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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION

10
11 ALL CARE TRANSPORT, LLC,
12 and JOSE PENA, on behalf of
themselves and all others similarly
13 situated,

14 Plaintiffs,

15 v.

16 FORD MOTOR COMPANY,

17 Defendant.

Case No. 5:17-cv-1390

CLASS ACTION COMPLAINT

for:

- (1) Breach of Express Warranty
- (2) Breach of Express Warranty – Magnuson-Moss Warranty Act
- (3) Breach of Implied Warranty
- (4) Breach of Implied Warranty – Magnuson-Moss Warranty Act
- (5) Fraud by Concealment
- (6) Unjust Enrichment
- (7) Violations of Unfair Competition Law

JURY TRIAL DEMANDED

INTRODUCTION

24 1. Plaintiffs All Care Transport, LLC, and Jose Pena bring this
25 action for themselves and on behalf of all persons and entities in California who
26 purchased or leased for purposes other than personal, family, or household use
27 certain Ford Transit vans equipped with uniform and uniformly defective driveshaft
28 flexible couplings manufactured, distributed, and/or sold/leased by Ford Motor

1 Company, and/or its related subsidiaries or affiliates (“Ford”), as further described
2 below (“Class Members”).

3 2. The vehicles at issue in this action are 2015-2017 Ford Transit
4 vans (the “Class Vehicles”).

5 3. This action is brought to remedy violations of law in connection
6 with Ford’s design, manufacture, marketing, advertising, selling/leasing,
7 warranting, and servicing of the Class Vehicles. These Class Vehicles have a
8 serious defect (the “Defect”) that results in the driveshaft flexible coupling (“flex
9 disc”) cracking and ultimately failing, resulting in damage to the Class Vehicles and
10 presenting a significant safety risk to Vehicle occupants.

11 4. The flex disc is a type of “universal joint” positioned between
12 the engine (in specific, the transmission) and the driveshaft, and is used to transmit
13 the rotational torque generated by the engine to the driveshaft, which in turn
14 transmits it to the axles and finally the wheels, propelling the Vehicle.

15 5. The flex disc is made of flexible rubber material and is designed
16 to allow some angular misalignment while reducing driveline vibration.



23 6. A triangular flange connecting the flex disc to the transmission
24 is bolted on to one side of the flex disc using three of the holes; a similar triangular
25 flange connecting the flex disc to the driveshaft is bolted on to the other side of the
26 flex disc using the other three holes.

27 7. When the flex disc fails, it fails catastrophically. The failure
28 causes the driveshaft violently to tear away from the transmission, which can result

1 in severe damage surrounding Vehicle components, including brake and fuel lines,
2 the transmission, rear end differential, torque converter, evaporation container, and
3 other parts, mangling the driveshaft in the process. The damage to these
4 components contributes to a dangerous loss of Vehicle control, including the loss of
5 brakes and engine power. Further, the forward end of the driveshaft disconnecting
6 from the transmission creates the risk that the driveshaft will “catch” on the ground
7 beneath the Vehicle, violently forcing the driveshaft upwards which can pierce into
8 the passenger cabin and cause the Vehicle to “pole vault,” i.e. catapult the entire
9 Vehicle into the air.

10 8. Flex disc failure due to the Defect is not a one-time event in the
11 Class Vehicles; after the flex disc fails, Ford simply replaces it with the same
12 defective flex disc, which does not reduce the safety and failure risks.

13 9. Until the Safety Recall issued June 28, 2017, discussed below,
14 when Plaintiffs and Class Members complained to Ford about the Defect, Ford
15 disclaimed knowledge or responsibility, blamed driver error, and did not cover the
16 replacement of the failed flex disc or the repair of the collaterally damaged Vehicle
17 components under warranty, forcing Plaintiffs and Class Members to spend money
18 to replace the failed flex disc and all other damaged components, to lose the use of
19 their vehicles, and to lose valuable business opportunities due to the lost time of
20 having the Vehicles out of service while being repaired.

21 10. On information and belief, prior to the manufacture and sale of
22 the vehicles at issue, Ford knew of the Defect through its knowledge of and
23 experience with automotive engineering and pre-release evaluation and testing of
24 the components and vehicles, as well as from sources such as “field data;”
25 replacement part sales data; early consumer complaints made directly to Ford,
26 collected by the National Highway Transportation Safety Administration’s Office
27 of Defect Investigation (“NHTSA ODI”), and/or posted on public online vehicle
28 owner forums; testing done in response to those complaints; aggregate data from

1 Ford dealers; and other internal sources. Yet despite this knowledge, Ford failed to
2 disclose and actively concealed the Defect from Class Members and the public, and
3 continued to market and advertise the Class Vehicles as “tough,” “safe,” “durable”
4 vehicles “designed to do its job all day, every day, and for many years to come,”
5 which they are not.

6 11. On June 28, 2017, Ford issued a Safety Recall for the Flex Disc
7 Defect in the Class Vehicles. The Safety Recall notice stated that “continuing to
8 operate a vehicle with a cracked flexible coupling may cause separation of the
9 driveshaft, resulting in a loss of motive power while driving or unintended vehicle
10 movement in park without the parking brake applied.” The Recall also noted that
11 “separation of the driveshaft from the transmission can result in secondary damage
12 to surrounding components, including brake and fuel lines.” Ford also
13 acknowledged that “driveshaft separation may increase the risk of injury or crash.”

14 12. In its Safety Recall notice, Ford requires Class Vehicle owners
15 to replace the flex disc “every 30,000 miles” until a permanent remedy (which Ford
16 admittedly does not have) becomes available. This aspect of the Safety Recall
17 makes clear that the flex discs fail quickly and repeatedly.

18 13. The Safety Recall notice makes clear that Ford presently does
19 not have a permanent fix for the Defect. Moreover, nothing in the terms of the
20 Recall indicate that Ford intends to reimburse Plaintiffs and Class Members for the
21 past costs incurred for the replacement of defective flex discs, repair of severe
22 collateral damage to other Vehicle systems caused by the catastrophic failure of the
23 flex discs, lost use of the Class Vehicles – which has exceeded one month in some
24 instances – and lost business opportunities due to the loss of the Class Vehicle’s use
25 during repairs. In short, as the Safety Recall notice makes clear, Ford’s Recall fails
26 to fix the underlying problem and falls well short of fully compensating Plaintiffs
27 and Class Members for the harm caused by the defective Class Vehicles.

28

1 distributing, selling, leasing, and servicing automobiles, including the Class
2 Vehicles, and other motor vehicles and motor vehicle components in California and
3 throughout the United States.

4
5 **PLAINTIFFS' EXPERIENCE WITH CLASS VEHICLES**

6 20. All Care Transport owns three Class Vehicles, all of which are
7 used by All Care Transport for business purposes.

8 21. Jose Pena owns one Class Vehicle, which is used by All Care
9 Transport for business purposes.

10 Van #1

11 22. All Care Transport Van #1 is a 2015 Ford Transit Van bearing
12 the Vehicle Identification No. 1FTNE2CM8FKA83451 that Jose Pena purchased
13 new on May 11, 2015, from Ed Butts Ford in La Puente, California.

14 23. On November 2, 2016, while Van #1 was being driven at speed
15 on the freeway, the driver heard a loud popping noise and felt vibration, and then
16 the flex disc catastrophically failed, causing the driver to lose steering and braking
17 control over the Van and perform an emergency-brake maneuver to stop the Van.
18 Had another vehicle been near the Van at the time, a crash would have been likely.

19 24. As typical when a flex disc fails, the driveshaft separated from
20 the engine. The failure of the flex disc was so violent that it also sheared the brake
21 lines and coolant lines, damaged the fuel line and evaporation canister, and broke
22 the transmission mount bracket and flange, all of which had to be replaced and
23 repaired.

24 25. That same day, November 2, 2016, All Care Transport brought
25 Van #1 in to Sunrise Ford in Fontana, California, for repair.

26 26. Van #1 was out of service for almost a month while being
27 repaired, causing All Care Transport lost time and business opportunities.

28 27. The cost to repair Van #1 was \$3,204.03.

1 Van #2

2 28. All Care Transport Van #2 is a 2016 Ford Transit Van bearing
3 the Vehicle Identification No. 1FTYE2CMOGKA08256 that All Care Transport
4 purchased new on September 22, 2015, from Ed Butts Ford in La Puente,
5 California.

6 29. On November 26, 2016, after the driver began to feel vibration
7 while driving, Van #2 was brought in to Sunland Ford in Victorville, California, to
8 have the flex disc checked. The service technicians test drove the Van, verified the
9 vibration issue, and upon inspecting the flex disc “found driveline coupler ...
10 coming apart.” It took almost two weeks for Sunland to get the replacement part
11 and perform the repair; Van #2 was out of service during this time, costing All Care
12 Transport lost time and business opportunities. Replacing the cracked flex disc cost
13 All Care Transport \$98.46.

14 30. On June 5, 2017, All Care Transport brought Van #2 in to
15 Shattucks Automotive in Hesperia, California, for a separate service (catalytic
16 converter failed) but asked that they also check on the flex disc. The service techs
17 found the flex disc (which had been installed new by Sunland only six months and
18 47,335 miles earlier) was cracked; they replaced it with a new flex disc at a cost of
19 \$267.11 to All Care Transport.

20 Van #3

21 31. All Care Transport Van #3 is a 2015 Ford Transit Van bearing
22 the Vehicle Identification No. 1FTNE2CMXFK805725 that All Care Transport
23 purchased new on December 10, 2015, from Ed Butts Ford in La Puente,
24 California.

25 32. After Van #1’s catastrophic flex disc failure and Van #2’s
26 cracked flex disc, All Care Transport brought their other Vans, including Van #3, in
27 to Sunland Ford in Victorville, California, to have the flex discs checked. On
28 December 8, 2016, the service center found the flex disc in Van #3 was cracked and

1 “coming apart.” It took a week for Sunland to get the replacement part and perform
2 the repair; Van #3 was out of service during this time, costing All Care Transport
3 lost time and business opportunities. Replacing the cracked flex disc cost All Care
4 Transport \$98.47.

5 33. On May 13, 2017, as Van #3 was being accelerated on a
6 freeway entrance ramp, the driver felt hard vibration and heard a loud popping
7 noise, and pulled over to the side of the on-ramp. Van #3 was towed to Big Apple
8 Auto in Victorville, California.

9 34. On May 17, 2017, Van #3 was towed at a cost of \$160 to
10 Sunrise Ford in Fontana, California, for repair. There the service technicians found
11 the flex disc (which had just been installed new five months earlier) had
12 catastrophically failed, causing the driveshaft to drop off the engine and tear into
13 pieces, shearing the transmission off its mount, shredding the fuel lines, damaging
14 the evaporator box and lines and the heater hose. When the driveshaft separated
15 from the engine it nearly tore through its catch-loop; if it had, the Van would have
16 pole-vaulted disastrously.

17 35. It took over five weeks for Sunrise to get repair Van #3,
18 meanwhile it was out of service during this time, costing All Care Transport lost
19 time and business opportunities. The total cost to All Care Transport to repair Van
20 #3 this time was \$5211.

21 Van #4

22 36. All Care Transport Van #4 is a 2016 Ford Transit Van bearing
23 the Vehicle Identification No. 1FTYE2CM2GKA50010 that All Care Transport
24 purchased new on May 17, 2106, from Ed Butts Ford in La Puente, California.

25 37. On April 17, 2017, while Van #4 was at Shattucks Automotive,
26 All Care Transport asked that the flex disc be checked, and the service technician
27 found the flex disc was cracked, and replaced it at a cost of \$356.11 to All Care
28 Transport. The replacement of the cracked flex disc caused Van #4 to be out of

1 service for three days, costing All Care Transport lost time and business
2 opportunities.

3 38. Plaintiffs' Class Vehicles came with a Ford New Vehicle
4 Limited warranty, and were under that warranty throughout the relevant period
5 described herein during which Ford refused to cover the repairs under warranty, and
6 refused to permanently repair or replace the flex disc with nondefective parts.

7 39. In addition, Plaintiffs have lost business opportunities and time
8 due to their Class Vehicles being out of service due to the Defect. These business
9 opportunities were not speculative, but were based on existing contracts that All
10 Care Transport had and could not now perform under due to the Vehicles being out
11 of service for repairs due to the Defect.

12 40. Beginning on the date of All Care Transport's first flex disc
13 failure, in November 2016, All Care Transport co-owners Lisa Lybarger and Jose
14 Pena repeatedly and consistently communicated with Ford service centers and Ford
15 Customer Operations concerning their dissatisfaction and safety concerns regarding
16 the flex disc failures and Flex Disc Defect, and asking Ford to cover the cost of
17 replacements and collateral damage repairs under warranty. Ford resisted the
18 Plaintiffs' requests, offering only partial reductions in the repair costs only after
19 persistent argument from Plaintiffs. Despite Plaintiffs' repeated entreaties, Ford
20 would not make them whole and reimburse all the costs they paid out of pocket for
21 replacement flex discs, repair to collaterally damaged Vehicle components, or
22 compensate them for the time and business opportunities they lost. Therefore, any
23 further dispute resolution attempts were futile.

24 41. All Care Transport expected the Class Vehicles to be of good
25 and merchantable quality and not defective. It had no reason to know of, or expect,
26 that the Vehicles were equipped with a defective flex disc that would
27 catastrophically and dangerously fail, nor was it aware from any source prior to
28 purchase of the unexpected, extraordinary, and costly repairs the Defect would

1 cause them to incur. Had they known these facts, they would not have bought their
2 Class Vehicles or would have paid less for them.

3 42. Plaintiffs regularly saw advertisements for Ford vehicles during
4 the time before they purchased their Class Vehicles. Those advertisements
5 influenced their decision to purchase their Class Vehicles. Had those
6 advertisements or any other Ford materials disclosed to Plaintiffs that the Class
7 Vehicles had defective flex discs, or that they would have to pay for
8 repairs/replacement due to failure of the defective flex discs, they would not have
9 purchased their Class Vehicles, or would not have purchased them at the price paid.

10 JURISDICTION

11 43. This Court has diversity jurisdiction over this action under 28
12 U.S.C. §§ 1332(a) and (d) because the amount in controversy for the Class exceeds
13 \$5,000,000, and Plaintiffs and other Class Members are citizens of a different state
14 than Defendant.

15 44. This Court has personal jurisdiction over Ford because Ford is
16 authorized to do business in California, Ford conducts substantial business in this
17 District, some of the actions giving rise to the complaint took place in this District,
18 Ford has minimum contacts with California, and/or Ford otherwise intentionally
19 avails itself of the markets in California through the promotion, marketing, and sale
20 of its products in California, each of which are sufficient bases to render the
21 exercise of jurisdiction by this Court permissible under traditional notions of fair
22 play and substantial justice. This Court also has personal jurisdiction over Ford
23 under 18 U.S.C. § 1965 because Ford is found in, has an agent in, or transacts
24 business in this District.

25 VENUE

26 45. Venue is proper in this District under 28 U.S.C. § 1391 because
27 Ford, as a corporation, is deemed to reside in any judicial district in which it is
28

1 subject to personal jurisdiction. Additionally, Ford transacts business within the
2 District, and some of the events establishing the claims arose in this District.
3 Moreover, a substantial part of the events or omissions giving rise to the claims
4 alleged herein occurred in this District.

5
6 **APPLICABLE LAW**

7 46. Plaintiffs, who asserts their claims against Ford, seek damages
8 and equitable relief on behalf of themselves and all other persons and entities
9 similarly situated, under the laws of California.

10 47. Plaintiffs reside in California and seek remedies under the laws
11 of California.

12 48. Ford conducts certain operations in California, for example,
13 Ford's Palo Alto Research and Innovation Center is located in California.

14 **FACTUAL ALLEGATIONS**

15 49. The defective part at issue here is a flex disc¹ used to transmit
16 rotational torque between the drive shaft and the companion flange on the Vehicle
17 transmission.

18 50. The flex disc is made from flexible synthetic rubber and is
19 designed to allow some angular misalignment while reducing driveline vibration.

20 51. Input (transmission-side) and output (driveshaft-side) shaft
21 flanges are bolted to the flex disc on either side using alternating hole positions, so
22 that the flanges are not connected directly to one another but instead only through
23 the rubber material of the flex disc. The elasticity of the rubber should absorb
24 vibration and flex for alignment. It follows that the flex disc must withstand the
25 application's full transmitted torque.

26
27
28 ¹ The flex disc is also known as a "flexible coupling" or a "giubo" (a contraction of
"giunto Boschi" – Italian for Boschi joint).

1 52. The flex discs at issue here begin to show signs of incipient
2 failure, including cracking, early in its life, at times before even 30,000 miles of
3 usage.

4 53. Ultimately the flex discs fail. When the flex disc fails, it fails
5 catastrophically. The failure causes the driveshaft violently to tear away from the
6 transmission, which can result in severe damage surrounding Vehicle components,
7 including brake and fuel lines, the transmission, rear end differential, torque
8 converter, evaporation container, and other components, mangling the driveshaft in
9 the process. The damage to these other components contributes to a dangerous loss
10 of Vehicle control, including the loss of brakes and engine power. Further, the
11 forward end of the driveshaft disconnecting from the transmission creates the risk
12 that the driveshaft will “catch” on the ground beneath the Vehicle, violently forcing
13 the driveshaft upwards which can pierce into the passenger cabin and cause the
14 Vehicle to “pole vault,” i.e. catapult the entire Vehicle into the air.

15 54. The Flex Disc Defect therefore poses an unreasonable safety
16 risk in that it can cause loss of Vehicle control, increased risk of a crash, and risk of
17 the separated driveshaft piercing the passenger cabin or catapulting the entire
18 Vehicle into the air via a “pole vault” effect when the driveshaft catches on the
19 ground beneath the Vehicle.

20
21 **A. Ford Knew of the Flex Disc Defect Prior to Sale or Lease of the Class Vehicles**

22 55. On information and belief, Ford learned of the Flex Disc Defect
23 at least as early as 2014, and certainly well before Plaintiffs and Class Members
24 purchased or leased their Class Vehicles, through sources such as its knowledge of
25 and experience with automotive engineering and pre-release evaluation and testing
26 of the components and vehicles, as well as replacement part sales data; early
27 consumer complaints made directly to Ford, collected by NHTSA ODI, and/or
28 posted on public online vehicle owner forums; testing done in response to those

1 complaints; aggregate data from Ford dealers; as well as through other internal
2 sources unavailable to Plaintiffs prior to discovery.

3 56. In its Recall notice, Ford noted that it relied on “field data” in
4 issuing the Recall. This “field data” also would have given Ford knowledge of the
5 Defect prior to the issuance of the Recall.

6
7 **B. Ford’s Knowledge of the Flex Disc Defect Gained from Pre-
Release Design, Manufacture, Engineering, and Testing Data**

8 57. During the pre-release process of designing, manufacturing,
9 engineering, and testing the Class Vehicles, Ford necessarily would have gained
10 comprehensive and exclusive knowledge about the Class Vehicle’s flex discs: the
11 types and properties of materials used to make the parts, including their durability
12 and whether those materials would weaken over time regardless of wear and use;
13 the basic engineering principles behind the construction and function of the parts;
14 the forces and stresses the parts would face; when and how the parts would fail; and
15 the cumulative and specific impacts on the parts caused by wear and use, the
16 passage of time, and environmental factors.

17 58. An adequate pre-release analysis of the design, engineering, and
18 manufacture of the flex discs used for the Class Vehicles would have revealed to
19 Ford that the flex discs were insufficiently strong and durable for the intended use,
20 would likely not last even 30,000 miles, let alone the useful life of the vehicle, even
21 under less-than-normal use. Thus during the pre-release design stage of the Class
22 Vehicles, Ford knew or should have known that the flex disc it chose for the Class
23 Vehicles was defective and would pose a safety risk to owners/lessees and the
24 motoring public.

25
26 **C. Ford’s Knowledge of the Flex Disc Defect Gathered from the
Large Number of Replacement Flex Discs Bought from Ford**

27 59. Upon information and belief, Ford also knew or should have
28 known about the Flex Disc Defect because of the higher than expected number of

1 replacement flex discs ordered from Ford, which should have alerted Ford that this
2 was a defective part.

3 60. Upon information and belief, Ford service centers use Ford
4 replacement parts that they order directly from Ford. Therefore, Ford would have
5 detailed and accurate data regarding the number and frequency of replacement part
6 orders, including replacement flex discs. The ongoing high sales of replacement
7 flex discs was (or should have been) known to Ford, and alerted Ford that its flex
8 discs were defective and posed a safety risk.

9
10 **D. Ford's Knowledge of the Flex Disc Defect Gained from Class
Member Complaints Made Directly to Ford**

11 61. Ford also knew or should have known about the Flex Disc
12 Defect because numerous consumer complaints regarding catastrophic failures of
13 the flex discs were made directly to Ford. The large number of complaints, and the
14 consistency of their descriptions of the Flex Disc Defect and the catastrophic
15 failures, safety risk, and collateral damage it caused in the Class Vehicles alerted
16 Ford to this serious Defect affecting the Class Vehicles.

17 62. The full universe of complaints made directly to Ford about the
18 Flex Disc Defect is information presently in the exclusive custody and control of
19 Ford and is not yet available to Plaintiffs prior to discovery. However, upon
20 information and belief, many Class Vehicle owners complained directly to Ford and
21 Ford dealerships and service centers about the repeated flex disc failures their
22 Vehicles experienced.

23 63. Plaintiffs themselves complained vocally and repeatedly to
24 Ford, beginning on the date of their first flex disc failure, in November 2016,
25 Plaintiffs repeatedly and consistently communicated with Ford service centers and
26 Ford Customer Operations concerning their dissatisfaction and safety concerns
27 regarding the flex disc failures and Flex Disc Defect.
28

1 64. Other instances of these direct-to-Ford complaints by Class
2 Members are described in Class Vehicle owners' complaints logged with NHTSA
3 ODI and posted on online vehicle owner forums:

4
5 • “The contact owns a 2015 Ford Transit. While driving on the highway, the
6 contact lost control of the vehicle. The vehicle was towed to the dealer where it was
7 diagnosed that the driveshaft fractured and damaged the transmission. In addition,
8 the technician stated that the driveshaft wrapped around the brake line. The
9 technician stated that all the brake lines, the transmission, the rear end differential,
10 and the driveshaft needed to be replaced. The vehicle was repaired. **The**
11 **manufacturer was notified.**” Complaint in NHTSA ODI database, ODI ID No.
12 10935896, date of incident: June 29, 2016.

13
14 • “The contact owns a 2015 Ford Transit. The contact stated that while driving
15 at 70 mph, the driveshaft fractured and caused damage to the torque converter and
16 the brake lines. The vehicle was taken to the dealer to be repaired. The contact
17 stated that the dealer replaced the transmission, the torque converter and also the
18 brake lines were replaced. The vehicle was repaired. **The manufacturer was**
19 **notified of the failure.**” Complaint in NHTSA ODI database, ODI ID No.
20 10935016, date of incident: June 29, 2016.

21 65. As the above sampling of complaints shows, Class Members
22 have been vocal in complaining directly to Ford about the Flex Disc Defect, and the
23 number and consistency of their complaints should have alerted Ford about the Flex
24 Disc Defect.
25
26
27
28

1 **E. Ford’s Knowledge of the Flex Disc Defect from Class Member**
2 **Complaints Collected by NHTSA’s Office of Defect Investigations**

3 66. In addition to complaints made directly to Ford, many Class
4 Vehicle owners and lessees lodged complaints about the Flex Disc Defect with
5 NHTSA’s Office of Defect Investigations (“NHTSA ODI”), beginning as early as
6 2014, and certainly well before Plaintiffs and Class Members purchased or leased
7 their Class Vehicles.

8 67. Federal law requires automakers like Ford to be in close contact
9 with NHTSA regarding potential auto defects, including imposing a legal
10 requirement, backed by criminal penalties for violation, of confidential disclosure
11 of defects by automakers to NHTSA, including field reports, customer complaints,
12 and warranty data. *See* TREAD Act, Pub. L. No. 106-414, 114 Stat. 1800 (2000).

13 68. Thus automakers should (and do) monitor NHTSA databases for
14 consumer complaints regarding their automobiles as part of the automakers’
15 ongoing obligation to identify potential defects in their vehicles, especially safety-
16 related defects such as the Flex Disc Defect.

17 69. From its monitoring of the NHTSA databases, Ford knew or
18 should have known of the many complaints about catastrophic flex disc failures
19 logged by NHTSA ODI, and the content, consistency, and large number of those
20 complaints alerted, or should have alerted, Ford to the Flex Disc Defect.

21 70. A sampling of the publicly available complaints lodged with
22 NHTSA ODI includes those quoted above, as well as the following:

23 • “62 mph on cruz hwy 501 the [flex disc] on the back of the transmission
24 snapped [-] the drive shaft was free spinning, ripping brake lines out, and killing the
25 motor. Was able to stop using parking brake. This is the third truck in my terminal
26 this has happened to [-] it is only a matter of time before someone gets hurt.”
27
28

1 Complaint in NHTSA ODI database, ODI ID No. 10914351, date of incident:
2 August 11, 2016.

3
4 • “Ford Transit with was going down a straight fourlane highway at 65 miles
5 per hour when without warning the [flex disc] on the drive shaft came apart. Driver
6 heard what sounded like a small explosion. The brake lines were blown off, the fuel
7 line was damaged, the drive shaft was broken, and a hole was blown into the
8 transmission case. Driver had no brakes, the drive shaft was separated from the rear
9 wheels, and transmission could not be down shifted. Engine remained on and she
10 was able to steer. There was no traffic near her or around her at the time. Road was
11 straight. Driver put hand on emergency brake in case some one pulled in front of
12 her and coast[ed] two miles to a stop.” Complaint in NHTSA ODI database, ODI
13 ID No. 10926224, date of incident: October 31, 2016.

14
15 • “Flex coupling between transmission and drive shaft routinely fails between
16 30,000 - 35,000 miles. This can create a dangerous situation where the drive shaft
17 could be forced into the passenger compartment when it comes into contact with the
18 road. Additionally, the failure of the flex coupling could cause loss of control of the
19 vehicle. There are numerous reports of these failures on Ford vehicle forums as
20 well as the failure that I have personally experienced. After reading of the
21 numerous failures, I inspected the flex coupling on my vehicle at 30,000 miles and
22 found that the flex coupling had visible cracks. A failure of a drive line component,
23 which could cause great bodily harm, at 30,000 miles, is unacceptable in a modern
24 vehicle.” Complaint in NHTSA ODI database, ODI ID No. 10981385, date of
25 incident: April 24, 2017.

26
27 71. As the above sampling of complaints makes clear, Class
28 Members have been vocal in complaining to NHTSA ODI about the Flex Disc

1 Defect since at least 2014, and Ford was, or should have been, aware of and
2 monitoring those complaints, and thus should have known about the Flex Disc
3 Defect and related safety risk since at least 2014, and certainly well before
4 Plaintiffs and Class Members purchased or leased their Class Vehicles.

5 72. In sum, as early as 2014, and certainly well before Plaintiffs and
6 Class Members purchased or leased their Class Vehicles, Ford was aware of the
7 Flex Disc Defect, should have been aware of the Flex Disc Defect through the
8 exercise of reasonable care, and/or was negligent in failing to be aware of the Flex
9 Disc Defect, based on, among others, the following sources:

10 a. Pre-release design, manufacture, engineering, and testing data;

11 b. "Field data" referred to in the Safety Recall notice, which was
12 necessarily known to Ford prior to its issuance of the Safety Recall;

13 c. Knowledge Ford had of the large number of replacement flex
14 discs ordered from Ford;

15 d. Numerous and consistent vehicle owner complaints made
16 directly to Ford about the Flex Disc Defect; and

17 e. Numerous and consistent vehicle owner complaints collected by
18 NHTSA ODI about the Flex Disc Defect.

19 73. Moreover, the large number and consistency of Class Member
20 complaints describing the Flex Disc Defect underscores the fact that Class
21 Members considered the Flex Disc Defect to be a safety risk and a material issue to
22 the reasonable consumer.

23 **Applicable Warranties**

24 74. Ford sold and leased Class Vehicles with a written express
25 warranty.

26 75. Ford's new vehicle Limited Warranty specifically provides for
27 extended (five-year, 60,000-mile) coverage for certain Vehicle components and
28

1 parts, including “universal and constant velocity joints” (which includes the flex
2 discs).

3 76. Ford replacement parts sold through authorized Ford dealerships
4 or Ford-authorized distributors are covered by a two-year, unlimited mileage
5 Service Parts Warranty.

6 77. Based on Plaintiffs’ experiences and reports from other Class
7 Members, prior to the Recall, Ford refused to cover the nonpermanent “fixes”
8 (replacing defective flex discs with same defective part) under warranty, and
9 instead required Class Members pay out of pocket for these nonpermanent “fixes”
10 even if Class Members’ Vehicle remained under warranty at the time.

11 78. Moreover, both before and after the Recall, Ford refuses to
12 cover repairs to the vehicle components collaterally damaged by the
13 catastrophically failing flex discs.

14 79. Ford provides the Warranty to buyers after the purchase of the
15 Class Vehicle is completed; buyers have no pre-suit knowledge or ability to bargain
16 as to the terms of the Warranty.

17 80. Plaintiffs were not provided with the Warranty prior to
18 purchasing the Class Vehicles.

19 81. The Warranty contains unexpected and unbargained-for
20 limitations that would (and did) surprise Plaintiffs and Class Members upon
21 learning of them.

22 82. The Warranty does not indicate that buyers who are dissatisfied
23 with the Warranty terms after receiving and reviewing them post-sale may return
24 the Vehicle within a certain time period.

25
26
27
28

1 **The June 28, 2017, Safety Recall**

2 83. On June 28, 2017, Ford issued a Safety Recall for the Flex Disc
3 Defect in the Class Vehicles. The Safety Recall does not adequately make Plaintiffs
4 and Class Members whole, and does not permanently remedy the Defect.

5 84. Nothing in the terms of the Recall indicate that Ford intends to
6 reimburse Plaintiffs and Class Members for the past costs incurred for the
7 replacement of defective flex discs, repair of severe collateral damage to other
8 Vehicle systems caused by the catastrophic failure of the flex discs, lost use of the
9 Class Vehicles – which has exceeded one month in some instances – and lost
10 business opportunities due to the loss of the Class Vehicle’s use during repairs.

11 85. Further, in the Safety Recall notice, Ford requires Class Vehicle
12 owners to replace the flex disc “every 30,000 miles” until a permanent remedy
13 (which Ford admittedly does not have) becomes available. This promises to create
14 future inconvenience and time-out-of-service for Plaintiffs and Class Members who
15 will have to bring their Vehicles in repeatedly to have the flex discs replaced, with
16 their Vehicles out of service while the replacement parts are ordered and installed.

17 86. In short, as the Safety Recall notice makes clear, Ford’s Recall
18 fails to fix the underlying problem and falls well short of fully compensating
19 Plaintiffs and Class Members for the harm caused by the defective Class Vehicles.

20 **Ford’s Marketing and Concealment**

21 87. Upon information and belief, Ford knowingly manufactured and
22 sold/leased the Class Vehicles with the Flex Disc Defect, while willfully concealing
23 the true inferior quality, safety risk, and sub-standard performance of the Class
24 Vehicles.

25 88. Ford directly markets the Class Vehicles via extensive
26 nationwide, multimedia advertising campaigns on television, the Internet,
27 billboards, print publications, mailings, and through other mass media.
28

1 89. Ford’s marketing material describes the Class Vehicles as
2 “durable,” “tough,” able to “tow and haul heavy cargo,” “built to carry lots of
3 people, lots of cargo, or both,” is suitable for “running a small business,” and notes
4 that “safety takes priority in every Transit” Vehicle.

5 90. Ford concealed the fact that the Class Vehicles, which
6 supposedly are safe and reliable and able to “carry loads that others would have to
7 leave behind,” are instead not even safe or reliable under ordinary conditions
8 because the flex discs fail repeatedly, causing a safety hazard and causing collateral
9 damage to other Vehicle components.

10 91. Plaintiffs and Class Members were exposed to Ford’s long-term,
11 national, multimedia marketing campaign touting the safety and durability of the
12 Class Vehicles, and Class Members justifiably made their decisions to
13 purchase/lease their Class Vehicles based on Ford’s misleading marketing that
14 concealed the true, defective nature of the Class Vehicles.

15 92. Further, Ford knowingly misled Class Members about the true,
16 defective nature of the Class Vehicles. As detailed above, upon information and
17 belief, Ford has been aware of the Flex Disc Defect since at least 2014, and
18 certainly well before Plaintiffs and Class Members purchased or leased their Class
19 Vehicles, through pre-release design and testing, “field data”, the high number of
20 flex disc replacement part sales, and the numerous and consistent complaints about
21 the Flex Disc Defect made directly to Ford, collected by NHTSA, and posted in
22 public online forums.

23 93. Despite Ford’s knowledge of the Defect, until the Recall Ford
24 told Class Members who called its customer service about the Flex Disc Defect that
25 Ford had never heard of the problem before and that the failures were due to driver
26 error.

27 94. In sum, Ford actively concealed the existence and nature of the
28 Flex Disc Defect from Class Members from at least 2014 until the Recall, despite

1 its knowledge of the existence and pervasiveness of the Flex Disc Defect, and
2 certainly well before Plaintiffs and Class Members purchased or leased their Class
3 Vehicles. Specifically, Ford has:

4 a. Failed to disclose, at and after the time of purchase, lease, and/or
5 repair, any and all known material defects of the Class Vehicles, including the Flex
6 Disc Defect;

7 b. Failed to disclose, at and after the time of purchase, lease, and/or
8 repair, that the Class Vehicles were defective and not fit for their intended
9 purposes;

10 c. Failed to disclose, and actively concealed, the fact that the Class
11 Vehicles were defective, despite the fact that Ford learned of the Flex Disc Defect
12 as early as 2014, and certainly well before Plaintiffs and Class Members purchased
13 or leased their Class Vehicles;

14 d. Failed to disclose, and actively concealed, the existence and
15 pervasiveness of the Defect even when directly asked about it by Class Members
16 during communications with Ford, Ford Customer Care, Ford dealerships, and Ford
17 service centers;

18 e. Actively concealed the Defect by forcing Class Members to bear
19 the cost of temporary “fixes” of replacing the flex discs, even though Class
20 Members were led to believe that the replacement had cured the problem in their
21 Vehicles; and

22 f. Actively concealed the Defect by knowingly selling and
23 installing replacement flex discs in Class Members’ vehicles, while knowing and
24 concealing that the replacements would likely soon fail due to the Defect, and that
25 by not providing a permanent remedy, Ford was forcing Class Members to
26 repeatedly repair their Class Vehicles.

27 95. By engaging in the conduct described above, Ford has concealed
28 the Defect from Class Members up until it announced the Recall on June 28, 2017.

1 If Class Members had knowledge of the information Ford concealed, they would
2 not have purchased/leased the Class Vehicles or would have paid less to do so.

3 Fraudulent Concealment Allegations

4 96. Absent discovery, Plaintiffs are unaware of, and unable through
5 reasonable investigation to obtain, the true names and identities of those individuals
6 at Ford responsible for disseminating false and misleading marketing materials
7 regarding the Class Vehicles. Ford necessarily is in possession of all of this
8 information. Plaintiffs' claims arise out of Ford's fraudulent concealment of the
9 Defect and the catastrophic failure, collateral damage, and safety hazard it causes.
10 To the extent that Plaintiffs' claims arise from Ford's fraudulent concealment, there
11 is no one document or communication, and no one interaction, upon which
12 Plaintiffs bases its claims. Plaintiffs alleges that at all relevant times, including
13 specifically at the time they purchased or leased their Class Vehicles, Ford knew, or
14 was reckless in not knowing, of the Defect; Ford was under a duty to disclose the
15 Defect based upon its exclusive knowledge of it, and its concealment of it; and Ford
16 never disclosed the Defect to Plaintiffs or the public at any time or place or in any
17 manner until the Recall.

18 97. Plaintiffs makes the following specific fraud allegations with as
19 much specificity as possible absent access to the information necessarily available
20 only to Ford:

21 a. **Who:** Ford actively concealed the Defect from Plaintiffs and
22 Class Members while simultaneously touting the safety and durability of the Class
23 Vehicles, as alleged in paragraphs 9-10, 87-95, above. Plaintiffs is unaware of, and
24 therefore unable to identify, the true names and identities of those specific
25 individuals at Ford responsible for such decisions.

26 b. **What:** Ford knew, or was reckless or negligent in not knowing,
27 that the Class Vehicles contain the Defect, as alleged above in paragraphs 55-73.
28

1 Ford concealed the Defect and made representations about the safety, durability,
2 and other attributes of the Class Vehicles, as specified above in paragraphs 9-10,
3 87-95.

4 c. **When:** Ford concealed material information regarding the
5 Defect at all times and made representations about the safety and durability of the
6 Class Vehicles, starting no later than 2014, continuing through the time of
7 sale/lease, and on an ongoing basis, until the announcement of the Recall on June
8 28, 2017, as alleged above in paragraphs 9-10, 55-73, 87-95. And when consumers
9 brought their Vehicles to Ford complaining of the Defect, Ford denied any
10 knowledge of or responsibility for the Defect, and in many instances, actually
11 blamed the owner for causing the problem.

12 d. **Where:** Ford concealed material information regarding the true
13 nature of the Defect in every communication it had with Plaintiffs and Class
14 Members and made representations about the safety and durability of the Class
15 Vehicles. Plaintiffs is aware of no document, communication, or other place or
16 thing, in which Ford disclosed the truth about the Defect in the Class Vehicles to
17 anyone outside of Ford, until the Recall was announced. Such information is not
18 adequately disclosed in any sales documents, displays, advertisements, warranties,
19 owner's manual, or on Ford's website.

20 e. **How:** Ford concealed the Defect from Plaintiffs and Class
21 Members and made representations about the safety and durability of the Class
22 Vehicles. Ford actively concealed the truth about the existence and nature of the
23 Defect from Plaintiffs and Class Members at all times, even though it knew about
24 the Defect and knew that information about the Defect would be important to a
25 reasonable consumer and Ford promised in its marketing materials that Class
26 Vehicles have qualities that they do not have.

27 f. **Why:** Ford actively concealed material information about the
28 Defect in Class Vehicles for the purpose of inducing Plaintiffs and Class Members

1 to purchase and/or lease Class Vehicles, rather than purchasing or leasing
2 competitors' vehicles and made representations about the safety and durability of
3 the Class Vehicles. Had Ford disclosed the truth, for example in its advertisements
4 or other materials or communications, Plaintiffs and Class Members (and
5 reasonable consumers) would have been aware of it, and would not have
6 bought/leased the Class Vehicles or would have paid less for them.

7 TOLLING OF THE STATUTE OF LIMITATIONS

8 Fraudulent Concealment Tolling

9
10 98. Upon information and belief, Ford has known of the Flex Disc
11 Defect in the Class Vehicles since at least 2014, and certainly well before Plaintiffs
12 and Class Members purchased or leased their Class Vehicles, and has concealed
13 from or failed to notify Plaintiffs, Class Members, and the public of the full and
14 complete nature of the Flex Disc Defect, even when directly asked about it by Class
15 Members during communications with Ford, Ford Customer Care, Ford
16 dealerships, and Ford service centers.

17 99. Any applicable statute of limitation has therefore been tolled by
18 Ford's knowledge, active concealment, and denial of the facts alleged herein.

19 Estoppel

20 100. Ford was and is under a continuous duty to disclose to Plaintiffs
21 and Class Members the true character, quality, and nature of the Class Vehicles.
22 Ford actively concealed the true character, quality, and nature of the Class Vehicles
23 and knowingly made representations about the safety, quality, durability, reliability,
24 toughness, and ruggedness of the Class Vehicles. Plaintiffs and Class Members
25 reasonably relied on Ford's knowing and affirmative representations and/or active
26 concealment of these facts. Based on the foregoing, Ford is estopped from relying
27 on any statutes of limitation in defense of this action.
28

1 **Discovery Rule**

2 101. The causes of action alleged herein did not accrue until
3 Plaintiffs and Class Members discovered that their Class Vehicles had the Flex Disc
4 Defect.

5 However, Plaintiffs and Class Members had no realistic ability to discern that the
6 Class Vehicles were defective until – at the earliest – after the Flex Disc Defect
7 manifested in their Vehicles. Even then, Plaintiffs and Class Members had no
8 reason to know the flex disc failure was caused by a defect in the Class Vehicles
9 because of Ford’s active concealment of the Flex Disc Defect. Not only did Ford
10 fail to notify Plaintiffs or Class Members about the Flex Disc Defect, Ford in fact
11 denied any knowledge of or responsibility for the Flex Disc Defect when directly
12 asked about it. Thus Plaintiffs and Class Members were not reasonably able to
13 discover the Flex Disc Defect until after they had purchased or leased the Class
14 Vehicles, despite their exercise of due diligence, and their causes of action did not
15 accrue until they discovered that the Flex Disc Defect caused their vehicle’s flex
16 disc failure.

17 **CLASS ACTION ALLEGATIONS**

18 102. Plaintiffs brings this lawsuit as a class action on behalf of
19 themselves and all other Class Members similarly situated pursuant to Federal
20 Rules of Civil Procedure 23(a) and (b)(3), (b)(2), and/or (c)(4). This action satisfies
21 the numerosity, commonality, typicality, adequacy, predominance, and superiority
22 requirements of those provisions.

23 103. Plaintiffs bring this class action, including all causes of action
24 stated below, on behalf of themselves and all other similarly situated members of
25 the proposed Class defined as follows:

26 All persons or entities that purchased or leased a 2015-
27 2017 Ford Transit in California for purposes other than
28

1 personal, family, or household use.

2 104. Excluded from the proposed Class: (1) Ford, any entity or
3 division in which Ford has a controlling interest, and its legal representatives,
4 officers, directors, assigns, and successors; (2) the Judge to whom this case is
5 assigned and the Judge's staff; (3) governmental entities; and (4) those persons who
6 have suffered personal injuries as a result of the facts alleged herein. Plaintiffs
7 reserves the right to amend the Class definitions if discovery and further
8 investigation reveal that the Class should be expanded, otherwise divided into
9 subclasses, or modified in any other way.

10
11 **Numerosity**

12 105. Although the exact number of Class Members is uncertain,
13 Ford's own Safety Recall notice put the number at over 400,000 Transit Vans in
14 North America, which implies the number of Class Vehicles here is great enough
15 such that joinder is impracticable. The disposition of the claims of these Class
16 Members in a single action will provide substantial benefits to all parties and to the
17 Court. Class Members are readily identifiable from information and records in
18 Ford's possession, custody, or control, as well as from records kept by the
19 Department of Motor Vehicles.

20
21 **Typicality**

22 106. The claims of Plaintiffs are typical of the claims of Class
23 Members in that Plaintiffs, like all Class Members, purchased or leased a Class
24 Vehicle designed, manufactured, and distributed by Ford. Plaintiffs, like all Class
25 Members, has been damaged by Ford's misconduct in that it purchased/leased a
26 Vehicle it would not have purchased/leased, or would not have purchased/leased at
27 the price paid; incurred or will incur the cost of repairs relating to and caused by the
28 Defect; and lost time and business opportunities due to having vehicles out of

1 service due to the Defect. Furthermore, the factual bases of Ford's misconduct are
2 common to all Class Members and represent a common thread of misconduct
3 resulting in injury to all Class Members.

4
5 **Adequate Representation**

6 107. Plaintiffs will fairly and adequately represent and protect the
7 interests of its respective Class Members. Plaintiffs has retained counsel with
8 substantial experience in prosecuting consumer class actions, including actions
9 involving defective vehicles.

10 108. Plaintiffs and its counsel are committed to vigorously
11 prosecuting this action on behalf of Class Members, and have the financial
12 resources to do so. Neither Plaintiffs nor its counsel has interests adverse to those of
13 Class Members.

14 **Predominance of Common Issues**

15 109. There are numerous questions of law and fact common to
16 Plaintiffs and Class Members that predominate over any question affecting only
17 individual Class Members, the answer to which will advance resolution of the
18 litigation as to all Class Members. These common legal and factual issues include:

- 19 a. whether the flex disc in the Class Vehicles is defective;
20 b. whether the Flex Disc Defect constitutes an unreasonable safety
21 risk;
22 c. whether Ford knew or should have known about the Flex Disc
23 Defect, and, if yes, how long Ford has known of the Defect;
24 d. whether the defective nature of the Class Vehicles constitutes a
25 material fact reasonable consumers would have considered in deciding whether to
26 purchase or lease a Class Vehicle;
27 e. whether Ford has a duty to disclose the defective nature of the
28 Class Vehicles to Plaintiffs and Class Members;

1 f. whether Ford omitted and failed to disclose material facts about
2 the Class Vehicles;

3 g. whether Ford's concealment of the true defective nature of the
4 Class Vehicles induced Plaintiffs and Class Members to act to their detriment by
5 purchasing or leasing Class Vehicles;

6 h. whether Ford's misrepresentations and omissions about the true
7 defective nature of the Class Vehicles were likely to mislead or deceive, and
8 therefore fraudulent, within the meaning of California's Unfair Competition Law
9 (UCL);

10 i. whether Ford's misrepresentations and omissions about the true
11 defective nature of the Class Vehicles were and are unfair within the meaning of the
12 UCL;

13 j. whether Ford represented, through its words and conduct, that
14 the Class Vehicles had characteristics, uses, or benefits that they did not actually
15 have;

16 k. whether Ford represented, through its words and conduct, that
17 the Class Vehicles were of a particular standard, quality, or grade when they were
18 of another;

19 l. whether Ford advertised the Class Vehicles with the intent not to
20 sell/lease them as advertised;

21 m. whether Ford's misrepresentations and omissions about the true
22 defective nature of the Class Vehicles were likely to create confusion or
23 misunderstanding;

24 n. whether Ford's misrepresentations and omissions about the true
25 defective nature of the Class Vehicles were and are deceptive;

26 o. whether the Class Vehicles were unfit for the ordinary purposes
27 for which they were used, in violation of the implied warranty of merchantability;
28

1 p. whether Plaintiffs and the other Class Members are entitled to a
2 declaratory judgment stating that the flex discs in Class Vehicles are defective
3 and/or not merchantable;

4 q. whether Plaintiffs and the other Class Members are entitled to
5 equitable relief, including, but not limited to, a preliminary and/or permanent
6 injunction;

7 r. whether Ford should be declared financially responsible for
8 notifying all Class Members of the problems with the Class Vehicles and for the
9 costs and expenses of permanently remedying the Flex Disc Defect in the Class
10 Vehicles; and

11 s. whether Ford is obligated to inform Class Members of their
12 right to seek reimbursement for having paid to diagnose, repair, or replace the
13 defective flex discs.

14
15 **Superiority**

16 110. Plaintiffs and Class Members have all suffered and will continue
17 to suffer harm and damages as a result of Ford's unlawful and wrongful conduct. A
18 class action is superior to other available methods for the fair and efficient
19 adjudication of this controversy.

20 111. Absent a class action, most Class Members would likely find the
21 cost of litigating their claims prohibitively high and would therefore have no
22 effective remedy at law. Because of the relatively small size of the individual Class
23 Members' claims (compared to the cost of litigation), it is likely that only a few
24 Class Members could afford to seek legal redress for Ford's misconduct. Absent a
25 class action, Class Members will continue to incur damages, and Ford's misconduct
26 will continue without remedy.

27 112. Class treatment of common questions of law and fact would also
28 be a superior method to multiple individual actions or piecemeal litigation in that

1 class treatment will conserve the resources of the courts and the litigants, and will
2 promote consistency and efficiency of adjudication.

3 **FIRST CAUSE OF ACTION**

4 (Breach of Express Warranty)

5 113. Ford is and was at all relevant times a “merchant” with respect
6 to motor vehicles, and specifically the Class Vehicles, under, inter alia, Cal. Com.
7 Code §§ 2104(1) and 10103(c), and “sellers” of motor vehicles, and specifically the
8 Class Vehicles, under § 2103(1)(d); is and was at all relevant times a
9 “manufacturer” of vehicles, and specifically the Class Vehicles, within the meaning
10 of, inter alia, California Civil Code § 1791(j); and, with respect to leases, is and was
11 at all relevant times a “lessor” of motor vehicles, and specifically the Class
12 Vehicles, under, inter alia, Cal. Com. Code § 10103(a)(16).

13 114. The Class Vehicles are and were at all relevant times “goods”
14 within the meaning of, inter alia, Cal. Com. Code §§ 2105(1) and 10103(a)(8), and
15 Cal. Civ. Code § 1791(a).

16 115. Plaintiffs and Class Members bought or leased Class Vehicles
17 manufactured, marketed to them, and intended to be purchased by consumers such
18 as them, by Ford.

19 116. Ford expressly warranted the Class Vehicles against defects
20 including the Flex Disc Defect, as described above, within the meaning of, *inter*
21 *alia*, Cal. Civil Code §§ 1791.2 and 1793.2.

22 117. As described above, the flex discs in the Class Vehicles are
23 defective. The Flex Disc Defect substantially impairs the use, value, and safety of
24 the Class Vehicles to reasonable consumers, including Plaintiffs and Class
25 Members.

26 118. Ford knew of the Defect, and that this Defect poses serious
27 safety risks to consumers like Plaintiffs and Class Members, when it expressly
28 warranted against the Defect, wrongfully and fraudulently concealed material facts

1 regarding the Defect, failed to inform Class Members that the Class Vehicles had
2 the Defect, and induced Plaintiffs and Class Members to purchase or lease the Class
3 Vehicles under false and/or fraudulent pretenses.

4 119. Ford breached its express warranties by supplying the Class
5 Vehicles to Plaintiffs and Class Members with defective flex discs.

6 120. Ford is obligated, under the terms of its express warranties, to
7 repair and/or replace the defective flex discs for Plaintiffs and Class Members.

8 121. As more fully detailed above, Ford was provided with
9 appropriate notice and has been on notice of the Defect and of its breach of express
10 written warranties from various sources, including Plaintiff.

11 122. Plaintiffs have given Ford a reasonable opportunity to cure its
12 failures with respect to its warranties, and Ford has failed to do so.

13 123. Ford breached its express warranties by failing to repair the
14 Class Vehicles under warranty and by failing to provide to Plaintiffs or Class
15 Members, as a warranty replacement, a product that conforms to the qualities and
16 characteristics that it promised when it sold the Class Vehicles to Plaintiffs and
17 Class Members.

18 124. Affording Ford any further opportunity to cure its breach of
19 written warranties is unnecessary and futile here.

20 125. Any express warranties promising to repair and/or correct any
21 defects fail in their essential purposes because the contractual remedy is insufficient
22 to make Class Members whole and because Ford has failed and/or has refused to
23 adequately provide the promised remedies within a reasonable time.

24 126. Accordingly, recovery by the Class Members is not restricted to
25 any written warranties promising to repair and/or correct defects, and they seek all
26 remedies as allowed by law.

27 127. In its capacity as a warrantor, and by the conduct described
28 herein, any attempt by Ford to limit or disclaim the express warranties in a manner

1 that would exclude coverage of the Flex Disc Defect is unconscionable as a matter
2 of law because the relevant purchase/lease transactions were tainted by Ford's
3 concealment of material facts. Thus any such effort by Ford to disclaim, or
4 otherwise limit, its liability for the Flex Disc Defect is null and void.

5 128. As a direct and proximate result of Ford's breach of express
6 warranties, Plaintiffs and Class Members received goods that are unreasonably
7 dangerous and that have substantially impaired value, have suffered incidental,
8 consequential, and other damages in an amount to be determined at trial.

9 129. Plaintiffs and Class Members are entitled to incidental,
10 consequential, and other damages and other legal and equitable relief, as well as
11 costs and attorneys' fees.

12 **SECOND CAUSE OF ACTION**

13 (Breach of Express Warranty – Magnuson-Moss Warranty Act)

14 130. Plaintiffs incorporates by reference each allegation set forth in
15 the preceding paragraphs.

16 131. The Class Vehicles are consumer products as defined in 15
17 U.S.C. § 2301(1).

18 132. Plaintiffs and Class Members are "consumers" as defined in 15
19 U.S.C. § 2301(3).

20 133. Ford is a supplier and warrantor as defined in 15 U.S.C. §
21 2301(4) and (5).

22 134. Ford provided Plaintiffs and Class Members with "written
23 warranties" within the meaning of 15 U.S.C. § 2301(6).

24 135. Ford has breached the Express Warranty by refusing to honor
25 the express warranty to replace or repair, free of charge, any defective vehicle
26 component, including the defective flex discs and the other vehicle components
27 collaterally damaged by flex disc failure.
28

1 136. At the time Class Vehicles were sold or leased, Ford knew of
2 that they possessed the Flex Disc Defect and offered an Express Warranty with no
3 intention of honoring said warranty with respect to the known Defect.

4 137. Additionally, pursuant to 15 U.S.C. § 2304(d)(1), “the warrantor
5 may not assess the consumer for any costs the warrantor or his representatives incur
6 in connection with the required remedy of a warranted product . . . [I]f any
7 incidental expenses are incurred because the remedy is not made within a
8 reasonable time or because the warrantor imposed an unreasonable duty upon the
9 consumer as a condition of securing remedy, then the consumer shall be entitled to
10 recover reasonable incidental expenses which are so incurred in any action against
11 the warrantor.”

12 138. At no time has Ford offered a permanent or adequate repair or
13 replacement of the defective flex discs that would permanently avoid repeated
14 catastrophic failure. Despite repeated demands by Plaintiffs and Class Members
15 that Ford pay the costs and incidental expenses associated with replacing defective,
16 failed flex discs and repairing other vehicle components collaterally damaged by
17 flex disc failure, Ford has refused to do so. Ford’s refusal to provide an adequate
18 repair or replacement and to pay for its installation violates 15 U.S.C. § 2304(d)(1).

19 139. Ford was afforded a reasonable opportunity to cure its breach of
20 the Express Warranty, but refused to do so. Given Ford’s refusals to compensate
21 Plaintiffs fully for the harm Ford caused, any additional pre-filing dispute
22 resolution efforts by Plaintiffs and Class Members would have been futile.

23 140. Under 15 U.S.C. § 2310(e), notice of breach of warranty need
24 not be provided until after Plaintiffs have been appointed Class Representatives.

25 141. As a direct and proximate result of Ford’s breach of its express
26 written warranties, Plaintiffs and Class Members have been damaged in an amount
27 to be proven at trial.
28

1 **THIRD CAUSE OF ACTION**

2 (Breach of Implied Warranty)

3 142. Plaintiffs incorporates by reference each allegation set forth in
4 the preceding paragraphs.

5 143. When it sold or leased its Class Vehicles, Ford extended an
6 implied warranty to Class Members that the subject vehicles were merchantable and
7 fit for the ordinary purpose for which such goods were sold or leased, pursuant to
8 Cal. Civ. Code §§ 1791.1, 1792-1793.

9 144. Persons who purchased or leased a vehicle from Ford are
10 entitled to the benefit of their bargain: a Vehicle that is safe and reliable to drive,
11 and that was not equipped with defective flex discs.

12 145. Ford breached this implied warranty in that its Class Vehicles
13 are (1) not fit for ordinary use, and (2) not of a merchantable quality.

14 146. Because of the Flex Disc Defect and the safety hazard it poses,
15 the Class Vehicles do not possess even the most basic degree of fitness for ordinary
16 use.

17 147. Had the Flex Disc Defect that existed at the time of sale been
18 known, the Class Vehicles could not have been sold or leased, or could not have
19 been sold or leased at the same price.

20 148. As a direct and proximate result of Ford's breach of the implied
21 warranty of merchantability, Plaintiffs and Class Members have been damaged in
22 an amount to be proven at trial.

23 **FOURTH CAUSE OF ACTION**

24 (Breach of Implied Warranty – Magnuson-Moss Warranty Act)

25 149. Plaintiffs incorporates by reference each allegation set forth in
26 the preceding paragraphs.

27 150. Plaintiffs and Class Members are “consumers” as defined in 15
28 U.S.C. § 2301(3).

1 151. Defendant Ford is a supplier and warrantor as defined in 15
2 U.S.C. § 2301(4) and (5).

3 152. Defendant Ford is a supplier and warrantor as defined in 15
4 U.S.C. § 2301(4) and (5).

5 153. The subject Class Vehicles are consumer products as defined in
6 15 U.S.C. § 2301(1).

7 154. Ford extended an implied warranty to Plaintiffs and Class
8 Members by operation of 15 U.S.C. § 2301(7), and this implied warranty covers
9 defects in its Class Vehicles.

10 155. Ford breached this implied warranty by selling/leasing its Class
11 Vehicles with defective flex discs that were neither merchantable nor fit for their
12 intended purpose.

13 156. Ford extended an implied warranty to Plaintiffs and Class
14 Members by operation of 15 U.S.C. § 2301(7), and this implied warranty covers
15 defects in the subject Class Vehicles' flex discs.

16 157. Ford breached this implied warranty by selling/leasing Class
17 Vehicles that were neither merchantable nor fit for their intended purpose.

18 158. Under 15 U.S.C. § 2310(e), notice of breach of warranty need
19 not be provided until after Plaintiffs have been appointed Class Representatives.

20 159. Ford was notified of its breach of warranty by way of Plaintiffs'
21 communications with Ford, beginning with Plaintiffs' first flex disc failure, in
22 November 2016. From then on, All Care Transport co-owners Lisa Lybarger and
23 Jose Pena repeatedly and consistently communicated with Ford service centers and
24 Ford Customer Operations concerning their dissatisfaction and safety concerns
25 regarding the flex disc failures and Flex Disc Defect, and asking Ford to cover the
26 cost of replacements and collateral damage repairs under warranty. At every turn,
27 Ford resisted Plaintiffs' requests, offering only partial reductions in the repair costs
28 only after persistent argument from Plaintiffs. Despite Plaintiffs' repeated

1 entreaties, Ford would not make them whole and reimburse all the costs they paid
2 out of pocket for replacement flex discs, repair to collaterally damaged Vehicle
3 components, or compensate them for the time and business opportunities they lost.
4 Therefore, any further dispute resolution attempts were futile.

5 160. As a direct and proximate result of Ford's breach of the implied
6 warranty under the Magnuson-Moss Act, Plaintiff, and the Class, have been
7 damaged in an amount to be proven at trial.

8 **FIFTH CAUSE OF ACTION**

9 (Fraud by Concealment)

10 161. Plaintiffs incorporates by reference each allegation set forth in
11 the preceding paragraphs.

12 162. Plaintiffs brings this cause of action for themselves and on
13 behalf of Class Members.

14 163. Ford concealed and suppressed material facts concerning the
15 quality of the Class Vehicles.

16 164. Ford concealed and suppressed material facts concerning the
17 safety and durability of the Class Vehicles.

18 165. Ford concealed and suppressed material facts concerning the
19 serious defect causing Class Vehicles' flex discs to catastrophically fail, causing the
20 driveshaft to separate from the engine and the collateral damage of other vehicle
21 components. Ford knew that Plaintiffs and Class Members would not be able to
22 inspect or otherwise detect the defect prior to purchasing or leasing the vehicles.
23 Ford furthered and relied upon this lack of disclosure to further promote payments
24 of repairs and in some cases accused Plaintiffs and Class Members of causing the
25 problem – all the while concealing the true nature of cause and defect from
26 Plaintiffs and Class Members. Ford further denied the very existence the Defect
27 when Plaintiffs and Class Members complained of the Defect.
28

1 166. Ford concealed and suppressed material facts that point to the
2 nature of the defect being a defective flex disc design, and instead pushed “fixes”
3 consisting of flex disc replacement with the same defective part, which would also
4 ultimately catastrophically fail.

5 167. Ford did so in order to boost confidence in its vehicles and
6 falsely assure purchasers and lessees of Ford vehicles, that the Class Vehicles were
7 safe, durable, warranted, and reliable vehicles and concealed the information in
8 order to prevent harm to Ford and its products’ reputations in the marketplace and
9 to prevent consumers from learning of the defective nature of the Class Vehicles
10 prior to their purchase or lease. These false representations and omissions were
11 material to consumers, both because they concerned the quality of the Class
12 Vehicles and because the representations and omissions played a significant role in
13 the decision to purchase or lease the Class Vehicles.

14 168. Ford had a duty to disclose the Flex Disc Defect in the Class
15 Vehicles because it was known and/or accessible only to Ford; Ford had superior
16 knowledge and access to the facts; and Ford knew the facts were not known to, or
17 reasonably discoverable, by Plaintiffs and Class Members. Ford also had a duty to
18 disclose because it made many general affirmative representations about the safety,
19 quality, warranty, and lack of defects in the Class Vehicles as set forth above,
20 which were misleading, deceptive, and/or incomplete without the disclosure of the
21 additional facts set forth above regarding its actual safety, quality, comfort, and
22 usability. Even when faced with complaints regarding the Defect, Ford misled and
23 concealed the true cause of the symptoms complained of. As a result, Class
24 Members were misled as to the true condition of the Class Vehicles once at
25 purchase or lease and again when the defect was complained of to Ford. The
26 omitted and concealed facts were material because they directly impact the safety,
27 value, and usability of the Class Vehicles purchased or leased by Plaintiffs and
28 Class Members. Whether a manufacturer’s products are as stated by the

1 manufacturer, backed by the manufacturer, and usable for the purpose it was
2 purchased/leased, are material concerns to a consumer.

3 169. Plaintiffs makes the following specific fraud allegations with as
4 much specificity as possible absent access to the information necessarily available
5 only to Ford:

6 a. **Who:** Ford actively concealed the Defect from Plaintiffs and
7 Class Members while simultaneously touting the safety and durability of the Class
8 Vehicles, as alleged in paragraphs 9-10, 87-95, above. Plaintiffs is unaware of, and
9 therefore unable to identify, the true names and identities of those specific
10 individuals at Ford responsible for such decisions.

11 b. **What:** Ford knew, or was reckless or negligent in not knowing,
12 that the Class Vehicles contain the Defect, as alleged above in paragraphs 55-73.
13 Ford concealed the Defect and made representations about the safety, durability,
14 and other attributes of the Class Vehicles, as specified above in paragraphs 9-10,
15 83-91.

16 c. **When:** Ford concealed material information regarding the
17 Defect at all times and made representations about the safety and durability of the
18 Class Vehicles, starting no later than 2014, continuing through the time of
19 sale/lease, and on an ongoing basis, until the announcement of the Recall on June
20 28, 2017, as alleged above in paragraphs 9-10, 55-73, 87-95. And when consumers
21 brought their Vehicles to Ford complaining of the Defect, Ford denied any
22 knowledge of or responsibility for the Defect, and in many instances, actually
23 blamed the owner for causing the problem.

24 d. **Where:** Ford concealed material information regarding the true
25 nature of the Defect in every communication it had with Plaintiffs and Class
26 Members and made representations about the safety and durability of the Class
27 Vehicles. Plaintiffs is aware of no document, communication, or other place or
28 thing, in which Ford disclosed the truth about the Defect in the Class Vehicles to

1 anyone outside of Ford, until the Recall was announced. Such information is not
2 adequately disclosed in any sales documents, displays, advertisements, warranties,
3 owner's manual, or on Ford's website.

4 e. **How:** Ford concealed the Defect from Plaintiffs and Class
5 Members and made representations about the safety and durability of the Class
6 Vehicles. Ford actively concealed the truth about the existence and nature of the
7 Defect from Plaintiffs and Class Members at all times, even though it knew about
8 the Defect and knew that information about the Defect would be important to a
9 reasonable consumer and Ford promised in its marketing materials that Class
10 Vehicles have qualities that they do not have.

11 f. **Why:** Ford actively concealed material information about the
12 Defect in Class Vehicles for the purpose of inducing Plaintiffs and Class Members
13 to purchase and/or lease Class Vehicles, rather than purchasing or leasing
14 competitors' vehicles and made representations about the safety and durability of
15 the Class Vehicles. Had Ford disclosed the truth, for example in its advertisements
16 or other materials or communications, Plaintiffs and Class Members (and
17 reasonable consumers) would have been aware of it, and would not have
18 bought/leased the Class Vehicles or would have paid less for them.

19 170. Ford actively concealed and/or suppressed these material facts,
20 in whole or in part, to protect its reputation, sustain its marketing strategy, avoid
21 recalls that would hurt the brand's image and cost money, and it did so at the
22 expense of Plaintiffs and Class Members.

23 171. Plaintiffs and Class Members were unaware of these omitted
24 material facts and would not have acted as they did if they had known of the
25 concealed and/or suppressed facts, in that they would not have purchased or leased
26 cars manufactured by Ford. Plaintiffs and Class Members' actions were justified.
27 Ford was in exclusive control of the material facts and such facts were not known to
28 the public, Plaintiff, or Class Members.

1 172. Because of the concealment and/or suppression of the facts,
2 Plaintiffs and Class Members sustained damage because they negotiated and paid
3 value for the Class Vehicles not considerate of the Flex Disc Defect that Ford failed
4 to disclose and paid for repairs and parts to attempt to remedy the defect. Had they
5 been aware of the concealed Defect that existed in the Class Vehicles, Plaintiffs and
6 Class Members would have paid less for their vehicles or would not have purchased
7 or leased them at all.

8 173. Accordingly, Ford is liable to Plaintiffs and Class Members for
9 damages in an amount to be proven at trial.

10 174. Ford's acts were done maliciously, oppressively, deliberately,
11 with intent to defraud, and in reckless disregard of Plaintiff' and Class Members'
12 rights and well-being to enrich Ford. Ford's conduct warrants an assessment of
13 punitive damages in an amount sufficient to deter such conduct in the future, which
14 amount is to be determined according to proof.

15 **SIXTH CAUSE OF ACTION**

16 (Unjust Enrichment)

17 175. Plaintiffs incorporates by reference each allegation set forth in
18 the preceding paragraphs.

19 176. Ford has been unjustly enriched by the purchases and leases of
20 the Class Vehicles by Plaintiffs and Class Members through Plaintiffs and Class
21 Members purchasing/leasing Class Vehicles from Ford and purchasing replacement
22 parts from Ford that Plaintiffs and Class Members would not have purchased/leased
23 but for Ford's misconduct alleged above with respect to the Flex Disc Defect.

24 177. Plaintiffs and Class Members unknowingly conferred a benefit
25 on Ford of which Ford had knowledge, since Ford was aware of the defective
26 nature of the Class Vehicles' flex discs and the resultant catastrophic failure and
27 safety risk, but failed to disclose this knowledge and misled Plaintiffs and Class
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1 Members regarding the nature and quality of the Class Vehicles while profiting
2 from this deception.

3 178. The circumstances are such that it would be inequitable,
4 unconscionable, and unjust to permit Ford to retain the benefit of profits that it
5 unfairly obtained from Plaintiffs and Class Members. These profits include the
6 premium price Plaintiffs and the Class paid for the Class Vehicles and the cost of
7 the parts bought from Ford used to replace the cracked or failed flex discs and to
8 repair collaterally damaged vehicle components.

9 179. Plaintiffs and Class Members, having been damaged by Ford's
10 conduct, are entitled to recover or recoup damages as a result of the unjust
11 enrichment of Ford to their detriment.

12 **SEVENTH CAUSE OF ACTION**

13 (Violation of California's Unfair Competition Law, Cal. Bus. & Prof. Code
14 § 17200, *et seq.*)

15 180. Plaintiffs hereby incorporates by reference the allegations
16 contained in the preceding paragraphs of this Complaint.

17 181. Plaintiffs brings this cause of action for themselves and on
18 behalf of Class Members.

19 182. California Business & Professions Code § 17200 prohibits acts
20 of "unfair competition," including any "unlawful, unfair or fraudulent business act
21 or practice" and "unfair, deceptive, untrue or misleading advertising." Ford engaged
22 in conduct that violated each of this statute's three prongs.

23 183. Ford committed an *unlawful business act or practice* in violation
24 of Cal. Bus. & Prof. Code § 17200, *et seq.*, by systematically breaching its warranty
25 obligations and by fraudulently failing to disclose a material safety defect in the
26 Class Vehicles.

27 184. Ford committed *unfair business acts and practices* in violation
28 of Cal. Bus. & Prof. Code § 17200, *et seq.*, because the acts and practices described

1 herein, including but not limited to Ford's failure to cover replacement of cracked
2 or failed flex discs and repairs to collaterally damaged components under warranty
3 and Ford's failure to provide a permanent remedy to fix the Flex Disc Defect, were
4 immoral, unethical, oppressive, unscrupulous, unconscionable, and/or substantially
5 injurious to Plaintiffs and Class Members. The Defect presents a safety hazard for
6 operators and occupants of the Class Vehicles. Ford's acts and practices were
7 additionally unfair because the harm to Plaintiffs and Class Members is substantial
8 and is not outweighed by any countervailing benefits to consumers or competition.
9 Further, Ford's acts and practices were unfair in that they were contrary to
10 legislatively declared or public policy.

11 185. Ford committed *fraudulent business acts and practices* in
12 violation of Cal. Bus. & Prof. Code § 17200, *et seq.*, when it concealed the
13 existence and nature of the Defect, while representing in its marketing, advertising,
14 and other broadly disseminated representations that the Class Vehicles were
15 "tough," "safe," "durable" vehicles "designed to do [their] job all day, every day,
16 and for many years to come," when, in fact, they are not. Ford's representations and
17 active concealment of the Defect are likely to mislead the public with regard to the
18 true defective nature of the Class Vehicles.

19 186. Ford's unfair or deceptive acts or practices occurred repeatedly
20 in the course of Ford's trade or business, and were likely to mislead a substantial
21 portion of the purchasing public.

22 187. Plaintiffs relied on Ford's material misrepresentations and
23 nondisclosures, and would not have purchased/leased, or would have paid less
24 money for, the Class Vehicles had it known the truth.

25 188. As a direct and proximate result of Ford's unfair, unlawful, and
26 deceptive practices, Plaintiffs lost money, time, and business opportunities.

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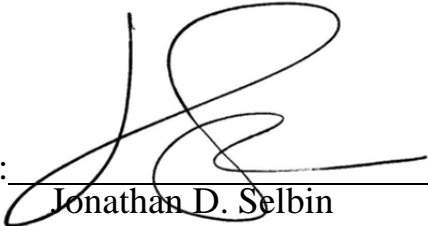
j. such other relief as may be appropriate under the circumstances.

DEMAND FOR JURY TRIAL

191. Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demands a trial by jury of any and all issues in this action so triable of right.

Dated: July 12, 2017

Respectfully submitted,

By: 
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