

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION**

ERIC GREGORY DOLL, ET AL., On)	
Behalf Of Themselves And All Others)	
Similarly Situated,)	
)	
Plaintiffs,)	C.A. No. 8:10-cv-01505-AW
)	
vs.)	
)	
FORD MOTOR COMPANY, A Delaware)	
Corporation,)	
)	
Defendants.)	
)	

CONSOLIDATED AMENDED COMPLAINT

Plaintiffs, Eric Gregory Doll (“Doll”), Donald L. Abraham (“Abraham”), David Garcia (“Garcia”), Stephen Mixon (“Mixon”), Matthew Pollack (“Pollack”), Michael Regensburger (“Regensburger”), and Patrick and Shirley Ziehr (“the Ziehers”) (collectively, “Plaintiffs”), by and through their undersigned counsel, on behalf of themselves and all other persons and entities similarly situated, allege the following facts and claims upon knowledge as to matters relating to themselves and upon information and belief as to all other matters and, by way of this Consolidated Amended Complaint (“Complaint”), aver as follows:

INTRODUCTION

1. Plaintiffs bring this class action against Defendant, Ford Motor Company (“Defendant” or “Ford”), for the benefit and protection of all individuals who purchased or leased 2004 and 2005 Ford Freestar and Mercury Monterey model vehicles manufactured, marketed, distributed and sold by Ford (“the Vehicle(s)"). Plaintiffs bring this action on behalf

of themselves and all others similarly situated (the “Class(es)”) to obtain damages, injunctive, declaratory and equitable relief, restitution and/or disgorgement of profits and additional relief as may be appropriate for the proposed Classes, as defined below.

2. The Vehicles are equipped with a defective torque converter that results in the sudden inability to maintain speed or accelerate and requires the torque converter, transmission, and/or related parts to be replaced and/or repaired at a significant monetary cost of approximately \$1,000 to \$3,000, exclusive of towing and other out-of-pocket costs necessitated by the defect. Ford’s inclusion of this defective torque converter in the Vehicles has resulted in widespread discontent, frustration and anger by Class members, and poses a significant safety hazard for drivers and passengers of the Vehicles, as well as for other vehicles traveling on public highways and streets.

3. As set forth below, Ford concealed and failed to disclose material information concerning the Vehicles’ torque converter, including, but not limited to, the fact that (1) the torque converter is defective, and (2) as a result of this defect, the torque converter and transmission inevitably fail well in advance of what is reasonably expected by consumers and the components’ expected useful life. As a result of Ford’s omissions and acts of concealment, Plaintiffs and Class members have been and will continue to be harmed and subjected to unreasonably high repair and replacement costs, and they have been and will continue to be forced to drive with a defect that is a significant safety concern. If these material facts had been disclosed by Ford, Plaintiffs and Class members would not have purchased or leased their Vehicles, or would have paid significantly less for them.

4. This action is brought to remedy violations of federal, state and common law in connection with Ford’s misconduct, including its conscious effort to conceal material facts

concerning the design, manufacture, performance history and propensity for premature failure or deterioration of the Vehicles, specifically their torque converter and transmission, during the distribution, marketing, sales, advertisement, customer service and repair performed with respect to these Vehicles.

5. Plaintiffs assert claims for breach of implied warranty under the Magnuson-Moss Act, 15 U.S.C. §§ 2301, 2301(7), 2310; breach of implied warranty under the laws of the states of Illinois, Maine, Maryland, New York, Pennsylvania, and South Carolina; violations of the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”), F.S.A. 501.201; violations of the Illinois Consumer Fraud and Deceptive Practices Act (“CFDPA”), 815 ILCS 505/1, *et seq.*; violations of the Maine Unfair Trade Practices Act (“MUTPA”), 5 M.R.S.A. § 205-A, *et seq.*; violations of the Maryland Consumer Protection Act (“MCPA”), Md. Code Ann., Commercial Law, § 13-101, *et seq.*; violations of the New York Deceptive Trade Practices Act (“NYDTPA”), N.Y. Gen. Bus. Law §349, *et seq.*; violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law (“UTPCPL”), 73 Pa.C.S.A. §§ 201-1, *et seq.*; and unjust enrichment.

THE PARTIES

6. Plaintiff, Abraham, is a citizen of the State of Illinois, and resided in Berwyn, Illinois at all times pertinent to this action. In or about July 2006, Abraham purchased a used 2005 Ford Freestar vehicle for his personal and family use from Arlington Heights Ford, an authorized Ford dealership in Arlington Heights, Illinois. He purchased his Vehicle for approximately \$18,000.

7. Plaintiff, Doll, is a citizen of the State of Maryland, and resides and resided in Bethesda, Maryland at all times pertinent to this action. In or about September 2004, Doll purchased a new 2004 Ford Freestar vehicle for his personal and family use from Lindsay Ford,

formerly Hill & Sanders Ford, an authorized Ford dealership in Wheaton, Maryland. He purchased his Vehicle for approximately \$23,000.

8. Plaintiff, Garcia, is a citizen of the State of Florida, and resides and resided in St. Cloud, Florida at all times pertinent to this action. In or about June 2009, Garcia purchased a used 2005 Ford Freestar vehicle for his personal and family use from DriveTime Kissimmee Dealership, a used car dealership in Kissimmee, Florida, for approximately \$18,000.

9. Plaintiff, Mixon, is a citizen of the State of South Carolina, and resides and resided in Sumter, South Carolina at all times pertinent to this action. In or about 2006, Mixon purchased a used 2004 Ford Freestar vehicle for his personal and family use from a Chevrolet dealership in South Carolina.

10. Plaintiff, Pollack, is a citizen of the State of Maine, and resides and resided in Topsham, Maine at all times pertinent to this action. In or about December 2004, Pollack purchased a new 2004 Ford Freestar vehicle for his personal and family use from Casco Bay Ford, an authorized Ford dealership in Yarmouth, Maine. He purchased his Vehicle for approximately \$20,000.

11. Plaintiff, Regensburger, is a citizen of the State of Pennsylvania, and resides and resided in Auburn, Pennsylvania at all times pertinent to this action. In or about November 2008, Regensburger purchased a used 2004 Mercury Monterey vehicle for his personal and family use from a Chrysler dealership in Reading, Pennsylvania. He purchased the Vehicle for \$8,950.

12. Plaintiffs, the Ziehers, are citizens of the State of Ohio, and reside and resided in Holland, Ohio at all times pertinent to this action. In or about May 2004, the Ziehers purchased a new 2004 Ford Freestar vehicle for their personal and family use from North Port Ford, an

authorized Ford dealership in Commack, New York. They purchased the Vehicle for approximately \$33,000.

13. Ford is a Delaware corporation with its principal place of business in Dearborn, Michigan. Ford, thus, is a citizen of Delaware and Michigan.

JURISDICTION AND VENUE

14. This action has been brought to remedy Ford's violations of warranty, state consumer protection and related statutes based upon the design, manufacture, distribution, marketing, sale, advertisement and provision of the Vehicles.

15. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2) because the matter in controversy, upon information and belief, exceeds \$5,000,000, exclusive of interest and costs, and this matter is a class action in which certain Class members are citizens of states other than that of Ford.

16. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because Ford does business throughout this judicial district and a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this district. At all pertinent times, Ford was and is in the business of manufacturing, marketing, advertising, distributing and selling the Vehicles throughout this judicial district and nationwide, by and through various authorized dealers. The Vehicles that are the subject of this Complaint were placed in the stream of commerce by Ford. Moreover, Plaintiff, Doll, resides in this judicial district.

SUBSTANTIVE ALLEGATIONS

17. This class action is brought against Ford for the benefit and protection of all current and former owners and lessees of the Vehicles.

18. The Vehicles at issue were manufactured, marketed and sold by Ford throughout the United States, including the states of Florida, Illinois, Maine, Maryland, New York, Pennsylvania, and South Carolina, through its established network of licensed dealers and distributors. The Vehicles had a suggested retail price of between \$20,000 and \$35,000.

19. All of the Vehicles are factory-equipped with a torque converter and 4-speed automatic transmission. The torque converter was (and is) defective at all relevant times. The torque converter defect causes the Vehicles to lose the ability to maintain speed or accelerate, suddenly and without warning, rendering the Vehicles either entirely inoperable or barely maneuverable. This sudden failure can occur at anytime when the Vehicles are in operation, including, but not limited to, when being driven on highways and streets. As a result of the defective torque converter, the Vehicles require costly replacement and/or repair of the torque converter, transmission, and/or related parts, and pose a safety hazard for drivers and passengers of the Vehicles, as well as for other vehicles traveling on public highways and streets.

20. On November 18, 2009, *The New York Times* reported that, in or around July 2009, the National Highway Traffic Safety Administration (“NHTSA”) initiated a preliminary investigation of the Vehicles to evaluate complaints of transmission failure. At the time of the preliminary investigation, NHTSA reportedly received 178 owner complaints of transmission failure. On November 10, 2009, NHTSA escalated its investigation to the Engineering Analysis (“EA”) phase. According to NHTSA, the EA phase is the “[s]econd and final phase of a NHTSA investigation, an EA is undertaken if data from a PE [Preliminary Evaluation] indicate further examination of a potential safety defect is warranted.” By this time, NHTSA received a reported 227 complaints involving a loss of power, 124 of which were attributed to “torque converter shaft splines stripping, causing a sudden loss of power to the drivetrain.” In addition,

Ford told NHTSA that it had received 2,791 warranty claims over a loss of power involving the Vehicles. Ford also told NHTSA that “while a torque converter replacement typically can cost well over \$1,000, a torque converter malfunction can sometimes damage other transmission components, requiring a complete transmission replacement, which typically costs \$3,000.”

21. Ford became aware of customer complaints regarding the torque converter defect and resulting transmission failures well before NHTSA’s July 2009 preliminary investigation. Indeed, in as early as 2004 and 2005, owners complained about this very problem to NHTSA.

For example:

- Was driving my 2004 Ford Mini Van Freestar when transmission just up and quit working. [Reported failure date: January 4, 2004].
- Was driving down the street in my 2005 Ford Freestar Van when I had to stop and put the vehicle in park to get out and check on something in the back. When I attempted to put the van back in drive, the only gear that was working was neutral. With no warning the transmission went out. We were fortunate we were not driving down the road at the time. [Reported failure date: April 25, 2004].
- I have a 2005 Ford Freestar that needs a transmission. I was driving to work today and out of no where my van stopped driving. The engine was on but the van wouldn’t move. I was just about to get onto Interstate 495 (about 100 feet from on ramp) I could have been killed my children could have been killed. My car wouldn’t move at all!!! I was scared to death. I have read many complaints today about the transmission problem with Ford Freestars. I can’t believe that there has been no recall. I [sic] will cost me \$3,000 dollars to have this fixed. I have 4 children, where do I get this money from? I have my van at a garage that we go to for regular maintenance. They are telling me there is no warranty on this van. How does this van just up and die when it is 3 years old with 55,000 miles on it and Ford is not responsible for anything? [Reported failure date: April 23, 2005].
- Sudden transmission failure without prior notice. [Reported failure date: August 29, 2005].
- Traveling on Interstate 95 with cruise control on at 79mph in heavy traffic as [sic] was end of Thanksgiving Holiday and engine revved and could not control speed – no forward motion when attempting to accelerate. Turned on the hazard lights and coasted to side of road. No warning or lights on dashboard to indicate any trouble just unable to accelerate. Towed and informed that torque converter the

issue and may be additional problems - at this time attempting to find parts (new or refurbished). [Reported failure date: November 30, 2005].

- This is the 3rd time the torque converter has gone out on our Ford Freestar Van. Two times on the Interstate traveling at interstate speeds leaving my wife stranded and terrified! This time I experienced it and took it to the transmission shop myself. There seems to be a real problem here 40000 transmissions goes, 90,000 and 97,000. Please help! [Reported failure date: December 8, 2005].

22. By 2006, hundreds, if not thousands, of owners complained about the same torque converter and transmission failure issues on such internet sites as <http://www.edmunds.com>. Moreover, consumers have made similar complaints to Ford, both directly and through its authorized dealers.

23. Upon information and belief, before selling the Vehicles to consumers, Ford was aware of the Vehicles' torque converter and transmission failure issues because consumers of the Vehicles' predecessor, the Ford Windstar, complained of the same or similar issues that they experienced with the Windstar. Under these circumstances, had Ford properly designed and tested the Vehicles' torque converter and transmission before selling the Vehicles to consumers, it would have known of the Vehicles' defective condition.

24. Despite the defective condition of the Vehicles' torque converter and resulting failure of the transmission, Ford provided owners and lessees with a mere 3 year or 36,000 mile bumper-to-bumper factory warranty known as the "New Vehicle Limited Warranty." The warranty was the same for all of the Vehicles.

25. Due to the defective nature of the Vehicles' torque converter, the Vehicles' torque converter and transmission are unreliable and do not perform in accordance with the reasonable expectations of Plaintiffs and Class members. Plaintiffs and Class members, as reasonable consumers, expected that the Vehicles' torque converter and transmission would have a useful life similar to that of conventional torque converters and 4-speed automatic transmissions that

come factory-equipped in comparable vehicles. However, the Vehicles' torque converter and transmission have a markedly reduced useful life, which is a material fact that a reasonable person would consider important in deciding whether or not to purchase (or to pay the same price for) the Vehicle, particularly considering the high repair and/or replacement costs associated with the defective torque converter and resulting transmission failure. Moreover, Plaintiffs and Class members would and do consider safety considerations that arise during the manifestation of the defect material. Plaintiffs and Class members would not have purchased, or would have paid substantially less for, their Vehicles had they been informed that the torque converter is defective and has (along with the transmission) a markedly reduced useful life. As such, the Vehicles' torque converter and transmission are unreliable and fail to perform in accordance with reasonable expectations of consumers, including Plaintiffs and Class members.

26. Ford had exclusive knowledge of the reduced useful life of the Vehicles' torque converter and transmission. Ford had access to relevant data regarding the useful life of the Vehicles' torque converter and transmission and, further, had knowledge as a result of the numerous complaints made by consumers about their Vehicles' torque converter and/or transmission failures to Ford, NHTSA, internet websites and other public fora. However, Ford concealed its knowledge of the defective nature of the Vehicles' torque converter and resulting transmission failure from Plaintiffs and Class members.

27. Ford knew or should have known of the inherent defect in the torque converter that reduced the useful life of the Vehicles' torque converter and transmission at the time of the marketing, sale and distribution of the Vehicles, particularly given that, upon information and belief, Ford was aware of the same or similar torque converter and transmission failure issues experienced by consumers of the Vehicles' predecessor, the Ford Windstar. In light of Ford's

knowledge regarding the defect and problems as detailed above, Ford's provision of a limited warranty with respect to the Vehicles, under all of these circumstances, constitutes an unlawful, unfair and fraudulent business practice, and, under all of the circumstances, the limited warranties accompanying the Vehicles are unconscionable and void.

28. As a result of Ford's conduct, Plaintiffs and the Class have been harmed and suffered injury in fact and/or actual damages and/or ascertainable loss.

29. Plaintiffs and Class members have been injured and lost money because they have paid more for the Vehicles than they would have had Ford disclosed material information regarding the Vehicles' defective torque converter and resulting transmission failure, and because they have had to pay unreasonable sums of money to repair and/or replace the Vehicles' torque converter, transmission, and/or related parts, which can range from approximately \$1,000 to \$3,000, exclusive of towing and other out-of-pocket costs necessitated by the defect.

30. Unreasonably high repair and/or replacements costs, as well as the reduced useful life of the Vehicles' torque converter and transmission, have caused further injury to Plaintiffs and the Class by virtue of the fact that they cannot safely enjoy full use of their Vehicles without the risk of the torque converter and/or transmission failing and the Vehicles suddenly losing all ability to maintain speed or accelerate, including while they are driving on highways and streets, thus rendering travel insecure and hazardous.

31. Plaintiffs and members of the Class would not have purchased the Vehicles, or would have paid significantly less for them, had Ford disclosed that the Vehicles' torque converter was (and is) defective in that it fails prematurely, causes the transmission to fail prematurely, and requires a significant amount of money to repair and/or replace. Plaintiffs and Class members have also been harmed and suffered actual damages because the Vehicles' torque

converters and transmissions have a useful life that is considerably shorter than that of conventional torque converters and transmissions. Thus, Plaintiffs and Class members have suffered and will continue to be harmed and suffer damages because the Vehicles' torque converter and transmission fail prematurely, the Vehicles' torque converter and transmission will continue to require replacement and repair, and replacement and repair will continue to be unreasonably costly and, in the case of transmission-only repairs, ultimately futile due to the inherently defective nature of the torque converter.

THE CLASS REPRESENTATIVES' EXPERIENCES

Abraham's Experience With The Vehicle

32. On or about the morning of July 19, 2010, Abraham's wife was driving the Vehicle on a public street in or near North Riverside, Illinois, when the Vehicle, which was traveling approximately 40 miles per hour, suddenly slipped out of gear and went into neutral, and then immediately failed to accelerate as a result of the defective torque converter. Abraham was required to replace the transmission at the cost of \$3,186.69, which included the cost of towing the Vehicle to the dealership. Abraham also incurred car rental expenses in the amount of \$69.19 during the period when the Vehicle was being repaired. At the time of the Vehicle's failure, the odometer reading was approximately 82,392 miles.

Doll's Experience With The Vehicle

33. In or about January 2010, Doll's wife was driving on a public highway in Bethesda, Maryland at approximately 7:30 p.m., when the Vehicle suddenly failed to accelerate as a result of the defective torque converter. Doll was required to replace the torque converter at the cost of \$2,054.68, in addition to the cost of towing the Vehicle to the dealership. At the time of the Vehicle's failure, the odometer reading was approximately 66,000 miles.

Garcia's Experience With The Vehicle

34. In or about June 2010, Garcia was driving the Vehicle on a public highway with his family in Auburndale, Florida, when the Vehicle suddenly revved, went into neutral, and failed to accelerate as a result of the defective torque converter. Garcia was required to replace the torque converter and rebuild the transmission at the cost of \$1,586 plus tax, in addition to the cost of towing the Vehicle to a mechanic. At the time of the Vehicle's failure, the odometer reading was approximately 97,000 miles.

Mixon's Experience With The Vehicle

35. In or about June 2010, Mixon's wife was driving home from church with their four children, when the Vehicle suddenly failed to accelerate as a result of the defective torque converter. Mixon was required to replace the torque converter at the cost of \$805.57. At the time of the Vehicle's failure, the odometer reading was approximately 92,000 miles.

Pollack's Experience With The Vehicle

36. In or about March 2010, Pollack's wife was driving the Vehicle with their two children on a public highway in Brunswick, Maine, when the Vehicle suddenly failed to accelerate as a result of the defective torque converter. Pollack was required to replace the transmission at the cost of \$3,113.91, in addition to the cost of towing the Vehicle to the dealership. At the time of the Vehicle's failure, the odometer reading was approximately 98,000 miles.

Regensburger's Experience With The Vehicle

37. In or about June 2009, Regensburger was driving the Vehicle on a public highway near Deer Lake, Pennsylvania, when the Vehicle suddenly failed to accelerate as a result of the defective torque converter. Regensburger was required to replace the torque converter and

rebuild the transmission at the cost of \$2,240.90. In addition, Regensburger incurred car rental expenses in the amount of \$529.98 during the period when the Vehicle was being repaired. At the time of the Vehicle's failure, the odometer reading was approximately 68,000 miles.

The Ziehers' Experience With The Vehicle

38. In or about May 2010, the Ziehers were driving the Vehicle on a public highway in Holland, Ohio, when the Vehicle suddenly failed to accelerate as a result of the defective torque converter. The Ziehers were required to replace the torque converter at the cost of \$1,800, in addition to towing costs. At the time of the Vehicle's failure, the odometer reading was approximately 63,000 miles.

39. Prior to Plaintiffs purchasing their Vehicles, Ford failed to disclose to owners and lessees of the Vehicles, including Plaintiffs, the condition and defect in the Vehicles that causes the torque converter and/or transmission to fail. Ford had a duty to disclose, but failed to disclose, all material information regarding the existence of this defect, the actual cost of the Vehicles in light of the replacement and/or repair necessitated by the defect, and the torque converter and transmission's actual shortened useful life. If Plaintiffs had known of these material facts, they would not have purchased their Vehicles, or would have paid significantly less for them.

CLASS MEMBERS' EXPERIENCES

40. The experiences of Plaintiffs mirror those of the numerous other Vehicle owners and lessees. The NHTSA Office of Defects Investigation's ("ODI") public database is replete with references to the common and profound torque converter and transmission problems that consumers have experienced with the Vehicles, including, but not limited to, the following small sample of representative complaints appearing in the ODI database:

- I have a 2004 Ford Freestar. I recently had my transmission replaced at 89,900 miles. We were on the highway at night time with an 8 year old and 7 year old when the vehicle just started stopping. There [sic] no warning lights that came on for the transmission no signs. The RPMS would go high/vehicle went would barely move. It was awful.
- 2004 Ford Freestar - transmission went out without any warning - I was turning a corner and hear a loud noise - the check transaxle light came on and I could not get the car to move - took to auto garage and they said they would have to replace but that they have seen this over and over with the 04 Freestar. This went out in the middle of an intersection on a busy street with my 3 kids in the car. This is a dangerous problem that Ford should address!
- 2004 Ford Freestar, going down road fine, engine rev, speed declined and would not move. Transmission locked due to bad torque converter. Had to replace transmission.
- Sudden transmission failure due to torque converter driving home from out of state vacation. Traveling 60 mph in passing lane when vehicle began to rapidly deaccelerate. Coasted across inside lane through traffic to shoulder of highway. Transmission fluid level was good. Towed to transmission shop and family and I waited several days for transmission to be repaired and rebuilt at cost exceeding \$2600.
- Transmission on 2004 Ford Freestar failed during normal driving, no warning whatsoever. Mileage was just over 70000. Transmission had to be replaced at a cost of \$2500. Oil and fluids had been changed regularly.
- I have a 2005 Ford Freestar with 43000 miles on it. While leaving the parking lot, the vehicle would not go forward or reverse. Had vehicle towed to Ford garage. They said I needed a torque converter. The cost is \$1500 dollars.
- My wife was driving our 2005 Ford Freestar with six kids in the van to school this morning, all of sudden, the transmission was dead on I-95 of Jacksonville, FL, the lost of transmission came so suddenly in I-95 without any earlier indications, she finally [sic] cruise it to the left [sic] should of I-95 and with the help of two police officers and one road ranger, all the passengers got transferred to a safe place. The van was towed to a repair shop where we were told the transmission needs to be changed at cost of at least more than \$2000.00.
- I own a 2005 Ford Freestar, while driving on the one a busy road I pressed the gas pedal but the engine just revved it would not accelerate or reverse. This was an abrupt loss of power with no prior problems. As a consequence of this destabilizing event the small children I had in the car were in danger. Fortunately, I was able to coast down due to an incline in the road. A tow truck company was

called and taken to a dealership service mechanic. I am going to have to pay around \$3000 for new transmission.

- No prior warning, working fine then not working at all...will not go into gear (engine will rev, you can shift to reverse, or drive but nothing). Transmission failure on my Mercury Monterey 2004. I have not corrected the problem as of yet dealership says new transmission cost is \$3500.
- While driving our 2004 Mercury Monterey the transmission quit working right in the middle of the road. I was able to get to the side of the road with out incident. The van only has 78,000 miles on it and would expect more than that on a major component. I'm still making payments on a van that doesn't work. To get it fixed is between \$1500 to 2500.
- I was traveling down 78 (a major road in town and my van 04 Mercury Monterey) just quit going. I had to coast into a turn lane to get out of the main road. It was very dangerous and I had my kids in the car. There was no warning at all, it just quit going. I called my dad and he got the repair shop to pull my car out of the turn lane. The mechanic said it was my transmission; it needed to be replaced.
- While driving way back home from work the transmission failed all of sudden causing me stranded on the middle of highway during heavy rush traffic hours. End up spending \$175.00 for towing and when called the next day to Ford dealer and Mercury dealership was approximately \$3500.00 to \$4500.00. Repaired the transmission from other transmission shop spending \$2500.00.

41. To date, despite the numerous reports of torque converter and transmission failure occurring with the Vehicles, Ford has not notified Class members about the Vehicles' torque converter defect that is responsible for the failure. Moreover, Ford has attempted to diminish the seriousness of the defect, telling NHTSA that the failures do "not present an unreasonable risk to safety." Indeed, as the November 18, 2009 *New York Times* article reported, "The automaker argued that despite losing power, a vehicle 'remains readily controllable and can be safely maneuvered and stopped. Steering and braking are unaffected.'" Ford's statements, however, are belied by the numerous consumer complaints involving a serious risk to personal safety as a consequence of the defective torque converter and resulting transmission failures, including the experiences associated with Plaintiffs' Vehicles.

TOLLING OF THE STATUTE OF LIMITATIONS

42. The causes of action alleged herein accrued upon discovery of the latently defective nature of the Vehicles. Because the defect and limitations alleged herein are latent and because Ford took steps to conceal the true character, nature and quality of the Vehicles equipped with a defective torque converter, among other reasons, Plaintiffs and members of the Classes did not discover and could not have discovered the problems and defects alleged herein through the exercise of reasonable diligence.

43. Any applicable statutes of limitations have been tolled by Ford's knowing and active concealment and denial of the facts as alleged herein. Plaintiffs and Class members have been kept ignorant of vital information essential to the pursuit of these claims, without any fault or lack of diligence on their part. Plaintiffs and members of the Classes could not reasonably have discovered the defects and problems alleged herein because of Ford's fraudulent concealment.

44. Ford was and is under a continuous duty to disclose to Plaintiffs and Class members the true character, quality, and nature of the Vehicles' torque converter and transmission. Ford knowingly, affirmatively, and/or actively concealed, and continues to conceal, the true character, quality and nature of the Vehicles' defective torque converter and resulting failed transmission.

45. Ford knew or should have known that Plaintiffs and the Classes would reasonably rely upon Ford's knowing, affirmative, and/or active concealment. Based on the foregoing, Ford is estopped from relying on any statutes of limitation in defense of this action.

CLASS ACTION ALLEGATIONS

46. Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3), on behalf of themselves and the following Classes:

Florida Class

All persons or entities who purchased or leased, not for resale, a 2004 or 2005 Ford Freestar or Mercury Monterey in the State of Florida.

Illinois Class

All persons or entities who purchased or leased, not for resale, a 2004 or 2005 Ford Freestar or Mercury Monterey in the State of Illinois.

Maine Class

All persons or entities who purchased or leased, not for resale, a 2004 or 2005 Ford Freestar or Mercury Monterey in the State of Maine.

Maryland Class

All persons or entities who purchased or leased, not for resale, a 2004 or 2005 Ford Freestar or Mercury Monterey in the State of Maryland.

New York Class

All persons or entities who purchased or leased, not for resale, a 2004 or 2005 Ford Freestar or Mercury Monterey in the State of New York.

Pennsylvania Class

All persons or entities who purchased or leased, not for resale, a 2004 or 2005 Ford Freestar or Mercury Monterey in the State of Pennsylvania.

South Carolina Class

All persons or entities who purchased or leased, not for resale, a 2004 or 2005 Ford Freestar or Mercury Monterey in the State of South Carolina.

Excluded from the Classes (individually and/or collectively, "Class" or "Classes") are Ford, as well as Ford's affiliates, employees, officers and directors, including franchised dealers; any person who has experienced physical injury as a result of the defects at issue in this litigation;

and the Judge to whom this case is assigned. Plaintiffs reserve the right to amend the Class definitions if discovery and further investigation reveals that the proposed Classes should be expanded or otherwise modified.

47. The members of each of the Classes are so numerous that joinder would be impracticable. Plaintiffs reasonably estimate that there are over 200,000 purchasers of the Vehicles throughout the United States, and that there are at least 1,000 members of the Classes. The members of the Classes are readily identifiable from information and records in Ford's possession, custody or control. The disposition of these claims will provide substantial benefits to the Classes.

48. There are questions of law and fact common to the members of the Classes that predominate over any questions affecting only individual Class members, including, but not limited to, the following:

- a. Whether the Vehicles are defective;
- b. Whether Ford omitted material facts from its communications and disclosures to the Class and the public regarding the defect inherent in the Vehicles' torque converter and the transmission failures resulting therefrom;
- c. Whether Ford knew, or was reckless in not knowing, that its omissions concerning the Vehicles' defect were deceptive, false and/or misleading;
- d. Whether Ford's concealment of material facts, as well as their false, deceptive and/or misleading statements of facts regarding the Vehicles, were likely to deceive the public;
- e. Whether, by the misconduct set forth in this Complaint, Ford has violated the laws under which the claims are asserted herein;
- f. Whether, by the misconduct set forth in this Complaint, Ford has breached its implied warranty of merchantability; and

- g. Whether, as a result of Ford's misconduct, Plaintiffs and the Classes are entitled to equitable relief and/or other relief, and, if so, the nature of such relief.

49. Plaintiffs' claims are typical of the claims of the members of the Classes.

Plaintiffs have no interests antagonistic to those of the Classes and are not subject to any unique defenses.

50. Plaintiffs will fairly and adequately protect the interests of all members of the Classes and have retained attorneys experienced in class action and complex litigation.

51. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy for, *inter alia*, the following reasons:

- a. It is economically impractical for members of the Classes to prosecute individual actions;
- b. The Classes are readily definable;
- c. Prosecution as a class action will eliminate the possibility of repetitious litigation; and
- d. A class action will enable claims to be handled in an orderly and expeditious manner. A class action will save time and expense and will ensure uniformity of decisions.

52. Plaintiffs do not anticipate any difficulty in the management of this litigation.

53. Ford has or has access to information for the Class members, which may be used for the purpose of providing notice of the pendency of this action.

FIRST CAUSE OF ACTION

Asserted On Behalf Of Certain Classes For Violations Of The Magnuson-Moss Act

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

55. Plaintiffs and the Classes seek to recover for Ford's breach of implied warranty of merchantability under the laws of the states of Illinois, Maine, Maryland, New York,

Pennsylvania, and South Carolina pursuant to the Magnuson-Moss Act, 15 U.S.C. §§ 2301, 2301(7), 2310.

56. Ford's implied warranty of merchantability accompanied the sale of the Vehicles sold to Plaintiffs and members of the Classes.

57. Ford is a merchant in the sale of the Vehicles to Plaintiffs and the Class members. Ford provided Plaintiffs and the Class members with an implied warranty that the Vehicles were merchantable and fit for the ordinary purposes for which they were sold. The Vehicles are not fit for their ordinary purpose because, *inter alia*, the Vehicles' torque converter and transmission have a useful life of less than that of a conventional torque converter and transmission, and the Vehicles do not provide a safe or reliable mode of transportation in light of the propensity of the Vehicles' torque converter and transmission to fail and the sudden occurrence of a loss of ability to maintain speed or accelerate associated with such failure, including, but not limited to, when the Vehicle is being driven on highways and streets.

58. The alleged defect is so basic that it renders the Vehicles as unfit for the ordinary purpose of providing reliable and safe transportation. The automobiles were sold with the defect and the defect rendered the goods unfit for ordinary and safe use.

59. The alleged defect existed at the time the Vehicles left the manufacturer and were not caused by any acts or omissions on the part of Plaintiffs or the Class members.

60. Ford knew or had reason to know that Plaintiff and the Class members purchased or leased the Vehicles to obtain safe and reliable transportation in connection with their operation of the Vehicles.

61. The Vehicles do not conform to the promises and affirmations uniformly issued by Ford in its sales materials and warranties, and are not of fair or average quality.

62. Plaintiffs and the Class members have used the Vehicle for their intended and ordinary purpose of providing transportation.

63. Plaintiffs and the Class members have performed each and every duty required under the terms of the warranties, except as may have been excused or prevented by the conduct of Ford or by operation of law in light of Ford's unconscionable conduct.

64. Plaintiffs and the Class members have provided sufficient and timely notice to Ford regarding the problems they experienced with the Vehicles' torque converter and transmission and, notwithstanding such notice, Ford has failed and refused to offer Plaintiffs and the Class members an effective remedy.

65. In addition, Ford has received, on information and belief, hundreds, if not thousands, of complaints and other notices from consumers advising them of the problems associated with the Vehicles' defective torque converter and resulting transmission failures, thereby constituting more than sufficient and timely notice to Ford. Moreover, despite public statements regarding the defect, Ford has refused to accept responsibility for its conduct.

66. By virtue of the conduct described of herein, Ford has breached the implied warranty of merchantability.

67. Plaintiffs and the Class members have been damaged as a direct and proximate result of Ford's breach of the implied warranty.

68. As a direct and proximate result of Ford's breach of the implied warranty, Plaintiffs and the Class members have been caused to suffer monetary damages to replace and/or repair their Vehicle's torque converter, transmission, and/or related parts, and other damages as a result of the breach of implied warranty.

69. As a result of the breach of implied warranty, Plaintiffs and the Class members have further suffered damages, including incidental and consequential damages, such as loss of the use of their vehicles, loss of enjoyment of their property, the difference between the value of the goods accepted and the value they would have had if they had been as warranted, and for those in the Classes who have not yet replaced or repaired the defective torque converter, the cost of what it would cost to repair or replace the defective torque converter and related damaged to the transmission.

70. Plaintiffs and the Class are entitled to recover damages and reasonable attorneys' fees and costs as a result of Ford's violations of the Magnuson-Moss Act.

SECOND CAUSE OF ACTION

**Asserted On Behalf Of Certain Classes For Breach Of Implied Warranty
Under The Laws Of The States Of Illinois, Maine, Maryland, New York, Pennsylvania,
And South Carolina**

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

72. Plaintiffs and the Classes seek to recover for Ford's breach of implied warranty of merchantability under the laws of the states of Illinois, Maine, Maryland, New York, Pennsylvania, and South Carolina.

73. Ford's implied warranty of merchantability accompanied the sale of the Vehicles sold to Plaintiffs and members of the Classes.

74. Ford is a merchant in the sale of the Vehicles to Plaintiffs and the Class members. Ford provided Plaintiffs and the Class members with an implied warranty that the Vehicles were merchantable and fit for the ordinary purposes for which they were sold. The Vehicles are not fit for their ordinary purpose because, *inter alia*, the Vehicles' torque converter and transmission

have a useful life of less than that of a conventional torque converter and transmission, and the Vehicles do not provide a safe or reliable mode of transportation in light of the propensity of the Vehicles' torque converter and transmission to fail and the sudden occurrence of a loss of ability to maintain speed or accelerate associated with such failure, including, but not limited to, when the Vehicle is being driven on highways and streets.

75. The alleged defect is so basic that it renders the Vehicles as unfit for the ordinary purpose of providing reliable and safe transportation. The automobiles were sold with the defect and the defect rendered the goods unfit for ordinary and safe use.

76. The alleged defect existed at the time the Vehicles left the manufacturer and were not caused by any acts or omissions on the part of Plaintiffs or the Class members.

77. Ford knew or had reason to know that Plaintiffs and the Class members purchased or leased the Vehicles to obtain safe and reliable transportation in connection with their operation of the Vehicles.

78. The Vehicles do not conform to the promises and affirmations uniformly issued by Ford in its sales materials and warranties, and are not of fair or average quality.

79. Plaintiffs and the Class members have used the Vehicle for their intended and ordinary purpose of providing transportation.

80. Plaintiffs and the Class members have performed each and every duty required under the terms of the warranties, except as may have been excused or prevented by the conduct of Ford or by operation of law in light of Ford's unconscionable conduct.

81. Plaintiffs and the Class members have provided sufficient and timely notice to Ford regarding the problems they have experienced with the Vehicles' torque converter and

transmission and, notwithstanding such notice, Ford has failed and refused to offer Plaintiffs and the Class members an effective remedy.

82. In addition, Ford has received, on information and belief, hundreds of complaints and other notices from consumers advising them of the problems associated with the Vehicles' defective torque converter and resulting transmission failures, thereby constituting more than sufficient and timely notice to Ford.

83. By virtue of the conduct described of herein, Ford has breached the implied warranty of merchantability.

84. Plaintiffs and the Class members have been damaged as a direct and proximate result of Ford's breach of the implied warranty.

85. As a direct and proximate result of Ford's breach of the implied warranty, Plaintiffs and the Class members have been caused to suffer monetary damages to replace and/or repair their Vehicles' torque converter, transmission, and/or related parts, and other damages as a result of the breach of implied warranty.

THIRD CAUSE OF ACTION
Asserted On Behalf Of Plaintiff, Garcia, And The Florida Class
For Violations Of The FDUTPA

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

87. This claim is asserted on behalf of Plaintiff, Garcia, and the Florida Class against Ford.

88. Plaintiff, Garcia, and the Florida Class members are consumers within the meaning of FDUPTA.

89. Ford, through its conduct, is engaged in trade and/or commerce within the meaning of FDUTPA.

90. The purchase or lease of the Vehicles by Plaintiff, Garcia, and the Florida Class members as described herein constitutes consumer transactions within the meaning of FDUTPA.

91. The practices of Ford violates the FDUTPA for, *inter alia*, the following reason:

- a. Ford omitted and concealed material facts from its communications and disclosures to Plaintiff, Garcia, and the Florida Class regarding the defects inherent in the Vehicles;

92. By the conduct described herein, Ford has engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of trade or commerce.

93. The omissions and concealments of material facts by Ford were likely to deceive reasonable consumers and a reasonable consumer would have relied on these omissions.

94. Had Ford disclosed all material information regarding the Vehicles to Plaintiff, Garcia, and other members of the Florida Class, they would not have purchased or leased the Vehicles.

95. As a direct and proximate cause of Ford's violations of the FDUTPA, Plaintiff, Garcia, and the Florida Class have suffered injury in fact and/or actual damage, in that they purchased or leased Vehicles with defective torque converters and resulting failed transmissions that are unreasonably expensive to repair and/or replace. Had Ford disclosed the true quality, nature and drawbacks of the Vehicles, Plaintiff, Garcia, and the Florida Class members would not have purchased, or would have paid significantly less, for the Vehicles. Plaintiff, Garcia, and the Florida Class have suffered further harm in that the Vehicles' torque converter and transmission fails prematurely, they have paid or will be required to pay significantly more to

repair or replace the torque converter and/or transmission than is reasonably anticipated and represented, they have lost use of their Vehicles, and the Vehicles have suffered diminution in value.

FOURTH CAUSE OF ACTION
Asserted On Behalf Of Plaintiff, Abraham, And The Illinois Class
For Violations Of The CFDPA

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

97. This claim is asserted on behalf of Plaintiff, Abraham, and the Illinois Class against Ford.

98. The CFDPA prohibits “[u]nfair methods of competition and unfair or deceptive acts or practices, including, but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation, or concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact...in the conduct of any trade or commerce.”

99. Ford violated the CFDPA by concealing, suppressing or omitting material facts regarding the Vehicles, including, but not limited to the fact that the Vehicles’ torque converter contains an inherent defect that causes the torque converter and/or transmission to fail well before their useful life, that the Vehicles do not provide a safe or reliable mode of transportation in light of the propensity of the Vehicles’ torque converter and/or transmission to fail and the sudden occurrence of a loss of power associated with such failure, and that the defect of the torque converter results in the costly replacement and/or repair of the torque converter, transmission, and/or related parts. This concealed or omitted information is the type of

information upon which a consumer would be expected to rely in making a decision whether to purchase, or how much to pay for, the Vehicles.

100. Ford concealed, suppressed or omitted these material facts while conducting trade and commerce with the intent that Plaintiff, Abraham, and the Illinois Class would rely on the omissions in the purchase or lease of their Vehicles.

101. To this day, Ford continues to violate the CFDPA by actively concealing the material information about the Vehicles and their torque converter and transmission, and by representing to Plaintiff, Abraham, and members of the Illinois Class that the Vehicles are defect-free and safe.

102. Ford intended that Plaintiff, Abraham, and the Illinois Class members would rely on its concealment and omission of material facts, which occurred in the course of conduct involving trade and commerce.

103. As a direct and proximate cause of Ford's violations of the CFDPA, Plaintiff, Abraham, and the Illinois Class have suffered injury in fact and/or actual damage, in that they purchased or leased Vehicles with defective torque converters and resulting failed transmissions that are unreasonably expensive to repair and/or replace. Had Ford disclosed the true quality, nature and drawbacks of the Vehicles, Plaintiff, Abraham, and the Illinois Class members would not have purchased, or would have paid significantly less, for the Vehicles. Plaintiff, Abraham, and the Illinois Class have suffered further harm in that the Vehicles' torque converters and transmission fail prematurely, they have paid or will be required to pay significantly more to repair or replace the torque converter and/or transmission than is reasonably anticipated and represented, they have lost use of their Vehicles, and the Vehicles have suffered diminution in value.

FIFTH CAUSE OF ACTION
Asserted On Behalf Of Plaintiff, Pollack, And The Maine Class
For Violations Of MUTPA

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

105. Plaintiff, Pollack, and the Maine Class members, as well as Ford, are “persons” within the meaning of the MUTPA, and the Vehicles are consumer goods within the meaning of MUTPA.

106. At all pertinent times, Ford was engaged in “trade” and “commerce” within the meaning of MUTPA.

107. The MUTPA prohibits unfair methods of competition, as well as unfair, deceptive and unconscionable acts or practices in consumer and other sales transactions, and provides consumers with private rights of action to redress such conduct.

108. Ford’s business acts and practices alleged herein constitute unfair methods of competition, as well as unfair, deceptive and unconscionable acts or practices, within the meaning of the MUTPA.

109. Ford acted in the face of prior notice that its conduct was deceptive, unfair and unconscionable. It is well-established in MUTPA jurisprudence that material omissions regarding a product constitute violations of these statutes.

110. Ford violated the MUTPA by inserting an unconscionable provision into a contract and limiting its warranties, when it knew or should have known the Vehicles were defective.

111. Ford violated the MUTPA by fraudulently concealing from and/or intentionally failing to disclose to Plaintiff, Pollack, and the Maine Class the true nature and costs associated with the Vehicles.

112. Ford violated the MUTPA by selling Vehicles that could not be reasonably repaired and instead require prohibitively high costs to repair or replace the torque converter, transmission, and/or related parts.

113. Ford actively concealed its knowledge regarding the inherent defect of the Vehicles' torque converter and the resulting failure of the transmission.

114. Ford failed to act in the face of prior notice regarding the problems associated with the Vehicles, thereby rendering its conduct unconscionable under all of the circumstances.

115. The omissions by Ford were likely to deceive reasonable consumers, and a reasonable consumer would have relied on these omissions.

116. Ford intended that Plaintiff, Pollack, and the Maine Class members would rely on its omissions, which occurred in the course of conduct involving trade and commerce.

117. Ford had a duty to disclose the torque converter defect in the Vehicles, the high cost of repairing or replacing the torque converter, transmission, and/or related parts, and the markedly lower useful life of the Vehicles' torque converter and transmission when compared to conventional torque converters and transmissions. By concealing this information that was material to Plaintiff, Pollack, and the Maine Class members, Ford violated the MUTPA.

118. Had Ford disclosed all material information regarding the Vehicles to Plaintiff, Pollack, and other members of the Maine Class, they would not have purchased or leased the Vehicles, or would have paid significantly less for them.

119. To this day, Ford continues to violate the MUTPA by actively concealing the material information about the Vehicles and their torque converter and transmission, and by representing to Plaintiff, Pollack, and members of the Maine Class that the Vehicles are defect-free and safe.

120. As a direct and proximate cause of Ford's violations of the MUTPA, Plaintiff, Pollack, and the Maine Class have suffered injury in fact and/or actual damage, in that they purchased or leased Vehicles with defective torque converters and resulting failed transmissions that are unreasonably expensive to repair and/or replace. Had Ford disclosed the true quality, nature and drawbacks of the Vehicles, Plaintiff, Pollack, and the Maine Class members would not have purchased, or would have paid significantly less, for the Vehicles. Plaintiff, Pollack, and the Maine Class have suffered further harm in that the Vehicles' torque converter and transmission fail prematurely, they have paid or will be required to pay significantly more to repair or replace the torque converter and/or transmission than is reasonably anticipated and represented, they have lost use of their Vehicles, and the Vehicles have suffered diminution in value.

121. Ford's violations of the MUTPA were knowing and willful.

122. Plaintiff, Pollack, on behalf of himself and the Maine Class, demands judgment against Ford for equitable relief available under the MUTPA, and further reserves the right to subsequently seek monetary damages as permitted by the MUTPA.

SIXTH CAUSE OF ACTION

**Asserted On Behalf Of Plaintiff, Doll, And The Maryland Class For Violations Of The
MCPA**

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

124. Plaintiff, Doll, and the Maryland Class members are consumer within the meaning of the MCPA and Md. Code Ann., Commercial Law § 13-101, *et seq.*

125. The Vehicles are consumer goods within the meaning of the MCPA and provided services within the MCPA's meaning of the term consumer services.

126. The MCPA prohibits the use of any "unfair or deceptive trade practice" in the sale or lease of any consumer goods or services.

127. Ford violated the MCPA by, *inter alia*, engaging in the following unfair deceptive acts or practices:

- a. Failing to disclose material facts that deceived and had the tendency to deceive; and
- b. Engaging in deception, fraud, false pretense, false premise, misrepresentation, or knowing concealment, suppression, or omission of any material fact with the intent that a consumer rely on the same in connection with: (i) the promotion or sale of consumer goods or services; or (ii) the subsequent performance of a merchant with respect to an agreement of sale or lease.

128. Ford violated the MCPA by concealing, suppressing or omitting material facts regarding the Vehicles, including, but not limited to, the fact that the Vehicles' torque converter is defective, that as a result of such defect, the Vehicles' torque converter and transmission fail prematurely, and that the cost of replacing or repairing the torque converter and/or transmission is prohibitively high. This concealed or omitted information is the type of information upon which a consumer would be expected to rely on in making a decision whether to purchase, or how much to pay for, the Vehicles.

129. Ford concealed, suppressed or omitted these material facts in conducting trade and commerce with the intent that Plaintiff, Doll, and the Maryland Class would rely on the omissions in the purchase or lease of their Vehicles.

130. To this day, Ford continues to violate the MCPA by actively concealing the material information about the Vehicles and their torque converter and transmission and by representing to Plaintiff, Doll, and members of the Maryland Class that the Vehicles are defect-free and safe.

131. Ford intended that Plaintiff, Doll, and the Maryland Class members would rely on its concealment and omission of material facts, which occurred in the course of conduct involving trade and commerce.

132. As a direct and proximate cause of Ford's violations of the MCPA, Plaintiff, Doll, and the Maryland Class have suffered injury in fact and/or actual damage, in that they purchased or leased Vehicles with defective torque converter and resulting failed transmissions that are unreasonably expensive to repair and/or replace. Had Ford disclosed the true quality, nature and drawbacks of the Vehicles, Plaintiff, Doll, and the Maryland Class members would not have purchased, or would have paid significantly less, for the Vehicles. Plaintiff, Doll, and the Maryland Class have suffered further harm in that the Vehicles' torque converter and transmission fail prematurely, they have paid or will be required to pay significantly more to repair or replace the torque converter and/or transmission than is reasonably anticipated and represented, they have lost use of their Vehicles, and the Vehicles have suffered diminution in value.

133. Plaintiff, Doll, and the Maryland Class are entitled to recover damages, reasonable attorneys' fees and costs, and expert expenses as a result of Ford's violations of the MCPA.

SEVENTH CAUSE OF ACTION

Asserted On Behalf Of Plaintiff, The Ziehrs, And The New York Class For Violations Of The NYDTPA

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

135. This claim is asserted on behalf of Plaintiffs, the Ziehrs, and the New York Class against Ford.

136. The NYDTPA prohibits “deceptive acts and practices in the conduct of any business, trade or commerce, or in the furnishing of any service in this state... .” Ford’s conduct, as described above, is unlawful.

137. Ford violated the NYDTPA by fraudulently concealing from and/or failing to disclose to Plaintiffs, the Ziehrs, and the New York Class the true nature and costs associated with the Vehicles.

138. Ford violated the NYDTPA by actively misrepresenting in, and/or concealing and omitting from, its advertising, marketing and other communications, material information about the Vehicles in a manner that was deceptive, including, *inter alia*, by concealing, suppressing or omitting material facts that the Vehicles’ torque converter is defective, that as a result of the defect, the Vehicles’ torque converter and transmission fail prematurely, and that the cost of replacing or repairing the torque converter and/or transmission is prohibitively high. This concealed or omitted information is the type of information upon which a consumer would be expected to rely on in making a decision whether to purchase, or how much to pay for, the Vehicles.

139. Plaintiffs, the Ziehrs, and the New York Class members relied on Ford’s concealment and omission of material facts.

140. To this day, Ford continues to violate the NYDTPA by actively concealing the material information about the Vehicles and their torque converter and transmission and by representing to Plaintiffs, the Ziehrs, and members of the New York Class that the Vehicles are defect-free and safe.

141. As a direct and proximate cause of Ford's violations of the NYDTPA, Plaintiffs, the Ziehrs, and members of the New York Class have suffered injury in fact and/or actual damage, in that they purchased or leased Vehicles with a defective torque converter and resulting failed transmissions that are unreasonably expensive to repair and/or replace. Had Ford disclosed the true quality, nature and drawbacks of the Vehicles, Plaintiffs, the Ziehrs, and the New York Class members would not have purchased, or would have paid significantly less, for the Vehicles. Plaintiffs, the Ziehrs, and the New York Class have suffered further harm in that the Vehicles' torque converter and transmission fail prematurely, they have paid or will be required to pay significantly more to repair or replace the torque converter and/or transmission than is reasonably anticipated and represented, they have lost use of their Vehicles, and the Vehicles have suffered diminution in value.

EIGHTH CAUSE OF ACTION
Asserted On Behalf Of Plaintiff, Regensburger, And The Pennsylvania Class
For Violations Of The UTPCPL

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

143. This claim is asserted on behalf of Plaintiff, Regensburger, and the Pennsylvania Class against Ford.

144. Ford is a manufacturer, marketer, seller and/or distributor of the Vehicles.

145. The conduct alleged above constitutes unfair methods of competition or unfair or deceptive acts or practices in violation of Section 201-2(4)(v),(vii), (xiv) and (xxi) of the UTPCPL, 73 Pa.C.S.A. §§ 201-1, *et seq.*

146. The UTPCPL applies to the claims of Plaintiff, Regensburger, and the other members of the Pennsylvania Class because the conduct which constitutes violations of the UTPCPL by the Ford occurred within the Commonwealth of Pennsylvania.

147. Plaintiff, Regensburger, and the other members of the Pennsylvania Class are consumers who purchased or leased the Vehicles, and did so primarily for personal, family or household purposes within the meaning of 73 Pa.C.S.A. § 201-9.2.

148. Ford used and employed unfair methods of competition and/or unfair or deceptive acts or practices within the meaning of 73 Pa.C.S.A. §§ 201-2 and 201-3. Such unfair methods of competition and/or unfair or deceptive acts or practices include, but are not limited to the following:

- b. Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding (§ 201-2(4)(xxi)).

149. Ford knew or should have known that the Vehicles were defective, had torque converters and transmissions with a markedly reduced useful life, were not suitable for use, that the cost of replacing or repairing the defective torque converter and resulting failed transmission is prohibitively high, and otherwise were not as represented by Ford.

150. Ford's concealments, omissions, deceptions and conduct were likely to deceive and likely to cause misunderstanding and/or in fact caused Plaintiff, Regensburger, and the other members of the Pennsylvania Class to be deceived and to misunderstand the suitability of the Vehicles for use.

151. Ford intended that Plaintiff, Regensburger, and the other members of the Pennsylvania Class would rely on its concealments, warranties, deceptions and/or omissions.

152. Plaintiff, Regensburger, and the other members of the Pennsylvania Class have been damaged as a proximate result of Ford's violations of the UTPCPL and have suffered actual, ascertainable losses by virtue of having purchased or leased the Vehicles.

153. As a direct and proximate result of Ford's violations of the UTPCPL, as set forth above, Plaintiff, Regensburger, and the other members of the Pennsylvania Class have suffered an ascertainable loss of money and are therefore entitled to relief, including damages, plus triple damages, costs and attorneys' fees under Section 201-9.2 of the UTPCPL.

NINTH CAUSE OF ACTION
Asserted On Behalf Of All Classes For Unjust Enrichment

154. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs of this Complaint to the extent not inconsistent with the claims asserted in this Court.

155. This claim is asserted in the alternative on behalf of Plaintiffs and the members of the Classes to the extent that there is any determination that Plaintiffs do not have standing to assert any contractual claims asserted against Ford on the alleged basis of absence of contractual privity or otherwise.

156. By its wrongful acts and omissions described herein, including selling the Vehicles with defective torque converters and resulting failed transmissions, Ford was unjustly enriched at the expense of Plaintiffs and the Classes.

157. Plaintiffs and the Class members conferred a benefit upon Ford by purchasing the Vehicles at the full price for fully functional vehicles equipped with appropriate and working torque converters and transmissions.

158. Ford knew that the Classes were purchasing the Vehicles and still accepted the sum contemplated for fully functional vehicles equipped with appropriate and working torque converters and transmissions.

159. Under the circumstances, it would be inequitable for Ford to retain the profits, benefits, and other compensation obtained through its wrongful conduct in manufacturing, marketing and selling the Vehicles with defective torque converters and resulting failed transmissions to Plaintiffs and the Classes. Natural justice and equity require that Plaintiffs and the Classes recover under the circumstances.

160. Plaintiffs, on behalf of themselves and all others similarly situated, seek restitution from Ford, and an order of this Court proportionally disgorging all profits, benefits, and other compensation wrongfully obtained by Ford from its conduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the Classes, pray for judgment against Ford granting the following relief:

- a. An order certifying this case as a class action and appointing Plaintiffs' counsel to represent the Classes;
- b. Restitution and disgorgement of all amounts obtained by Ford as a result of its misconduct, together with interest thereon from the date of payment, to the victims of such violations;
- c. All recoverable compensatory and other damages sustained by Plaintiffs and the Classes;
- d. Actual and/or statutory damages for injuries suffered by Plaintiffs and the Classes in the maximum amount permitted by applicable law;

- e. An order (1) requiring Ford to immediately cease its wrongful conduct as set forth above; (2) enjoining Ford from continuing to conceal material information and conduct business via the unlawful, unfair and deceptive business acts and practices complained of herein; (3) ordering Ford to engage in a corrective notice campaign; (4) requiring Ford to refund to Plaintiffs and all Class members the funds paid to them for the Vehicles equipped with defective torque converters and resulting failed transmissions or, in the alternative, requiring Ford to replace all of the Vehicles' torque converters and transmissions upon failure and to reimburse all consumers who have already paid to replace and/or repair their Vehicles' torque converter and/or transmission;
- f. Appropriate and additional injunctive relief;
- g. Statutory pre-judgment and post-judgment interest on any amounts;
- h. Payment of reasonable attorneys' fees, costs, and expenses as may be allowable under applicable law; and
- i. Such other relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all causes of action so triable.

Dated: September 17, 2010

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