

1 TINA WOLFSON (SBN 174806)
 2 twolfson@ahdootwolfson.com
 ROBERT R. AHDOOT (SBN 172098)
 3 rahdoot@ahdootwolfson.com
 CHRISTOPHER STINER (SBN 276033)
 4 cstiner@ahdootwolfson.com
 DEBORAH DE VILLA (SBN 312564)
 5 ddevilla@ahdootwolfson.com
AHDOOT & WOLFSON, P.C.
 6 2600 W. Olive Avenue, Suite 500
 Burbank, California 91505-4521
 7 Telephone: (310) 474-9111
 8 Facsimile: (310) 474-8585

9 *Attorneys for Plaintiff and the Putative Class*

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

13 MICHAEL SCRIBER, individually and
 14 on behalf of all others similarly situated,

15 Plaintiff,

16 v.

17 FORD MOTOR COMPANY,

18 Defendant.
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28

Case No. '22CV1716 MMAMDD

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Michael Scriber (“Plaintiff”), individually and on behalf of all others
2 similarly situated, upon personal knowledge of facts pertaining to him and on information
3 and belief as to all other matters, by and through undersigned counsel, hereby brings this
4 Class Action Complaint against Defendant Ford Motor Company (collectively,
5 “Defendant” or “Ford”).

6 **NATURE OF THE ACTION**

7 1. Plaintiff brings this action on behalf of himself and on behalf of all similarly
8 situated persons (“Class Members”) in the United States who purchased or leased any of
9 the following Ford and Lincoln branded vehicles which were manufactured with a 3G
10 modem, an obsolete piece of telematics equipment for the indicated model years: Fusion
11 Energi model years 2014-2020, C-MAX Energi model years 2014-2017, Focus Battery
12 Electric Vehicle (BEV) model years 2016-2018, MKZ / MKZ Hybrid model years 2016-
13 2017, MKC model years 2015-2017, Continental model year 2017, and MKX model years
14 2016-2017 (the “Class Vehicles”).

15 2. This action is brought to remedy violations of law in connection with
16 Defendant’s manufacture, marketing, advertising, selling, warranting, and servicing of the
17 Class Vehicles. The Class Vehicles’ internet enabled features, such as roadside emergency
18 safety features and other features available through the MyFord or MyLincoln Mobile App,
19 were rendered inoperable after AT&T’s 3G phase out in 2022 due to Ford’s installation of
20 obsolete telematics equipment in the Class Vehicles. The allegations herein are based on
21 personal knowledge as to Plaintiff’s own experiences and are made as to other matters
22 based on an investigation by counsel, including analysis of publicly available information.

23 **JURISDICTION AND VENUE**

24 3. The Court has subject matter jurisdiction over Plaintiff’s claims pursuant to
25 28 U.S.C. § 1332(d), because this matter was brought as a class action under Fed. R. Civ.
26 P. 23, at least one proposed Class member is of diverse citizenship from Defendant, the
27 proposed Class includes more than 100 members, and the aggregate amount in controversy
28 exceeds five million dollars (\$5,000,000), excluding interest and costs.

1 investigated the issue further. After many weeks and several dozen phone calls, El Cajon
2 Ford's Service Center determined that Plaintiff's vehicle had a 3G rather than a 4G modem
3 installed. They further informed him that Ford offered a 4G modem upgrade kit, however
4 Ford did not consider it a repair covered by the warranty. They estimated that the upgrade
5 kit costs \$458.69 and labor involved would cost \$558.48.

6 9. On October 14, 2022, Plaintiff sent a letter to Ford demanding that they honor
7 the replacement of his non-functional 3G modem with a functional 4G modem as an
8 authorized repair under the New Vehicle Warranty. Ford did not offer to repair or replace
9 his modem, or otherwise resolve the problems with Plaintiff's vehicle.

10 10. Defendant Ford Motor Company is a Delaware limited liability company with
11 its principal place of business located in Dearborn, Michigan. Defendant designed,
12 manufactured, marketed, distributed, leased, and sold, through its authorized dealers and
13 distributors, the Class Vehicles in the United States to Plaintiff and the other Class
14 members.

15 **FACTUAL BACKGROUND**

16 11. A Class Vehicle's Mobile App uses the vehicle's onboard wireless module,
17 or modem, to communicate with the secure Ford cloud service through cellular technology.
18 The Mobile App allows you to start, lock, unlock, and locate the vehicle remotely. The
19 Mobile App also connects you with other vehicle resources like a parking locator, roadside
20 assistance, dealer locations and Ford Support. In recognition of the importance of the theft
21 and safety features, insurance carriers offer vehicle owners preferential rates for vehicles
22 with those features.

23 12. For plug-in hybrids, the Mobile App allows the owner to check the vehicle's
24 battery charge level and total range, and to schedule the time of day the vehicle charges its
25 battery in order to take advantage of when electricity prices are at their lowest.

26 13. Ford contracted with AT&T to provide access to its 3G network for the
27 modems installed in the Class Vehicles. As mobile carriers seek to upgrade their networks
28 to use the latest technologies, they periodically shut down older outdated services, such as

1 3G, to free up spectrum and infrastructure to support new services, such as 5G. Similar
2 transitions have happened before. For example, some mobile carriers shut down their 2G
3 networks when they upgraded their networks to support 4G services. Mobile carriers have
4 the flexibility to choose the types of technologies and services they deploy, including when
5 they decommission older services in favor of newer services to meet consumer demands.

6 14. AT&T first introduced 3G in 2006-2007. This was followed by the launch of
7 its 4G LTE service on September 18, 2011. Then, in February 2019, AT&T publicly
8 announced a plan to sunset their 3G wireless network in order to make way for its
9 deployment of its 5G network.

10 15. Despite the inevitability of AT&T's decommissioning of its 3G network, and
11 the public announcement of the timetable in February 2019, Ford continued to manufacture
12 the Class Vehicles with a 3G modem. Accordingly, Ford knew or should have known when
13 it manufactured each of the Class Vehicles that AT&T would decommission its 3G network
14 before the end of the usable life of the Class Vehicle and/or while the Class Vehicles were
15 still under warranty.

16 16. From 2014 to the present the only vehicles that Ford manufactured with a 3G
17 modem were the Class Vehicles. All other vehicles were manufactured with 4G modems
18 which remain operational today.

19 17. In November 2021, Ford initiated for a limited time Customer
20 Satisfaction Program 21B09 instructing Ford and Lincoln dealers to provide a 4G modem
21 upgrade to Class Vehicles. Per the Customer Satisfaction Program, owners within the
22 "complimentary trial period" of their Mobile App could purchase the 4G modem upgrade
23 kit and Ford would cover costs for labor/installation. Owners outside the complimentary
24 trial period of their Mobile App have the option to pay for both the 4G modem upgrade kit
25 and the labor/installation costs. The Customer Satisfaction Program is no longer available
26 to owners of Class Vehicles, regardless of whether they are still within the "complimentary
27 trial period" of their Mobil App. In fact, the Customer Satisfaction Program expired May
28

1 31, 2022, meaning Ford would cover no cost associated with the 4G upgrade initiated after
2 that date.

3 18. Ford refused to make the 4G upgrade kit installation as a warranty repair or
4 otherwise cover all costs associated with the repair of the 3G modem. As a result of Ford's
5 misconduct, Plaintiff and the other Class members were each injured on account of
6 receiving Class Vehicles that were fundamentally different from what they believed they
7 were purchasing, less valuable than was represented, and less valuable than what they
8 actually received.

9 19. To date, Plaintiff and Class members have not obtained an adequate repair for
10 the non-functional 3G modem, and they do not know whether Defendant is capable of
11 providing a repair for the non-functional 3G modem beyond its replacement with a 4G
12 modem as described above. As such, and without the benefit of discovery, it is for all
13 practical purposes impossible to know at this time whether a remedy at law or in equity
14 will provide the appropriate full relief for Plaintiffs and members of the Class. As a result,
15 Plaintiff, at this stage of the litigation, seeks both restitution and a remedy at law, where
16 the claims so permit. Further, Plaintiff seeks an injunction enjoining Defendant and its
17 agents, servants, and employees, and all persons acting under, in concert with, or for it
18 from selling Class Vehicles without notice that they have a non-functional 3G modem
19 which must be replaced with a functional 4G modem.

20 **TOLLING OF STATUTES OF LIMITATIONS**

21 20. Defendant had exclusive knowledge of the defective nature of the Class
22 Vehicles' 3G modems, i.e. that they would cease operating when AT&T's 3G network was
23 decommissioned, and knew the defective nature would not be discovered by Plaintiff and
24 Class Members unless and until the defect manifested. Only Defendant had access to
25 information about the defect, through internal pre-sale testing procedures customarily
26 conducted by Ford, communications with AT&T regarding the eventual decommissioning
27 of its 3G network, and Ford's general knowledge of the telecommunications industry's
28 upgrade to 4G and 5G technology.

1 21. Since the defect could not be detected until it manifested itself when the
2 AT&T network was decommissioned, Plaintiff and Class Members exercising due
3 diligence were not reasonably able to discover the defect until after purchasing the Class
4 Vehicles. Plaintiff and Class Members could not reasonably have been expected to learn
5 of or discover Defendant's omissions of material information concerning the Class
6 Vehicles until after manifestation of the Defect and only then because they would be forced
7 to research what had happened to their Vehicles. Therefore, the discovery rule applies to
8 all claims asserted by Plaintiff and Class Members.

9 22. Defendant has known about the defect since at least 2019 when AT&T made
10 its announcement of the decommissioning of its 3G network, if not earlier, and has failed
11 to alert Class Members to the defect.

12 23. Thus, any applicable statute of limitations has been tolled by Defendant's
13 actions and Defendant is estopped from pleading the statute of limitations because it failed
14 to disclose facts it was obligated to disclose concerning the defect.

15 **CLASS ALLEGATIONS**

16 24. This action is brought as a class action pursuant to Fed. R. Civ. P. 23(a) (b)(2),
17 and (b)(3) on behalf of a Class defined as follows:

18 **Class**

19 All persons and entities in the United States that purchased or leased a Class Vehicle
20 for end use and not for resale.

21 25. In the alternative, Plaintiff seeks certification of the following class:

22 **California Class**

23 All persons and entities in the State of California that purchased or leased a Class
24 Vehicle for end use and not for resale.

25
26 26. Excluded from the Class are: (i) Defendant and its officers and directors,
27 agents, affiliates, subsidiaries, authorized distributors and dealers, (ii) all Class members
28 who timely and validly request exclusion from the Class, and (iii) the Judge presiding over

1 this action.

2 27. Certification of Plaintiff's claims for class-wide treatment is appropriate
3 because Plaintiff can prove the elements of his claims on a class-wide basis using the same
4 evidence as would be used to prove those elements in individual actions alleging the same
5 claims.

6 28. **Numerosity:** The members of the Class are so numerous that joinder of all
7 Class members in a single proceeding would be impracticable. While the exact number and
8 identities of individual members of the Class are unknown at this time, such information
9 being in the sole possession of Ford and obtainable by Plaintiff only through the discovery
10 process, Plaintiff believes, and on that basis alleges, that tens of thousands of Class
11 Vehicles have been sold and leased nationwide.

12 29. **Existence/Predominance of Common Questions of Fact and Law:**
13 Common questions of law and fact exist as to all Class members and predominate over
14 questions affecting only individual Class members. Such common questions of law or fact
15 include, *inter alia*:

- 16 a. whether Ford engaged in the conduct alleged herein;
- 17 b. whether Ford omitted and misrepresented material facts to purchasers
18 and lessees of Class Vehicles;
- 19 c. whether Ford's omissions and misrepresentations regarding the Class
20 Vehicles were likely to mislead a reasonable consumer;
- 21 d. whether Ford breached warranties with Plaintiff and the other Class
22 members when it produced, distributed, and sold the Class Vehicles;
- 23 e. whether Plaintiff's and the other Class members' Class Vehicles were
24 worth less than as represented as a result of the conduct alleged herein;
- 25 f. whether Plaintiff and the other Class members have been damaged and,
26 if so, the extent of such damages; and
- 27 g. whether Plaintiff and the other Class members are entitled to equitable
28 relief, including but not limited to, restitution and injunctive relief.

29 30. Ford engaged in a common course of conduct giving rise to the legal rights
30 sought to be enforced by Plaintiff individually and on behalf of the other Class members.

1 Similar or identical statutory and common law violations, business practices, and injuries
2 are involved. Individual questions, if any, pale by comparison, in both quality and quantity,
3 to the numerous common questions that dominate this action.

4 31. **Typicality:** Plaintiff's claims are typical of the claims of the other Class
5 members because, among other things, Plaintiff and the other Class members were injured
6 through the substantially uniform misconduct described above. Like Plaintiff, Class
7 members also purchased or leased a Class Vehicle containing the defect. Plaintiff is
8 advancing the same claims and legal theories on behalf of himself and all other Class
9 members, and no defense is available to Ford that is unique to Plaintiff. The same events
10 giving rise to Plaintiff's claims for relief are identical to those giving rise to the claims of
11 all Class members. Plaintiff and all Class members sustained monetary and economic
12 injuries including, but not limited to, ascertainable losses arising out of Ford's wrongful
13 conduct in selling/leasing and failing to remedy defective Class Vehicles.

14 32. **Adequacy:** Plaintiff is an adequate Class representative because he will fairly
15 represent the interests of the Class. Plaintiff has retained counsel with substantial
16 experience in prosecuting consumer class actions, including consumer fraud and
17 automobile defect class action cases. Plaintiff and his counsel are committed to prosecuting
18 this action vigorously on behalf of the Class they represent and have the resources to do
19 so. Neither Plaintiff nor his counsel has interests adverse or antagonistic to those of the
20 Class.

21 33. **Superiority:** A class action is superior to any other available means for the
22 fair and efficient adjudication of this controversy, and no unusual difficulties are likely to
23 be encountered in the management of this class action. The damages or other detriment
24 suffered by Plaintiff and the other Class members are relatively small compared to the
25 burden and expense that would be required to individually litigate their claims against Ford,
26 so it would be impracticable for Class members to individually seek redress for Ford's
27 wrongful conduct. Even if Class members could afford individual litigation, the court
28 system should not be required to undertake such an unnecessary burden. Individualized

1 litigation would also create a potential for inconsistent or contradictory judgments and
2 increase the delay and expense to all parties and the court system. By contrast, the class
3 action device presents far fewer management difficulties and provides the benefits of single
4 adjudication, economy of scale, and comprehensive supervision by a single court.

5 34. Upon information and belief, members of the Class can be readily identified
6 and notified based upon, *inter alia*, the records (including databases, e-mails, dealership
7 records and files, etc.) Ford maintains regarding its sales and leases of Class Vehicles.

8 **CAUSES OF ACTION**

9 **COUNT I**

10 **Breach of Express Warranty**
11 **(On Behalf of Plaintiff and the Class)**

12 35. Plaintiff realleges and incorporates by reference the preceding paragraphs as
13 if fully set forth herein.

14 36. Plaintiff and other Class members formed a contract with Defendant at the
15 time they purchased their Class Vehicles. The terms of the contract include the promises
16 and affirmations of fact and express warranties made by Defendant.

17 37. Defendant's 2020 New Vehicle Limited Warranty provides that "Ford Motor
18 Company dealers will, without charge, repair, replace, or adjust all parts on your vehicle
19 that malfunction or fail during normal use during the applicable coverage period due to a
20 manufacturing defect in factory-supplied materials or factory workmanship."

21 38. Plaintiff's and the other Class members' Class Vehicles did not perform as
22 promised and contained a defective modem which was nonfunctional after the inevitable
23 decommissioning of AT&T's 3G outdated network.

24 39. Defendant has actual knowledge that it breached express warranties with
25 Plaintiff and the other Class members related to the Class Vehicles.

26 40. Defendant breached the terms of the express warranties with Plaintiff and
27 other Class members by not providing the Class Vehicles with properly functioning
28 modems.

1 41. Plaintiff sought repair of his vehicle during the warranty period and Ford
2 refused to make a repair without payment.

3 42. As the foreseeable and actual result of Defendant's breach of express
4 warranty, Plaintiff and the other Class members were damaged in an amount that is the
5 difference between the value of the Class Vehicles if they had possessed a modem capable
6 of functioning without AT&T's outdated 3G network and performed as represented and
7 the value of the vehicles they actually received. Plaintiff and the other Class members
8 suffered diminution in the value of the Class Vehicles, out-of-pocket losses related to
9 repairing, maintaining, and servicing their defective Class Vehicles, costs associated with
10 arranging and obtaining alternative means of transportation, and other incidental and
11 consequential damages recoverable under the law.

12 **COUNT II**
13 **Breach of Implied Warranty of Merchantability**
14 **(On Behalf of Plaintiff and the Class)**

15 43. Plaintiff realleges and incorporates by reference the preceding paragraphs as
16 if fully set forth herein.

17 44. Defendant is and was at all relevant times a merchant with respect to the Class
18 Vehicles, and manufactured, distributed, warranted and sold the Class Vehicles.

19 45. A warranty that the Class Vehicles, and their telematics equipment, were in
20 merchantable condition and fit for the ordinary purposes for which they were sold is
21 implied by law.

22 46. Plaintiff and the other Class members purchased the Class Vehicles
23 manufactured and sold by Defendant in consumer transactions.

24 47. The Class Vehicles, when sold and at all times thereafter, were not in
25 merchantable condition and the modem was not in merchantable condition and were not
26 fit for the ordinary purpose for which cars with installed telematics equipment are used
27 because the inevitable decommissioning of AT&T's outdated 3G network would render
28 the vehicle modem nonfunctional. The Class Vehicles left Defendant's possession and

1 control with defective modem that rendered them at all times thereafter unmerchantable
2 and unfit for ordinary use. Plaintiff and the other Class members used their Class Vehicles
3 in the normal and ordinary manner for which Class Vehicles were designed and advertised.

4 48. Defendant knew before the time of sale to Plaintiff and the other Class
5 members, or earlier, that the Class Vehicles were produced with a defective modem that
6 was unfit for ordinary use. This knowledge was based on Defendant's own knowledge of
7 the decommissioning of AT&T's 3G network its modems relied on, its decision to include
8 an alternate 4G modem in other vehicle models produced around the same time, the
9 industry standard practice of making vehicle features that would not be affected by the 3G
10 network shutdown, and Defendant's general knowledge regarding the manufacture of its
11 vehicle modems and integrated systems and software.

12 49. Despite Plaintiff's and the other Class members' normal, ordinary, and
13 intended uses, maintenance, and upkeep, the modem of the Class Vehicles experienced and
14 continue to experience the defect and premature failure after AT&T decommissioned its
15 outdated 3G network.

16 50. Plaintiff's and other Class members' modems and the Class Vehicles are, and
17 at all times were, not of fair or average quality, nor would they pass without objection.

18 51. All conditions precedent have occurred or been performed.

19 52. Defendant's warranty disclaimers, exclusions, and limitations, to the extent
20 that they may be argued to apply, were, at the time of sale, and continue to be,
21 unconscionable and unenforceable to disclaim liability for a known, latent defect.
22 Defendant knew when it first made these warranties and their limitations that the defect
23 existed, and the warranties might expire before a reasonable consumer would notice or
24 observe the defect upon AT&T decommissioning its outdated 3G network. Defendant also
25 failed to take necessary actions to adequately disclose or cure the defect after the existence
26 of the defect came to the public's attention and sat on its reasonable opportunity to cure or
27 remedy the defect, its breaches of warranty, and consumers' losses. Under these

28

1 circumstances, it would be futile to enforce any informal resolution procedures or give
2 Defendant any more time to cure the defect or cure its breaches of warranty.

3 53. Plaintiff and the other Class members suffered and will suffer diminution in
4 the value of their Class Vehicles, out-of-pocket losses related to repairing, maintaining,
5 and servicing their defective Class Vehicles, costs associated with arranging and obtaining
6 alternative means of transportation, and other incidental and consequential damages
7 recoverable under the law.

8 54. Plaintiff and the other Class members had sufficient direct dealings with
9 Defendant and its agents (dealers) to establish privity of contract between themselves and
10 Defendant. As alleged *supra*, Plaintiff purchased his Class Vehicle from a Ford dealership,
11 an agent of Ford. Plaintiff's Class Vehicle was purchased with a Ford New Vehicle Limited
12 Warranty. Defendant and Plaintiff and the other Class members are in privity because of
13 Ford's New Vehicle Limited Warranty, which Defendant extends to Plaintiff and the other
14 Class members. Privity, nevertheless, is not required in this case because Plaintiff and the
15 other Class members are intended third-party beneficiaries of contracts between Defendant
16 and its dealers; specifically, they are the intended beneficiaries of Defendant's implied
17 warranties. The dealers were not intended to be the ultimate consumers of the Class
18 Vehicles; the warranty agreements were designed for, and intended to benefit, only the
19 ultimate consumers—such as Plaintiff and the other Class members. Indeed, under the
20 terms of the New Vehicle Limited Warranty, the warranty applies if the vehicle “was
21 originally sold or leased by Ford Motor Company or one of its dealers in the United States
22 or U.S. Federalized Territories, and it was originally registered/licensed and operated in
23 the United States, U.S. Federalized Territories, or Canada.”

COUNT III

**Violation of California’s Consumers Legal Remedies Act
Cal. Civ. Code § 1750, *et seq.* (“CLRA”)
(On Behalf of Plaintiff and the California Class)**

1
2
3
4 55. Plaintiff realleges and incorporates by reference the preceding paragraphs as
5 if fully set forth herein.

6 56. Defendant is a “person,” under Cal. Civ. Code § 1761(c).

7 57. Plaintiff is a “consumer,” as defined by Cal. Civ. Code § 1761(d), who
8 purchased or leased a Class Vehicle.

9 58. Defendant’s conduct, as described herein, in misrepresenting the
10 characteristics, qualities, benefits and capabilities of the Class Vehicles, or omitting
11 material information, violates the CLRA. Specifically, Defendant violated the CLRA by
12 omitting material facts and failing to disclose known defects in its modem, engaging in the
13 following practices proscribed by Civil Code § 1770(a) in transactions that were intended
14 to result in, and did result in, the sale or lease of the Class Vehicles:

- 15 • representing that the Class Vehicles have approval, characteristics,
16 ingredients, uses, benefits, or quantities which they do not have;
- 17 • representing that the Class Vehicles are of a particular standard, quality,
18 or grade if they are of another;
- 19 • advertising the Class Vehicles with intent not to sell them as advertised;
20 and
- 21 • representing that the Class Vehicles have been supplied in accordance
22 with previous representations when they have not.

23 59. Defendant violated the CLRA by selling and leasing Class Vehicles that it
24 knew were equipped with defective modem incapable of performing as advertised, unable
25 to deliver the benefits, qualities, and characteristics described in advertisements and
26 promotional materials because the inevitable decommissioning of AT&T’s outdated 3G
27 network would render the vehicle modems nonfunctional. Defendant omitted from Plaintiff
28 and other Class members the material fact that Class Vehicles were sold with this defect in

1 their modem. This is a fact that a reasonable consumer would consider important in
2 selecting a vehicle to purchase or lease.

3 60. Defendant knew, at the time it sold Plaintiff his vehicle, of the material fact
4 that the vehicles were equipped with a defective modem in the ways described above, and
5 that the defective modem substantially diminished the quality, performance, safety, and
6 lifespan of Plaintiff's and other Class members' vehicles. Through internal pre-sale testing
7 procedures customarily conducted by Ford, Ford learned of the defect in the Class
8 Vehicles' modem. Defendant's conduct in selling the defective Class Vehicles and
9 omitting information about the defect was fraudulent, wanton, and malicious.

10 61. Defendant's unfair and deceptive acts or practices were the foreseeable and
11 actual cause of Plaintiff and other Class members suffering actual damage on account of
12 receiving a car that lacked the performance that Defendant represented the vehicles to have
13 and contained defective modems.

14 62. Plaintiff and the other Class members paid for a car that was supposed to meet
15 certain specifications. When they received a vehicle that did not conform to these
16 specifications, and which fell below the standards set by and described in Ford's
17 representations, Plaintiff and the other Class members were damaged on account of
18 receiving a car worth less than as represented. Plaintiff and the other Class members
19 suffered diminution in the value of Class Vehicles, out-of-pocket losses related to
20 repairing, maintaining, and servicing their defective Class Vehicles, costs associated with
21 arranging and obtaining alternative means of transportation, and other incidental and
22 consequential damages recoverable under the law.

23 63. Pursuant to § 1782 of the CLRA, on November 3, 2022, Plaintiff notified
24 Defendant in writing by certified mail of the particular violations of § 1770 of the CLRA
25 and demanded that Defendant rectify the problems associated with the actions detailed
26 above and give notice to all affected consumers of Defendant's intent to so act.

27 64. If Defendant fails to rectify or agree to rectify the problems associated with
28 the actions detailed above and give notice to all affected consumers within 30 days of the

1 date of written notice pursuant to § 1782 of the Act, Plaintiffs will amend this Complaint
2 to add claims for actual, punitive, and statutory damages, as appropriate.

3 65. Pursuant to § 1780(d) of the Act, attached hereto as **Exhibit A** is the affidavit
4 showing that this action has been commenced in the proper forum.

5
6 **COUNT IV**
7 **Violation of California’s Unfair Competition Law**
8 **California Business & Professions Code § 17200, et seq. (“UCL”)**
9 **(On Behalf of Plaintiff and the California Class)**

10 66. Plaintiff realleges and incorporates by reference the preceding paragraphs as
11 if fully set forth herein.

12 67. The UCL prohibits any “unlawful,” “fraudulent,” or “unfair” business act or
13 practice and any false or misleading advertising. In the course of conducting business,
14 Defendant committed “unlawful” business practices by, among other things, making the
15 representations and omissions of material facts, as set forth more fully herein, refusing to
16 repair or replace the Class Vehicle’s nonoperational 3G modem, and violating Civil Code
17 §§ 1572, 1573, 1709, 1711, 1770(a)(5), (6), (7), (9), and (16), and Business & Professions
18 Code §§ 17200, et seq., 17500, et seq., and the common law.

19 68. In the course of conducting business, Defendant committed “unfair” business
20 practices by, among other things, misrepresenting and omitting material facts regarding the
21 characteristics, capabilities, and benefits of Class Vehicles. There is no societal benefit
22 from such false and misleading representations and omissions, only harm. While Plaintiff
23 and other Class members were harmed by this conduct, Defendant was unjustly enriched.
24 As a result, Defendant’s conduct is “unfair” as it has offended an established public policy.
25 Further, Defendant engaged in immoral, unethical, oppressive, and unscrupulous activities
26 that are substantially injurious to consumers.

27 69. Defendant knew when Class Vehicles were first sold and leased that they were
28 equipped with a defective modem that substantially diminished the quality, performance,
and safety and lifespan of the vehicles. Through internal pre-sale testing procedures

1 customarily conducted by Ford, communications with AT&T regarding the eventual
2 decommissioning of its 3G network, and Ford’s general knowledge of the
3 telecommunications industry’s upgrade to 4G and 5G technology, before the Class
4 Vehicles were introduced to the market Ford knew of the defect in the Class Vehicles’
5 modem—i.e., that the inevitable decommissioning of AT&T’s outdated 3G network would
6 render the vehicle modems nonfunctional.

7 70. Plaintiff alleges violations of consumer protection, unfair competition, and
8 truth in advertising laws in California, resulting in harm to consumers. Defendant’s acts
9 and omissions also violate and offend the public policy against engaging in false and
10 misleading advertising, unfair competition, and deceptive conduct towards consumers.
11 This conduct constitutes violations of the UCL’s “unfair” prong. There were reasonably
12 available alternatives to further Defendant’s legitimate business interests other than the
13 conduct described herein.

14 71. The UCL also prohibits any “fraudulent business act or practice.” In the
15 course of conducting business, Defendant committed “fraudulent business act[s] or
16 practices” by, among other things, prominently making the representations (which also
17 constitute advertising within the meaning of § 17200) and omissions of material facts
18 regarding the safety, characteristics, and production quality of the Class Vehicles.

19 72. Defendant’s actions, claims, omissions, and misleading statements, as more
20 fully set forth above, were also false, misleading and likely to deceive the consuming public
21 within the meaning of the UCL.

22 73. Plaintiff was deceived as a result of his reliance on Defendant’s material
23 representations and omissions, which are described above. Plaintiff suffered injury in fact
24 and lost money as a result of purchasing a deceptively advertised Class Vehicle by paying
25 more than he should have and expending time, effort, and money to attempt to repair or
26 replace his Class Vehicle’s modem and incurring other consequential inconvenience,
27 aggravation, damages, and loss of money and time.

28

1 74. Unless restrained and enjoined, Defendant will continue to engage in the
2 above-described conduct. Accordingly, injunctive relief is appropriate.

3 75. Plaintiff, on behalf of himself and all others similarly situated, seeks
4 restitution from Defendant of all money obtained from Plaintiff and the other members of
5 the Class collected as a result of unfair competition, an injunction prohibiting Defendant
6 from continuing such practices, corrective advertising, and all other relief this Court deems
7 appropriate, consistent with Business & Professions Code § 17203.

8
9 **COUNT V**
10 **Fraudulent Omission**
11 **(On Behalf of Plaintiff and the California Class)**

12 76. Plaintiff incorporates by reference the allegations contained in the preceding
13 paragraphs of this Complaint.

14 77. Defendant knew that the Class Vehicles' modems were defective, would fail,
15 and were not suitable for their intended use, and that the Class Vehicles' defect would lead
16 to the failure of key features like the those accessed through the mobile application.

17 78. Defendant concealed from and failed to disclose to Plaintiff and Class
18 members the defective nature of Class Vehicles' modem.

19 79. Defendant was under a duty to Plaintiff and Class members to disclose the
20 defective nature of Class Vehicles' modem because:

- 21
- 22 • Defendant was in a superior position to know the true state of facts
23 about the defect contained in Class Vehicles' modem;
 - 24 • Defendant made partial disclosures about the quality of Class Vehicles
25 without revealing the defective nature of the modem; and
 - 26 • Defendant actively concealed the defective nature of the Class
27 Vehicles' modem from Plaintiff and other Class members.

28 80. The facts concealed or not disclosed by Defendant to Plaintiff and the other
Class members are material in that a reasonable person would have considered them to be
important in deciding whether to purchase or lease Defendant's Class Vehicles or pay a

1 lesser price for them. Had Plaintiff and Class members known about the defective nature
2 of Class Vehicles' modem, they would not have purchased or leased Class Vehicles, or
3 would have paid less for them.

4 81. Defendant concealed or failed to disclose the true nature of the design or
5 manufacturing defects contained in Class Vehicles' modem in order to induce Plaintiff and
6 Class members to purchase or lease Class Vehicles. Plaintiff and the other Class members
7 justifiably relied on Defendant's omissions to their detriment. This detriment is evident
8 from Plaintiff's and Class members' purchase or lease of the defective Class Vehicles. As
9 a direct and proximate result of Defendant's misconduct, Plaintiff and Class members have
10 suffered and will continue to suffer actual damages.

11 **REQUEST FOR RELIEF**

12 WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated,
13 respectfully requests that the Court enter judgment in his favor and against Defendant as
14 follows:

- 15 A. Certifying the Class under Federal Rule of Civil Procedure 23 as requested
16 herein;
- 17 B. Appointing Plaintiff as Class Representative and undersigned counsel as
18 Class Counsel;
- 19 C. Finding that Ford engaged in the unlawful conduct as alleged herein;
- 20 D. Awarding Plaintiff and the other Class members actual, compensatory, and
21 consequential damages;
- 22 E. Awarding Plaintiff and the other Class members statutory damages;
- 23 F. Awarding Plaintiff and the other Class members declaratory and injunctive
24 relief;
- 25 G. Awarding Plaintiff and the other Class members restitution and
26 disgorgement;
- 27 H. Awarding Plaintiff and the other Class members exemplary damages, should
28 the finder of fact determine that Ford acted with malice or oppression;

- 1 I. Awarding Plaintiff and the other Class members pre-judgment and post-
2 judgment interest on all amounts awarded;
3 J. Awarding Plaintiff and the other Class members reasonable attorneys' fees,
4 costs, and expenses; and
5 K. Granting such other relief as the Court deems just and appropriate.

6 **JURY TRIAL DEMAND**

7 Plaintiff, individually and on behalf of all others similarly situated, hereby requests
8 a jury trial, pursuant to Federal Rule of Civil Procedure 38, on all claims so triable.

9
10 Dated: November 3, 2022

Respectfully submitted,

11 /s/ Tina Wolfson

12 TINA WOLFSON (SBN 174806)
twolfson@ahdootwolfson.com
13 ROBERT R. AHDOOT (SBN 172098)
rahdoot@ahdootwolfson.com
14 CHRISTOPHER STINER (SBN 276033)
cstiner@ahdootwolfson.com
15 DEBORAH DE VILLA (SBN 312564)
ddevilla@ahdootwolfson.com
16 **AHDOOT & WOLFSON, P.C.**
2600 W. Olive Avenue, Suite 500
17 Burbank, California 91505-4521
Telephone: (310) 474-9111
18 Facsimile: (310) 474-8585

19 *Attorneys for Plaintiff and the Putative Classes*
20
21
22
23
24
25
26
27
28

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Ford, Volkswagen Hit with Class Actions Over 'Obsolete' 3G Vehicle Features](#)
