

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

SOUTHERN DIVISION

ERIC GREGORY DOLL, On Behalf of	)	
Himself and All Others Similarly Situated	)	
5115 Moorland Lane	)	
Bethesda, MD 20814	)	
	)	
Plaintiff	)	C.A. No. _____
	)	
vs.	)	
	)	
FORD MOTOR COMPANY, A Delaware	)	
Corporation	)	
1 American Road	)	
Dearborn, MI 48126	)	
	)	
SERVE: THE CORPORATION TRUST	)	
INCORPORATED	)	
351 West Camden Street	)	
Baltimore, MD 21201	)	
	)	
Defendants.	)	

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**COMPLAINT**

Plaintiff, Eric Gregory Doll (“Plaintiff”), by and through his undersigned counsel, on behalf of himself and all other persons and entities similarly situated, alleges the following facts and claims upon knowledge as to matters relating to himself and upon information and belief as to all other matters and, by way of this Complaint, avers as follows:

**INTRODUCTION**

1. Plaintiff brings 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 models manufactured, marketed,

distributed and sold by Ford (“the Vehicle(s)”). Plaintiff brings this action on behalf of himself and all others similarly situated (the “Class”) to obtain damages, injunctive, declaratory and equitable relief, restitution and/or disgorgement of profits and additional relief as may be appropriate for the proposed Class, as defined below.

2. The Vehicles are equipped with a defective transmission that results in a sudden loss of power and requires the transmission, its components and/or related parts to be replaced and/or repaired at a significant monetary cost of approximately \$1,000 to \$3,000. Ford’s inclusion of this defective transmission in the Vehicles has resulted in widespread discontent, frustration and anger by Class members.

3. As set forth below, Ford concealed and failed to disclose material information concerning the Vehicles’ transmission, including, but not limited to, the fact that (1) the transmission is defective, and (2) the transmission inevitably fails beyond the New Vehicle Limited Warranty provided at the time of purchase and/or lease of the Vehicles and well in advance of their expected useful life. As a result of Ford’s omissions and acts of concealment, Plaintiff and Class members have been and will continue to be harmed and subjected to unreasonably high repair and replacement costs. If these material facts had been disclosed by Ford, Plaintiff 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 and their transmission during the distribution, marketing, sales, advertisement, customer service and repair performed with respect to these Vehicles.

5. Plaintiff asserts 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 State of Maryland; violation of the Maryland Consumer Protection Act (“MCPA”), Md. Code Ann., Commercial Law, § 13-101, *et seq.*; and unjust enrichment.

### **THE PARTIES**

6. Plaintiff 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, Plaintiff purchased a new 2004 Ford Freestar model for his personal and family use from Lindsay Ford, formerly Hill & Sanders Ford, an authorized Ford dealership in Wheaton, Maryland.

7. 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**

8. 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.

9. 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.

10. 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 Plaintiff’s 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.

**SUBSTANTIVE ALLEGATIONS**

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

12. The Vehicles at issue were manufactured, marketed and sold by Ford throughout the United States, including the State of Maryland, through its established network of licensed dealers and distributors. The Vehicles had a suggested retail price of between \$20,000 and \$35,000.

13. All of the Vehicles are factory-equipped with a 4-speed automatic transmission that was (and is) defective at all relevant times. The transmission defect causes the Vehicles to lose power, suddenly and without warning, rendering them either entirely inoperable or barely maneuverable and with little power. This sudden loss of power 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 transmission, the Vehicles require costly replacement and/or repair of the entire transmission, transmission component parts and/or related parts such as the torque converter.

14. On November 18, 2009, *The New York Times* reported that, in or around July 2010, 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.” 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.”

15. Ford became aware of customer complaints regarding the transmission defect 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 2001 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 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 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].

16. By 2006, hundreds of owners complained about the same 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.

17. Despite the defective condition of the Vehicles' 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.

18. Due to the defective nature of the Vehicles' transmission, the Vehicles and their transmission are unreliable and do not perform in accordance with the reasonable expectations of Plaintiff and Class members. Plaintiff and Class members, as reasonable consumers, expected that the Vehicles' transmission would have a useful life similar to that of a conventional 4-speed automatic transmission. However, the Vehicles' transmission has 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 transmission. Plaintiff and Class members would not have purchased, or would have paid substantially less for, their Vehicles had they been informed that the transmission is defective and has a markedly reduced useful life. As such, the Vehicles' transmission is unreliable and fails to perform in accordance with reasonable expectations of consumers, including Plaintiff and Class members.

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

20. Ford knew or should have known of the inherent defect in the transmission that reduced the useful life of the Vehicles' at the time of the marketing, sale and distribution of the Vehicles. 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.

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

22. Plaintiff 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 transmission, and because they have had to pay unreasonable sums of money to repair and/or replace the Vehicles' transmission and/or component parts, which can range from approximately \$1,000 to \$3,000.

23. Unreasonably high repair and/or replacements costs, as well as the reduced useful life of the Vehicles' transmission, have caused further injury to Plaintiff and the Class by virtue of the fact that they cannot safely enjoy full use of their Vehicles without the risk of the transmission failing and the Vehicles suddenly losing power, including while they are driving, thus rendering travel insecure and hazardous.

24. Plaintiff 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' transmission was (and is) defective in that it fails prematurely and requires a significant amount of money to repair and/or replace. Plaintiff and Class members have also been harmed and suffered actual



damages because the Vehicles' transmissions have a useful life that is considerably shorter than that of conventional transmissions. Thus, Plaintiff and Class members have suffered and will continue to be harmed and suffer damages because the Vehicles' transmission fails prematurely, the Vehicles' transmission will continue to require replacement and repair, and replacement and repair will continue to be unreasonably costly and ultimately futile due to the inherently defective nature of the transmission.

**Plaintiff's Experience**

25. Plaintiff purchased his Vehicle in or about September 2004 for approximately \$23,000.

26. In or about January 2010, Plaintiff's wife was driving on a public highway in Bethesda, Maryland at approximately 7:30 p.m. when the Vehicle suddenly lost power as a result of the defective torque converter. Plaintiff 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, the Vehicle's odometer reading was approximately 66,000 miles.

27. Prior to Plaintiff purchasing his Vehicle, Ford failed to disclose to owners and lessees of the Vehicles, including Plaintiff, the condition and defect in the Vehicles that causes the 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 transmission's actual shortened useful life. If Plaintiff had known these material facts, he would not have purchased the Vehicle, or would have paid significantly less for the Vehicle.

**The Class Members' Experience**

28. The experiences of Plaintiff 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 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 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 4 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 4300 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 cruise it to the left 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 justed 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 a 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.

29. To date, despite the numerous reports of transmission failure occurring with the Vehicles, Ford has not notified Class members about the Vehicles' defective transmission. Moreover, Ford has attempted to diminish the seriousness of the transmission defect, telling NHTSA that the transmission 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 transmission failures, including the experiences associated with Plaintiff’s Vehicle.

### **TOLLING OF THE STATUTE OF LIMITATIONS**

30. 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 transmission, among other reasons, Plaintiff and members of the Class did not discover and could not have discovered the problems and defects alleged herein through the exercise of reasonable diligence.

31. Any applicable statutes of limitations have been tolled by Ford’s knowing and active concealment and denial of the facts as alleged herein. Plaintiff 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. Plaintiff and members of the Class could not reasonably have discovered the defects and problems alleged herein because of Ford’s fraudulent concealment.

32. Ford was and is under a continuous duty to disclose to Plaintiff and Class members the true character, quality, and nature of the Vehicles’ transmission. Ford knowingly, affirmatively, and/or actively concealed, and continues to conceal, the true character, quality and nature of the Vehicles’ defective transmission.

33. Ford knew or should have known that Plaintiff and the Class 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**

34. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3), on behalf of himself and the following 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.

Excluded from the Class is 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. Plaintiff reserves the right to amend the Class definition if discovery and further investigation reveals that the proposed Class should be expanded or otherwise modified.

35. The members of each of the Class are so numerous that joinder would be impracticable. Plaintiff reasonably estimates 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 Class. The members of the Class 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 Class.

36. There are questions of law and fact common to the members of the Class 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' transmission;

c. Whether Ford knew, or was reckless in not knowing, that its omissions concerning the Vehicles' defective transmission were deceptive, false and/or misleading;

d. Whether, by the misconduct set forth in this Complaint, Ford has violated the MCPA;

e. Whether, by the misconduct set forth herein, Ford has breached its implied warranty of merchantability; and

f. Whether, as a result of Ford's misconduct, Plaintiff and the Class are entitled to equitable relief and/or other relief, and, if so, the nature of such relief.

37. Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff has no interests antagonistic to those of the Class and is not subject to any unique defenses.

38. Plaintiff will fairly and adequately protect the interests of all members of the Class and has retained attorneys experienced in class action and complex litigation.

39. A class action is superior to 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 Class to prosecute individual actions;

b. The Class is 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.

40. Plaintiff does not anticipate any difficulty in the management of this litigation.

41. 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 The Class For Violations Of The Magnuson-Moss Act**

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

43. Plaintiff and the Class seek to recover for Ford's breach of implied warranty of merchantability under the laws of the State of Maryland pursuant to the Magnuson-Moss Act, 15 U.S.C. §§ 2301, 2301(7), 2310.

44. Ford's implied warranty of merchantability accompanied the sale of the Vehicles sold to Plaintiff and members of the Class.

45. Ford is a merchant in the sale of the Vehicles to Plaintiff and the Class members. Ford provided Plaintiff 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' transmission has a useful life of less than that of a conventional transmission, and the Vehicles do not provide a safe or reliable mode of transportation in light of the propensity of the Vehicles' transmission to fail and the sudden occurrence of a loss of power associated with such failure, including, but not limited to, when the Vehicle is being driven on highways and streets.

46. 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.

47. The alleged defect existed at the time the transmissions left the manufacturer and were not caused by any acts or omissions on the part of Plaintiff or the class members.



48. 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.

49. 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.

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

51. Plaintiff 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.

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

53. In addition, Ford has received, on information and belief, hundreds of complaints and other notices from consumers advising them of the defects associated with the Vehicles' transmission.

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

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

56. As a direct and proximate result of Ford's breach of the implied warranty, Plaintiff and the class members have been caused to suffer monetary damages to replace and/or

repair the defective transmissions, damage to their vehicles, and other damages as a result of the breach of implied warranty.

57. As a result of the breach of implied warranty, Plaintiff 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 class that have not yet replaced or repaired the defective transmissions, the cost of what it would cost to repair or replace the defective transmissions.

58. Plaintiff 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 The Class For Breach Of Implied Warranty Under The Laws Of The State of Maryland**

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

60. Plaintiff and the Class seek to recover for Ford's breach of implied warranty of merchantability under the laws of the State of Maryland.

61. Ford's implied warranty of merchantability accompanied the sale of the Vehicles sold to Plaintiff and members of the Class.

62. Ford is a merchant in the sale of the Vehicles to Plaintiff and the Class members. Ford provided Plaintiff 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' transmission has a useful life of less than that of a conventional transmission, and the Vehicles do not provide a safe or reliable mode

of transportation in light of the propensity of the Vehicles' transmission to fail and the sudden occurrence of a loss of power associated with such failure, including, but not limited to, when the Vehicle is being driven on highways and streets.

63. 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.

64. The alleged defect existed at the time the transmissions left the manufacturer and were not caused by any acts or omissions on the part of Plaintiff or the class members.

65. 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.

66. 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.

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

68. Plaintiff 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.

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

70. In addition, Ford has received, on information and belief, hundreds of complaints and other notices from consumers advising them of the defects associated with the Vehicles' transmission.

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

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

73. As a direct and proximate result of Ford's breach of the implied warranty, Plaintiff and the class members have been caused to suffer monetary damages to replace and/or repair the defective transmissions, damage to their vehicles, and other damages as a result of the breach of implied warranty.

### **THIRD CAUSE OF ACTION**

#### **Asserted On Behalf Of The Class For Violations Of The MCPA**

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

75. Plaintiff is a consumer within the meaning of the MCPA and Md. Code Ann., Commercial Law § 13-101, *et seq.*

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

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

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

- a. Making false or misleading statements or other representations of any kind which had the capacity, tendency, or effect of deceiving or misleading consumers;
- b. Representing that consumer goods or services have a sponsorship, approval, accessory, characteristic, ingredient, use, benefit, or quantity which they do not have;
- c. Representing that consumer goods or services are of a particular standard, quality, grade, style, or model which they are not;
- d. Failing to disclose material facts that deceived and had the tendency to deceive;
- e. Advertising consumer goods or services: (i) without intent to sell or lease them as advertised or offered; and (ii) with intent not to supply reasonably expected public demand; and
- f. 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.

79. Ford violated the MCPA by concealing, suppressing or omitting material facts regarding the Vehicles, including, but not limited to, the fact that the Vehicles' transmission is defective, that the Vehicles' transmission fails prematurely and that the cost of replacing or repairing the defective 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.

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

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

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

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

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

#### **FOURTH CAUSE OF ACTION**

##### **Asserted On Behalf Of The Class For Unjust Enrichment**

85. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs of this Complaint to the extent not inconsistent with the claims asserted in this Court.

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

87. By its wrongful acts and omissions described herein, including selling the Vehicles with defective transmissions, Ford was unjustly enriched at the expense of Plaintiff and the Class.

88. Plaintiff and the Class conferred a benefit upon Defendant by purchasing its automobiles at the full price for fully functional vehicles equipped with appropriate and working transmissions.

89. Defendant knew that the Class was purchasing the Vehicles and still accepted the sum contemplated for fully functional vehicles equipped with appropriate and working transmissions.

90. 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 transmissions to Plaintiff and the Class. Natural justice and equity require that Plaintiff and the Class recover under the circumstances.

91. Plaintiff, on behalf of himself and all others similarly situated, seeks 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, Plaintiff, on behalf of himself and the Class, prays for judgment against Ford granting the following relief:

- a. An order certifying this case as a class action and appointing Plaintiff's counsel to represent the Class;
- 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 Plaintiff and the Class;
- d. Actual and/or statutory damages for injuries suffered by Plaintiff and the Class 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 Plaintiff and all Class members the funds paid to them for the Vehicles equipped with defective transmissions or, in the alternative, requiring Ford to replace all of the Vehicles' transmissions upon failure and to reimburse all consumers who have already paid to replace and/or repair their Vehicles' 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**

Plaintiff demands a trial by jury on all causes of action so triable.



Dated: June 8, 2010

*s/Timothy F. Maloney*

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