MONTHS AND HAD DIFFICULTY SWITCHING
 6 GEARS FROM 1ST TO 2ND HAD REALLY BAD GRINDING
 7 AND WOULD TAKE A COUPLE OF TIMES TO SHIFT. THEN,
 8 WHEN STARTING MY CAR FROM MY HOUSE, I WAS
 9 UNABLE TO GET THE GEAR INTO REVERSE WHILE THE
 10 CAR WAS ON. IT JUST WOULDN'T GO IN TO GEAR... NOT
 11 ANY GEAR IN FACT. I HAD TO TURN THE CAR OFF AND
 12 PUT IT INTO REVERSE AND THEN TURN THE CAR ON.
 13 WHILE THE CLUTCH WAS FULLY PRESSED DOWN THE
 14 CAR STARTED MOVING BACKWARDS WHEN I REMOVED
 15 MY FOOT FROM THE BREAK. (THE CAR WAS LEVEL AND
 16 THAT NEVER HAPPENS). THEN AFTER BACKING UP I
 17 COULDN'T GET IT OUT OF REVERSE. I HAD TO TURN THE
 18 CAR OFF AND PUT IT IN 1ST AND THEN START THE CAR.
 19 THE SAME THING - IT MOVED WITH THE CLUTCH IN AND
 20 COULDN'T GET IT OUT OF GEAR. I HAD THE CAR TOWED
 21 TO THE DEALER'S SERVICE DEPARTMENT. AFTER THE
 22 TOW, FOR WHATEVER REASON, THEY WERE ABLE TO
 23 DRIVE THE CAR WITHOUT ISSUE. I'M NOT USED TO
 24 DRIVING A CAR WITH SUCH TRANSMISSION PROBLEMS
 25 THAT CAN'T BE DIAGNOSED.

26 96. A search for "2014 Ford Mustang" on the NHTSA website yields a
 27 number of complaints from consumers experiencing the transmission defect⁵.

28 For instance:

a. A consumer in Noblesville, IN wrote on **February 19, 2015:**

22 I AM HAVING PROBLEMS WITH THE TRANSMISSION
 23 SHIFTING FROM 1-2-3 WHEN COLD. THE TRANSMISSION
 24 DOES NOT WANT TO GO INTO 1ST OR 2ND WITHOUT
 25 GRINDING AND WILL GRIND AN POP OUT OF 3RD WHEN
 26 TRYING TO SHIFT INTO IT SOMETIMES. I HAVE BEEN TO
 27 THE FORD DEALER AND WAS TOLD THAT FORD KNOWS

⁵<https://www.nhtsa.gov/vehicle/2014/FORD/MUSTANG/2%252520DR/RWD>, last accessed April 30, 2019

1 ABOUT THE GRINDING ISSUE IN THE MUSTANG BUT
 2 WILL DO NOTHING TO FIX IT. I WAS TOLD BY THE FORD
 3 SERVICE ADVISOR THAT FORD WAS DOING A FLUID
 4 CHANGE TO A HEAVIER TRANS FLUID AND NOW THEY
 5 HAVE STOPPED. NOW I AM LEFT WITH A BRAND NEW
 6 MUSTANG THAT GRINDS THE GEARS EVERY DAY. *TR

7 b. A consumer in Port Charlotte, FL wrote on **April 21, 2015:**

8 I JUST GOT THIS CAR USED TOOK IT IN FOR A NOISE IN
 9 THE TRANSMISSION IN 5TH GEAR KNOWING IT IS UNDER
 10 WARRANTY THE FORD DEALER STARTED THE WORK ON
 11 THE CAR THREE DAYS LATER I WAS TOLD THAT IT WAS
 12 ABUSED AND NOT UNDER WARRANTY I WAS TOLD THAT
 13 THE OLD OWNER CHANGED THE CLUTCH THAT CAUSED
 14 THE DAMAGE I FIND THAT HARD TO BELIEVE THIS CAR
 15 IS NOT MODIFIED IN ANY WAY SO WHY THE CLUTCH
 16 AND I HAVE READ ALL OF THE 5TH GEAR PROBLEMS
 17 LIKE MINE. THEY HAVE TOLD ME THE REPAIR IS 3400. TO
 18 FIX AND IF THEY PUT IT BACK TOGETHER IT WILL BE 500
 19 OR 600 I DIDN'T GIVE THEM WRITTEN OR WARBLE [sic]
 20 PERMISSION TO DO THIS SO I DON'T KNOW HOW I WILL
 21 HANDLE IT. THIS IS A ON GOING PROBLEM WITH THIS
 22 TRANSMISSION I'M TRYING TO WORK IT OUT WITH THE
 23 DEALER BUT I DON'T KNOW HOW IT WILL GO. THANK
 24 YOU TIM

25 97. A search for “2015 Ford Mustang” on the NHTSA website
 26 yields a number of complaints from consumers experiencing the transmission
 27 defect⁶. For instance:

28 a. A consumer in Manor, TX wrote on **October 18, 2018:**

PREMATURE INTERMEDIATE SHAFT FAILURE. RESULTED
 IN TRANSMISSION FAILURE. VEHICLE ONLY OPERATES
 IN 1, 2, 3 AND REVERSE. VEHICLE IN MOTION.

b. A consumer in Fair Lawn, NJ wrote on **August 21, 2018:**

I HAVE A 2015 MUSTANG GT PREMIUM WITH A

⁶

<https://www.nhtsa.gov/vehicle/2015/FORD/MUSTANG/2%252520DR/RWD#c>
 complaints, last accessed April 29, 2019.

1 STANDARD TRANSMISSION AND WHEN EVER I'M AT A
 2 STOP AND PRESS ON CLUTCH TO PUT INTO 1ST. GEAR
 3 THERE IS A THUD SOUND LIKE THE CLUTCH ISN'T
 4 HOLDING. AND GOING INTO 2ND. GEAR THERE'S A
 GRINDING FEELING LIKE SYNCHROS ARE BROKEN.

5 c. A consumer in Cakera, AL wrote on **September 27, 2015:**

6 LOUD THUD WHEN SHIFTING, GRINDING DURING
 7 SHIFTING OF ALL GEARS, INTERMITTENT HIGH RPM
 LOCKOUT. FORD CLAIMS ITS "NORMAL"

8 d. A consumer in Orlando, FL wrote on **August 4, 2015:**

9 I AM ALSO EXPERIENCING THE THUD ISSUE IN MY 2015
 10 FORD MUSTANG GT CAR. IT'S REALLY NOTICEABLE
 11 WHEN I SHIFT FROM AND TO 1, 2, 3, 4 AND IT'S QUIETER
 12 BUT STILL THERE SHIFTING 5 AND 6. NOISE IS VERY
 13 ANNOYING, BUT MY CONCERN IS WILL I HAVE ISSUES
 WITH MY DRIVE TRAIN, CLUTCH OR ANY THING ELSE IN
 THE FUTURE.

14 e. A consumer in Jonesboro, GA wrote on **December 29, 2014:**

15 [HTTP://WWW.MUSTANG6G.COM/FORUMS/SHOWTHREAD.
 16 PHP?T=14267](http://www.mustang6g.com/forums/showthread.php?t=14267)

17 VEHICLE EXHIBITED THE SOUND SHOWN IN THE VIDEO.
 18 IT TOOK AN INDEPENDENT SHOP TO DIAGNOSE AND
 19 FIND THE PROBLEM TO BE SHOWN IN THE
 20 TRANSMISSION BELLHOUSING OF THE MT82. DEALER
 21 FINALLY HEARD THE ISSUE AND SERVICE MANAGER
 22 ACKNOWLEDGED IT SOUNDED FROM THE TRANS, BUT
 23 NOW DEALER IS SAYING THE PROBLEM ISN'T
 OCCURRING. THEY HAVE FAILED TO FOLLOW MY
 INSTRUCTIONS ON REPRODUCING THE ISSUE. THIS
 24 COULD CAUSE A SEVERE TRANSMISSION FAILURE AND
 25 LOSS OF CONTROL BUT NO ATTEMPTS TO REMOVE THE
 26 TRANS TO INSPECT HAS BEEN DONE. *TR

27 98. A search for "2016 Ford Mustang" on the NHTSA website yields a
 28 number of complaints from consumers experiencing the transmission defect⁷.

⁷

<https://www.nhtsa.gov/vehicle/2013/FORD/MUSTANG/2%252520DR/RWD>,
 last accessed April 29, 2019.

1 For instance:

2 a. A consumer from Tolleson, AZ wrote on **May 24, 2016:**

3 6 SPEED MANUAL TRANSMISSION; CLUNKS, GRINDS AND
4 DIFFICULT TO ENGAGE IN 1ST-4TH GEARS, HAPPENS
5 UNDER ALL DRIVING CONDITIONS. MANUFACTURER
6 REFUSES TO ADDRESS UNDERLYING CAUSE.

7 b. A consumer from Gilbert, AZ wrote on **August 7, 2017:**

8 SINCE I HAVE PURCHASED THE CAR WITH 300 MILES I
9 HAD TO TAKE THE VEHICLE IN BECAUSE THE
10 TRANSMISSION WAS AT TIMES, HARD TO SHIFT, WOULD
11 GRIND A GEAR. LOCKED ME OUT OF A GEAR, AND IN
12 GENERAL CAN SHAKE AND PRODUCE LOUD THUMPING
13 NOISES WHEN ENGAGING GEARS WHILE SITTING AT A
14 STANDSTILL OR EVEN WHILE DRIVING DOWN THE ROAD.
15 I WAS TOLD AT THE TIME THAT THIS WAS NORMAL
16 BEHAVIOR. I HAD TEST DROVE MORE THAN ONE CAR
17 BEFORE PURCHASING THIS ONE. NONE OF THE OTHERS
18 BEHAVED THIS WAY. I HAVE DONE MORE RESEARCH
19 AND DISCOVERED THAT THIS IS A VERY INTERMITTENT
20 ISSUE BETWEEN BUILDS OF THE TRANSMISSION. I TOOK
21 IT IN AGAIN FOR SERVICE. THEY HAD REMOVED THE
22 TRANSMISSION AND SERVICED SOME PARTS. UPON
23 GETTING THE CAR BACK IT ALMOST IMMEDIATELY
24 WENT BACK TO DOING THE SAME THING. THIS IS NOT A
25 BIG SAFETY CONCERN, BUT COULD CAUSE BIGGER AND
26 MORE EXPENSIVE ISSUES DOWN THE ROAD DEPENDING
27 ON WHAT IS HAPPENING TO THE TRANSMISSION. THIS IS
28 ONE OF FOUR COMPLAINTS I HAVE WITH THIS
PARTICULAR VEHICLE THAT HAVE NOT BEEN
RESOLVED.

c. A consumer from Morristown, TN wrote on **March 19, 2018:**

2016 FORD MUSTANG GT 6 SPEED MANUAL. SHIFTING
GEARS CLUTCH ALL THE WAY IN IT HAS A HARSH
FEELING NOTCHY GOING INTO 1ST 2ND 3RD GEARS THE
OTHER GEARS FEEL SMOOTH. I HAVE TALKED TO
ANOTHER GUY AND HIS ONLY HAS 2K MILES AND HE
HAS THE SAME PROBLEM. I LOVE THIS MUSTANG BUT
THAT JUST MAKE IT NOT FUN TO DRIVE ANYMORE.

1 FORD NEEDS TO RECALL THIS PROBLEM ASAP.

2 99. A search for “2017 Ford Mustang” on the NHTSA website yields a
3 number of complaints from consumers experiencing the transmission defect⁸.
4

5 For instance:

6 a. A consumer from Manning, SC wrote on **November 30, 2018:**

7 CAR MAKES A CLUNCK WHEN SHIFTING GEARS. SO BAD
8 YOU CAN FEEL IT THOUGH THE SEAT. LOOKS LIKE MANY
9 OTHER PEOPLE ARE HAVING SIMILAR ISSUES. IT DOES IT
10 SITTING STILL AND MOVING.

11 b. A consumer from Lindsay, CA wrote on **October 14, 2018:**

12 WHENEVER I TAKE OFF AND WHILE I'M DRIVING
13 SHIFTING GEARS THE CAR MAKES A THUD OR THUMP
14 SOUND. WHEN I FIRST PUT IT INTO GEAR IT MAKES THE
15 THUD SOUND AND IT CONTINUES THROUGHOUT SECOND
16 AND THIRD EVEN FOURTH GEAR. IT'S ODD BECAUSE NO
17 OTHER CAR THAT I'VE OWNED HAS DONE THIS AND I DO
18 NOT THINK IT'S NORMAL.

19 c. A consumer from Elkhart, IN wrote on **March 28, 2018:**

20 CAR HAS AUDIBLE CLUNKING NOISE WHEN SHIFTING
21 FROM GEAR TO GEAR. MANUAL TRANSMISSION.

22 d. A consumer wrote on **November 4, 2017:**

23 THE VEHICLE HAS BEEN BALANCE THE WHEELS AT
24 LEAST 4 TIMES IN THE LAST 2 MONTHS ALSO REPLACED
25 BOTH FRONT ROTORS THE VEHICLE HAVE A VIBRATION
26 ON THE STEERING WHEEL AROUND 50 TO 60 MILES AN
27 HOUR ALSO HAVE A PINGING METAL SOUND WHEN YOU
28 SHIFT ..ALSO A WOBBLE IN BETWEEN 5 TO 10 MILES AN
HOUR A RIGHT REAR TIRE WAS REPLACED NO CHANGE
THE VEHICLE HAVE ONLY 2200 MILES ONE FORD
MECHANIC FEELS AFTER CONFIRM MY CONCERNS THAT
COULD BE DRIVE LINE RELATED . DESPITE MY
CONCERNS FORD IS CONTACTING AN ENGINEER TO

⁸

<https://www.nhtsa.gov/vehicle/2013/FORD/MUSTANG/2%252520DR/RWD>,
last accessed April 29, 2019.

1 LOOK AT THE CAR DONT KNOW WHEN EVEN AFTER A
 2 MECHANIC FOUND THIS .WHAT TO ME COULD BECOME A
 3 SAFETY ISSUE .CONTACTED FORD CORP STILL WAITING
 4 WHEN ANYONE WILL FIX MY CAR .I AM ANGRY OF THE
 5 LACK OF CARING FROM FORD DEALERS .THERE MANY
 6 FORD MUSTANG OWNERS WITH THIS PROBLEM .

100. A search for “2018 Ford Mustang” on the NHTSA website yields a
 number of complaints from consumers experiencing the transmission defect⁹.

For instance:

a. A consumer in Tuttle, OK wrote on **March 10, 2019:**

WHEN GETTING UP TO SPEED ON AN ON RAMP OR
 PASSING ON A TWO LA E ROAD, WHEN SHIFTING INTO
 THIRD GEAR, THE TRANSMISSION WILL NOT GO INTO
 GEAR. I’VE HAD THIS HAPPEN TWICE, ONCE MY
 DAUGHTER WAS WITH ME ON A TWO LANE ROAD, GOING
 FROM SECOND TO THIRD WHILE PASSING, THE CAR WILL
 NOT ALLOW IT. PEOPLE HAVE NOTED THIS MANY
 PLACES WHILE RUNNING OUT SECOND GEAR AND
 SHIFTING INTO THIRD IN MULTI SITUATIONS. THIS IS A
 HAZARD AND IT IS KNOWN DUE TO THE SHIFTER NOT
 BEING DIRECT AND USING A REMOTE LINKAGE. AN
 AFTERMARKET BRACKET AND SHIFTER WILL FIX THIS
 ISSUE, HOWEVER THIS VEHICLE SHOULD OPERATE
 SAFELY WITHOUT PURCHASING AFTERMARKET
 EQUIPMENT. SIMPLE LOOK UP MISSED SHIFTS WITH MT-
 82 MUSTANG TRANSMISSION. YOU WILL SEE MANY WITH
 THE SAME ISSUE AND AFTERMARKET PARTS TO FIX THIS
 SAFETY HAZARD.

Ford-Related Websites and Online Discussion Boards

101. Consumers have posted extensively on websites dedicated to
 discussions of Ford vehicles regarding the transmission defect in vehicles

⁹

<https://www.nhtsa.gov/vehicle/2013/FORD/MUSTANG/2%252520DR/RWD>,
 last accessed April 29, 2019.

equipped with the MT82 transmissions. Upon information and belief, Ford employees have seen these complaints. For example, consumer “fdesalvo” posted on mustangsource.com¹⁰ February 26, 2013:

a. Thoughts on the 2014 MT82

I've managed to rack up 300 miles on the new GT and I'm still learning the nuances of this machine. Bear in mind this thing probably isn't even near broken in yet, so take this with a grain of salt.

The transmission requires a huge amount of finesse to manage mid - high RPM shifting. It feels as though the shift gate is moving about and I have to chase it around a bit.

Also, 80% of the time there's a clunk near the engine bay when shifting from 1st - 2nd. When I press the clutch shifting from 1st, I hear 3 metallic taps; it sounds like the pressure plate is bouncing against the flywheel.

I'm not going to make a service issue of any of this unless it persists beyond the first oil change. I'm going to assume that the shifting issue is due to the infamous shift bracket/bushing, so I ordered the Steeda replacement and hope to have that installed over the next 2 weeks.

These two issues have takes some of the enjoyment away from my experience, but the rest of the car has been great. Still, the enjoyment of rowing through the gears and that level of connectivity with the motor and transmission is the reason why I went manual. I really hope these two issues resolve themselves soon.

b. Consumer “2012GT” responded on February 27, 2013:

Why did Ford keep this transmission?! It's been a nuisance for 3 years now. How many MT82 threads does it take Ford? You messed up; own up to it and put a quality manual in these cars. Quit duct taping an inherently flawed product!

Good luck with your MT82 dilemma man. You're in the company

¹⁰ <https://themustangsource.com/forums/f726/thoughts-2014-mt82-519101/>, last accessed April 30, 2019.

1 of many

2 102. In a thread dedicated to the 2013 Ford Mustang¹¹, consumers posted
3 complaints including:

4 a. Mustang GT Premium 5.0L, Manual transmission 4,300 miles

5 OWNER OF A 2013 MUSTANG GT PREMIUM 5.0 WITH 6
6 SPEED TRANSMISSION. HAVE HAD PROBLEMS WITH
7 ROUGH SHIFTING SINCE SHORTLY AFTER BUYING. HAVE
8 TAKEN IT INTO MY LOCAL FORD DEALERSHIP 2 TIMES SO
9 FAR AND MADE MENTION OF MY PROBLEMS SEVERAL
10 OTHER TIMES. FORD HAS BEEN UNABLE TO CORRECT
11 THE ROUGH SHIFTING WITH BOTH TRIPS TO THE
12 SERVICE DEPARTMENT TELLING ME THAT THEY CAN
13 NOT DUPLICATE THE PROBLEM. THE ROUGH SHIFTING
14 OCCURS IN 1ST-2ND AND 3RD GEARS MOST OF THE TIME,
15 ESPECIALLY IN COLDER TEMPERATURES. SOMETIMES I
16 ALSO HAVE A HARD TIME DOWN-SHIFTING INTO LOWER
17 GEAR AND JUST HAVE TO WAIT UNTIL I REACH A
18 COMPLETE STOP BEFORE BEING ABLE TO DOWN-SHIFT.
19 CURRENTLY HAVE ABOUT 7200 MILES ON THE CAR AND
20 WOULD LOVE FOR THIS ROUGH SHIFTING TO BE
21 RESOLVED. THESE SAME ISSUES REMIND ME OF THE 2011
22 AND 2012 MUSTANG'S WITH MANUAL TRANSMISSION
23 THAT FORD RELEASED A FIX FOR THAT WOULD ACT THE
24 SAME WAY

25 - jjitpro, Prattville, AL, US

26 b. Mustang GT500 5.8L V8, Manual transmission, 20,200 miles

27 I started hearing a clunking sound when shifting the manual
28 transmission. I took the car to the deal and Ford had them replace
the slave cylinder and hydraulic clutch. I still hear the clunking
sound coming from the transmission. I will be taking the car back to
see if they can fix the issue.

- Scott B., Albuquerque, NM, US

¹¹ <https://www.carcomplaints.com/Ford/Mustang/2013/transmission/>, last
accessed April 30, 2019

Trade Publications

103. Trade publications also described the transmission defect in vehicles equipped with the MT82 6-speed transmissions in articles posted online.

a. For example, an article on autoevolution.com reported:

The fifth-generation Mustang received a well-deserved update for the 2011 model year. But replacing the 5-speed Tremec TR-3650 proved to be troublesome for both Ford and Mustang enthusiasts, chiefly because the Getrag MT82 had a few faults. Arguably the most talked-about problem is the second into third gear high-rpm lockout. Then there's the hard shifting and weird feel of the clutch, the screws backing out, and the list of common problems goes on and on.

MT82 woes garnered so much attention at some point that the National Highway Traffic Safety Administration opened an investigation into the matter. But fortunately, Ford made small upgrades to the six-speed manual with the passing of time. From clutch springs to oil viscosity, bolt types to gear finishes, most defects have been addressed. Not all of them, though.

The sixth-generation Mustang still features a bit of notchiness on cold mornings until the oil warms up. Switching to a performance-oriented shifter or support bracket eliminates this hindrance, and the Ford Motor Company took notice of it. So for 2018, the Mustang GT ushers in an important update.

Referred to as MT82-D4, the latest incarnation of the six-speed manual developed from the Tremec TR-6060 promises to perform much better than its predecessor. The Getrag-supplied transmission is exclusive to the Coyote V8-powered Mustang GT and brings together a dual mass flywheel, twin disc clutch and revised gearing. The biggest difference compared to the gearbox equipping the 2015-2017 Mustang GT is the direct-drive fourth gear.

With fifth and sixth relegated to overdrive gears, the 2018 Mustang GT keeps the engine speed lower during highway cruising. But oddly enough, the additional overdrive gear doesn't improve the fuel economy from the 2017 Mustang GT with the previous version of the MT82. This, however, might have something to do with the V8's biggest improvements: dual-fuel injection system and Shelby

1 GT350-inspired plasma-sprayed cylinder bore liners.

2 The 2018 Mustang EcoBoost, meanwhile gets a different diaphragm
3 spring and cover, thus raising torque capacity and improving the
4 feel of the clutch pedal. Then again, the 10-speed automatic co-
5 developed with General Motors is the real party piece of the 2018
6 Mustang, be it the Coyote or EcoBoost¹².

7 b. An article published on mustangandfords.com reported:

8 If you're driving a 2011-2014 Mustang with the 3.7L DOHC V-6 or
9 5.0L DOHC Coyote V-8, you're undoubtedly frustrated with sloppy
10 shifts, gear clash, disappointing acceleration, and durability issues.
11 And despite the Mustang's exceptional build quality, the factory's
12 Getrag MT-82 six-speed just isn't up to the job in high-performance
13 applications. The MT-82 suffers from an unacceptable failure rate
14 and can't be described as a user friendly gearbox. It tends to get
15 stuck in gear during hard aggressive shifting. It also tends to break.
16 It has a subpar externally mounted rail-style shifter. We've even
17 seen bolts fall out of the factory shifter. Because the factory Getrag
18 MT-82 six-speed has never been up to the task it was designed for,
19 Modern Driveline engineers have been working on a Tremec T-56
20 Magnum XL six-speed conversion package fully capable and ready
21 for action in your 2011-2014 3.7L or 5.0L Mustang¹³.

22 **Technical Service Bulletins**

23 104. Over the nine-year period beginning around September of 2010 and
24 up to as recently as August of 2018, Ford issued a variety of PIs, TSBs, and
25 other bulletins related to the MT82and Transmission Defect.

26 105. Whether through customer complaints, dealer complaints, or its
27 own testing, Ford's recognition of the Transmission Defect can be pinpointed to
28 September 20, 2010, if not ealier.

106. **Bulletin # 10-19-4** In September 2010, Ford issued Service Bulletin
#10-19-4 entitled "CLUTCH STAYOUT AT HIGH RPM." This bulletin

¹² <https://www.autoevolution.com/news/2018-ford-mustang-gt-features-upgraded-mt82-manual-transmission-121592.html>, last accessed April 30, 2019

¹³ <http://www.mustangandfords.com/how-to/drivetrain/1504-scrap-your-getrag-for-the-modern-drivelinetremec-t-56-magnum-xl/>, last accessed on April 30, 2019

1 applied to 2011 Mustang built with a manual transmission. In this bulletin, Ford
2 advised service personnel, “Some 2011 Mustangs..., may exhibit a clutch pedal
3 Stayout condition will generate a concern of the clutch pedal remaining on the
4 floor during high engine RPM shifts. When engine RPM drops, clutch pedal
5 operation returns to normal, but the re-engagement may be abrupt.”

6 107. **TSB 11-3-18** In March 2011, Ford issued Service Bulletin #11-3-18
7 entitled “MT82 MANUAL 6-SPEED TRANSMISSION COLD SHIFT
8 EFFORT.” This bulletin applied to 2011-2012 Mustang vehicles equipped with
9 a MT82 6-speed manual transmission. In this bulletin, Ford advised service
10 personnel, “Some 2011-2012 Mustang vehicles equipped with a MT82 6-speed
11 manual transmission may exhibit increased shift efforts in cold ambient
12 temperatures. This is usually most noticeable in 1st and 2nd gears but may also be
13 noticed in 3rd through 6th gears.

14 108. **SSM 26614** Issued on October 19, 2010, this Special Service
15 Message identified an issue with fasteners in the MT82 and advised technicians
16 of revised fasteners.

17 109. **TSB 18-2083** Published on March 20, 2018. This TSB entitled
18 “5.0L Manual Transmission – Inability or Difficulty to shift into Second Gear –
19 Built on or before 15-Nov-2017” was issued for 2018 Mustang vehicles
20 equipped with the 5.0L engine and a manual transmission. The TSB addresses
21 difficulty shifting into second gear that, according to Ford, may have been due
22 to a stack-up tolerance issue between the transmission and the shifter.

23 110. **TSB 18-2175** Published on June 29, 2018. This TSB entitled “5.0L
24 Manual Transmission – Inability to shift into 3rd or 4th Gear” was issued for
25 2018 Mustang vehicles equipped with the 5.0L engine and a manual
26 transmission. The TSB addresses difficulty shifting into 3rd and 4th gear that,
27 according to Ford, may have been due to a broken 3-4 shift fork.

28 111. **TSB 18-2267** On August 30, 2018, Ford issued Service Bulletin

#18-2267 entitled “5.0L- Manual Transmission- Inability To Drive In First and Second Gear.” This bulletin applied to 2018-2019 Mustang vehicles equipped with a 5.0L engine and a manual transmission. In this bulletin, Ford advised service personnel, “Some 2018-2019 Mustang vehicles equipped with a 5.0L engine and a manual transmission may exhibit an inability to drive the vehicle in first and/or second gear.” In this bulletin, Ford provided an explanation of the 6-speed transmission’s inability to drive, and advised service personnel that, “this may be due to a broken 1-2 shift fork.”

Ford Has Actively Concealed the Transmission Defect

112. While Ford has been fully aware of the Transmission Defect in the Class Vehicles, it actively concealed the existence and nature of the defect from Plaintiffs and Class Members at the time of purchase, lease, or repair and thereafter. Specifically, Ford failed to disclose or actively concealed at and after the time of purchase, lease, or repair:

- (a) any and all known material defects or material nonconformity of the Class Vehicles, including the defects relating to the Transmission;
- (b) that the Class Vehicles, including their Transmissions, were not in good in working order, were defective, and were not fit for their intended purposes; and
- (c) that the Class Vehicles and their Transmissions were defective, despite the fact that Ford learned of such defects through alarming failure rates, customer complaints, as well as other internal sources, as early as 2010.

113. Ford further actively concealed the material facts that the Transmission was not safe, that it would function in a manner that would pose a safety hazard, and that it was defective. Instead, Ford sold vehicles with a known safety defect, and failed to disclose this defect to consumers when Ford

1 learned of it.

2 CLASS ACTION ALLEGATIONS

3 114. Plaintiff brings this lawsuit as a class action on behalf of themselves
4 and all others similarly situated as members of the proposed Plaintiff Classes
5 pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3). This action
6 satisfies the numerosity, commonality, typicality, adequacy, predominance, and
7 superiority requirements of those provisions.

8 115. The Class and Sub-Classes are defined as:

9 **The Class:** All individuals in the United States who
10 purchased or leased any 2011 through 2019 Ford
11 Mustang equipped with an MT82 or MT82-D4 manual
12 Transmission.

13 **California Sub-Class:** All individuals who purchased
14 or leased any 2011 through 2019 Ford Mustang vehicles
15 equipped with an MT82 or MT82-D4 manual
16 Transmission in the State of California.

17 **CLRA Sub-Class:** All members of the California Sub-
18 Class who are “consumers” within the meaning of
19 California Civil Code § 1761(d).

20 **Implied Warranty Sub-Class:** All members of the
21 Nationwide Class who took delivery of their vehicles in
22 the State of California.

23 **Florida Sub-Class:** All individuals who purchased or
24 leased any 2011 through 2019 Ford Mustang vehicles
25 equipped with an MT82 or MT82-D4 manual
26 Transmission in the State of Florida

27 **New York Sub-Class:** All individuals who purchased
28 or leased any 2011 through 2019 Ford Mustang vehicles
equipped with an MT82 or MT82-D4 manual
Transmission in the State of New York.

Delaware Sub-Class: All individuals who purchased or
leased any 2011 through 2019 Ford Mustang vehicles
equipped with an MT82 or MT82-D4 manual
Transmission in the State of Delaware.

116. Excluded from the Class and Sub-Classes are: (1) Defendant, any
entity or division in which Defendant has a controlling interest, and their legal
representatives, officers, directors, assigns, and successors; (2) all Judges to

1 whom this case is assigned and the Judges' staff; (3) any Judge sitting in the
2 presiding court system who may hear an appeal of any judgment entered; and (4)
3 those persons who have suffered personal injuries as a result of the facts alleged
4 herein. Plaintiff reserves the right to amend the Class and Sub-Class definitions
5 if discovery and further investigation reveal that the Class and Sub-Class should
6 be expanded or otherwise modified.

7 117. There is a well-defined community of interest in the litigation and
8 each Sub-Class is readily ascertainable.

9 118. Numerosity: Although the exact number of Class Members is
10 uncertain and can only be ascertained through appropriate discovery, the number
11 is great enough such that joinder is impracticable. The disposition of the claims
12 of these Class Members in a single action will provide substantial benefits to all
13 parties and to the Court. The Class Members are readily identifiable from
14 information and records in Defendant's possession, custody, or control, as well
15 as from records kept by the Department of Motor Vehicles.

16 119. Typicality: Plaintiffs' claims are typical of the claims of the Class
17 in that Plaintiffs, like all Class Members, purchased or leased a Class Vehicle
18 designed, manufactured, and distributed by Ford, and equipped with a
19 Transmission. The representative Plaintiff, like all Class Members, have been
20 damaged by Defendant's misconduct in that they have incurred or will incur the
21 cost of repairing or replacing the defective transmission. Furthermore, the
22 factual bases of Ford's misconduct are common to all Class Members and
23 represent a common thread resulting in injury to all Class Members.

24 120. Commonality: There are numerous questions of law and fact
25 common to Plaintiffs and the Class that predominate over any question affecting
26 only individual Class Members. These common legal and factual issues include
27 the following:

28 (a) Whether Class Vehicles contain defects relating to the

1 Transmission;

2 (b) Whether the defects relating to the Transmission constitute an
3 unreasonable safety risk;

4 (c) Whether Defendant knew about the defects relating to the
5 Transmission and, if so, how long Defendant has known of
6 the defect;

7 (d) Whether the defective nature of the Transmission constitutes
8 a material fact;

9 (e) Whether Defendant has a duty to disclose the defective nature
10 of the Transmission to Plaintiff and Class Members;

11 (f) Whether Plaintiffs and the other Class Members are entitled
12 to equitable relief, including but not limited to a preliminary
13 and/or permanent injunction;

14 (g) Whether Defendant knew or reasonably should have known
15 of the defects relating to the Transmission before it sold and
16 leased Class Vehicles to Plaintiffs and Class Members;

17 (h) Whether Defendant should be declared financially
18 responsible for notifying all Class Members of the problems
19 with the Class Vehicles and for the costs and expenses of
20 repairing and replacing the defective Transmission;

21 (i) Whether Defendant is obligated to inform Class Members of
22 their right to seek reimbursement for having paid to diagnose,
23 repair, or replace their defective Transmission; and

24 (j) Whether Defendant breached the implied warranty of
25 merchantability pursuant to the Song-Beverly Consumer
26 Warranty Act.

27 121. Adequate Representation: Plaintiffs will fairly and adequately
28 protect the interests of the Class Members. Plaintiffs have retained attorneys

1 experienced in the prosecution of class actions, including consumer and product
2 defect class actions, and Plaintiffs intend to prosecute this action vigorously.

3 122. Predominance and Superiority: Plaintiffs and the Class Members
4 have all suffered and will continue to suffer harm and damages as a result of
5 Defendant's unlawful and wrongful conduct. A class action is superior to other
6 available methods for the fair and efficient adjudication of the controversy.
7 Absent a class action, most Class Members would likely find the cost of
8 litigating their claims prohibitively high and would therefore have no effective
9 remedy at law. Because of the relatively small size of the individual Class
10 Members' claims, it is likely that only a few Class Members could afford to seek
11 legal redress for Defendant's misconduct. Absent a class action, Class Members
12 will continue to incur damages, and Defendant's misconduct will continue
13 without remedy. Class treatment of common questions of law and fact would
14 also be a superior method to multiple individual actions or piecemeal litigation
15 in that class treatment will conserve the resources of the courts and the litigants
16 and will promote consistency and efficiency of adjudication.

17 123. In the alternative, this action is certifiable under the provisions of
18 Federal Rule of Civil Procedure 23(b)(1) and/or (b)(2) because:

19 (a) The prosecution of separate actions by individual members of the
20 Class would create a risk of inconsistent or varying adjudications with respect to
21 individual members of the Class which would establish incompatible standards
22 of conduct for Ford;

23 (b) The prosecution of separate actions by individual members of
24 the Class would create a risk of adjudications as to them
25 which would, as a practical matter, be dispositive of the
26 interests of the other members of the Class not parties to the
27 adjudications, or substantially impair or impede their ability
28 to protect their interests; and

1 (c) Ford has acted or refused to act on grounds generally
2 applicable to the Class, thereby making appropriate final
3 injunctive relief or corresponding declaratory relief with
4 respect to the Class as a whole and necessitating that any
5 such relief be extended to members of the Class on a
6 mandatory, class-wide basis.

7 124. Plaintiffs are not aware of any difficulty which will be encountered
8 in the management of this litigation which should preclude its maintenance as a
9 class action.

10 **TOLLING OF THE STATUTES OF LIMITATIONS**

11 125. Because the defect is undetectable until it manifests and Ford failed
12 to disclose or intentionally concealed the Transmission Defect, Plaintiffs and
13 Class Members were not reasonably able to discover the problem until after
14 purchasing the Class Vehicles, despite exercise of due diligence.

15 126. Additionally, on information and belief, Ford instructed its
16 authorized dealership employees and technicians to inform Class Members that
17 the manifestations of the Transmission Defect in the Transmission was normal,
18 and therefore not a defect as alleged herein.

19 127. Plaintiffs and the Class Members had no realistic ability to discern
20 that the Transmissions in Class Vehicles were defective. Therefore, the
21 discovery rule is applicable to the claims asserted by Plaintiffs and the Class
22 Members.

23 128. Plaintiffs are informed and believe and based thereon alleges that
24 Ford has known of the Transmission Defect since at least 2010 and has
25 concealed from or failed to alert owners of the Class Vehicles of the defective
26 nature of the Transmissions.

27 129. Any applicable statute of limitations has therefore been tolled by
28 Defendant's knowledge, active concealment, and denial of the facts alleged

herein. Defendant is further estopped from relying on any statute of limitations because of its concealment of the Transmission Defect.

FIRST CAUSE OF ACTION

Violation of California's Consumer Legal Remedies Act –

Cal. Civ. Code § 1750, *et seq.*

(On Behalf of the CLRA Sub-Class)

130. Plaintiff Gregorio incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

131. Plaintiff Gregorio brings this cause of action on behalf of himself and on behalf of the members of the CLRA Sub-Class.

132. Defendant is a “person” as defined by California Civil Code § 1761(c).

133. Plaintiff Gregorio and CLRA Sub-Class Members are “consumers” within the meaning of California Civil Code § 1761(d) because they purchased their Class Vehicles primarily for personal, family or household use.

134. By failing to disclose and concealing the defective nature of the transmissions from Plaintiff Gregorio and prospective Class Members, Defendant violated California Civil Code § 1770(a), as it represented that the Class Vehicles and their transmissions had characteristics and benefits that they do not have, and represented that the Class Vehicles and their transmissions were of a particular standard, quality, or grade when they were of another. *See* Cal. Civ. Code §§ 1770(a)(5) & (7).

135. Defendant's unfair and deceptive acts or practices occurred repeatedly in Defendant's trade or business, were capable of deceiving a substantial portion of the purchasing public and imposed a serious safety risk on the public.

136. Defendant knew that the Class Vehicles and their transmissions suffered from an inherent defect, were defectively designed or manufactured,

1 and were not suitable for their intended use.

2 137. As a result of their reliance on Defendant's omissions and/or
3 misrepresentations, owners and/or lessees of the Class Vehicles suffered an
4 ascertainable loss of money, property, and/or value of their Class Vehicles.
5 Additionally, as a result of the Transmission Defect, Plaintiff and the Class
6 Members were harmed and suffered actual damages in that the Class Vehicles'
7 transmissions are substantially certain to fail before their expected useful life has
8 run.

9 138. Defendant was under a duty to Plaintiff Gregorio and the Class
10 Members to disclose the defective nature of the transmissions and/or the
11 associated repair costs because:

- 12 (a) Defendant was in a superior position to know the true state of
13 facts about the safety defect in the Class Vehicles'
14 transmissions;
- 15 (b) Plaintiff Gregorio and the Class Members could not
16 reasonably have been expected to learn or discover that their
17 transmissions had a dangerous safety defect until it
18 manifested; and
- 19 (c) Defendant knew that Plaintiff Gregorio and the Class
20 Members could not reasonably have been expected to learn of
21 or discover the safety defect.

22 139. In failing to disclose the defective nature of the transmissions,
23 Defendant knowingly and intentionally concealed material facts and breached its
24 duty not to do so.

25 140. The facts Defendant concealed from or did not disclose to Plaintiff
26 Gregorio and the Class Members are material in that a reasonable consumer
27 would have considered them to be important in deciding whether to purchase or
28 lease the Class Vehicles or pay less. Had Plaintiff Gregorio and other Class

1 Members known that the Class Vehicles' transmissions were defective, they
2 would not have purchased or leased the Class Vehicles or would have paid less
3 for them.

4 141. Plaintiff Gregorio and the Class Members are reasonable consumers
5 who do not expect the transmissions installed in their vehicles to exhibit
6 transmission slips, kicking forward, jerking, premature internal wear, delayed
7 acceleration, and/or difficulty in stopping the vehicle. This is the reasonable and
8 objective consumer expectation relating to vehicle transmissions.

9 142. As a result of Defendant's conduct, Plaintiff Gregorio and Class
10 Members were harmed and suffered actual damages in that the Class Vehicles
11 experienced and will continue to experience transmission slips, kicking forward,
12 jerking, increased stopping times, premature internal wear, delayed acceleration,
13 and, eventually, transmission failure.

14 143. As a direct and proximate result of Defendant's unfair or deceptive
15 acts or practices, Plaintiff Gregorio and Class Members suffered and will
16 continue to suffer actual damages.

17 144. Plaintiff Gregorio and the Class are entitled to equitable relief.

18 145. Defendant received notice on behalf of the putative class, including
19 Mr. Gregorio, from Ziad El-Rifai of its violations of the CLRA pursuant to
20 California Civil Code § 1782(a). Defendant failed to provide appropriate relief
21 for their violations of the CLRA within 30 days. Accordingly, Plaintiff Gregorio
22 now seeks monetary, compensatory, and punitive damages, in addition to
23 injunctive and equitable relief.
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SECOND CAUSE OF ACTION

**Breach of Implied Warranty Pursuant to Song-Beverly
Consumer Warranty Act – Cal. Civ. Code §§ 1792 and 1791.1, *et seq.*
(On Behalf of the California Implied Warranty Sub-Class)**

146. Plaintiff Gregorio incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

147. Plaintiff Gregorio brings this cause of action against Defendant on behalf of himself and on behalf of the members of the Implied Warranty Sub-Class.

148. Defendant was at all relevant times the manufacturer, distributor, warrantor, and/or seller of the Class Vehicles. Defendant knew or had reason to know of the specific use for which the Class Vehicles were purchased or leased.

149. Defendant provided Plaintiff Gregorio and Class Members with an implied warranty that the Class Vehicles and their components and parts are merchantable and fit for the ordinary purposes for which they were sold. However, the Class Vehicles are not fit for their ordinary purpose of providing reasonably reliable and safe transportation because, *inter alia*, the Class Vehicles and their transmissions suffered from an inherent defect at the time of sale and thereafter are not fit for their particular purpose of providing safe and reliable transportation.

150. Defendant impliedly warranted that the Class Vehicles were of merchantable quality and fit for such use. This implied warranty included, among other things: (i) a warranty that the Class Vehicles and their transmissions were manufactured, supplied, distributed, and/or sold by Ford were safe and reliable for providing transportation; and (ii) a warranty that the Class Vehicles and their transmissions would be fit for their intended use while the Class Vehicles were being operated.

151. Contrary to the applicable implied warranties, the Class Vehicles

1 and their transmissions at the time of sale and thereafter were not fit for their
2 ordinary and intended purpose of providing Plaintiff Gregorio and the Class
3 Members with reliable, durable, and safe transportation. Instead, the Class
4 Vehicles are defective, including, but not limited to, the defective design and
5 manufacture of their transmissions.

6 152. As a result of Defendant's breach of the applicable implied
7 warranties, owners and/or lessees of the Class Vehicles suffered an ascertainable
8 loss of money, property, and/or value of their Class Vehicles. Additionally, as a
9 result of the Transmission Defect, Plaintiff and the Class Members were harmed
10 and suffered actual damages in that the Class Vehicles' transmissions are
11 substantially certain to fail before their expected useful life has run.

12 153. Defendant's actions, as complained of herein, breached the implied
13 warranty that the Class Vehicles were of merchantable quality and fit for such
14 use in violation of California Civil Code §§ 1792 and 1791.1.

15 **THIRD CAUSE OF ACTION**

16 **Breach of Express Warranty – Cal. Comm. Code § 2313**

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

18 154. Plaintiff Gregorio incorporate by reference the allegations
19 contained in the preceding paragraphs of this Complaint.

20 155. Plaintiff Gregorio brings this cause of action on behalf of himself
21 and on behalf of the California Sub-Class.

22 156. As a result of Defendant's breach of the applicable express
23 warranties, owners and/or lessees of the Class Vehicles suffered an ascertainable
24 loss of money, property, and/or value of their Class Vehicles. Additionally, as a
25 result of the Transmission Defect, Plaintiff and the Class Members were harmed
26 and suffered actual damages in that the Class Vehicles' transmissions are
27 substantially certain to fail before their expected useful life has run.

28 157. Defendant provided all purchasers and lessees of the Class Vehicles

1 with the express warranty described herein, which became a material part of the
2 bargain. Accordingly, Defendant's express warranty is an express warranty
3 under California law.

4 158. Defendant manufactured and/or installed the transmission and its
5 component parts in the Class Vehicles and the Transmission and its component
6 parts are covered by the express warranty.

7 159. Ford provided all purchasers and lessees of the Class Vehicles with
8 a New Vehicle "Bumper to Bumper" Limited Warranty and a Powertrain
9 Limited Warranty with the purchase or lease of the Class Vehicles. In this
10 Bumper to Bumper Limited Warranty, Ford expressly warranted that its dealers
11 would "without charge, repair, replace, or adjust all parts on your vehicle that
12 malfunction or fail during normal use during the applicable coverage period due
13 to a manufacturing defect in factory-supplied materials or factory workmanship"
14 if the vehicle is properly operated and maintained and was taken to a Ford
15 dealership for a warranty repair during the warranty period. Under this "Bumper
16 to Bumper Coverage," Ford promised to cover "all parts on [the] vehicle" "for
17 three years – unless you drive more than 36,000 miles before three years elapse.
18 In that case, your coverage ends at 36,000 miles."

19 160. Furthermore, under the Powertrain Limited Warranty, Ford
20 expressly warranted that it would cover listed powertrain components under its
21 Powertrain Limited Warranty, including transmission components including the
22 "Transmission: all internal parts, clutch cover, seals and gaskets, torque
23 converter, transfer case (including all internal parts), transmission case,
24 transmission mounts" "for five years or 60,000 miles, whichever occurs first."

25 161. On information and belief, Defendant breached the express
26 warranty by:

- 27 a. Extending a 3 year/36,000 mile Bumper to Bumper Limited
28 Warranty and 5 year/60,000 mile Powertrain Limited

1 Warranty with the purchase or lease of the Class Vehicles,
 2 thereby warranting to repair or replace any part defective in
 3 material or workmanship, including the subject transmission,
 4 at no cost to the owner or lessee;

- 5 b. Selling and leasing Class Vehicles with transmissions that
 6 were defective in material and workmanship, requiring repair
 7 or replacement within the warranty period;
- 8 c. Refusing to honor the express warranty by repairing or
 9 replacing, free of charge, the transmission or any of its
 10 component parts and instead charging for repair and
 11 replacement parts; and
- 12 d. Purporting to repair the transmission and its component parts
 13 by replacing the defective transmission components with the
 14 same defective components and/or instituting temporary
 15 fixes, on information and belief, to ensure that the
 16 Transmission Defect manifests outside of the Class Vehicles'
 17 express warranty period.

18 162. Plaintiff Gregorio was not required to notify Ford of the breach
 19 because affording Ford a reasonable opportunity to cure its breach of written
 20 warranty would have been futile. Defendant was also on notice of the defect
 21 from the complaints and service requests it received from Class Members, from
 22 repairs and/or replacements of the transmission or a component thereof, and
 23 through other internal sources.

24 163. As a direct and proximate cause of Defendant's breach, Plaintiff
 25 Gregorio and the other Class Members suffered damages and continue to suffer
 26 damages, including economic damages at the point of sale or lease.
 27 Additionally, Plaintiff Gregorio and the other Class Members either have
 28 incurred or will incur economic damages at the point of repair in the form of the

1 cost of repair.

2 164. Additionally, Ford breached the express warranty by performing
3 illusory repairs. Rather than repairing the vehicles pursuant to the express
4 warranty, Ford falsely informed class members that there was no problem with
5 their vehicle, or replaced defective components in the Transmissions with
6 equally defective components, without actually repairing the vehicles.

7 165. Plaintiff Gregorio and the other Class Members are entitled to legal
8 and equitable relief against Defendant, including actual damages, consequential
9 damages, specific performance, attorneys' fees, costs of suit, and other relief as
10 appropriate.

11 **FOURTH CAUSE OF ACTION**

12 **Violation of California Business & Professions Code § 17200, *et seq.***

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

14 166. Plaintiff Gregorio incorporates by reference the allegations
15 contained in the preceding paragraphs of this Complaint.

16 167. Plaintiff Gregorio brings this cause of action on behalf of himself
17 and on behalf of the California Sub-Class.

18 168. As a result of their reliance on Defendant's omissions and/or
19 misrepresentations, owners and/or lessees of the Class Vehicles suffered an
20 ascertainable loss of money, property, and/or value of their Class Vehicles.
21 Additionally, as a result of the Transmission Defect, Plaintiff Gregorio and the
22 Class Members were harmed and suffered actual damages in that the Class
23 Vehicles' transmissions are substantially certain to fail before their expected
24 useful life has run.

25 169. California Business & Professions Code § 17200 prohibits acts of
26 "unfair competition," including any "unlawful, unfair or fraudulent business act
27 or practice" and "unfair, deceptive, untrue or misleading advertising."

28 170. Plaintiff Gregorio and the Class Members are reasonable consumers

1 who do not expect their transmissions to exhibit transmission slips, kicking
2 forward, jerking, increased stopping times, premature internal wear, delayed
3 acceleration, and, eventually, transmission failure.

4 171. Defendant knew the Class Vehicles and their transmissions suffered
5 from inherent defects, were defectively designed or manufactured, would fail
6 prematurely, and were not suitable for their intended use.

7 172. In failing to disclose the defects with the transmission, Defendant
8 has knowingly and intentionally concealed material facts and breached its duty
9 not to do so.

10 173. Defendant was under a duty to Plaintiff Gregorio and the Class
11 Members to disclose the defective nature of the Class Vehicles and their
12 transmissions:

- 13 (a) Defendant was in a superior position to know the true state of
14 facts about the safety defect in the Class Vehicles’
15 transmissions;
- 16 (b) Defendant made partial disclosures about the quality of the
17 Class Vehicles without revealing the defective nature of the
18 Class Vehicles and their transmissions; and
- 19 (c) Defendant actively concealed the defective nature of the
20 Class Vehicles and their transmissions from Plaintiff and the
21 Class.

22 174. The facts Defendant concealed from or not disclosed to Plaintiff
23 Gregorio and the Class Members are material in that a reasonable person would
24 have considered them to be important in deciding whether to purchase or lease
25 Class Vehicles. Had Plaintiff and other Class Members known that the Class
26 Vehicles’ transmissions were defective and posed a safety hazard, then Plaintiff
27 Gregorio and the other Class Members would not have purchased or leased
28 Class Vehicles equipped with transmissions, or would have paid less for them.

1 175. Defendant continued to conceal the defective nature of the Class
2 Vehicles and their transmissions even after Class Members began to report
3 problems. Indeed, Defendant continues to cover up and conceal the true nature
4 of the problem.

5 176. Defendant's conduct was and is likely to deceive consumers.

6 177. Defendant's acts, conduct and practices were unlawful, in that they
7 constituted:

- 8 (a) Violations of the California Consumer Legal Remedies Act;
- 9 (b) Violations of the Song-Beverly Consumer Warranty Act; and
- 10 (c) Violations of the express warranty provisions of California
11 Commercial Code section 2313.

12 178. By its conduct, Defendant has engaged in unfair competition and
13 unlawful, unfair, and fraudulent business practices.

14 179. Defendant's unfair or deceptive acts or practices occurred
15 repeatedly in Defendant's trade or business and were capable of deceiving a
16 substantial portion of the purchasing public.

17 180. As a direct and proximate result of Defendant's unfair and
18 deceptive practices, Plaintiff and the Class have suffered and will continue to
19 suffer actual damages.

20 181. Defendant has been unjustly enriched and should be required to
21 make restitution to Plaintiff and the Class pursuant to §§ 17203 and 17204 of the
22 Business & Professions Code.

FIFTH CAUSE OF ACTION

Breach of Warranty under the Magnuson-Moss

Warranty Act – 15 U.S.C. § 2303 *et seq.*

(On Behalf of the Nationwide Class, or, in the Alternative, the State Sub-Classes)

182. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

183. Plaintiffs bring this cause of action on behalf of themselves and on behalf of all Class Members, or, in the alternative, the California Sub-Class.

184. The Class Vehicles are a “consumer product” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

185. Plaintiffs and Class Members are “consumers” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

186. Defendant is a “supplier” and “warrantor” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)-(5).

187. Defendant’s express warranty is a “written warranty” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(6).

188. Ford provided all purchasers and lessees of the Class Vehicles with a New Vehicle “Bumper to Bumper” Limited Warranty and a Powertrain Limited Warranty with the purchase or lease of the Class Vehicles. In this Bumper to Bumper Limited Warranty, Ford expressly warranted that its dealers would “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” if the vehicle is properly operated and maintained and was taken to a Ford dealership for a warranty repair during the warranty period. Under this “Bumper to Bumper Coverage,” Ford promised to cover “all parts on [the] vehicle” “for three years – unless you drive more than 36,000 miles before three

1 years elapse. In that case, your coverage ends at 36,000 miles.”

2 189. Furthermore, under the Powertrain Limited Warranty, Ford
 3 expressly warranted that it would cover listed powertrain components under its
 4 Powertrain Limited Warranty, including transmission components (including the
 5 “Transmission: all internal parts, clutch cover, seals and gaskets, torque
 6 converter, transfer case (including all internal parts), transmission case,
 7 transmission mounts”) “for five years or 60,000 miles, whichever occurs first.”

8 190. On information and belief, Defendant breached the express
 9 warranty by:

- 10 (a) Extending a 3 year/36,000 mile Bumper to Bumper Limited
 11 Warranty and 5 year/60,000 mile Powertrain Limited
 12 Warranty with the purchase or lease of the Class Vehicles,
 13 thereby warranting to repair or replace any part defective in
 14 material or workmanship, including the subject transmission,
 15 at no cost to the owner or lessee;
- 16 (b) Selling and leasing Class Vehicles with transmissions that
 17 were defective in material and workmanship, requiring repair
 18 or replacement within the warranty period;
- 19 (c) Refusing to honor the express warranty by repairing or
 20 replacing, free of charge, the transmission or any of its
 21 component parts and instead charging for repair and
 22 replacement parts; and
- 23 (d) Purporting to repair the transmission and its component parts
 24 by replacing the defective transmission components with the
 25 same defective components and/or instituting temporary
 26 fixes, on information and belief, to ensure that the
 27 Transmission Defect manifests outside of the Class Vehicles’
 28 express warranty period.

1 191. Furthermore, Defendant impliedly warranted that the Class
2 Vehicles were of merchantable quality and fit for such use. This implied
3 warranty included, among other things: (i) a warranty that the Class Vehicles
4 and their transmissions were manufactured, supplied, distributed, and/or sold by
5 Ford were safe and reliable for providing transportation; and (ii) a warranty that
6 the Class Vehicles and their transmissions would be fit for their intended use
7 while the Class Vehicles were being operated.

8 192. Contrary to the applicable implied warranties, the Class Vehicles
9 and their transmissions at the time of sale and thereafter were not fit for their
10 ordinary and intended purpose of providing Plaintiff and Class Members with
11 reliable, durable, and safe transportation. Instead, the Class Vehicles and their
12 transmissions are defective.

13 193. Defendant's breach of express and implied warranties has deprived
14 Plaintiff and Class Members of the benefit of their bargain.

15 194. The amount in controversy of Plaintiffs' individual claims meets or
16 exceeds the sum or value of \$25,000. In addition, the amount in controversy
17 meets or exceeds the sum or value of \$50,000 (exclusive of interests and costs)
18 computed on the basis of all claims to be determined in this suit.

19 195. Defendant has been afforded a reasonable opportunity to cure its
20 breach, including when Plaintiff and Class Members brought their vehicles in
21 for diagnoses and repair of the transmission.

22 196. As a direct and proximate cause of Defendant's breach of express
23 and implied warranties, Plaintiffs and Class Members sustained damages and
24 other losses in an amount to be determined at trial. Defendant's conduct
25 damaged Plaintiffs and Class Members, who are entitled to recover actual
26 damages, consequential damages, specific performance, diminution in value,
27 costs, attorneys' fees, and/or other relief as appropriate.

28 197. Additionally, Ford breached the express warranty by performing

1 illusory repairs. Rather than repairing the vehicles pursuant to the express
2 warranty, Ford falsely informed class members that there was no problem with
3 their vehicles, performed ineffective software updates, or replaced defective
4 components in the Transmissions with equally defective components, without
5 actually repairing the vehicles.

6 198. As a result of Defendant's violations of the Magnuson-Moss
7 Warranty Act as alleged herein, Plaintiffs and Class Members have incurred
8 damages.

9 **SIXTH CAUSE OF ACTION**

10 **Unjust Enrichment**

11 **(On Behalf of the Class)**

12 199. Plaintiffs incorporates by reference the allegations contained in the
13 preceding paragraphs of this Complaint.

14 200. Plaintiffs brings this cause of action on behalf of themselves and all
15 Class Members.

16 201. As a direct and proximate result of Defendant's failure to disclose
17 known defects, Defendant has profited through the sale and lease of the Class
18 Vehicles. Although these vehicles are purchased through Defendant's agents,
19 the money from the vehicle sales flows directly back to Defendant.

20 202. Additionally, as a direct and proximate result of Defendant's failure
21 to disclose known defects in the Class Vehicles, Plaintiffs and Class Members
22 have vehicles that require repeated, high-cost repairs that can and therefore have
23 conferred an unjust substantial benefit upon Defendant.

24 203. Defendant has been unjustly enriched due to the known defects in
25 the Class Vehicles through the use money paid that earned interest or otherwise
26 added to Defendant's profits when said money should have remained with
27 Plaintiff and Class Members.
28

204. As a result of the Defendant's unjust enrichment, Plaintiffs and Class Members have suffered damages.

SEVENTH CAUSE OF ACTION

Violation of the Florida Deceptive and Unfair Trade Practice Act

F.S.A § 501.201-.213

(On Behalf of the Florida Sub-Class)

205. Plaintiffs Lemons and Walker incorporate by reference and re-allege the allegations contained in the preceding paragraphs of this complaint.

206. Plaintiffs Lemons and Walker bring this cause of action on their own behalf and on behalf of the members of the Florida Sub-Class.

207. Defendant's business acts and practices alleged herein constitute unfair, unconscionable and/or deceptive methods, acts or practices under the Florida Deceptive and Unfair Trade Practices Act, § 501.201, *et seq.*, Florida Statutes ("FDUTPA").

208. At all relevant times, Florida Plaintiffs Lemons and Walker and the Florida Sub-Class Members were "consumers" within the meaning of the FDUTPA. F.S.A. § 501.203(7).

209. FDUTPA provides that unfair methods of competition, unconscionable acts and practices, and unfair or deceptive acts or practices in the conduct "of any trade or commerce" are unlawful. § 501.204, Fla. Stat. Under FDUTPA, "trade or commerce" is defined to include any advertisement or solicitation relating to a "thing of value." Defendant's conduct, as set forth herein, occurred in the conduct of "trade or commerce" within the meaning of the FDUTPA. F.S.A. § 501.203 (8).

210. The practices of the Defendant, described above, violate the FDUTPA for, *inter alia*, one or more of the following reasons:

- (a) Defendant represented that goods or services have sponsorship, approval, characteristics, uses, and benefits that they do not have;

1 (b) Defendant provided, disseminated, marketed, and otherwise
2 distributed uniform false and misleading advertisements, technical data and
3 other information to consumers regarding the performance, reliability,
4 quality and nature of the MT82 and MT82-D4 transmissions;

5 (c) Defendant represented that goods or services were of a particular
6 standard, quality, or grade, when they were of another;

7 (d) Defendant engaged in unconscionable commercial practices in
8 failing to reveal material facts and information about the MT82 and MT82-
9 D4 transmissions, which did, or tended to, mislead Florida Plaintiffs and
10 the Florida Sub-Class Members about facts that could not reasonably be
11 known by the consumer;

12 (e) Defendant failed to reveal facts that were material to the transactions
13 in light of representations of fact made in a positive manner;

14 (f) Defendant caused Plaintiffs Lemons and Walker and the Florida
15 Sub-Class Members to suffer a probability of confusion and a
16 misunderstanding of legal rights, obligations, and/or remedies by and
17 through its conduct;

18 (g) Defendant failed to reveal material facts to Plaintiffs Lemons and
19 Walker and the Florida Sub-Class with the intent that Plaintiffs Lemons
20 and Walker and the Florida Sub-Class Members rely upon the omission;

21 (h) Defendant made material representations and statements of fact to
22 Plaintiffs Lemons and Walker and the Florida Sub-Class Members that
23 resulted in Plaintiffs Lemons and Walker and the Florida Sub-Class
24 Members reasonably believing the represented or suggested state of affairs
25 to be other than what they actually were;

26 (i) Defendant intended that Plaintiffs Lemons and Walker and the
27 Florida Sub-Class Members rely on their misrepresentations and omissions,
28 so that Plaintiffs Lemons and Walker and the Florida Sub-Class Members

1 would purchase vehicles equipped with the MT82 and MT82-D4
2 transmissions.

3 211. Defendant's actions impact the public interest because Plaintiffs
4 Lemons and Walker and the Florida Sub-Class Members were injured in exactly
5 the same way as thousands of others purchasing and/or leasing the vehicles with
6 MT82 and MT82-D4 transmissions as a result of and pursuant to Defendant's
7 generalized course of deception.

8 212. Had Plaintiffs Lemons and Walker and the Florida Sub-Class
9 Members known of the defective nature of the MT82 and MT82-D4
10 transmissions, they would not have purchased or leased vehicles equipped with
11 the MT82 and MT82-D4 transmissions or would have paid less for them.

12 213. The foregoing acts, omissions and practices proximately caused
13 Plaintiffs Lemons and Walker and the Florida Sub-Class Members to suffer
14 actual damages in the form of, inter alia, overpaying for the vehicles, as well as
15 diminution in value of the vehicles equipped with MT82 and MT82-D4
16 transmissions, and they are entitled to recover such damages, together with all
17 other appropriate damages, attorneys' fees and costs of suit.

18 **EIGHTH CAUSE OF ACTION**

19 **Breach of Express Warranty**

20 **F.S.A. §§ 672.313 and 680.21**

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

22 214. Plaintiffs Lemons and Walker incorporate by reference and re-
23 allege the allegations contained in the preceding paragraphs of this complaint.

24 215. Plaintiffs Lemons and Walker bring this cause of action on their
25 own behalf and on behalf of the members of the Florida Sub-Class.

26 216. Defendant is and was at all relevant times a "merchant" with
27 respect to motor vehicles under F.S.A. §§ 672.104(1) and 680.1031(3)(k), and a
28

1 “seller” of motor vehicles under § 672.103(1)(d).

2 217. With respect to leases, Defendant is and was at all relevant times a
3 “lessor” of motor vehicles under F.S.A. § 680.1031(1)(p).

4 218. The Class Vehicles are and were at all relevant times “goods”
5 within the meaning of F.S.A. §§ 672.105(1) and 680.1031(1)(h).

6 219. Defendant provided all purchasers and lessees of the Class Vehicles
7 with the express warranty described herein, which became a material part of the
8 bargain.

9 220. Defendant provided all purchasers and lessees of Ford-branded
10 Class Vehicles with the Ford Warranty.

11 221. Defendant impliedly warranted that the Class vehicles were of
12 merchantable quality and fit for such use. This implied warranty included,
13 among other things: (i) a warranty that the Class Vehicles and their transmission
14 were manufactured, supplied, distributed, and/or sold by Ford were safe and
15 reliable for providing transportation; and (ii) a warranty that the Class Vehicles
16 and their transmissions would be a fit for their intended use while the Class
17 Vehicles were being operated.

18 222. Defendant manufactured and/or installed the MT82 and MT82-D4
19 transmissions and the transmissions’ component parts in the Class Vehicles, and
20 the MT82 and MT82-D4 transmissions and their component parts are covered
21 by the express Warranties.

22 223. The Transmission Defect at issue in this litigation was present at the
23 time the Class Vehicles were sold or leased to Plaintiffs Lemons and Walker and
24 the Florida Sub-Class Members.

25 224. Plaintiffs Lemons and Walker relied on Ford’s express warranties,
26 which were a material part of the bargain, when purchasing or leasing their
27 Class Vehicles.
28

1 225. Under the express Warranties, Ford was obligated to correct the
2 Transmission Defect in the vehicles owned or leased by Plaintiffs Lemons and
3 Walker and the Florida Sub-Class Members.

4 226. Although Ford was obligated to correct the Transmission Defect,
5 none of the attempted fixes to the transmissions are adequate under the terms of
6 the Warranties, as they did not cure the defect.

7 227. Ford breached the express Warranties by performing ineffective
8 repairs or by refusing to perform repairs. Rather than repairing the vehicles
9 pursuant to the express Warranties, Ford falsely informed Florida Sub-Class
10 Members that there was no problem with their Class Vehicles, performed
11 ineffective procedures including replacing defective components in the MT82
12 and MT82-D4 transmissions with equally defective components, without
13 actually repairing the Class Vehicles.

14 228. Ford and its agent dealers have failed and refused to conform the
15 MT82 and MT82-D4 transmissions to the express Warranties. Ford's conduct,
16 as discussed throughout this Complaint, has voided any attempt on its part to
17 disclaim liability for its actions.

18 229. Moreover, Ford's attempt to disclaim or limit these express
19 Warranties vis-à-vis consumers is unconscionable and unenforceable under the
20 circumstances here. Specifically, Ford's warranty limitation is unenforceable
21 because it knowingly sold a defective product without informing consumers
22 about the defect.

23 230. The time limits contained in Ford's warranty period were also
24 unconscionable and inadequate to protect Florida Plaintiffs and the Florida Sub-
25 Class Members. Among other things, Florida Plaintiffs and the Florida Sub-
26 Class Members had no meaningful choice in determining these time limitations,
27 the terms of which unreasonably favored Ford. A gross disparity in bargaining
28 power existed between Ford and the Class members, and Ford knew or should

1 have known that the Class Vehicles were defective at the time of sale.

2 231. Plaintiffs Lemons and Walker and the Florida Sub-Class Members
3 have complied with all obligations under the Warranties, or otherwise have been
4 excused from performance of said obligations as a result of Ford's conduct
5 described herein.

6 232. Plaintiffs Lemons and Walker and the Florida Sub-Class Members
7 were not required to notify Ford of the breach because affording Ford a
8 reasonable opportunity to cure its breach of written warranty would have been
9 futile. Ford was also on notice of the Transmission Defect from the complaints
10 and service requests it received from Plaintiffs Lemons and Walker and the
11 Class Members, from repairs and/or replacements of the transmissions or
12 components thereof, and through other internal and external sources.

13 233. Because Ford, through its conduct and exemplified by its own
14 service bulletins, has covered repairs of the Transmission Defect if Ford
15 determines the repairs are appropriately covered under the Warranties, Ford
16 cannot now deny that the Warranties cover the Transmission Defect.

17 234. Because has not been able remedy the Transmission Defect, any
18 limitation on remedies included in the Warranties causes the Warranties to fail
19 their essential purposes, rendering them null and void.

20 235. As a direct and proximate cause of Ford's breach, Plaintiffs Lemons
21 and Walker and the Florida Sub-Class Members suffered damages and continue
22 to suffer damages, including economic damages at the point of sale or lease and
23 diminution of value of their Class Vehicles. Additionally, Plaintiffs Lemons and
24 Walker and the Florida Sub-Class Members have incurred or will incur
25 economic damages at the point of repair in the form of the cost of repair.

26 236. As a direct and proximate result of Ford's breach of express
27 warranties, Plaintiffs Lemons and Walker and the Florida Sub-Class Members
28 have been damaged in an amount to be determined at trial.

NINTH CAUSE OF ACTION

Breach of Implied Warranty

F.S.A. §§ 672.314 and 680.212

(On Behalf of the Florida Sub-Class)

237. Plaintiffs Lemons and Walker incorporate by reference and re-allege the allegations contained in the preceding paragraphs of this complaint.

238. Plaintiffs Lemons and Walker bring this cause of action on their own behalf and on behalf of the members of the Florida Sub-Class.

239. Ford is and was at all relevant times a “merchant” with respect to motor vehicles under F.S.A. §§ 672.104(1) and 680.1031(3)(k), and a “seller” of motor vehicles under § 672.103(1)(d).

240. With respect to leases, Ford is and was at all relevant times a “lessor” of motor vehicles under F.S.A. § 680.1031(1)(p).

241. The Class Vehicles are and were at all relevant times “goods” within the meaning of F.S.A. §§ 672.105(1) and 680.1031(1)(h).

242. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law under F.S.A. §§ 672.314 and 680.212.

243. Defendant knew or had reason to know of the specific use for which the Class Vehicles were purchased or leased. Ford directly sold and marketed vehicles equipped with the MT82 and MT82-D4 transmissions to customers through authorized dealers, like those from whom Plaintiffs Lemons and Walker and the Florida Sub-Class Members bought or leased their vehicles, for the intended purpose of consumers purchasing the vehicles. Ford knew that the Class Vehicles would and did pass unchanged from the authorized dealers to Plaintiffs Lemons and Walker and the Florida Sub-Class Members, with no modification to the defective transmissions.

1 244. Ford provided Plaintiffs Lemons and Walker and the Florida Sub-
2 Class Members with an implied warranty that the Class Vehicles and their
3 components and parts are merchantable and fit for the ordinary purposes for
4 which they were sold.

5 245. This implied warranty included, among other things: (i) a warranty
6 that the Class Vehicles and their transmissions that were manufactured,
7 supplied, distributed, and/or sold by Ford were safe and reliable for providing
8 transportation; and (ii) a warranty that the Class Vehicles and their transmissions
9 would be fit for their intended use while the Class Vehicles were being operated.

10 246. Contrary to the applicable implied warranties, the Class Vehicles
11 and their transmissions at the time of sale and thereafter were not fit for their
12 ordinary and intended purpose of providing Plaintiffs Lemons and Walker and
13 Class Members with reliable, durable, and safe transportation. Instead, the Class
14 Vehicles are defective, including, but not limited to, the defective design and
15 manufacture of their transmissions and the existence of the Transmission Defect
16 at the time of sale or lease and thereafter.

17 247. As a result of Defendant's breach of the applicable implied
18 warranties, Plaintiffs Lemons and Walker and the Florida Sub-Class Members of
19 the Class Vehicles suffered an ascertainable loss of money, property, and/or
20 value of their Class Vehicles. Additionally, as a result of the Transmission
21 Defect, Plaintiffs Lemons and Walker and the Florida Sub-Class Members were
22 harmed and suffered actual damages in that the Class Vehicles' transmission
23 components are substantially certain to fail before their expected useful life has
24 run.

25 248. Defendant's actions, as complained of herein, breached the implied
26 warranty that the Class Vehicles were of merchantable quality and fit for such
27 use in violation of F.S.A. §§ 672.314 and 680.212.

28 249. Plaintiffs Lemons and Walker and the Florida Sub-Class Members

1 have complied with all obligations under the warranty, or otherwise have been
2 excused from performance of said obligations as a result of Ford's conduct
3 described herein.

4 250. Plaintiffs Lemons and Walker and the Florida Sub-Class Members
5 were not required to notify Ford of the breach because affording Ford a
6 reasonable opportunity to cure its breach of written warranty would have been
7 futile. Ford was also on notice of the Transmission Defect from the complaints
8 and service requests it received from Plaintiffs Lemons and Walker and the
9 Class Members, from repairs and/or replacements of the transmissions or
10 components thereof, and through other internal sources.

11 251. As direct and proximate cause of Defendant's breach, Plaintiffs
12 Lemons and Walker and the Florida Sub-Class Members suffered damages and
13 continue to suffer damages, including economic damages at the point of sale or
14 lease and diminution of value of their Class Vehicles. Additionally, Plaintiffs
15 Lemons and Walker and the Florida Sub-Class Members have incurred or will
16 incur economic damages at the point of repair in the form of the cost of repair.

17 252. As a direct and proximate result of Defendant's breach of the
18 implied warranty of merchantability, Plaintiffs Lemons and Walker and the
19 Florida Sub-Class Members have been damaged in an amount to be proven at
20 trial.

21 **TENTH CAUSE OF ACTION**

22 **DECEPTIVE ACTS OR PRACTICES IN VIOLATION OF N.Y. LAW**

23 **N.Y. GEN. BUS. LAW §§ 349, 350, *et seq.***

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

25 253. Plaintiff Joseph Plis incorporates by reference and re-allege the
26 allegations contained in the preceding paragraphs of this complaint.

27 254. Plaintiff Plis brings this cause of action on his own behalf and on
28 behalf of the members of the New York Sub-Class.

1 255. New York’s General Business Law § 349 makes unlawful
2 “[d]eceptive acts or practices in the conduct of any business, trade or
3 commerce.”

4 256. New York’s General Business Law § 350 also makes unlawful
5 “[f]alse advertising in the conduct of any business, trade or commerce[.]” False
6 advertising includes “advertising, including labeling, of a commodity ... if such
7 advertising is misleading in a material respect,” taking into account “the extent
8 to which the advertising fails to reveal facts material in the light of
9 ...representations [made] with respect to the commodity....” N.Y. Gen. Bus.
10 Law § 350-a.

11 257. Defendant’s representations, as alleged above, were and are
12 material to a reasonable consumer and are likely to affect consumer behavior
13 and conduct.

14 258. Defendant’s act and practices offended public policy and violate
15 numerous state and federal laws.

16 259. Defendant’s intentional deception of consumers was immoral,
17 unethical, oppressive, and unscrupulous.

18 260. Defendant’s conduct has caused and continues to cause substantial
19 injury to Plaintiff Plis, New York consumers, and others because, as alleged
20 above, consumers paid a premium for Class Vehicles based on representations
21 about their efficiency, functionality, safety and performance. That injury is not
22 outweighed by any countervailing public policy that could justify Defendant’s
23 deceptive practices.

24 261. Because Plaintiff Plis and other members of the New York Sub-
25 Class reasonably relied on Defendant’s misrepresentations about the Class
26 Vehicles, they could not have reasonably avoided that injury.

27 262. Defendant’s conduct has not resulted in any benefit to consumers or
28 competition.

263. Defendant's unfair, deceptive practices and false advertising directly, foreseeably, and proximately caused Plaintiff Plis and other members of the New York Sub-Class an ascertainable loss because those consumers paid a premium for what they thought were safe vehicles free from any Transmission Defect.

**ELEVENTH CAUSE OF ACTION
BREACH OF EXPRESS WARRANTY
(N.Y. U.C.C. LAW §§2-213 AND 2A-210)
(On Behalf of the New York Sub-Class)**

264. Plaintiffs incorporate by reference and re-allege the allegations contained in the preceding paragraphs of this complaint.

265. Plaintiffs repeat and re-allege every allegation above as if set forth herein in full.

266. Plaintiff Plis brings this cause of action on behalf of himself and on behalf of the New York Sub-Class.

267. Defendant expressly warranted that the Class Vehicles were of high quality and, at minimum, would actually work properly. Defendant also expressly warranted that they would repair and/or replace defects in material and/or workmanship free of charge that occurred during the new vehicle and certified preowned ("CPO") warranty periods.

268. Plaintiff Plis relied on Defendant's express warranties when purchasing his vehicle.

269. Defendant breached this warranty by selling to Plaintiff Plis and the New York Sub-Class members the Vehicles with known Transmission Defects, which are not of high quality, and which are predisposed to fail prematurely and/or fail to function properly.

270. As a result of Defendant's actions, Plaintiff Plis and the New York Sub-Class members have suffered economic damages including, but not limited

1 to, costly repairs, loss of vehicle use, substantial loss in value and resale value of
2 the vehicles, and other related damage.

3 271. Defendant's attempt to disclaim or limit these express warranties
4 vis-à-vis consumers is unconscionable and unenforceable under the
5 circumstances here. Specifically, Defendant's warranty limitation is
6 unenforceable because they knowingly sold a defective product without
7 informing consumers about the defect.

8 272. The time limits contained in Defendant's warranty period were also
9 unconscionable and inadequate to protect Plaintiff Plis and members of the New
10 York Sub-Class. Among other things, Plaintiff Plis and the New York Sub-Class
11 members had no meaningful choice in determining these time limitations, the
12 terms of which unreasonably favored Defendant. A gross disparity in bargaining
13 power existed between Defendant and the Class members, and Defendant knew
14 or should have known that the Class Vehicles were defective at the time of sale.

15 273. Plaintiff Plis and the New York Sub-Class members have complied
16 with all obligations under the warranty, or otherwise have been excused from
17 performance of said obligations as a result of Defendant's conduct described
18 herein.

19 **TWELFTH CAUSE OF ACTION**
20 **VIOLATION OF THE DELAWARE CONSUMER FRAUD ACT 6 DEL.**
21 **CODE § 2511(7)**

22 **(On Behalf of the Delaware Sub-Class)**

23 274. Plaintiffs incorporate by reference and re-allege the allegations
24 contained in the preceding paragraphs of this complaint.

25 275. Plaintiff Wooten brings this cause of action on his own behalf and
26 on behalf of the members of the Delaware Sub-Class.

27 276. Ford is a "person" within the meaning of 6 Del. Code § 2511(7).

28 277. The Delaware Consumer Fraud Act ("Delaware CFA") prohibits the

1 “act, use or employment by any person of any deception, fraud, false pretense,
2 false promise, misrepresentation, or the concealment, suppression, or omission
3 of any material fact with intent that others rely upon such concealment,
4 suppression or omission, in connection with the sale, lease or advertisement of
5 any merchandise, whether or not any person has in fact been misled, deceived or
6 damaged thereby.” 6 Del. Code § 2513(a).

7 278. Defendant participated in deceptive trade practices that violated the
8 Delaware CFA as described below and alleged throughout the Complaint. By
9 failing to disclose the Transmission Defect, by concealing the Transmission
10 Defect, by marketing its vehicles as safe, reliable, easily operable, efficient, and
11 of high quality, and by presenting itself as a reputable manufacturer that valued
12 safety, cleanliness, performance and efficiency, and stood behind its vehicles
13 after they were sold, Defendant knowingly and intentionally misrepresented and
14 omitted material facts in connection with the sale or lease of the Class Vehicles.
15 Defendant systematically misrepresented, concealed, suppressed, or omitted
16 material facts relating to the Class Vehicles and Transmission Defect in the
17 course of its business.

18 279. Defendant also engaged in unlawful trade practices by employing
19 deception, deceptive acts or practices, fraud, misrepresentations, or
20 concealment, suppression or omission of any material fact with intent that others
21 rely upon such concealment, suppression or omission, in connection with the
22 sale of the Class Vehicles.

23 280. Defendant’s unfair and deceptive acts or practices occurred
24 repeatedly in its trade or business, were capable of deceiving a substantial
25 portion of the purchasing public, and imposed a serious safety risk on the public.

26 281. Defendant knew that the Class Vehicles and their transmissions
27 suffered from an inherent defect, were defectively designed or manufactured,
28 and were not suitable for their intended use.

1 282. Defendant knew or should have known that its conduct violated the
2 Delaware CFA.

3 283. Plaintiff Wooten and Delaware Sub-Class Members reasonably
4 relied on Defendant's misrepresentations and omissions of material facts in its
5 advertisements of the Class Vehicles and in the purchase of the Class Vehicles.

6 284. Had Plaintiff Wooten and Delaware Sub-Class Members known
7 that the Class Vehicles would exhibit the Transmission Defect, they would not
8 have purchased or leased the Class Vehicles, or would have paid less for them.
9 Plaintiffs did not receive the benefit of their bargain as a result of Defendant's
10 misconduct.

11 285. Plaintiff Wooten and Delaware Sub-Class Members suffered injury
12 in fact to a legally protected interest. As a result of Defendant's conduct,
13 Plaintiff Wooten and Delaware Sub-Class Members were harmed and suffered
14 actual damages in the form of the diminished value of their vehicles.

15 286. As a result of Defendant's conduct, Plaintiff Wooten and Delaware
16 Sub-Class Members were harmed and suffered ascertainable loss of money or
17 property as a result of Defendant's misrepresentations and omissions with regard
18 to their Class Vehicles' transmissions because they purchased vehicles which do
19 not perform as advertised and are subject to premature failure.

20 287. As a direct and proximate result of Defendant's unfair or deceptive
21 acts or practices, Plaintiff Wooten and Delaware Sub-Class Members suffered
22 and will continue to suffer injury in fact and/or actual damages.

23 288. Plaintiff Wooten and Delaware Sub-Class Members seek damages
24 under the Delaware CFA for injury resulting from the direct and natural
25 consequences of Defendant's unlawful conduct. *See, e.g., Stephenson v. Capano*
26 *Dev., Inc.*, 462 A.2d 1069, 1077 (Del. 1983).

27 289. Defendant engaged in gross, oppressive, or aggravated conduct
28 justifying the imposition of punitive damages.

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THIRTEENTH CAUSE OF ACTION
BREACH OF EXPRESS WARRANTY 6 DEL. CODE §§ 2-313 AND 2A-210
(On Behalf of the Delaware Sub-Class)

290. Plaintiffs incorporate by reference and re-allege the allegations contained in the preceding paragraphs of this complaint.

291. Plaintiff Wooten brings this cause of action on his own behalf and on behalf of the members of the Delaware Sub-Class.

292. Defendant is and was at all relevant times a “merchant” with respect to motor vehicles under 6 Del. Code §§ 2-104(1) and 2A-103(3), and a “seller” of motor vehicles under § 2-103(1)(d).

293. With respect to leases, Defendant is and was at all relevant times a “lessor” of motor vehicles under 6 Del. Code § 2A-103(1)(p).

294. The Class Vehicles are and were at all relevant times “goods” within the meaning of 6 Del. Code §§ 2-105(1) and 2A-103(1)(h).

295. Defendant provided all purchasers and lessees of the Class Vehicles with the express warranty described herein, which became a material part of the bargain.

296. The Transmission Defect at issue in this litigation was present at the time the Class Vehicles were sold or leased to Plaintiff Wooten and Delaware Sub-Class Members.

297. Plaintiff Wooten and the Delaware Sub-Class Members relied on Ford’s express warranties, which were a material part of the bargain, when purchasing or leasing their Class Vehicles.

298. Under the express Warranties, Defendant was obligated to correct the Transmission Defect in the vehicles owned or leased by Plaintiff Wooten and Delaware Sub-Class Members.

299. Although Defendant was obligated to correct the Transmission

1 Defect, none of the attempted fixes to the transmissions are adequate under the
2 terms of the Warranties, as they did not cure the defect.

3 300. Defendant breached the express Warranties by performing illusory
4 repairs or by telling Plaintiff Wooten and Delaware Sub-Class Members that no
5 repairs were necessary. Rather than repairing the vehicles pursuant to the
6 express Warranties, Defendant falsely informed Delaware Sub-Class Members
7 that there was no problem with their Class Vehicles, performed ineffective
8 procedures, and/or replaced defective components in the Transmissions with
9 equally defective components, without actually repairing the Class Vehicles.

10 301. Defendant and its agent dealers have failed and refused to conform
11 Transmissions to the express Warranties. Defendant's conduct, as discussed
12 throughout this Complaint, has voided any attempt on its part to disclaim
13 liability for its actions.

14 302. Moreover, Defendant's attempt to disclaim or limit these express
15 Warranties vis-à-vis consumers is unconscionable and unenforceable under the
16 circumstances here. Specifically, Defendant's warranty limitation is
17 unenforceable because it knowingly sold a defective product without informing
18 consumers about the defect.

19 303. The time limits contained in Defendant's warranty period were also
20 unconscionable and inadequate to protect Plaintiff Wooten and Delaware Sub-
21 Class Members. Among other things, Plaintiff Wooten and Delaware Sub-Class
22 Members had no meaningful choice in determining these time limitations, the
23 terms of which unreasonably favored Defendant. A gross disparity in bargaining
24 power existed between Defendant and the Class members, and Defendant knew
25 or should have known that the Class Vehicles were defective at the time of sale.

26 304. Plaintiff Wooten and Delaware Sub-Class Members have complied
27 with all obligations under the Warranties, or otherwise have been excused from
28 performance of said obligations as a result of Defendant's conduct described

1 herein.

2 305. Plaintiff Wooten and Delaware Sub-Class Members were not
3 required to notify Defendant of the breach because affording Defendant a
4 reasonable opportunity to cure its breach of written warranty would have been
5 futile. Defendant was also on notice of the Transmission Defect from the
6 complaints and service requests it received from Plaintiffs and the Class
7 Members, from repairs and/or replacements of the transmissions or components
8 thereof, and through other internal and external sources described herein.

9 306. Because Defendant, through its conduct and exemplified by its own
10 service bulletins, has covered repairs of the Transmission Defect if Defendant
11 determines the repairs are appropriately covered under the Warranties,
12 Defendant cannot now deny that the Warranties cover the Transmission Defect.

13 307. Because Defendant has not been able to remedy the Transmission
14 Defect, any limitation on remedies included in the Warranties causes the
15 Warranties to fail their essential purposes, rendering them null and void.

16 308. As a direct and proximate cause of Defendant's breach, Plaintiff
17 Wooten and Delaware Sub-Class Members suffered damages and continue to
18 suffer damages, including economic damages at the point of sale or lease and
19 diminution of value of their Class Vehicles. Additionally, Plaintiff Wooten and
20 Delaware Sub-Class Members have incurred or will incur economic damages at
21 the point of repair in the form of the cost of repair.

22 309. As a direct and proximate result of Defendant's breach of express
23 warranties, Delaware Plaintiffs and Delaware Sub-Class Members have been
24 damaged in an amount to be determined at trial.

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FOURTEENTH CAUSE OF ACTION
BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY 6
DEL. CODE §§ 2-314 AND 2A-212
(On Behalf of the Delaware Sub-Class)

310. Plaintiffs incorporate by reference and re-allege the allegations contained in the preceding paragraphs of this complaint.

311. Plaintiff Wooten brings this cause of action on his own behalf and on behalf of the members of the Delaware Sub-Class.

312. Defendant is and was at all relevant times a “merchant” with respect to motor vehicles under 6 Del. Code §§ 2-104(1) and 2A-103(3), and a “seller” of motor vehicles under § 2-103(1)(d).

313. With respect to leases, Defendant is and was at all relevant times a “lessor” of motor vehicles under 6 Del. Code § 2A-103(1)(p).

314. The Class Vehicles are and were at all relevant times “goods” within the meaning of 6 Del. Code §§ 2-105(1) and 2A-103(1)(h).

315. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law under 6 Del. Code §§ 2-314 and 2A-212.

316. Defendant knew or had reason to know of the specific use for which the Class Vehicles were purchased or leased. Defendant directly sold and marketed vehicles equipped with the Transmissions to customers through authorized dealers, like those from whom Plaintiff Wooten and the Delaware Sub-Class Members bought or leased their vehicles, for the intended purpose of consumers purchasing the vehicles. Defendant knew that the Class Vehicles would and did pass unchanged from the authorized dealers to Plaintiff Wooten and the Delaware Sub-Class Members, with no modification to the defective transmissions.

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2 317. Defendant provided Plaintiff Wooten and Class Members with an
3 implied warranty that the Class Vehicles and their components and parts are
4 merchantable and fit for the ordinary purposes for which they were sold.

5 318. This implied warranty included, among other things: (i) a warranty
6 that the Class Vehicles and their transmissions that were manufactured,
7 supplied, distributed, and/or sold by Defendant were safe and reliable for
8 providing transportation; and (ii) a warranty that the Class Vehicles and their
9 transmissions would be fit for their intended use while the Class Vehicles were
10 being operated.

11 319. Contrary to the applicable implied warranties, the Class Vehicles
12 and their Transmissions at the time of sale and thereafter were not fit for their
13 ordinary and intended purpose of providing Plaintiff Wooten and Delaware Sub-
14 Class Members with reliable, durable, and safe transportation. Instead, the Class
15 Vehicles are defective, including, but not limited to, the defective design or
16 manufacture of their transmissions and the existence of the Transmission Defect
17 at the time of sale or lease and thereafter. Defendant knew of this defect at the
18 time these sale or lease transactions occurred.

19 320. As a result of Defendant's breach of the applicable implied
20 warranties, Plaintiff Wooten and the Delaware Sub-Class Members suffered an
21 ascertainable loss of money, property, and/or value of their Class Vehicles.
22 Additionally, as a result of the Transmission Defect, Plaintiff Wooten and the
23 Delaware Sub-Class Members were harmed and suffered actual damages in that
24 the Class Vehicles' transmission components are substantially certain to fail
25 before their expected useful life has run.

26 321. Defendant's actions, as complained of herein, breached the implied
27 warranty that the Class Vehicles were of merchantable quality and fit for such
28 use in violation of 6 Del. Code §§ 2-314 and 2A-212.

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2 322. Plaintiff Wooten and Delaware Sub-Class Members have complied
3 with all obligations under the warranty, or otherwise have been excused from
4 performance of said obligations as a result of Defendant's conduct described
5 herein.

6 323. Plaintiff Wooten and Delaware Sub-Class Members were not
7 required to notify Defendant of the breach because affording Defendant a
8 reasonable opportunity to cure its breach of written warranty would have been
9 futile. Defendant was also on notice of the Transmission Defect from the
10 complaints and service requests it received from Plaintiffs and the Class
11 Members, from repairs and/or replacements of the transmissions or components
12 thereof, and through other internal sources.

13 324. As a direct and proximate cause of Defendant's breach, Plaintiff
14 Wooten and Delaware Sub-Class Members suffered damages and continue to
15 suffer damages, including economic damages at the point of sale or lease and
16 diminution of value of their Class Vehicles. Additionally, Plaintiff Wooten and
17 Delaware Sub-Class Members have incurred or will incur economic damages at
18 the point of repair in the form of the cost of repair.

19 325. As a direct and proximate result of Defendant's breach of the
20 implied warranty of merchantability, Plaintiff Wooten and Delaware Sub-Class
21 Members have been damaged in an amount to be proven at trial.

22 **RELIEF REQUESTED**

23 326. Plaintiffs, on behalf of themselves, and all others similarly situated,
24 requests the Court to enter judgment against Defendant, as follows:

- 25 (a) An order certifying the proposed Class and Sub-Classes,
26 designating Plaintiffs as named representatives of the Class,
27 and designating the undersigned as Class Counsel;
28 (b) A declaration that Defendant is financially responsible for

- 1 notifying all Class Members about the defective nature of the
2 transmission, including the need for period maintenance;
- 3 (c) An order enjoining Defendant from further deceptive
4 distribution, sales, and lease practices with respect to Class
5 Vehicles, and to remove and replace Plaintiffs and Class
6 Members' transmissions with a suitable alternative product;
7 enjoining Defendant from selling the Class Vehicles with the
8 misleading information; compelling Defendant to provide
9 Class members with a replacement transmission that does not
10 contain the defects alleged herein; and/or compelling
11 Defendant to reform its warranty, in a manner deemed to be
12 appropriate by the Court, to cover the injury alleged and to
13 notify all Class members that such warranty has been
14 reformed;
- 15 (d) A declaration requiring Defendant to comply with the various
16 provisions of the state and federal consumer protection
17 statutes herein alleged and to make all the required
18 disclosures;
- 19 (e) An award to Plaintiffs and the Class for compensatory,
20 exemplary, and statutory damages, including interest, and
21 including the additional purchase cost of the Transmission
22 option, in an amount to be proven at trial; and damages
23 under the Consumers Legal Remedies Act;
- 24 (f) Any and all remedies provided pursuant to the state and
25 federal consumer protection statutes herein alleged;
- 26 (g) A declaration that Defendant must disgorge, for the benefit of
27 the Class, all or part of the ill-gotten profits it received from
28 the sale or lease of its Class Vehicles, or make full restitution

1 to Plaintiffs and Class Members;

2 (h) An award of attorneys' fees and costs, as allowed by law;

3 (i) An award of attorneys' fees and costs pursuant to California
4 Code of Civil Procedure § 1021.5;

5 (j) An award of pre-judgment and post-judgment interest, as
6 provided by law;

7 (k) Leave to amend the Complaint to conform to the evidence
8 produced at trial;

9 (l) Plaintiffs demand that Ford perform a recall, and repair all
10 vehicles; and

11 (m) Such other relief as may be appropriate under the
12 circumstances.

13 **DEMAND FOR JURY TRIAL**

14 327. Plaintiffs demand a trial by jury of any and all issues in this action
15 so triable.

16 Dated: April 6, 2020

Respectfully submitted,

17 CAPSTONE LAW APC
18

19 By: /s/Steven R. Weinmann

20 Steven R. Weinmann

21 Tarek H. Zohdy

Cody R. Padgett

22 Trisha K. Monesi

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EXHIBIT 1

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9 Wooten

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12

13 ERIC GREGORIO, BRANDON
14 LEMONS, JOHN WALKER,
JOSEPH PLIS, AND
15 CHRISTOPHER WOOTEN
Individually, and on behalf of a class
16 of similarly situated individual,

17 Plaintiffs,

18 v.

19 FORD MOTOR COMPANY, a
Delaware corporation,

20 Defendant.
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Case No.: 2:19-cv-09773-JAK-E

**DECLARATION OF ERIC
GREGORIO IN SUPPORT OF
VENUE FOR CLASS ACTION
COMPLAINT PURSUANT TO
CIVIL CODE SECTION 1780(d)**

DECLARATION OF ERIC GREGORIO

I, Eric Gregorio, declare under penalty of perjury as follows:

1. I make this declaration based upon my personal knowledge except as to those matters stated herein that are based upon information and belief, and as to those matters I believe them to be true. I am over the age of eighteen, a citizen of the State of California, and a Plaintiff in this action.

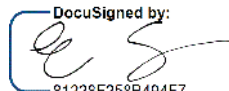
2. Pursuant to California Civil Code section 1780(d), this Declaration is submitted in support of Plaintiffs' Selection of Venue for the Trial of Plaintiff's California Consumers Legal Remedies Act claim.

3. I am a resident of Hesperia, California, in San Bernardino County. I purchased and service my vehicle in Fontana, California, and I keep my vehicle at my home in Hesperia, California.

4. Based on the facts set forth herein, the Central District of California is a proper venue for the prosecution of my California Consumers Legal Remedies Act claim because the vehicle that is the subject of this lawsuit is situated here and a substantial portion of the events giving rise to my claims occurred here. Further, Defendant conducts business in the Central District of California.

5. I declare under penalty of perjury under the laws of California and the United States of America that the foregoing is true and correct.

Executed on April 6, 2020 in Hesperia, California.

DocuSigned by:

81228F258B494F7...
Eric Gregorio

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [2011-2019 Ford Mustang Models Plagued by MT82 Transmission 'Defect,' Class Action Says](#)
