

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MARK JONES and MICHAEL MCKEE,  
individually and on behalf of all others similarly  
situated,

Plaintiffs,

v.

FORD MOTOR COMPANY, a Delaware  
corporation,  
Defendant.

No. 3:21-cv-05666

**FORD MOTOR COMPANY’S NOTICE  
OF REMOVAL**

**TO: Clerk of the Court**

**AND TO: All Counsel of Record**

**PLEASE TAKE NOTICE** Defendant Ford Motor Company (“Ford”) removes this case from the Superior Court of Washington for Thurston County to the United States District Court for the Western District of Washington at Tacoma, pursuant to 28 U.S.C. §§ 1332(d)(2), 1441, 1446, and 1453.

**I. INTRODUCTION AND BACKGROUND**

On August 9, 2021, Plaintiffs Mark Jones and Michael McKee (“Plaintiffs”) commenced this action against Ford in the Superior Court of the State of Washington for Thurston County, Case No. 21-2-01367-34, by filing the Class Action Complaint (the “Complaint”). A true and

1 correct copy of the Complaint is attached hereto. The Complaint asserts, on behalf of a putative  
 2 class, that Ford violated the Washington Privacy Act (“WPA”), RCW 9.73 *et seq.*, because Ford  
 3 vehicles allegedly download, record, and store Plaintiffs’ text messages without their consent.  
 4 Compl. ¶¶ 37, 43, 46, 58.

5 Specifically, the Complaint alleges Ford’s modern vehicles are equipped with an  
 6 “infotainment system” that can be connected to a smartphone for additional functionality, *id.* at ¶¶  
 7 10–12, and that these “systems in Ford vehicles from at least 2014 onward also download and store  
 8 a copy of all text messages on smartphones when connected to infotainment systems in Ford  
 9 vehicles.” *Id.* at ¶ 17. Vehicle owners, the Complaint alleges, cannot access these stored copies  
 10 of text messages. *Id.* at ¶ 28. Rather, the stored copies of text messages can be accessed using  
 11 hardware and software designed by a third-party company, not related to Ford, named Berla. *Id.*  
 12 at ¶ 29. The Complaint further alleges that “Berla specifically restricts access to its systems,  
 13 making them available primarily to law enforcement and private investigation service providers.”  
 14 *Id.* at ¶ 30.

15 Plaintiff Jones allegedly owned a Ford vehicle with an infotainment system, and “[o]n at  
 16 least ten occasions,” he “connected his smartphone to his Ford infotainment system at a time that  
 17 it had at least one text message stored on it.” *Id.* at ¶¶ 32, 38. The Complaint alleges Plaintiff’s  
 18 vehicle’s infotainment system downloaded and recorded Plaintiff Jones’s private text messages  
 19 without his consent. *Id.* at ¶¶ 37, 39, 40. Plaintiff McKee, though not an owner of a Ford vehicle,  
 20 allegedly sent private text messages to Plaintiff Jones, which Plaintiff McKee claims were then  
 21 “downloaded and recorded ... by Plaintiff Jones’ Ford vehicle’s infotainment system.” *Id.* at ¶¶  
 22 46, 57, 59. The Complaint alleges such recording of Plaintiffs’ text messages caused them injury  
 23 and violated the WPA. *Id.* at ¶¶ 55–56, 60–61, 77–78.

24 The Complaint seeks declaratory judgment that Ford violated the WPA, an order enjoining  
 25 Ford from further WPA violations, “liquidated damages at the rate of one hundred dollars a day  
 26

for each day of violation, not to exceed one thousand dollars,” and attorneys’ fees and costs.  
 Compl., Prayer for Relief.

## II. GROUNDS FOR REMOVAL

This action lies within the original jurisdiction of this Court, and removal is therefore proper under the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. §§ 1332(d), 1453. CAFA grants this Court original jurisdiction over class actions when: (1) there are at least 100 members of the putative class; (2) the aggregate amount in controversy exceeds \$5 million; (3) at least one defendant is a citizen of a state different from at least one putative class member (*i.e.*, minimal diversity); and (4) the defendants are not states, state officials, or other government entities. 28 U.S.C. § 1332(d)(2)(A), (d)(5)(A and B), and (d)(6). Each of these grounds is satisfied here.

### A. The putative class has over 100 members.

To be eligible for removal under CAFA, a putative class action must contain at least 100 members. 28 U.S.C. § 1332(d)(5)(B). Here, the Complaint seeks to certify a class of “[a]ll persons, who within three years prior to the filing of this Complaint, had their text messages recorded by the infotainment system in a Ford vehicle (Ford or Lincoln) while a resident of the State of Washington.” Compl. ¶ 62. Because the Complaint was filed on August 9, 2021, the putative class definition’s period runs from August 9, 2018 to the present (the “Class Period”). Although Ford disputes that a class meeting this definition—or any other—meets the requirements for certification, the putative class contains far more than 100 members.

During the proposed Class Period, Ford sold at least 67,750 vehicles equipped with an “infotainment system” in the state of Washington that allowed people to send and receive text messages. Declaration of Chris Eikey in Support of Ford’s Notice of Removal (“Eikey Decl.”) ¶ 2. Assuming for the purposes of removal that the Complaint’s allegations are true, and that these infotainment systems recorded text messages, the 100-person threshold is easily surpassed. Compl. ¶ 17 (“On information and belief, infotainment systems in Ford vehicles from at least 2014

onward also download and store a copy of all text messages on smartphones when connected to infotainment systems in Ford vehicles.”); *see also, e.g., Bastami v. Semiconductor Components Indus., LLC*, 2017 WL 1354148, at \*3 n. 2 (N.D. Cal. Apr. 13, 2017) (when considering whether removal is proper, the “Court accepts the allegations of plaintiff’s complaint as true”) (citation omitted).

**B. The aggregate amount in controversy exceeds \$5 million.**

CAFA allows removal of a putative class action when the amount in controversy exceeds \$5 million, exclusive of interest and costs, aggregated across the class members’ claims. § 1332(d)(2). To satisfy CAFA, defendants do not need to prove this amount with any specificity. *See Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 84 (2014) (explaining a notice of removal “need not contain evidentiary submissions”). Instead, when the complaint does not allege a specific amount in controversy, defendants can satisfy CAFA simply “based on reasonable assumption,” without going “so far as to prove Plaintiff’s case for him by proving the actual rates of violation.” *Dawsey v. Travelers Indem. Co.*, 2015 WL 4394545, at \*2 (W.D. Wash. July 16, 2015). The amount in controversy for CAFA purposes includes, among other types of relief, both statutory damages and attorneys’ fees that could be awarded to the class. *Id.* at \*3 (including both treble damages and attorneys’ fees in the amount in controversy under a CPA claim to satisfy CAFA requirements); *see also Fritsch v. Transp. Co. of Ariz., LLC*, 899 F.3d 785, 793 (9th Cir. 2018) (“Among other items, the amount in controversy [for purposes of CAFA removal] includes damages (compensatory, punitive, or otherwise), the costs of complying with an injunction, and attorneys’ fees awarded under fee-shifting statutes or contract.”).

In this instance, although the Complaint does not state the total amount the putative class could obtain, the proposed class seeks a total amount far in excess of \$5 million.<sup>1</sup> Plaintiffs seek

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<sup>1</sup> The following analysis is provided solely to establish that CAFA’s amount in controversy requirement is reasonably met if the Complaint’s allegations are accepted as true. This analysis is in no way an admission of any allegation in the Complaint, an admission regarding whether class certification is appropriate, an admission as to the proper method for calculating damages, or an admission that Plaintiffs are entitled to any relief whatsoever.

1 statutory damages under the WPA “at the rate of one hundred dollars a day for each day of  
 2 violation, not to exceed one thousand dollars.” Compl., Prayer for Relief ¶ C; *see also* RCW  
 3 9.73.060 (injured person under the WPA “shall be entitled to actual damages ... or liquidated  
 4 damages computed at the rate of one hundred dollars a day for each day of violation, not to exceed  
 5 one thousand dollars”). Plaintiffs seek statutory damages for ten days of alleged WPA violations  
 6 per class member, or \$1,000 per class member. Compl., Prayer for Relief ¶ C. Because Ford sold  
 7 over 67,750 vehicles equipped with the infotainment system during the proposed Class Period in  
 8 Washington State, *see* Eikey Decl. ¶ 2, and assuming each purchaser is entitled to the statutory  
 9 damages Plaintiffs seek, the amount of in controversy is at least \$67 million—far in excess of the  
 10 \$5 million CAFA threshold.

11 In addition to liquidated damages under the WPA, Plaintiffs also seek statutory attorneys’  
 12 fees under RCW 9.73.060. Compl., Prayer for Relief ¶ C; *see also Fritsch*, 899 F.3d at 793  
 13 (“Among other items, the amount in controversy [for purposes of CAFA removal] includes  
 14 damages ... attorneys’ fees awarded under fee-shifting statutes or contract.”). Such attorneys’ fees  
 15 further increase the amount in controversy.

16 **C. Minimum diversity is satisfied.**

17 The Complaint satisfies the minimal diversity requirement of CAFA. CAFA supports  
 18 removal if any defendant is a citizen of a different state than any one class member.  
 19 § 1332(d)(2)(A). Here, the named Plaintiffs both allege they are Washington residents. Compl.  
 20 ¶¶ 6–7. Similarly, the proposed class definition states that it is limited to “[a]ll persons” who had  
 21 their text messages allegedly recorded “while a resident of the State of Washington.” *Id.* at ¶ 62.

22 Minimal diversity is thus satisfied here because Ford, which is a corporation, is not a citizen  
 23 of Washington State. A corporation is considered a citizen of the state of its incorporation as well  
 24 as the state where its principal place of business is located. 28 U.S.C. § 1332(c)(1); *see also Hertz*  
 25 *Corp. v. Friend*, 559 U.S. 77, 92–93 (2010). A corporation’s principal place of business is its  
 26 “nerve center” or “the place where a corporation’s officers direct, control, and coordinate

the corporation's activities.” *Hertz*, 559 U.S. at 92–93 (“[I]n practice it should normally be the place where the corporation maintains its headquarters ...”). Here, Ford is incorporated in Delaware, and its headquarters are in Michigan. Eikey Decl. ¶ 3. Ford is therefore a citizen of Delaware and Michigan. CAFA’s minimal diversity requirements are satisfied.

**D. The defendant is not a government entity.**

Ford is a corporation. It is not a government entity of any sort.

**III. REMOVAL IS TIMELY**

Plaintiffs filed this class action on August 9, 2021. Plaintiffs served the summons and Complaint on Ford on August 12, 2021. This notice is filed within 30 days of that service, as required by 28 U.S.C. § 1446(b)(1). *See Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347–48 (1999) (30-day removal period begins on service of summons and complaint). Removal of this action is therefore timely.

**IV. INTRADISTRICT ASSIGNMENT**

Removal to the Tacoma Division of the Western District of Washington is appropriate because the allegations in the Complaint indicate that Plaintiffs’ claims arose in Washington State, Compl. ¶¶ 6–7, and because the Tacoma division encompasses the place where the action is pending. *See* LCR 3(d); 28 U.S.C. §§ 128, 1441(a).

Respectfully submitted this 10th day of September, 2021.

DLA PIPER LLP (US)

*s/ Anthony Todaro*

Anthony Todaro, WSBA No. 30391

*s/ Jeff DeGroot*

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*Attorneys for Defendant  
Ford Motor Company.*

**VERIFICATION**

Pursuant to Western District of Washington Local Rule 101(c), the undersigned counsel for defendant Ford Motor Company, hereby verifies that the pleadings and other documents attached hereto as **Exhibit A** are true and complete copies of the pleadings and documents in the state court proceeding. I declare under penalty of perjury that the foregoing is true and correct.

Executed at Seattle, Washington this 10th day of September, 2021.

s/ Anthony Todaro

Anthony Todaro, WSBA No. 30391

**CERTIFICATE OF SERVICE**

I hereby certify that on September 10, 2021, I caused the foregoing document to be served on the following counsel of record in the manner indicated:

<p>Joel B. Ard, WSBA No. 40104 ARD LAW GROUP PLLC P.O. Box 11633 Bainbridge Island, Washington 98110 Tel: 206.701.9243 E-mail: joel@ard.law</p> <p><i>Attorney for Plaintiffs</i> <i>Mark Jones and Michael McKee</i></p>	<p><input type="checkbox"/> Via Hand Delivery</p> <p><input type="checkbox"/> Via U.S. Mail</p> <p><input checked="" type="checkbox"/> Via E-mail</p> <p><input checked="" type="checkbox"/> Via the Court's CM/ECF System</p>
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 10th day of September, 2021.

s/ Alicia Morales  
Alicia Morales, Legal Practice Specialist

21-2-01367-34  
CMP 3  
Complaint  
10801460



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THURSTON COUNTY, WA  
SUPERIOR COURT  
08/09/2021 8:03:08 AM  
Linda Myhre Enlow  
Thurston County Clerk

STATE OF WASHINGTON  
THURSTON COUNTY SUPERIOR COURT

MARK JONES and MICHAEL MCKEE,  
individually and on behalf of all others similarly  
situated,

21-2-01367-34

*Plaintiffs,*

CLASS ACTION COMPLAINT

v.

FORD MOTOR COMPANY, a Delaware  
Corporation,

*Defendant.*

Plaintiffs Mark Jones ("Jones") and Michael McKee ("McKee," and collectively "Plaintiffs"), individually and on behalf of all others similarly situated, allege the following based upon personal knowledge as to Plaintiffs and Plaintiffs' own acts, and upon information and belief as to all other allegations, based on investigation of counsel. This investigation included, *inter alia*, a review of public documents prepared by Defendant, media reports, and other information concerning Defendant. The investigation of the facts pertaining to this case is continuing. Plaintiffs believe that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

I. INTRODUCTION

1. This class action suit seeks statutory damages for violations of the Washington Privacy Act, Chapter 9.73 RCW (hereafter the "WPA" or the "Act"), which forbids any entity in

1 Washington from intercepting or recording any private communication without first  
2 obtaining the consent of all the participants in the communication.<sup>1</sup>

3 2. Because defendant Ford Motor Company ("Ford" or "Defendant") has violated the  
4 WPA, it is liable for liquidated damages computed at the rate of one hundred dollars per  
5 day for each day of violation, not to exceed one thousand dollars per Plaintiff and absent  
6 class member, and a reasonable attorneys' fee and other costs of litigation.

7 3. Plaintiffs are also entitled to declaratory and injunctive relief that Ford has violated the  
8 WPA, and enjoining further violations.

## 9 II. JURISDICTION AND VENUE

10 4. This Court has jurisdiction over the subject matter of this lawsuit and over the parties to  
11 the lawsuit.

12 5. Venue is proper in this Court pursuant to RCW 4.12.025 because Defendant resides in this  
13 county.

## 14 III. PARTIES

15 6. Plaintiff Jones is now, and at all times relevant to this Complaint has been, a Washington  
16 resident.

17 7. Plaintiff McKee is now, and at all times relevant to this Complaint has been, a Washington  
18 resident.

19 8. Defendant Ford Motor Company ("Ford") is a Delaware Corporation with a principal  
20 place of business in Dearborn, Michigan.

21 9. Ford manufactures vehicles which it sells in the United States and in Washington state  
22 under the Ford name and under the Lincoln name. Together herein, they are referred to as  
23 "Ford vehicles" or "vehicles manufactured by Ford."  
24

25 <sup>1</sup> As described below, Plaintiffs seek to represent a class consisting of: *"All persons, who in the three years*  
26 *prior to the date of filing this Complaint, had their text messages recorded by the infotainment system in a Ford*  
27 *vehicle (Ford or Lincoln) while a resident of the State of Washington."*

#### IV. FACTS

##### A. Ford vehicle infotainment systems.

10. Modern vehicles, including those built by Ford, contain “infotainment systems.”

11. Infotainment systems in Ford vehicles include methods for the system to connect to a smartphone, both by USB and by Bluetooth.

12. Once a smartphone is connected to the infotainment system in a Ford vehicle, the system offers additional apps and functionality native to the smartphone but controlled and accessed through the infotainment system controls rather than through the smartphone.

13. These can include, for example, the ability to play music stored on or streamed through the smartphone through the vehicle’s speakers, and to use the smartphone’s satellite navigation software through the infotainment system screen and vehicle speakers for turn-by-turn directions.

14. Infotainment systems in Ford vehicles also include the ability to make and receive telephone calls on a connected smartphone, using the vehicle microphone and speakers and thereby operating hands-free.

15. At all relevant times, infotainment systems in Ford vehicles also interface with the smartphone’s text messaging system.

16. The infotainment system interface in Ford vehicles is designed to work specifically with at least the two major smartphone operating systems: CarPlay for Apple smartphones (iPhones) and Android Auto for Android smartphones.

17. On information and belief, infotainment systems in Ford vehicles from at least 2014 onward also download and store a copy of all text messages on smartphones when connected to infotainment systems in Ford vehicles.

18. On information and belief, third party Berla Corporation (“Berla”), based in Annapolis, Maryland, manufactures equipment (hardware and software) capable of extracting stored text messages from infotainment systems in Ford vehicles.

19. On information and belief, the Berla system is not generally available to the general public.

20. Berla states that “Our vehicle forensics tools are available to law enforcement, military, civil and regulatory agencies, and select private industry organizations.”<sup>2</sup>

21. On information and belief, vehicle infotainment systems in Ford vehicles automatically download a copy of every text message stored on any phone connected to the system and stores that copy in computer memory on the vehicle in such a manner that the vehicle owner cannot access it.

22. However, according to Berla, while a vehicle owner cannot retrieve that text message, Berla and Ford have ensured that law enforcement can.

23. According to a 2017 report in CyberScoop, Ben LeMere, the CEO and founder of Berla, bragged in 2014 that “We’ve been working directly with the [original equipment manufacturers] themselves to educate them. Hey, ‘this is privacy data,’ ‘this is what you need to secure.’ *But we only do that when it’s part of an agreement that they will allow law enforcement in.*”<sup>3</sup> (Emphasis added.)

24. In a story published by NBC News, NBC quoted LeMere from a podcast as follows: “‘People rent cars and go do things with them and don’t even think about the places they are going and what the car records,’ LeMere said in a June interview for a podcast made by Cellebrite, a company that makes tools to help law enforcement agencies extract data from locked mobile phones. ‘Most of them aren’t doing anything wrong, but it’s pretty funny to see the hookers and blow request text messages and answers.’”<sup>4</sup>

25. A recent article published by The Intercept quoted LeMere as follows: “In a 2015 appearance on the podcast ‘The Forensic Lunch,’ LeMere told the show’s hosts how the

<sup>2</sup> See <https://berla.co/> (last accessed May 24, 2021).

<sup>3</sup> See <https://www.cyberscoop.com/berla-car-hacking-dhs/> (last accessed May 24, 2021 and attached hereto as Exhibit A). That article refers to, and quotes, a 19:52 minute presentation found at <https://www.youtube.com/watch?v=E0DQEVgIY5k>.

<sup>4</sup> See <https://www.nbcnews.com/tech/tech-news/snitches-wheels-police-turn-car-data-destroy-suspects-alibis-n1251939> (last accessed May 24, 2021 and attached as Exhibit B). That article purports to hyperlink to a podcast at <https://www.cellebrite.com/en/series/vehicle-data-extractions-ben-lemere-ceo-at-berla-vehicle-forensics/> but no such podcast appears at that URL as of May 24, 2021.

1 company uses exactly this accidental-transfer scenario in its trainings: 'Your phone died,  
2 you're gonna get in the car, plug it in, and there's going to be this nice convenient USB  
3 port for you. When you plug it into this USB port, it's going to charge your phone,  
4 absolutely. And as soon as it powers up, it's going to start sucking all your data down into  
5 the car.'"<sup>5</sup>

6 26. The Intercept article continues: "In the same podcast, LeMere also recounted the  
7 company pulling data from a car rented at BWI Marshall Airport outside Washington,  
8 D.C.: 'We had a Ford Explorer ... we pulled the system out, and we recovered 70 phones  
9 that had been connected to it. All of their call logs, their contacts and their SMS history, as  
10 well as their music preferences, songs that were on their device, and some of their Facebook  
11 and Twitter things as well. ... And it's quite comical when you sit back and read some of  
12 the the [sic] text messages.'"<sup>6</sup>

13 27. On information and belief, a reasonable opportunity for discovery will show that  
14 infotainment systems in Ford vehicles automatically download a copy of all text messages  
15 from connected smartphones and store them in onboard computer memory.

16 28. On information and belief, a reasonable opportunity for discovery will show that the  
17 onboard stored copy of text messages cannot be accessed by vehicle owners.

18 29. On information and belief, a reasonable opportunity for discovery will show that the  
19 onboard stored copy of text messages can be accessed by someone using hardware and  
20 software designed and sold by Berla.

21 30. Berla specifically restricts access to its systems, making them available primarily to law  
22 enforcement and private investigation service providers.

23 31. No Plaintiff is able to acquire a Berla system in order to be able to access the text messages  
24 stored on his own or any other Ford vehicle.

25  
26 <sup>5</sup> See <https://theintercept.com/2021/05/03/car-surveillance-berla-msab-cbp/> (last accessed May 24, 2021  
27 and attached as Exhibit C). The article contains no internal link to this referenced podcast.

<sup>6</sup> *Id.*

**B. Plaintiff Jones' Ford infotainment system, smartphone, and text messages.**

32. Plaintiff Jones owns a 2021 vehicle manufactured by Ford.

33. Plaintiff Jones' Ford vehicle is equipped with an infotainment system that syncs to any smartphone either plugged into the system through a USB cable or connected via Bluetooth.

34. Plaintiff Jones owns a smartphone.

35. The infotainment system on Plaintiff Jones' Ford vehicle is a device designed to record text communications.

36. In the past three years, on more than ten occasions, Plaintiff Jones connected his smartphone into his Ford vehicle's infotainment system.

37. Plaintiff Jones never consented to Ford downloading and storing his text messages, and similarly did not consent to third parties such as Berla or law enforcement having access to copies of such text messages made by his Ford vehicle's infotainment system.

38. On at least ten occasions in the past three years, Plaintiff Jones connected his smartphone to his Ford infotainment system at a time that it had at least one text message stored on it.

39. Each of Plaintiff Jones' text messages was and is a private communication, inasmuch as Plaintiff Jones had not shared the messages with anyone other than the recipients.

40. On information and belief, a reasonable opportunity for discovery will show that each text message on Plaintiff Jones' smartphone was downloaded and recorded onto onboard vehicle memory by his Ford vehicle's infotainment system.

41. Ford was not a party to any of the text messages.

42. By the foregoing conduct, Ford recorded the text messages through the infotainment system.

43. On information and belief, a reasonable opportunity for discovery will show that Plaintiff Jones' Ford vehicle's infotainment system wrongfully retains the recorded copy of Plaintiff Jones' text message for more than ten days.

1 **C. Plaintiff McKee's text messages.**

2 44. In the past three years, Plaintiff McKee sent at least one text message to Plaintiff Jones.

3 45. Plaintiff Jones thereafter connected his smartphone to the infotainment system in his Ford  
4 vehicle.

5 46. On information and belief, a reasonable opportunity for discovery will show that Plaintiff  
6 McKee's text message to Plaintiff Jones was downloaded and recorded onto onboard  
7 vehicle memory by Plaintiff Jones' Ford vehicle's infotainment system.

8 47. Ford was not a party to the text message.

9 48. By the foregoing conduct, Ford intercepted and recorded the text messages through the  
10 infotainment system.

11 49. On information and belief, a reasonable opportunity for discovery will show that Plaintiff  
12 Jones' Ford vehicle's infotainment system wrongfully retains the recorded copy of Plaintiff  
13 McKee's text message for more than ten days.

14 **D. Privacy of text messages; Non-consent to Ford's interception and recording.**

15 50. Each of Plaintiff Jones' text messages is a private communication between Plaintiff Jones  
16 and his interlocutor.

17 51. Plaintiff Jones has never consented to Ford intercepting his text messages.

18 52. Plaintiff Jones has never consented to Ford recording his text messages.

19 53. Plaintiff Jones has never inquired of an interlocutor to his text messages whether the  
20 counterparty consents to Ford intercepting and recording the text messages.

21 54. As such, no interlocutor of Plaintiff Jones has ever consented to Ford intercepting and/ or  
22 recording their text messages.

23 55. Ford's interception and/ or recording of Plaintiff Jones' text messages has injured Plaintiff  
24 Jones. On information and belief, Plaintiff Jones' private and confidential text messages  
25 now reside on his Ford vehicle, can be accessed by Berla systems, and cannot be deleted by  
26 Plaintiff Jones. Each of Plaintiff Jones' private and confidential text messages is accessible  
27 at any time by law enforcement, by Berla, and by similar private actors.

1 56. Ford has also injured Plaintiff Jones by depriving him of the right and ability to engage in  
 2 private text communications without unwillingly allowing Ford to intercept and record a  
 3 copy for access by third parties such as Berla and law enforcement.

4 57. Each of Plaintiff McKee's text messages is a private communication between Plaintiff  
 5 McKee and his interlocutor.

6 58. Plaintiff McKee has never consented to Ford intercepting his text messages.

7 59. Plaintiff McKee has never consented to Ford recording his text messages.

8 60. Ford's recording of Plaintiff McKee's text messages has injured Plaintiff McKee. On  
 9 information and belief, Plaintiff McKee's private and confidential text messages now reside  
 10 on Plaintiff Jones' Ford vehicle, and can be accessed by Berla systems, and cannot be  
 11 deleted by either Plaintiff Jones or McKee. Each of Plaintiff McKee's private and  
 12 confidential text messages to Plaintiff Jones is accessible at any time by law enforcement,  
 13 by Berla, and by similar private actors.

14 61. Ford has injured Plaintiff McKee by depriving him of the right and ability to engage in  
 15 private text communications without unwillingly allowing Ford to intercept and record a  
 16 copy for access by third parties such as Berla and law enforcement.

#### 17 **V. CLASS ALLEGATIONS**

18 62. Plaintiffs bring this action as a class action pursuant to Civil Rule 23 on behalf of the  
 19 following Classes of persons:

20 All persons, who within three years prior to the filing of this Complaint, had their text  
 21 messages recorded by the infotainment system in a Ford vehicle (Ford or Lincoln) while  
 a resident of the State of Washington.

22 Excluded from the Class are Defendant Ford and any person, firm, trust, corporation,  
 23 or other entity related to or affiliated with any defendant.

24 63. On information and belief, Ford vehicles have intercepted and recorded text messages from  
 25 numerous Washington persons.  
 26  
 27

1 64. On information and belief, the Class is so numerous that joinder of all affected persons is  
2 impracticable and the disposition of their claims in a class action, rather than in individual  
3 actions, will benefit both the parties and the courts.

4 65. On information and belief, Class members may be identified from records maintained by  
5 one or more of the Washington Department of Licensing, Ford, and/or Berla, and may be  
6 notified of the pendency of this action by mail or electronic mail using the form of notice  
7 similar to that customarily used in class actions.

8 66. Plaintiffs' claims are typical of the claims of the other members of the Class.

9 67. All members of the Class have been and/or continue to be similarly affected by Ford's  
10 wrongful conduct as complained of herein. Plaintiffs are unaware of any interests that  
11 conflict with or are antagonistic to the interests of the Class.

12 68. Plaintiffs will fairly and adequately protect the Class members' interests and have retained  
13 counsel competent and experienced in class actions and complex litigation. Plaintiffs and  
14 Plaintiffs' counsel will adequately and vigorously litigate this class action, and Plaintiffs are  
15 aware of their duties and responsibilities to the Class.

16 69. Ford has acted with respect to the Class in a manner generally applicable to each Class  
17 member. Common questions of law and fact exist as to all Class members and predominate  
18 over any questions affecting individual Class members. The questions of law and fact  
19 common to the Class include, *inter alia*:

20 a. Whether Ford recorded private communications and conversations without the  
21 consent of all participants in the communication and conversations; and

22 b. The remedies available to Plaintiffs and the Class.

23 70. A class action is superior to all other available methods for the fair and efficient adjudication  
24 of this controversy since joinder of all Class members is impracticable. Furthermore, as the  
25 statutory damages suffered by individual Class members is relatively small, the expense and  
26 burden of individual litigation makes it impossible as a practical matter for Class members  
27

1 to individually redress the wrongs done to them. There will be no difficulty in managing  
2 this action as a class action.

3 71. Ford has acted on grounds generally applicable to the entire Class with respect to the  
4 matters complained of herein, thereby making appropriate the relief sought herein with  
5 respect to the Class as a whole.

## 6 VI. CAUSES OF ACTION

### 7 A. First Cause of Action: Washington Privacy Act

8 72. Plaintiffs hereby incorporate by reference the allegations contained in the preceding  
9 paragraphs of this Complaint.

10 73. This First Cause of Action is brought pursuant to the Washington Privacy Act, Chapter  
11 9.73 RCW, on behalf of the Class, against Ford.

12 74. As to each Plaintiff and member of the Class, Ford recorded private communications  
13 transmitted by telephone, telegraph, radio, or other device between two or more individuals  
14 between points within or without the state of Washington by means of a device designed to  
15 record or transmit said communication.

16 75. As to each Plaintiff and member of the Class, Ford did not first obtain the consent of all the  
17 participants in such communications.

18 76. Ford recorded private conversations by means of a device designed to record or transmit  
19 such conversation without first obtaining the consent of all the persons engaged in the  
20 conversation.

21 77. Ford is therefore liable to each Plaintiff and member of the Class for liquidated damages  
22 computed at the rate of one hundred dollars a day for each day of violation, not to exceed  
23 one thousand dollars for each Plaintiff and member of the Class, and a reasonable attorneys'  
24 fee and other costs of litigation, as provided by RCW 9.73.060.

25 78. Ford's acts and practices in violation of Chapter 9.73 RCW as complained of herein have  
26 injured the persons of Plaintiffs and each member of the Class.  
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79. Because Ford's wrongful recordation and retention of text messages as alleged above has occurred on more than ten separate occasions and/ or continued for more than ten days, Plaintiffs are entitled to \$1,000 of statutory liquidated damages.

80. Each member of the Class is therefore entitled to \$1,000 of statutory liquidated damages.

81. Plaintiff therefore seeks recovery of damages, including specifically statutory damages, on his own behalf and on behalf of each member of the Class, together with the costs of the suit, including reasonable attorneys' fees and other costs of litigation.

**B. Second Cause of Action: Declaratory Relief**

82. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

83. This Second Cause of Action is brought pursuant to the Uniform Declaratory Judgments Act, Chapter 7.24 RCW, on behalf of the Class, against Ford.

84. Plaintiffs seek a declaration that Ford's conduct violates the Washington Privacy Act.

**C. Third Cause of Action: Injunctive Relief**

85. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

86. Plaintiffs seek an injunction from this Court, enjoining Ford from further interception and recordation of text messages by use of its infotainment systems, and ordering Ford to cause its infotainment systems to delete all stored text messages.

**VII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs and the Class prays for relief and judgment as follows:

A. Declaring that this action is properly maintainable as a class action under Rule 23 of the Federal Rules of Civil Procedure, and certifying Plaintiffs as the Class representative and their counsel as Counsel for the Class;

B. Declaring that Ford recorded private communications and conversations in violation of the Washington Privacy Act;

1 C. Awarding Plaintiffs and the members of the Classes the remedy of liquidated  
2 damages at the rate of one hundred dollars a day for each day of violation, not to exceed one  
3 thousand dollars, and a reasonable attorneys' fee and other costs of litigation;

4 D. Enjoining further violations of the WPA; and

5 Such other and further relief as this Court may deem just and proper.

6 **VIII. JURY DEMAND**

7 Plaintiff and the Class hereby demand a trial by jury.

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19 August 9, 2021.

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21 By:

ARD LAW GROUP PLLC

Joel B. Ard, WSBA # 40104

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ATTORNEYS FOR PLAINTIFF AND THE  
PUTATIVE CLASS

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# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Ford Infotainment Systems Illegally Store Text Messages, Make Them Available to Law Enforcement, Class Action Alleges](#)

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