

1 COMPLAINT

2 **TO THE HONORABLE UNITED STATES DISTRICT JUDGE:**

3 **BENJAMIN ASCENSIO, CALEB BARNES, LINDA BOURLAND, TERRIE**
4 **BUMPUS, FELTON BURTON, TERESA BYRD, ALVIN CEARLEY, ALICE CLARK,**
5 **FLORINDA ESPARZA, RUBY GRANADOS, TAYLOR HARRELL, DEBORAH HEAD,**
6 **JOEL HINOJOSA, SHARON JOHNSON, JOSH LAZETTE, JAMIE LOPEZ-**
7 **MARTINEZ, MICHELLE POPE, DANIEL REYES, MEGAN RICE, TERESA**
8 **RODRIGUEZ, IVY ROSENBERG, JUANITA SANCHES, JULIAN SANTANA, BILL**
9 **SMITH, CHRISTINE TAMEZ, DAWN UTSEY, STACI WYATT, ROBERT**
10 **ZEBROWSKI, Plaintiffs, complain of FORD MOTOR COMPANY, Defendant, and file this**
11 **their Original Complaint.**

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14 **I. Parties**

15 1. Plaintiff **BENJAMIN ASCENSIO** is an individual of the lawful age of majority
16 and citizen of the State of Texas.

17 2. Plaintiff **CALEB BARNES** is an individual of the lawful age of majority and
18 citizen of the State of Texas.

19 3. Plaintiff **LINDA BOURLAND** is an individual of the lawful age of majority and
20 citizen of the State of Texas.

21 4. Plaintiff **TERRIE BUMPUS** is an individual of the lawful age of majority and
22 citizen of the State of Texas.

23 5. Plaintiff **FELTON BURTON** is an individual of the lawful age of majority and
24 citizen of the State of Texas.

25 6. Plaintiff **TERESA BYRD** is an individual of the lawful age of majority and
26 citizen of the State of Texas.
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2 7. Plaintiff **ALVIN CEARLEY** is an individual of the lawful age of majority and
3 citizen of the State of Texas.

4 8. Plaintiff **ALICE CLARK** is an individual of the lawful age of majority and
5 citizen of the State of Texas.

6 9. Plaintiff **FLORINDA ESPARZA** is an individual of the lawful age of majority
7 and citizen of the State of Texas.

8 10. Plaintiff **RUBY GRANADOS** is an individual of the lawful age of majority and
9 citizen of the State of Texas.

10 11. Plaintiff **TAYLOR HARRELL** is an individual of the lawful age of majority and
11 citizen of the State of Texas.

12 12. Plaintiff **DEBORAH HEAD** is an individual of the lawful age of majority and
13 citizen of the State of Texas.

14 13. Plaintiff **JOEL HINOJOSA** is an individual of the lawful age of majority and
15 citizen of the State of Texas.

16 14. Plaintiff **SHARON JOHNSON** is an individual of the lawful age of majority and
17 citizen of the State of Texas.

18 15. Plaintiff **JOSH LAZETTE** is an individual of the lawful age of majority and
19 citizen of the State of Texas.

20 16. Plaintiff **JAMIE LOPEZ-MARTINEZ** is an individual of the lawful age of
21 majority and citizen of the State of Texas.

22 17. Plaintiff **MICHELLE POPE** is an individual of the lawful age of majority and
23 citizen of the State of Texas.

24 18. Plaintiff **DANIEL REYES** is an individual of the lawful age of majority and
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1 citizen of the State of Texas.

2 19. Plaintiff **MEGAN RICE** is an individual of the lawful age of majority and citizen
3 of the State of Texas.

4 20. Plaintiff **TERESA RODRIGUEZ** is an individual of the lawful age of majority
5 and citizen of the State of Texas.

6 21. Plaintiff **IVY ROSENBERG** is an individual of the lawful age of majority and
7 citizen of the State of Texas.

8 22. Plaintiff **JUANITA SANCHES** is an individual of the lawful age of majority and
9 citizen of the State of Texas.

10 23. Plaintiff **JULIAN SANTANA** is an individual of the lawful age of majority and
11 citizen of the State of Texas.

12 24. Plaintiff **BILL SMITH** is an individual of the lawful age of majority and citizen
13 of the State of Texas.

14 25. Plaintiff **CHRISTINE TAMEZ** is an individual of the lawful age of majority and
15 citizen of the State of Texas.

16 26. Plaintiff **DAWN UTSEY** is an individual of the lawful age of majority and
17 citizen of the State of Texas.

18 27. Plaintiff **STACI WYATT** is an individual of the lawful age of majority and
19 citizen of the State of Texas.

20 28. Plaintiff **ROBERT ZEBROWSKI** is an individual of the lawful age of majority
21 and citizen of the State of Texas.

22 29. Defendant, **FORD MOTOR COMPANY**, hereinafter "Ford," is headquartered
23 in Michigan, but their principal place of business is in this District. Ford conducts business in
24 this District and is responsible for the manufacture, distribution, and sale of all Ford Vehicles in
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1 the United States, as well as engineering design, development, research and development, and
2 manufacturing activities in the U.S. and Worldwide. Ford may be served through its registered
3 agent, CT Corporation System, at 1999 Bryan St., Suite 900, Dallas, Texas 75201.

4 **II. Jurisdiction**

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6 30. This Court has federal question jurisdiction over the lawsuit under the Magnuson-
7 Moss Warranty Act pursuant to 15 USC § 2310(d); and 28 USC § 1331 in that the disputes
8 involve predominant issues of federal law. This Court has jurisdiction over the lawsuit because
9 Plaintiffs and Defendant are citizens of different states and because the matter in controversy
10 exceeds \$75,000 pursuant to 28 USC §1332 (a). Declaratory relief is available pursuant to 28
11 USC §§ 2201 and 2202. The court has supplemental jurisdiction under 28 USC § 1367 over
12 Plaintiffs' state law claims because said claims are so related to the claims within the Court's
13 original jurisdiction that they form part of the same case or controversy under Article 3 of the
14 United States Constitution.
15

16 **III. Venue**

17 31. Venue is proper in this district under 28 U.S.C. §1391(a)(3) because Defendant
18 Ford is subject to personal jurisdiction in this district, Defendant Ford's principal place of
19 business in Texas is in this District.
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21 **IV. Conditions Precedent**

22 32. All conditions precedent have been performed or have occurred.

23 **V. Facts**

24 **A. Background**

25 33. Plaintiffs bring this action as a consolidated suit due to the fact that their
26 allegations are all the same; their Ford transmissions are defective. In fact, though their vehicles
27 are not all the same model or model year, they are all equipped with the same Ford DPS6 or
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1 PowerShift transmission. Moreover, the symptoms that the defective transmissions are causing
2 are also the same. Plaintiffs' vehicles are exhibiting shuddering, slipping, bucking, jerking,
3 hesitation while changing gears, premature internal wear, delays in downshifting, and in some
4 extreme cases, sudden or delayed acceleration. Ford installed the defective PowerShift
5 transmission in 22 different models of Fiesta, Focus, and EcoSport vehicles between 2011 and
6 the present. Plaintiffs also allege that Ford knew about the defective transmissions as early as
7 2010 and failed to disclose the defects to Plaintiffs before they purchased the Vehicles.
8

9 34. Ford has never acknowledged publicly that the Transmission Defect even exists.
10 To the contrary, Ford actively concealed, and continues to conceal, the Transmission Defect by,
11 among other things, telling customers that the symptoms associated with the Transmission
12 Defect were "normal driving conditions." Ford issued multiple Technical Service Bulletins
13 ("TSBs") to *dealers* but never directly notified consumers of known problems with the
14 PowerShift Transmission. Ford further perpetuated its cover-up by ultimately issuing two
15 "Customer Satisfaction Programs" that simply offered additional ineffectual repairs without
16 disclosing the truth about the Transmission Defect. Customers whose vehicles were supposedly
17 repaired pursuant to the Customer Satisfaction Programs have nevertheless continued to
18 experience the Transmission Defect. The Transmission Defect has no known repair.
19

20 35. None of the information in the market that discussed the Transmission Defect
21 disclosed, fully or at all, the material facts known only to Ford, including that the PowerShift
22 Transmission had serious problems since its early development that Ford simply was unable to
23 fix and that rendered the Vehicles unsafe to drive. The PowerShift Transmission was a new
24 technology to Ford that was rushed to the market without disclosing the problems described
25 above so that Plaintiffs could make informed purchasing decisions.
26

27 36. In 2010, Ford knew of the Transmission Defect and began issuing TSBs to its
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1 dealerships in an effort to address it. But Ford never communicated the TSBs, or the information
2 they contained, directly to Plaintiffs. Instead, Ford prepared a separate series of intentionally
3 sanitized documents for its customers to induce them into believing that their kicking, bucking,
4 suddenly accelerating and sling-shooting vehicles were exhibiting “normal driving
5 characteristics.”

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7 37. The problems plaguing the PowerShift Transmission cannot be chalked up to
8 “normal driving characteristics.” Such language is belied by the fact that, on information and
9 belief, Ford has replaced thousands, if not tens of thousands, PowerShift Transmissions,
10 clutches, or both, due to early catastrophic transmission failure.

11
12 38. The PowerShift transmission is a \$1,095 option for Ford Focus and Fiesta models
13 (the “Vehicles”), which Ford designed and marketed as a more advanced and fuel efficient
14 alternative to a traditional manual or automatic transmission and offered it as the sole
15 “Automatic” option for the Vehicles.

16
17 39. Each Plaintiff acquired a Ford vehicle equipped with the defective transmission
18 well after Ford knew about the defects in the transmission. The evidence to establish the
19 transmission defect, Ford’s knowledge of the defect, and non-disclosure of the defect to each
20 Plaintiff is highly relevant to each of Plaintiffs’ claims. Accordingly, each Plaintiff’s case is
21 interrelated and involves common evidence to a degree sufficient to necessitate the consolidation
22 herein.

23
24 40. Traditional manual transmissions use a driver controlled clutch. To operate the
25 transmission, the driver presses and releases a foot pedal, which engages and disengages the
26 engine from the transmission, allowing the vehicle to travel smoothly while the driver manually
27 changes gears.

28
41. In contrast, the typical automatic transmission free the driver from operating the

1 clutch through the use of a fluid-filled device called a torque converter. The torque converter
2 substitutes for the manual transmission's clutch, transmitting power from the engine to the
3 transmission through a fluid medium.

4 42. While typical automatic transmissions offer increased convenience, they are
5 generally less fuel efficient and slower shifting than their manual counterparts. This is because
6 the torque converter transfers power less efficiently than a clutch. As a result, Ford marketed and
7 sold its PowerShift transmissions as a "best of both worlds" alternative, offering a manual
8 transmission's fuel economy with the automatic transmission's ease of operation and shift
9 quality.
10

11 43. Ford's PowerShift transmission, while sometimes referred to as an "automatic," is
12 actually a set of computerized manual transmissions. It lacks a torque converter, instead using
13 two "dry" clutches to directly engage and disengage the engine with and from the transmission.
14 Whereas, similar "automated manual" transmissions on the market use "wet" clutches bathed in
15 oil. Ford's PowerShift transmission clutches lack the oil pumps and other components of a "wet"
16 clutch system, and instead operate "dry."
17

18 44. Ford designed the Vehicle's computerized "automated manual" transmission in
19 an effort to meet heightened governmental and consumer expectations for fuel economy,
20 performance, and efficiency. According to Ford's own press release, dated March 10, 2010,
21 "PowerShift with dry-clutch facings and new energy saving electromechanical actuation for
22 clutches and gear shifts saves weight, improves efficiency, increases smoothness, adds
23 durability, and is sealed with low-friction gear lubricant for the life of the vehicle. This
24 transmission requires no regular maintenance."
25

26 45. Theoretically, an "automated manual" transmission, *i.e.*, the PowerShift
27 Transmission, should have the convenience of an automatic transmission without sacrificing the
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1 fuel efficiency and shift speed of a manually-shifted vehicle. In practice, however, Ford's
2 PowerShift transmissions plagued by numerous problems and safety concerns, rendering the
3 Vehicles virtually inoperable.

4 46. The Transmission Defect causes unsafe conditions, including, but not limited to,
5 the Vehicles suddenly lurching forward, sudden acceleration, delayed acceleration, and sudden
6 loss of forward propulsion. These conditions present a safety hazard because they severely affect
7 the driver's ability to control the car's speed, acceleration, and deceleration. These conditions
8 make it difficult to safely merge into traffic. Even more troubling, the Transmission Defect can
9 cause the Vehicles to fail to downshift and decelerate when the brakes are depressed. As a result,
10 Plaintiffs have experienced their cars lurching forward into intersections at red lights due to the
11 failure of their braking efforts to stop the car.
12

13 47. On information and belief, the Transmission Defect also causes premature wear to
14 the PowerShift Transmission's clutch plates and other components, which can result in
15 premature transmission failure and requires expensive repairs, including replacement of the
16 transmission and its related components.
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18 48. Beginning as early as 2010, Ford knew or should have known that the Vehicles
19 and the PowerShift Transmission was defective in its design and/or manufacture, which
20 adversely affects the driveability of the Vehicles, causing safety hazards.
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22 49. Plaintiffs are informed and believe and based thereon allege that prior to the sale
23 of the Vehicles, Ford knew or should have known about the Transmission Defect through its
24 exclusive knowledge of non-public, internal data about the Transmission Defect, including, but
25 not limited to,; pre-release testing data; early consumer complaints about the Transmission
26 Defect to Ford's dealers who are their agents for vehicle repairs; warranty claim data related to
27 the defect; aggregate data from Ford's dealers; consumer complaints to the National Highway
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1 Traffic Safety Administration (“NHTSA”) and resulting notice from NHTSA; dealership repair
2 orders; testing conducted in response to owner or lessee complaints; TSBs applicable to the
3 Vehicles; the existence of the defect in the substantially identical European and Australian model
4 vehicles; and other internal sources of aggregate information about the problem. Nevertheless,
5 Ford has actively concealed and failed to disclose this defect to Plaintiffs at the time of purchase
6 or lease and thereafter.
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8 50. Before offering the vehicle for sale in the United States, Ford offered the same
9 vehicles, equipped with a similar dual-clutch transmission, in Europe and Australia. Although
10 the American version utilizes “dry” clutches as opposed to the European and Australian
11 versions’ “wet” clutches, Ford acknowledged that the transmission offered for sale in the United
12 States is “derivative” of the design from the European and Australian models.¹ European and
13 Australian versions of the dual-clutch transmission suffered from similar defects known to Ford
14 as alleged herein.
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16 51. On information and belief, despite developing and patenting the THF technology
17 and spending approximately 6,000 man-hours of computer aided mathematical modeling,
18 simulation and analysis of engine speeds, torque and clutch capacity as well as spending over
19 \$550 million to build a new transmission manufacturing facility with Getrag in Mexico to
20 produce the Powershift Transmission, Ford is now canceling the PowerShift program many
21 years prior to its estimated end date.
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23 52. As a result of the Transmission Defect, in 2010 and 2011, Ford issued several
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26 ¹ See Autoblog.com, “Ford officially announces dual clutch PowerShift gearbox for
27 2010,” [http://www.autoblog.com/2009/01/21/ford-officially-announces-dual-clutch-powershift-](http://www.autoblog.com/2009/01/21/ford-officially-announces-dual-clutch-powershift-gearbox-for-201/)
28 [gearbox-for-201/](http://www.autoblog.com/2009/01/21/ford-officially-announces-dual-clutch-powershift-gearbox-for-201/) (last visited February 4, 2015).

1 TSBs to its dealers in the United States, but not its customers², acknowledging problems in the
2 PowerShift Transmission. For example, Ford’s TSB from September 2010, covering the 2011
3 Ford Fiesta, informed dealers of “concerns such as no engagement or intermittent no
4 engagement in Drive or Reverse when shifting from Park to Drive or Reverse, grinding noise
5 during engagement, and/or a check engine light with transmission control module (TCM)
6 diagnostic trouble code”
7

8 53. Similarly, Ford’s TSB released on January 1, 2011, covering the 2011 Ford Fiesta
9 with the PowerShift Transmission, informs dealers of problems with the PowerShift
10 Transmission causing “a loss of power, hesitation, surge, or lack of throttle response while
11 driving.”
12

13 54. Throughout 2011, Ford continued to issue various TSBs covering the Ford Fiesta
14 and Ford Focus vehicles which advised dealers of the continuing transmission problems. For
15 example, a Ford TSB released in September of 2011 advised dealers to reprogram the
16 transmission computer if 2011 Ford Fiesta owners complained about “hesitation when
17 accelerating from a low speed after coast down, harsh or late 1-2 upshift, harsh shifting during
18 low-speed tip-in or tip-out maneuvers and/or engine r.p.m. flare when coasting to a stop.”
19

20 55. Because Ford did not notify Plaintiffs that the PowerShift Transmission is
21 defective, Plaintiffs are subjected to dangerous driving conditions that often occur without
22 warning.
23

24 56. The alleged Transmission Defect was inherent in each Ford Fiesta and Ford
25 Focus’ PowerShift Transmission and was present in each Ford Fiesta and Ford Focus’
26 PowerShift Transmission at the time of sale.
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28 ² Some, but not all, service bulletins are available through the website for the Office of
Defect Investigations of the National Highway Traffic Safety Administration.

1 57. Ford knew about and concealed the Transmission Defect present in the Vehicles,
2 along with the attendant dangerous safety and driveability problems, from Plaintiffs, at the time
3 of sale, lease, and repair and thereafter. In fact, instead of repairing the defects in the PowerShift
4 Transmission, Ford either refused to acknowledge the defects' existence or performed
5 ineffective software upgrades or other repairs that simply masked the defect.
6

7 58. If Plaintiffs had known about the transmission defects at the time of purchase or
8 lease, Plaintiffs would not have purchased or leased the Vehicles or would have paid
9 substantially less for them.

10 59. As a result of their reliance on Defendant's omissions and/or misrepresentations,
11 owners and/or lessees of the Vehicles suffered an ascertainable loss of money, property, and/or
12 value of their Vehicles, including, but not limited to, the \$1,095.00 cost of the optional
13 PowerShift transmission, out-of-pocket costs related to repairs to the PowerShift Transmission.
14 Additionally, as a result of the Transmission Defect, Plaintiffs were harmed and suffered actual
15 damages in that the Vehicles' transmissions and related components are substantially certain to
16 fail before their expected useful life has run.
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18 **B. Implied Warranties**

19 60. An implied warranty of merchantability arose in the transaction, which included
20 the guarantee that the Vehicles would pass without objection in the trade under the contract
21 description; and that the Vehicles were fit for the ordinary purpose for which such Vehicles are
22 purchased.
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24 61. Subsequent to the sale, an implied warranty arose in connection with the repairs
25 performed by Defendant. Specifically, Defendant impliedly warranted that the repair work had
26 been performed in a good and workmanlike manner.
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C. Express Warranty

63. In addition to the implied warranties that arose in the transaction, certain representations and express warranties were made, including, that any malfunction in the Vehicles occurring during a specified warranty period resulting from defects in material or workmanship would be repaired, and that repair work on the Vehicles had, in fact, repaired the defects.

64. Plaintiffs' purchase of the Vehicles were accompanied by express warranties offered by Defendant and extending to Plaintiffs. These warranties were part of the basis of the bargain of Plaintiffs' contract for purchase of the Vehicles.

65. The basic warranty covered any repairs or replacements needed during the warranty period due to defects in factory materials or workmanship. Any required adjustments would also be made during the basic coverage period. All warranty repairs and adjustments, including parts and labor, were to be made at no charge. Additional warranties were set forth in Ford's warranty booklet and owner's manual.

D. Plaintiff Specific Facts

66. On or about April 19, 2015, Plaintiff Benjamin Ascensio purchased a 2012 Ford Focus, VIN: 1FAHP3F20CL289964, from Sames Bastrop Ford in Bastrop, Texas for \$11,000. Plaintiff Benjamin Ascensio's vehicle was equipped with an optional PowerShift Transmission that cost him \$1,095.00.

67. Plaintiff Benjamin Ascensio purchased the Vehicle primarily for personal, family, or household use. Ford manufactured, sold, distributed, advertised, marketed, and warranted the vehicle. The defects in the PowerShift transmission were not disclosed to Plaintiff Benjamin Ascensio at the time of purchase. Had Plaintiff Benjamin Ascensio been told about the defective transmission, he would not have purchased the Vehicle or would have paid substantially less.

1 68. Plaintiff Benjamin Ascensio has had numerous problems with the Vehicle. Since
2 purchase, the Vehicle has encountered an excessive number of defects, including but not limited
3 to transmission, suspension system, vibrations, Navigation system, and the check engine light.
4 The Vehicle has been in the shop at least 9 times and spent an excessive number of days in the
5 shop. The Vehicle still has problems despite numerous repair attempts.
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7 69. Plaintiff Caleb Barnes purchased a 2012 Ford Focus, VIN:
8 1FAHP3E2XCL329680 for approximately \$20,000. Plaintiff Caleb Barnes' vehicle was
9 equipped with an optional PowerShift Transmission that cost him \$1,095.00.

10 70. Plaintiff Caleb Barnes purchased the Vehicle primarily for personal, family, or
11 household use. Ford manufactured, sold, distributed, advertised, marketed, and warranted the
12 vehicle. The defects in the PowerShift transmission were not disclosed to Plaintiff Caleb Barnes
13 at the time of purchase. Had Plaintiff Caleb Barnes been told about the defective transmission,
14 he would not have purchased the Vehicle or would have paid substantially less.
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16 71. Plaintiff Caleb Barnes has had numerous problems with the Vehicle. Since
17 purchase, the Vehicle has encountered an excessive number of defects, including but not limited
18 to transmission, shudders, hesitation, and the control modules. The Vehicle has been in the shop
19 at least 4 times and spent an excessive number of days in the shop. The Vehicle still has
20 problems despite numerous repair attempts.
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22 72. On or about December 31, 2014, Plaintiff Linda Bourland purchased a 2014 Ford
23 Focus, VIN: 1FADP3F27EL130473, for approximately \$23,000. Plaintiff Linda Bourland's
24 vehicle was equipped with an optional PowerShift Transmission that cost her \$1,095.00.

25 73. Plaintiff Linda Bourland purchased the Vehicle primarily for personal, family, or
26 household use. Ford manufactured, sold, distributed, advertised, marketed, and warranted the
27 vehicle. The defects in the PowerShift transmission were not disclosed to Plaintiff Linda
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1 Bourland at the time of purchase. Had Plaintiff Linda Bourland been told about the defective
2 transmission, she would not have purchased the Vehicle or would have paid substantially less.

3 74. Plaintiff Linda Bourland has had numerous problems with the Vehicle. Since
4 purchase, the Vehicle has encountered an excessive number of defects, including but not limited
5 to transmission, shudders, hesitation, and the control modules. The Vehicle has been in the shop
6 at least 4 times and spent an excessive number of days in the shop.
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8 75. On or about February 13, 2013, Plaintiff Terrie Bumpus purchased a 2013 Ford
9 Focus, VIN: 1FADP3K29DL220339 from Joe Myers Ford in Houston, Texas for \$21,200.
10 Plaintiff Terrie Bumpus' vehicle was equipped with an optional PowerShift Transmission that
11 cost her \$1,095.00.
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13 76. Plaintiff Terrie Bumpus purchased the Vehicle primarily for personal, family, or
14 household use. Ford manufactured, sold, distributed, advertised, marketed, and warranted the
15 vehicle. The defects in the PowerShift transmission were not disclosed to Plaintiff Terrie
16 Bumpus at the time of purchase. Had Plaintiff Terrie Bumpus been told about the defective
17 transmission, she would not have purchased the Vehicle or would have paid substantially less.

18 77. Plaintiff Terrie Bumpus has had numerous problems with the Vehicle. Since
19 purchase, the Vehicle has encountered an excessive number of defects, including but not limited
20 to transmission, shudders, and the control modules. The Vehicle has been in the shop at least 3
21 times and spent an excessive number of days in the shop. The Vehicle still has problems despite
22 numerous repair attempts.
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24 78. On or about February 28, 2015, Plaintiff Felton Burton purchased a 2012 Ford
25 Focus, VIN: 1FAHP3E21CL428890 for approximately \$16,500. Plaintiff Felton Burton's
26 vehicle was equipped with an optional PowerShift Transmission that cost him \$1,095.00.

27 79. Plaintiff Felton Burton purchased the Vehicle primarily for personal, family, or
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1 household use. Ford manufactured, sold, distributed, advertised, marketed, and warranted the
2 vehicle. The defects in the PowerShift transmission were not disclosed to Plaintiff Felton Burton
3 at the time of purchase. Had Plaintiff Felton Burton been told about the defective transmission,
4 he would not have purchased the Vehicle or would have paid substantially less.
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6 80. Plaintiff Felton Burton has had numerous problems with the Vehicle. Since
7 purchase, the Vehicle has encountered an excessive number of defects, including but not limited
8 to transmission, shudders, and the control modules. The Vehicle has been in the shop at least 3
9 times and spent an excessive number of days in the shop. The Vehicle still has problems despite
10 numerous repair attempts.

11 81. On or about May 19, 2012, Plaintiff Teresa Byrd purchased a 2012 Ford Focus,
12 VIN: 1FAHP3F26CL391446 from AutoNation Ford in Fort Worth, Texas for \$20,100. Plaintiff
13 Teresa Byrd's vehicle was equipped with an optional PowerShift Transmission that cost her
14 \$1,095.00.
15

16 82. Plaintiff Teresa Byrd purchased the Vehicle primarily for personal, family, or
17 household use. Ford manufactured, sold, distributed, advertised, marketed, and warranted the
18 vehicle. The defects in the PowerShift transmission were not disclosed to Plaintiff Teresa Byrd
19 at the time of purchase. Had Plaintiff Teresa Byrd been told about the defective transmission, she
20 would not have purchased the Vehicle or would have paid substantially less.
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22 83. Plaintiff Teresa Byrd has had numerous problems with the Vehicle. Since
23 purchase, the Vehicle has encountered an excessive number of defects, including but not limited
24 to transmission, suspension system, vibrations, Navigation system, and the check engine light.
25 The Vehicle has been in the shop at least 4 times and spent an excessive number of days in the
26 shop. The Vehicle still has problems despite numerous repair attempts.
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1 84. On or about June 3, 2016, Plaintiff Alvin Cearley purchased a 2015 Ford Focus,
2 VIN: 1FADP3F25FL302422 from Karl Klement Ford in Muenster, Texas for \$16,700. Plaintiff
3 Alvin Cearley's vehicle was equipped with an optional PowerShift Transmission that cost him
4 \$1,095.00.

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6 85. Plaintiff Alvin Cearley purchased the Vehicle primarily for personal, family, or
7 household use. Ford manufactured, sold, distributed, advertised, marketed, and warranted the
8 vehicle. The defects in the PowerShift transmission were not disclosed to Plaintiff Alvin Cearley
9 at the time of purchase. Had Plaintiff Alvin Cearley been told about the defective transmission,
10 he would not have purchased the Vehicle or would have paid substantially less.

11 86. Plaintiff Alvin Cearley has had numerous problems with the Vehicle. Since
12 purchase, the Vehicle has encountered an excessive number of defects, including but not limited
13 to transmission, shudders, hesitation, and the clutch. The Vehicle has been in the shop an
14 excessive number of times and spent an excessive number of days in the shop. The Vehicle still
15 has problems despite numerous repair attempts.

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17 87. On or about July 31, 2015, Plaintiff Alice Clark purchased a 2015 Ford Focus,
18 VIN: 1FADP3F20FL347574 from Lone Star Ford in Houston, Texas for \$23,500. Plaintiff
19 Monica Castro's vehicle was equipped with an optional PowerShift Transmission that cost her
20 \$1,095.00.

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22 88. Plaintiff Alice Clark purchased the Vehicle primarily for personal, family, or
23 household use. Ford manufactured, sold, distributed, advertised, marketed, and warranted the
24 vehicle. The defects in the PowerShift transmission were not disclosed to Plaintiff Alice Clark at
25 the time of purchase. Had Plaintiff Alice Clark been told about the defective transmission, she
26 would not have purchased the Vehicle or would have paid substantially less.

1 89. Plaintiff Alice Clark has had numerous problems with the Vehicle. Since
2 purchase, the Vehicle has encountered an excessive number of defects, including but not limited
3 to transmission, shudders, hard starts, control modules, and hesitation. The Vehicle has been in
4 the shop at least 4 times and spent an excessive number of days in the shop. The Vehicle still
5 has problems despite numerous repair attempts.
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7 90. On or about September 5, 2014, Plaintiff Florinda Esparza purchased a 2014 Ford
8 Focus, VIN: 1FADP3J29EL342234 from Mac Haik Southway Ford in San Antonio, Texas for
9 \$27,700. Plaintiff Florinda Esparza's vehicle was equipped with an optional PowerShift
10 Transmission that cost her \$1,095.00.

11 91. Plaintiff Florinda Esparza purchased the Vehicle primarily for personal, family,
12 or household use. Ford manufactured, sold, distributed, advertised, marketed, and warranted the
13 vehicle. The defects in the PowerShift transmission were not disclosed to Plaintiff Florinda
14 Esparza at the time of purchase. Had Plaintiff Florinda Esparza been told about the defective
15 transmission, she would not have purchased the Vehicle or would have paid substantially less.
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17 92. Plaintiff Florinda Esparza has had numerous problems with the Vehicle. Since
18 purchase, the Vehicle has encountered an excessive number of defects, including but not limited
19 to transmission, shudders, HVAC system, and oil leaks. The Vehicle has been in the shop at least
20 7 times and spent approximately 49 days in the shop. The Vehicle still has problems despite
21 numerous repair attempts.
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23 93. On or about March 19, 2012, Plaintiff Ruby Granados purchased a 2012 Ford
24 Focus, VIN: 1FAHP3F25CL3555103 from Hacienda Ford in San Antonio, Texas for \$18,300.
25 Plaintiff Ruby Granados' vehicle was equipped with an optional PowerShift Transmission that
26 cost her \$1,095.00.

27 94. Plaintiff Ruby Granados purchased the Vehicle primarily for personal, family, or
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1 household use. Ford manufactured, sold, distributed, advertised, marketed, and warranted the
2 vehicle. The defects in the PowerShift transmission were not disclosed to Ruby Granados at the
3 time of purchase. Had Plaintiff Ruby Granados been told about the defective transmission, she
4 would not have purchased the Vehicle or would have paid substantially less.
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6 95. Plaintiff Ruby Granados has had numerous problems with the Vehicle. Since
7 purchase, the Vehicle has encountered an excessive number of defects, including but not limited
8 to transmission, shudders, and hesitation. The Vehicle has been in the shop at least 3 times and
9 spent an excessive number of days in the shop. The Vehicle still has problems despite numerous
10 repair attempts.

11 96. On or about March 5, 2014, Plaintiff Taylor Harrell purchased a 2014 Ford Focus,
12 VIN: 1FADP3F22EL246406 from Sam Pack Five Star Ford in Lewisville, Texas for
13 approximately \$20,000. Plaintiff Taylor Harrell's vehicle was equipped with an optional
14 PowerShift Transmission that cost her \$1,095.00.
15

16 97. Plaintiff Taylor Harrell purchased the Vehicle primarily for personal, family, or
17 household use. Ford manufactured, sold, distributed, advertised, marketed, and warranted the
18 vehicle. The defects in the PowerShift transmission were not disclosed to Plaintiff Taylor Harrell
19 at the time of purchase. Had Plaintiff Taylor Harrell been told about the defective transmission,
20 she would not have purchased the Vehicle or would have paid substantially less.
21

22 98. Plaintiff Taylor Harrell has had numerous problems with the Vehicle. Since
23 purchase, the Vehicle has encountered an excessive number of defects, including but not limited
24 to the transmission, shudders, jerking, and hesitation. The Vehicle has been in the shop at least 3
25 times and spent approximately 30 days in the shop. The Vehicle still has problems despite
26 numerous repair attempts.

27 99. On or about May 29, 2015, Plaintiff Deborah Head purchased a 2015 Ford Focus,
28

1 VIN: 1FADP3F22FL230482 from AutoNation Ford in Arlington, Texas for approximately
2 \$20,000. Plaintiff Deborah Head's vehicle was equipped with an optional PowerShift
3 Transmission that cost her \$1,095.00.

4 100. Plaintiff Deborah Head purchased the Vehicle primarily for personal, family, or
5 household use. Ford manufactured, sold, distributed, advertised, marketed, and warranted the
6 vehicle. The defects in the PowerShift transmission were not disclosed to Plaintiff Deborah Head
7 at the time of purchase. Had Plaintiff Deborah Head been told about the defective transmission,
8 she would not have purchased the Vehicle or would have paid substantially less.

9
10 101. Plaintiff Deborah Head has had numerous problems with the Vehicle. Since
11 purchase, the Vehicle has encountered an excessive number of defects, including but not limited
12 to the transmission, stalling, bluetooth, rough idle, and hesitation. The Vehicle has been in the
13 shop at least 10 times and spent an excessive number of days in the shop. The Vehicle still has
14 problems despite numerous repair attempts.

15
16 102. Plaintiff Joel Hinojosa purchased a 2014 Ford Focus, VIN:
17 1FADP3F23EL390076 for approximately \$20,000. Plaintiff Joel Hinojosa's vehicle was
18 equipped with an optional PowerShift Transmission that cost him \$1,095.00.

19 103. Plaintiff Joel Hinojosa purchased the Vehicle primarily for personal, family, or
20 household use. Ford manufactured, sold, distributed, advertised, marketed, and warranted the
21 vehicle. The defects in the PowerShift transmission were not disclosed to Plaintiff Joel Hinojosa
22 at the time of purchase. Had Plaintiff Joel Hinojosa been told about the defective transmission,
23 he would not have purchased the Vehicle or would have paid substantially less.

24
25 104. Plaintiff Joel Hinojosa has had numerous problems with the Vehicle. Since
26 purchase, the Vehicle has encountered an excessive number of defects, including but not limited
27 to the transmission, stalling, hesitation, and the control modules. The Vehicle has been in the
28

1 shop at least 4 times and spent an excessive number of days in the shop. The Vehicle still has
2 problems despite numerous repair attempts.

3 105. On or about April 2, 2013, Plaintiff Sharon Johnson purchased a 2014 Ford
4 Focus, VIN: 1FADP3E25EL195923 from Baytown Ford in Baytown, Texas for approximately
5 \$19,000. Plaintiff Sharon Johnson's vehicle was equipped with an optional PowerShift
6 Transmission that cost her \$1,095.00.
7

8 106. Plaintiff Sharon Johnson purchased the Vehicle primarily for personal, family, or
9 household use. Ford manufactured, sold, distributed, advertised, marketed, and warranted the
10 vehicle. The defects in the PowerShift transmission were not disclosed to Plaintiff Sharon
11 Johnson at the time of purchase. Had Plaintiff Sharon Johnson been told about the defective
12 transmission, she would not have purchased the Vehicle or would have paid substantially less.
13

14 107. Plaintiff Sharon Johnson has had numerous problems with the Vehicle. Since
15 purchase, the Vehicle has encountered an excessive number of defects, including but not limited
16 to the transmission, stalling, hesitation, and the control modules. The Vehicle has been in the
17 shop at least 4 times and spent an excessive number of days in the shop. The Vehicle still has
18 problems despite numerous repair attempts.

19 108. On or about January 18, 2014, Plaintiff Josh Lazette purchased a 2012 Ford
20 Focus, VIN: 1FAHP3F22CL106628 for approximately \$24,800. Plaintiff Josh Lazette's vehicle
21 was equipped with an optional PowerShift Transmission that cost him \$1,095.00.
22

23 109. Plaintiff Josh Lazette purchased the Vehicle primarily for personal, family, or
24 household use. Ford manufactured, sold, distributed, advertised, marketed, and warranted the
25 vehicle. The defects in the PowerShift transmission were not disclosed to Plaintiff Josh Lazette
26 at the time of purchase. Had Plaintiff Josh Lazette been told about the defective transmission, he
27 would not have purchased the Vehicle or would have paid substantially less.
28

1 110. Plaintiff Josh Lazette has had numerous problems with the Vehicle. Since
2 purchase, the Vehicle has encountered an excessive number of defects, including but not limited
3 to the transmission, stalling, hesitation, and the control modules. The Vehicle has been in the
4 shop at least 4 times and spent an excessive number of days in the shop. The Vehicle still has
5 problems despite numerous repair attempts.
6

7 111. On or about July of 2011, Plaintiff Jamie Lopez-Martinez purchased a 2012 Ford
8 Focus, VIN: 1FAHP3E21CL428985 from Bluebonnet Ford in New Braunfels, Texas for
9 \$20,000. Plaintiff Jamie Lopez-Martinez's vehicle was equipped with an optional PowerShift
10 Transmission that cost her \$1,095.00.

11 112. Plaintiff Jamie Lopez-Martinez purchased the Vehicle primarily for personal,
12 family, or household use. Ford manufactured, sold, distributed, advertised, marketed, and
13 warranted the vehicle. The defects in the PowerShift transmission were not disclosed to Plaintiff
14 Jamie Lopez-Martinez at the time of purchase. Had Plaintiff Jamie Lopez-Martinez been told
15 about the defective transmission, she would not have purchased the Vehicle or would have paid
16 substantially less.
17

18 113. Plaintiff Jamie Lopez-Martinez has had numerous problems with the Vehicle.
19 Since purchase, the Vehicle has encountered an excessive number of defects, including but not
20 limited to the transmission, shudders, check engine light, and hard starts. The Vehicle has been
21 in the shop at least 4 times and spent an excessive number of days in the shop. The Vehicle still
22 has problems despite numerous repair attempts.
23

24 114. On or about March 5, 2015, Plaintiff Michelle Pope purchased a 2012 Ford
25 Focus, VIN: 1FAHP3M29CL436785 for approximately \$25,600. Plaintiff Michelle Pope's
26 vehicle was equipped with an optional PowerShift Transmission that cost her \$1,095.00.

27 115. Plaintiff Michelle Pope purchased the Vehicle primarily for personal, family, or
28

1 household use. Ford manufactured, sold, distributed, advertised, marketed, and warranted the
2 vehicle. The defects in the PowerShift transmission were not disclosed to Plaintiff Michelle Pope
3 at the time of purchase. Had Plaintiff Michelle Pope been told about the defective transmission,
4 she would not have purchased the Vehicle or would have paid substantially less.
5

6 116. Plaintiff Michelle Pope has had numerous problems with the Vehicle. Since
7 purchase, the Vehicle has encountered an excessive number of defects, including but not limited
8 to the transmission, shudders, hesitation, premature tire wear, and pulling to the right. The
9 Vehicle has been in the shop at least 4 times and spent an excessive number of days in the shop.
10 The Vehicle still has problems despite numerous repair attempts.

11 117. On or about August 1, 2014, Plaintiff Daniel Reyes purchased a 2013 Ford Focus,
12 VIN: 1FADP3F21DL248274 from Clay Cooley Ford in Dallas, Texas for approximately
13 \$20,000. Plaintiff Daniel Reyes' vehicle was equipped with an optional PowerShift
14 Transmission that cost him \$1,095.00.
15

16 118. Plaintiff Daniel Reyes purchased the Vehicle primarily for personal, family, or
17 household use. Ford manufactured, sold, distributed, advertised, marketed, and warranted the
18 vehicle. The defects in the PowerShift transmission were not disclosed to Plaintiff Daniel Reyes
19 at the time of purchase. Had Plaintiff Daniel Reyes been told about the defective transmission,
20 he would not have purchased the Vehicle or would have paid substantially less.
21

22 119. Plaintiff Daniel Reyes has had numerous problems with the Vehicle. Since
23 purchase, the Vehicle has encountered an excessive number of defects, including but not limited
24 to the transmission, shudders, clutch, vibrations, and jerking. The Vehicle has been in the shop at
25 least 5 times and spent approximately 16 days in the shop. The Vehicle still has problems
26 despite numerous repair attempts.

27 120. On or about March 24, 2014, Plaintiff Megan Rice purchased a 2014 Ford Focus,
28

1 VIN: 1FADP3J22EL229435 from Covert Ford in Hutto, Texas for \$26,100. Plaintiff Jamie
2 Lopez-Martinez's vehicle was equipped with an optional PowerShift Transmission that cost her
3 \$1,095.00.

4 121. Plaintiff Megan Rice purchased the Vehicle primarily for personal, family, or
5 household use. Ford manufactured, sold, distributed, advertised, marketed, and warranted the
6 vehicle. The defects in the PowerShift transmission were not disclosed to Plaintiff Megan Rice at
7 the time of purchase. Had Plaintiff Megan Rice been told about the defective transmission, she
8 would not have purchased the Vehicle or would have paid substantially less.

9
10 122. Megan Rice has had numerous problems with the Vehicle. Since purchase, the
11 Vehicle has encountered an excessive number of defects, including but not limited to
12 transmission, clutch, seals, shudders, and surging. The Vehicle has been in the shop at least 4
13 times and spent an excessive number of days in the shop. The Vehicle still has problems despite
14 numerous repair attempts.

15
16 123. On or about April 18, 2014, Plaintiff Teresa Rodriguez purchased a 2014 Ford
17 Focus, VIN: 1FADP3K20EL149081 from Hacienda Ford in Edinburg, Texas for \$24,900.
18 Plaintiff Teresa Rodriguez's vehicle was equipped with an optional PowerShift Transmission
19 that cost her \$1,095.00.

20
21 124. Plaintiff Teresa Rodriguez purchased the Vehicle primarily for personal, family,
22 or household use. Ford manufactured, sold, distributed, advertised, marketed, and warranted the
23 vehicle. The defects in the PowerShift transmission were not disclosed to Plaintiff Teresa
24 Rodriguez at the time of purchase. Had Plaintiff Teresa Rodriguez been told about the defective
25 transmission, she would not have purchased the Vehicle or would have paid substantially less.

26
27 125. Plaintiff Teresa Rodriguez has had numerous problems with the Vehicle. Since
28 purchase, the Vehicle has encountered an excessive number of defects, including but not limited

1 to transmission, clutch, hesitation, shudders, and surging. The Vehicle has been in the shop an
2 excessive number of times and spent an excessive number of days in the shop. The Vehicle still
3 has problems despite numerous repair attempts.

4 126. On or about July 5, 2014, Plaintiff Ivy Rosenberg purchased a 2013 Ford Focus,
5 VIN: 1FADP3F27DL327366 from Mac Haik Ford in Desoto, Texas for \$14,700. Plaintiff Ivy
6 Rosenberg's vehicle was equipped with an optional PowerShift Transmission that cost her
7 \$1,095.00.

8 127. Plaintiff Ivy Rosenberg purchased the Vehicle primarily for personal, family, or
9 household use. Ford manufactured, sold, distributed, advertised, marketed, and warranted the
10 vehicle. The defects in the PowerShift transmission were not disclosed to Plaintiff Ivy
11 Rosenberg at the time of purchase. Had Plaintiff Ivy Rosenberg been told about the defective
12 transmission, she would not have purchased the Vehicle or would have paid substantially less.

13 128. Ivy Rosenberg has had numerous problems with the Vehicle. Since purchase, the
14 Vehicle has encountered an excessive number of defects, including but not limited to
15 transmission, shudders, hesitation, and the clutch. The Vehicle has been in the shop at least 3
16 times and spent an excessive number of days in the shop. The Vehicle still has problems despite
17 numerous repair attempts.

18 129. On or about December 12, 2012, Plaintiff Juanita Sanches purchased a 2013 Ford
19 Focus, VIN: 1FADP3F22DL289867 from Access Ford in Calallen, Texas for \$22,000. Plaintiff
20 Juanita Sanches' vehicle was equipped with an optional PowerShift Transmission that cost her
21 \$1,095.00.

22 130. Plaintiff Juanita Sanches purchased the Vehicle primarily for personal, family, or
23 household use. Ford manufactured, sold, distributed, advertised, marketed, and warranted the
24

1 vehicle. The defects in the PowerShift transmission were not disclosed to Plaintiff Juanita
2 Sanches at the time of purchase. Had Plaintiff Juanita Sanches been told about the defective
3 transmission, she would not have purchased the Vehicle or would have paid substantially less.

4 131. Plaintiff Juanita Sanches has had numerous problems with the Vehicle. Since
5 purchase, the Vehicle has encountered an excessive number of defects, including but not limited
6 to transmission, check engine light, hesitation, shudders, and oil leaks. The Vehicle has been in
7 the shop at least 8 times and spent approximately 32 days in the shop. The Vehicle still has
8 problems despite numerous repair attempts.

9
10 132. On or about May 8, 2014, Plaintiff Julian Santana purchased a 2014 Ford Focus,
11 VIN: 1FADP3F26EL270689 from Sames Ford in Laredo, Texas for \$32,000. Plaintiff Julian
12 Santana's vehicle was equipped with an optional PowerShift Transmission that cost him
13 \$1,095.00.

14
15 133. Plaintiff Julian Santana purchased the Vehicle primarily for personal, family, or
16 household use. Ford manufactured, sold, distributed, advertised, marketed, and warranted the
17 vehicle. The defects in the PowerShift transmission were not disclosed to Plaintiff Julian Santana
18 at the time of purchase. Had Plaintiff Julian Santana been told about the defective transmission,
19 he would not have purchased the Vehicle or would have paid substantially less.

20
21
22 134. Plaintiff Julian Santana has had numerous problems with the Vehicle. Since
23 purchase, the Vehicle has encountered an excessive number of defects, including but not limited
24 to transmission, hesitation, shudders, HVAC, overheats, and stalling. The Vehicle has been in
25 the shop at least 3 times and spent approximately 15 days in the shop. The Vehicle still has
26 problems despite numerous repair attempts.

27 135. Plaintiff Bill Smith purchased a 2014 Ford Focus, VIN: 1FADP3K26EL109376
28

1 from Marshall Ford in Marshall, Texas for \$25,000. Plaintiff Bill Smith's vehicle was equipped
2 with an optional PowerShift Transmission that cost him \$1,095.00.

3 136. Plaintiff Bill Smith purchased the Vehicle primarily for personal, family, or
4 household use. Ford manufactured, sold, distributed, advertised, marketed, and warranted the
5 vehicle. The defects in the PowerShift transmission were not disclosed to Plaintiff Bill Smith at
6 the time of purchase. Had Plaintiff Bill Smith been told about the defective transmission, he
7 would not have purchased the Vehicle or would have paid substantially less.
8

9 137. Plaintiff Bill Smith has had numerous problems with the Vehicle. Since
10 purchase, the Vehicle has encountered an excessive number of defects, including but not limited
11 to transmission, rough idle, HVAC, vibrations, seals, shudders, and surging. The Vehicle has
12 been in the shop at least 8 times and spent at least 40 days in the shop. The Vehicle still has
13 problems despite numerous repair attempts.
14

15 138. Plaintiff Christine Tamez purchased a 2015 Ford Focus Titanium,
16 VIN:1FADP3N21FL201119 from AutoNation Ford in Corpus Christi, Texas for approximately
17 \$26,000. Plaintiff Christine Tamez's vehicle was equipped with an optional PowerShift
18 Transmission that cost her \$1,095.00.

19 139. Plaintiff Christine Tamez purchased the Vehicle primarily for personal, family, or
20 household use. Ford manufactured, sold, distributed, advertised, marketed, and warranted the
21 vehicle. The defects in the PowerShift transmission were not disclosed to Plaintiff Christine
22 Tamez at the time of purchase. Had Plaintiff Christine Tamez been told about the defective
23 transmission, she would not have purchased the Vehicle or would have paid substantially less.
24

25 140. Plaintiff Christine Tamez has had numerous problems with the Vehicle. Since
26 purchase, the Vehicle has encountered an excessive number of defects, including but not limited
27 to dash noise, the transmission, shudders, sunroof, remote start system, hesitation, and the trim.
28

1 The Vehicle has been in the shop at least 7 times and spent at least 24 days in the shop. The
2 Vehicle still has problems with the transmission and remote start system despite numerous repair
3 attempts.

4 141. On or about November 24, 2012, Plaintiff Dawn Utsey purchased a 2013 Ford
5 Focus, VIN: 1FADP3F20DL183580 from Southwest Ford in Weatherford, Texas for
6 approximately \$17,000. Plaintiff Dawn Utsey vehicle was equipped with an optional PowerShift
7 Transmission that cost her \$1,095.00.

8 142. Plaintiff Dawn Utsey purchased the Vehicle primarily for personal, family, or
9 household use. Ford manufactured, sold, distributed, advertised, marketed, and warranted the
10 vehicle. The defects in the PowerShift transmission were not disclosed to Plaintiff Dawn Utsey
11 at the time of purchase. Had Plaintiff Dawn Utsey been told about the defective transmission,
12 she would not have purchased the Vehicle or would have paid substantially less.

13 143. Plaintiff Dawn Utsey has had numerous problems with the Vehicle. Since
14 purchase, the Vehicle has encountered an excessive number of defects, including but not limited
15 to transmission, hesitation, shudders, and surging. The Vehicle has been in the shop at least 4
16 times and spent an excessive number of days in the shop. The Vehicle still has problems despite
17 numerous repair attempts.

18 144. On or about March of 2016, Plaintiff Staci Wyatt purchased a 2014 Ford Focus,
19 VIN: 1FADP3F21EL156650 for approximately \$20,000. Plaintiff Staci Wyatt's vehicle was
20 equipped with an optional PowerShift Transmission that cost her \$1,095.00.

21 145. Plaintiff Staci Wyatt purchased the Vehicle primarily for personal, family, or
22 household use. Ford manufactured, sold, distributed, advertised, marketed, and warranted the
23 vehicle. The defects in the PowerShift transmission were not disclosed to Plaintiff Staci Wyatt at
24 the time of purchase. Had Plaintiff Staci Wyatt been told about the defective transmission, she
25
26
27
28

1 would not have purchased the Vehicle or would have paid substantially less.

2 146. Plaintiff Staci Wyatt has had numerous problems with the Vehicle. Since
3 purchase, the Vehicle has encountered an excessive number of defects, including but not limited
4 to transmission, throttle body, shuddering, hesitation, and the clutch. The Vehicle has been in the
5 shop at least 5 times and spent approximately 45 days in the shop. The Vehicle still has
6 problems despite numerous repair attempts.
7

8 147. On or about January 15, 2013, Plaintiff Robert Zebrowski purchased a 2013 Ford
9 Focus, VIN: 1FADP3K28DL226312 for approximately \$20,000. Plaintiff Robert Zebrowski's
10 vehicle was equipped with an optional PowerShift Transmission that cost him \$1,095.00.

11 148. Plaintiff Robert Zebrowski purchased the Vehicle primarily for personal, family,
12 or household use. Ford manufactured, sold, distributed, advertised, marketed, and warranted the
13 vehicle. The defects in the PowerShift transmission were not disclosed to Plaintiff Robert
14 Zebrowski at the time of purchase. Had Plaintiff Robert Zebrowski been told about the defective
15 transmission, he would not have purchased the Vehicle or would have paid substantially less.
16

17 149. Plaintiff Robert Zebrowski has had numerous problems with the Vehicle. Since
18 purchase, the Vehicle has encountered an excessive number of defects, including but not limited
19 to transmission, wheel bearings, trim, shuddering, hesitation, and the clutch. The Vehicle has
20 been in the shop at least 7 times and spent approximately 18 days in the shop. The Vehicle still
21 has problems despite numerous repair attempts.
22

23 **VI. Causes of Action**

24 **COUNT 1: VIOLATIONS OF THE TEXAS DECEPTIVE**
25 **TRADE PRACTICES ACT ("DTPA")**

26 150. Plaintiffs reallege and incorporate by reference herein each and every allegation
27 set forth in the preceding paragraphs.

28 151. Plaintiffs are "consumers" as defined in the DTPA.

1 152. Defendant violated the following provisions of the DTPA:

- 2 a. §17.50(1): the use or employment of a false, misleading, or deceptive acts
3 or practices as defined in §17.46(b)(24) of the DTPA that were
4 detrimentally relied upon by Plaintiff. Defendant failed to disclose
5 information concerning the Vehicles, which was known at the time of the
6 transactions and the failure to disclose such information was intended to
7 induce Plaintiffs into transactions into which Plaintiffs would not have
8 entered had the information been disclosed. The representations made by
9 Defendant were material and upon which Plaintiffs relied to their
10 detriment. Had Plaintiffs known that the material representations made by
11 Defendant were false they would not have purchased the Vehicles;
12 b. §17.46(b)(7)--representing that goods or services are of a particular
13 standard, quality, or grade, or that goods are of a particular style or model,
14 if they are of another. Defendant represented that the Vehicles were of a
15 particular standard, quality, or grade when in fact they were of another.
16 The representations made by Defendant were of a material nature and
17 upon which Plaintiffs relied to their detriment. Had Plaintiffs known that
18 the material representations made by Defendant were false they would not
19 have purchased the Vehicles.
20 b. §17.50(2): breach of express warranty, as defined in §2.313 of the Texas
21 Business and Commerce Code (the warranty failed of its essential purpose
22 and Plaintiffs were deprived of substantial value of bargain because the
23 defect was not corrected within reasonable time);
24 c. §17.50(2): breach of the implied warranty to perform repairs in a good
25 and workmanlike manner, as set forth in *Melody Home Mfg. Co. v.*
26 *Barnes*, 741 S.W.2d 349, 354 (Tex. 1987);
27 d. §17.50(2): breach of the implied warranty of merchantability as defined in
28 §2.314 of the Texas Business and Commerce Code;
29 e. §17.50(3): an unconscionable action or course of action as defined by
30 §17.45(5).

153. Because of the inherent defects in the Vehicles, which existed at the time the
Vehicles were sold, although not discovered until later, the Vehicles were not merchantable in
that they would not pass without objection in the trade under the contract description and they
were not fit for the ordinary purpose for which such vehicles are used. Furthermore, Defendant

1 failed to perform the repair work in a good and workmanlike manner. This conduct by
2 Defendant constitutes a breach of the implied warranties described above, which breach is
3 actionable under DTPA §17.50(a)(2).

4 154. When the Vehicles were not repaired, the express warranties that they would be
5 and had been repaired were breached in violation of the DTPA. Defendant's breach of the
6 express warranties is actionable under DTPA § 17.50(a)(2).

7 155. Defendant's statements that the Vehicles' defects would be and had been repaired
8 when they were not misrepresented the characteristics, uses, benefits, standard and quality of
9 Defendant's services. For this reason, these representations were false, misleading and deceptive
10 as defined in DTPA § 17.46(b)(5), (7), (9), (12), (20), and (22); and this conduct is actionable
11 under DTPA § 17.50(a)(1).

12 156. Defendant took advantage of the lack of knowledge, ability, experience, or
13 capacity of the consumers to a grossly unfair degree. For this reason, this transaction was
14 unconscionable and is actionable under DTPA § 17.50(a)(3).

15 157. Plaintiffs further contend that Defendant's violations of the DTPA were
16 committed knowingly as that term is defined in §17.45(9) of the DTPA, entitling Plaintiffs to
17 seek civil penalties in trebling of their actual damages in accordance with the DTPA.

18 158. This conduct was a producing and/or proximate cause of actual damages to
19 Plaintiffs, as set forth below.

20 159. The limited remedies in Defendant's warranty fails of its essential purpose and
21 deprives Plaintiffs of the substantial value of the bargain because Defendant or its authorized
22 dealerships did not correct the defects within a reasonable time. Tex. Bus. and Com. Code §
23 2.719. Therefore, any purported limitation of remedies is ineffective.

24 160. The exclusion of consequential and incidental damages is unconscionable and
25
26
27
28

1 therefore unenforceable.

2 161. As a direct and proximate result of Defendant's willful violation of their
3 obligations under the DTPA, Plaintiffs have suffered actual, consequential and incidental
4 damages, including but not limited to diminution in value of the Vehicles, out of pocket
5 expenses, and loss of use.
6

7 **COUNT 2: VIOLATIONS OF THE MAGNUSON-MOSS WARRANTY ACT**

8 162. Plaintiffs reallege and incorporate by reference as though fully set forth herein
9 each and every allegation contained in the preceding paragraphs.

10 163. Plaintiffs are "consumers" as defined in the Magnuson-Moss Warranty Act
11 (hereinafter "Warranty Act"), 15 U.S.C. § 2301(3).
12

13 164. Defendant Ford is a "supplier" and "warrantor" as defined in the Warranty Act, 15
14 U.S.C. § 2301(4) and (5).

15 165. The Vehicles are "consumer products" as defined in the Warranty Act, 15 U.S.C.
16 § 2301(1), because it is normally used for personal purposes and Plaintiffs in fact purchased the
17 Vehicles wholly or primarily for personal use.
18

19 166. The express warranties pertaining to the Vehicles are "written warranties" as
20 defined in the Warranty Act, 15 U.S.C. § 2301(6).

21 167. The actions of Defendant, in failing to tender the Vehicles to Plaintiffs free of
22 defects and refusing to repair or replace the defective Vehicles tendered to Plaintiffs constitute a
23 breach of the written and implied warranties covering the Vehicles and hence a violation of the
24 Magnuson-Moss Warranty Act.
25

26 168. Plaintiffs have performed all things agreed to and required of them under the
27 purchase agreement and warranty, except as may have been excused or prevented by the conduct
28

1 of Defendant as herein alleged.

2 169. As a direct and proximate result of the acts and omissions of Defendant as set
3 forth herein above, Plaintiffs have been damaged herein above in an amount more than
4 \$75,000.00 according to proof provided by Plaintiffs.
5

6 **COUNT 3: BREACH OF EXPRESS WARRANTIES**

7 170. Plaintiffs reallege and incorporate by reference as though fully set forth herein
8 each and every allegation contained in the preceding paragraphs.

9 171. Defendant Ford issued express written warranties that covered the Vehicles.
10

11 172. As alleged above, Defendant breached their warranties by failing to correct the
12 Vehicles' defects.

13 173. In breach of the foregoing warranties, Defendant has failed to correct said defects.

14 174. The damages Plaintiffs have suffered are a direct and proximate result of
15 Defendant's actions in this matter include, but are not limited to, diminution in value of the
16 Vehicles, out of pocket expenses, cost of repair, and loss of use.
17

18 **COUNT 4: BREACH OF IMPLIED WARRANTIES**

19 175. Plaintiffs reallege and incorporate herein by reference each and every allegation
20 set forth in the preceding paragraphs.

21 176. Defendant Ford impliedly warranted that the Vehicles, which they designed and
22 manufactured, were merchantable and fit for their intended purpose and would pass without
23 objection in the trade.

24 177. Because of the defects, Plaintiffs' Vehicles are unfit for their intended use, are of
25 substandard quality, and have caused economic loss to Plaintiffs. Therefore, Defendant
26 breached the implied warranty of merchantability.
27
28

- 1 of purchase;
- 2 b. Damages for loss of use of the Vehicles;
- 3 c. Cost of repair;
- 4 d. Out of pocket damages for expenditures related to repairs, deductibles;
- 5 and towing charges.
- 6 e. Additional damages under the DTPA;
- 7 f. Costs of suit;
- 8 g. Attorney's fees;
- 9 h. Prejudgment and post-judgment interest; and
- 10 I. All other relief this Honorable Court deems appropriate.
- 11
- 12

13 **X. Demand for Jury Trial**

14 183. Plaintiffs hereby demand trial by jury to the extent authorized by law.

15 RESPECTFULLY SUBMITTED:

16 BY: /s/ *Richard C. Dalton*

17 Richard C. Dalton

18 Texas Bar No. 24033539

19 Louisiana Bar No. 23017

20 California Bar No. 268598

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