

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

*Ford Fusion and C-MAX Fuel Economy
Litigation*

This Document Relates to All Actions.

Case No. 13-MD-2450 (KMK)

CONSOLIDATED SECOND AMENDED
CLASS ACTION COMPLAINT AND
DEMAND FOR JURY TRIAL

INTRODUCTION

1. This consumer fraud class action is based on Defendant Ford Motor Company's ("Ford" or the "Company") false and misleading advertising campaign regarding the fuel economy of certain 2013 model-year hybrid vehicles.

2. Until this past year, Ford's efforts to break into the burgeoning market for hybrid vehicles had been largely unsuccessful. Ford's primary hybrid offering, the first generation Ford Fusion Hybrid, which was launched in model year 2010, was marketed as achieving 41 miles per gallon ("MPG") in the city and 36 MPG highway, for a combined 39 MPG—well below the market-leading Prius, which offered 51 city and 48 highway for a combined 50 MPG. Consequently, the fuel economy of this Ford Fusion Hybrid was not high enough to convince most potential customers to pay several thousand dollars more for a hybrid vehicle (also known as the "hybrid premium").

3. As of mid-2012, Ford held only 3% of the hybrid market. But with the 2013 model year, Ford launched a massive and misleading advertising campaign designed to convey to the auto-buying public that two of its new 2013 hybrid models—the all new second generation Fusion Hybrid and the C-MAX—had made a quantum leap in fuel economy and now delivered 47 city, 47 highway and 47 MPG combined. Ford's "47 MPG" message was broadcast nationwide through a Times Square "47" kick-off, a "47 Challenges for 47 Days" multimedia event, national television commercials, widespread magazine and newspaper advertisements, and coordinated use of social media.

4. Ford's advertising campaign was a tremendous success, triggering month after month of record hybrid sales for the Company. For Prius drivers, Ford's new 47/47/47 MPG figures offered the promise of a more powerful, roomier American made vehicle which nonetheless could achieve fuel economy comparable to the Prius. And for (i) loyal Ford

customers, (ii) car buyers committed to support the American auto industry, and (iii) others driving less fuel-efficient vehicles, the 2013 Ford Fusion Hybrid and the C-MAX offered enough of a bump in fuel economy to justify the hybrid premium. By the end of 2012, Ford's share of the hybrid market had increased more than five-fold, rocketing from 3% to 16% within months of Ford's introduction of the 2013 Fusion Hybrid and the C-MAX vehicles and the massive advertising campaign touting their class leading fuel economy. By April 2013, Ford was the second-leading auto company in the hybrid market, boasting that more and more Toyota and Honda customers were trading in their vehicles for Ford hybrids. In August 2013, Ford achieved its 11th consecutive month of record hybrid sales on the strength of its vaunted "47 MPG."

5. The problem for consumers was that Ford's "47 MPG" advertising campaign was highly misleading, as the fuel economy of the 2013 Fusion Hybrid and C-MAX vehicles were no better than the Company's prior hybrid offerings. Outside of the laboratory, under real-world driving conditions, consumers who purchased a 2013 Fusion Hybrid or C-MAX hybrid found themselves consistently unable to get anywhere near the advertised 47 MPG. Ford knew that its 2013 Fusion Hybrid and C-MAX could not deliver 47 MPG under real-world driving conditions, and Ford has now acknowledged as much, but only after the 2013 model year was almost over and after Ford achieved the record sales it hoped to achieve through its misleading advertising campaign.

6. Additionally, Ford has now conceded that the MPG figures repeatedly advertised for the C-MAX were not even based on tests of the C-MAX itself. Rather, Ford relied solely on the testing of the 2013 Fusion Hybrid, although that vehicle is smaller and has a more aerodynamic shape.

7. Plaintiffs are consumers who purchased or leased a 2013 Ford Fusion Hybrid (hereinafter the “2013 Fusion Hybrid”) or a 2013 Ford C-MAX (hereinafter the “C-MAX”) (hereinafter collectively referred to as the “2013 Fusion Hybrid and C-MAX” or the “Vehicles”) and now find themselves with a vehicle that achieves nowhere near the fuel economy they reasonably expected, and would have received had they bought another hybrid vehicle.

8. As a result of Ford’s misrepresentations and material omissions regarding the fuel economy of the Vehicles, Plaintiffs and the Class have suffered damages in that they purchased and/or leased Vehicles that they would not have otherwise purchased and/or leased. Alternatively, Plaintiffs and the Class would not have paid as much for these Vehicles. Further, Plaintiffs and the Class have suffered damages in increased fuel expenses and the quantifiable diminution of value for their Vehicles.

9. Plaintiffs Gregory Holman, Richard Pitkin, Bruce Klafter, Johanna Fontenot, Dean Wilkins, April Tibbetts, James Oldcorn, Jeremy Dobbs, Gary Cole, Richard Weglarz, Raymond Belden, James Griffiths, Matthew Romak, Dean Majkrzak, Michael Hendrickson, Leah Broome, James DeVito, Robert Fellows, Octavio Hoyos, Mark Goodale, Gary Druckenmiller, and Dennis Harkins (collectively, “Plaintiffs”) bring this action for compensatory damages and equitable, injunctive, and declaratory relief against Ford. Plaintiffs, individually and on behalf of all others similarly situated, allege the following upon their own knowledge, or where there is no personal knowledge, upon information and belief, and/or the investigation of counsel.

JURISDICTION AND VENUE

10. This Court has jurisdiction over this lawsuit pursuant to 28 U.S.C. §1332(a)(1), as modified by the Class Action Fairness Act of 2005, because the Plaintiffs and Ford are citizens of different states, there are more than 100 members of the Class (as defined herein), and the

aggregate amount in controversy exceeds \$5,000,000.00, exclusive of attorneys' fees, interest, and costs.

11. This Court has personal jurisdiction over Ford because Ford has conducted and continues to conduct business in the State of New York and because Ford committed the acts and omissions complained of herein, in part, in the State of New York.

12. Pursuant to 28 U.S.C. §1391(b), venue as to Ford is proper in this District. Ford sells a substantial amount of automobiles in this District, has dealerships in this District, and many of Ford's acts complained of herein occurred in this District.

PARTIES

I. PLAINTIFFS¹

A. Arizona

13. Plaintiff Gregory Holman is a resident and citizen of the city of Phoenix, Arizona. Plaintiff Holman was in the market for a hybrid because he travels long distances for his work. He saw a television advertisement for the C-MAX,² which said the C-MAX got better MPG than the Prius v. Mr. Holman also viewed advertisements on the C-MAX Facebook page, which echoed this message, including a video ad series called the Hybrid Games,³ which compared the Prius v unfavorably to the C-MAX. After viewing the above-described advertising, Plaintiff Holman purchased a 2013 Ford C-MAX on December 6, 2012, at Power Ford in Scottsdale, Arizona. Mr. Holman would not have purchased the C-MAX but for his reliance on Ford's deceptive advertising as described in this paragraph.

¹ Unless otherwise noted, each Exhibit cited in this section reflects an advertisement produced by Ford that is either identical to, or which does not differ materially from, the specific advertisement relied upon by the corresponding Plaintiff.

² See Exhibit 1.

³ See Exhibit 3.

B. California

14. Plaintiff Bruce Klafter is a resident and citizen of San Mateo, California. Mr. Klafter has a long commute and only considered high mileage vehicles as part of his search. Mr. Klafter saw a television commercial,⁴ which represented that the C-MAX had better horsepower than Prius v and beat Prius v in MPG. After viewing the above-described advertising, Plaintiff Klafter purchased a 2013 Ford C-MAX on November 24, 2012, at Serramonte Ford in Colma, California. Mr. Klafter would not have purchased the C-MAX but for his reliance on Ford's deceptive advertising as described in this paragraph.

15. Plaintiff Richard Pitkin is a resident and citizen of Roseville, California. Mr. Pitkin was in the market for a hybrid car because fuel economy was the most important feature he was looking for in a car. Prior to his purchase, Plaintiff Pitkin visited Ford's website where he saw Ford's representations that the C-MAX got better mileage than the Prius and viewed a Hybrid Games video.⁵ After viewing the above-described advertising, Plaintiff Pitkin purchased a 2013 Ford C-MAX on or about October 30, 2012, at Folsom Lake Ford in Folsom, California. Mr. Pitkin would not have purchased the C-MAX but for his reliance on Ford's deceptive advertising as described in this paragraph.

16. Plaintiff Johanna Fontenot is a resident and citizen of Altadena, California. She had considered buying a 2012 Ford Fusion Hybrid but decided to wait until the 2013 model was available because the advertised fuel economy of the 2013 model was much higher than the 2012 model. She obtained her information about the fuel economy of the 2013 Fusion Hybrid from a Fusion brochure that she received from her dealer. In that brochure, she read the representation "47 mpg in the city and on the highway? Yes, it's true. Building on the award-winning success

⁴ See Exhibit 2.

⁵ See Exhibit 3.

of the 2012 model, the all-new 2013 Ford Fusion Hybrid achieves 47 combined mpg. City mileage is best in class and 4 mpg better than its nearest class competitor.”⁶ Ms. Fontenot also saw a Ford TV commercial for the Fusion Hybrid, which stated that the Fusion “doubles the fuel economy of the average vehicle.”⁷ After viewing the above-described advertising, Plaintiff Fontenot purchased a 2013 Fusion Hybrid on or about November 11, 2012, at Advantage Ford in Duarte, California. Ms. Fontenot would not have purchased the 2013 Fusion Hybrid but for her reliance on Ford’s deceptive advertising as described in this paragraph.

C. Colorado

17. Plaintiff Dean Wilkins is a resident and citizen of the city of Holyoke, Colorado. Mr. Wilkins researched the 2013 Fusion Hybrid on Ford’s website and, in the fall of 2012, visited Lakewood Fordland where he obtained a brochure for the 2013 Fusion Hybrid. In that brochure, he read “47 mpg in the city and on the highway? Yes, it’s true...The all-new 2013 Fusion Hybrid achieves 47 combined mpg.”⁸ After viewing the above-described advertising, Plaintiff Wilkins purchased a 2013 Ford Fusion Hybrid on or about November 20, 2012, at Lakewood Fordland in Lakewood, Colorado. Mr. Wilkins would not have purchased the 2013 Ford Fusion Hybrid but for his reliance on Ford’s deceptive advertising as described in this paragraph.

D. Connecticut

18. Plaintiff April Tibbetts is a resident and citizen of the city of Terryville, Connecticut. In the fall of 2012, Plaintiff Tibbetts was in the market for a hybrid vehicle because she had a very long commute to her job. She was considering the Prius v, and had never considered buying a Ford. However, while she was watching a television show she had digitally

⁶ See Exhibit 4 at p. 5.

⁷ See Exhibit 5.

⁸ See Exhibit 4 at p. 5.

video recorded she saw an advertisement⁹ for the Ford C-MAX that said it got better mileage than the Prius v. Ms. Tibbetts saved the ad and later showed it to her husband. As a consequence of seeing the representations about the C-MAX's fuel economy in that advertisement, Ms. Tibbetts went to Hammonasset Ford in Madison, Connecticut where she received a C-MAX brochure which stated "It's more fuel efficient than Toyota Prius v."¹⁰ After viewing the above-described advertising, on or about November 30, 2012, Plaintiff Tibbetts purchased the C-MAX at Hammonasset Ford in Madison, Connecticut. Ms. Tibbetts would not have purchased the C-MAX but for her reliance on Ford's deceptive advertising as described in this paragraph.

E. Florida

19. Plaintiff Jeremy Dobbs is a resident and a citizen of the city of Orlando, Florida. In mid-2012, Plaintiff Dobbs was in the market for a new vehicle, which was fuel efficient because he drives long distances for his work in sales. During his search, Mr. Dobbs went to Ford's website and saw a Ford TV advertisement, which stated that the all-new Ford Fusion Hybrid "doubles the fuel economy of the average vehicle."¹¹ Mr. Dobbs also visited Ford dealers to further investigate the vehicle. At the dealership, Mr. Dobbs was given a brochure for the 2013 Fusion. In that brochure he read: "47 in the city and on the highway? Yes, it's true...The all new 2013 Fusion Hybrid achieves 47 combined mpg. City mileage is best in class and 4 mpg more than its nearest class competitor."¹² After viewing the above-described advertising, Mr. Dobbs purchased a 2013 Fusion Hybrid on December 17, 2013, at Sunstate Ford

⁹ See Exhibit 1.

¹⁰ See Exhibit 6 at p. 2.

¹¹ See Exhibit 5.

¹² See Exhibit 4 at p. 5.

in Orlando, Florida. Mr. Dobbs would not have purchased the Fusion Hybrid but for his reliance on Ford's deceptive advertising as described in this paragraph.

20. Plaintiff James Oldcorn is a resident and citizen of Naples, Florida. In or around November or December 2012, Mr. Oldcorn saw Ford's television advertisement,¹³ which stated the "C-MAX also beats the Prius v with better mpg." After viewing the above-described advertising, Plaintiff Oldcorn purchased a 2013 Ford C-MAX around December 2012, at Galloway Ford in Fort Myers, Florida. Mr. Oldcorn would not have purchased the C-MAX but for his reliance on Ford's deceptive advertising as described in this paragraph.

F. Illinois

21. Plaintiff Gary Cole is a resident and citizen of the city of Wakarusa, Indiana. Plaintiff Cole drives as much as 30,000 miles a year for his job and accordingly his number one consideration in buying a new vehicle was getting high mileage. Mr. Cole learned about the fuel economy of the C-MAX from Ford television advertisements, which represented that the "C-MAX also beats the Prius v with better mpg,"¹⁴ and that the Prius v was "a Hybrid that C-MAX also bests in mpg."¹⁵ Thereafter, he went to a Ford dealership and was given a brochure for the 2013 C-MAX in which he read that the C-MAX was "more fuel efficient than the Prius v."¹⁶ After viewing the above-described advertising, Plaintiff Cole purchased a C-MAX on January 2, 2013, at Fair Oaks Ford in Naperville, Illinois. Mr. Cole would not have purchased the C-MAX but for his reliance on Ford's deceptive advertising as described in this paragraph.

22. Plaintiff Richard Weglarz is a resident and citizen of the city of Antioch, Illinois. Plaintiff Weglarz was considering purchasing a Diesel VW Jetta that got very good fuel

¹³ See Exhibit 1.

¹⁴ See Exhibit 1.

¹⁵ See Exhibit 2.

¹⁶ See Exhibit 6 at p. 2.

economy when he heard that Ford was coming out with a 2013 Fusion Hybrid that was going to get 47 MPG in the city on the highway and combined. In the fall of 2012, Mr. Weglarz went to Ford's website to research the vehicle and visited Kunes County Ford, where he obtained a brochure for the 2013 Fusion.¹⁷ In that brochure he read Ford's representation of the Fusion Hybrid's fuel economy leadership: "47 mpg in the city and on the highway? Yes, it's true. Building on the award-winning success of the 2012 model, the all-new 2013 Ford Fusion Hybrid achieves 47 combined mpg." Mr. Weglarz also saw a Ford TV advertisement in which Ford described the 2013 Fusion Hybrid as "the most fuel efficient mid-size hybrid sedan in America."¹⁸ After viewing the above-described advertising, Mr. Weglarz purchased a 2013 Ford Fusion Hybrid on or about November 22, 2012, at Kunes County Ford in Antioch, Illinois. Mr. Weglarz would not have purchased the 2013 Fusion Hybrid but for his reliance on Ford's deceptive advertising as described in this paragraph.

G. Maryland

23. Plaintiff Raymond Belden is a resident and citizen of the city of Odenton, Maryland and serves as a police officer at the Metropolitan Police Department of the District of Columbia. In late 2012, Officer Belden, who drives approximately 20,000 miles a year, was in the market for a high mileage vehicle when he saw a Ford television advertisement for the C-MAX,¹⁹ which stated that the C-MAX got better gas mileage than the Prius v. After viewing the above-described advertising, Officer Belden purchased a C-MAX around January 2013, at Koons Ford in Silver Spring, Maryland. Officer Belden would not have purchased the C-MAX but for his reliance on Ford's deceptive advertising as described in this paragraph.

¹⁷ See Exhibit 4 at p. 5.

¹⁸ See Exhibit 7.

¹⁹ See Exhibit 1.

H. Michigan

24. Plaintiff James Griffiths is a resident and citizen of Bay City, Michigan. In mid-2012, Mr. Griffiths was in the market for a fuel efficient vehicle because he drove approximately 30,000 miles a year for his job. On a trip to the dealership, Mr. Griffiths was given a C-MAX brochure.²⁰ Mr. Griffiths read the statements in the brochure that the Ford C-MAX was “more fuel efficient than Toyota Prius v.” After viewing the above-described advertising, on September 26, 2012, Plaintiff Griffiths purchased a C-MAX on or about September 26, 2012, at Hagen Ford in Bay City, Michigan. Mr. Griffiths would not have purchased the C-MAX but for his reliance on Ford’s deceptive advertising as described in this paragraph.

25. Plaintiff Matthew Romak is a resident and citizen of Gibraltar, Michigan. On or about the end of 2012, Plaintiff Romak, who drives approximately 30,000 miles a year, was in the market for a fuel efficient vehicle in order to save money on gas. He had originally considered and eliminated hybrid vehicles from his choices because hybrids achieved their best mileage in the city and Mr. Romak mostly drove on highways. He considered several vehicles, and in furtherance of his goal, he went to Ford’s website. Mr. Romak also saw a Ford TV commercial for the Fusion Hybrid, which stated that the Fusion “doubles the fuel economy of the average vehicle.”²¹ Mr. Romak visited a Ford dealership and obtained a brochure for the Ford Fusion Hybrid.²² In that brochure, he read “47 mpg in the city and on the highway? Yes, it’s true. Building on the award-winning success of the 2012 model, the all-new 2013 Ford Fusion Hybrid achieves 47 combined mpg.” After viewing the above-described advertising, Plaintiff Romak purchased a 2013 Ford Fusion Hybrid in January 2013, at Crest Ford in Flat Rock,

²⁰ See Exhibit 6 at p. 2.

²¹ See Exhibit 5.

²² See Exhibit 4 at p. 5.

Michigan. Mr. Romak would not have purchased the 2013 Fusion Hybrid but for his reliance on Ford's deceptive advertising as described in this paragraph.

I. Minnesota

26. Plaintiff Dean Majkrzak is currently a resident and citizen of Phoenix, Arizona. At the time of his purchase of a 2013 Ford Fusion Hybrid, Mr. Majkrzak was a resident and citizen of the city of Elk River, Minnesota. At the time he began looking for a new car, Plaintiff Majkrzak went to Ford's website and saw a Ford television advertisement for the Fusion Hybrid, which stated that the all-new Fusion Hybrid "doubles the fuel economy of the average vehicle."²³ He also viewed the dealership brochure for the Ford Fusion Hybrid,²⁴ which stated that the Fusion Hybrid's mpg leadership "47 mpg in the city and on the highway? Yes, it's true. Building on the award-winning success of the 2012 model, the all-new 2013 Ford Fusion Hybrid achieves 47 combined mpg." After reviewing the above-described advertising, Mr. Majkrzak purchased a 2013 Fusion Hybrid on January 11, 2013, at New Brighton Ford in New Brighton, Minnesota. Mr. Majkrzak would not have purchased his 2013 Fusion Hybrid but for his reliance on Ford's deceptive advertising as described in this paragraph.

J. Missouri

27. Plaintiff Leah Broome is a resident and citizen of Rolla, Missouri. In the fall of 2012, Plaintiff Broome was in the market for a fuel efficient vehicle and had decided to buy a Prius. However, when she saw a Ford Hybrid Games video,²⁵ which claimed that the C-MAX had better fuel economy than the Prius, she decided to consider the C-MAX. Plaintiff Broome also saw another C-MAX television advertisement,²⁶ which stated that the C-MAX got better gas

²³ See Exhibit 5.

²⁴ See Exhibit 4 at p. 5.

²⁵ See Exhibit 3.

²⁶ See Exhibit 1.

mileage than the Prius v. After reviewing the above-described advertising, Plaintiff Broome purchased a C-MAX on or about December 2012, at Hutcheson Ford in St. James, Missouri. Ms. Broome would not have purchased the C-MAX but for her reliance on Ford's deceptive advertising in this paragraph.

28. Plaintiff Michael Hendrickson is a resident and citizen of the city of Rogersville, Missouri and serves as a Circuit Judge in Missouri. Judge Hendrickson had long been searching for a quality car that achieved great gas mileage as his position requires travel throughout the largest geographic circuit in Missouri, consisting of five counties. At the time of his search, Judge Hendrickson anticipated driving about 60,000 miles per year for his job and his personal needs. Accordingly, he was in the market for a highly fuel efficient car. Judge Hendrickson went to Ford's website and also visited a Ford dealership where he was given a brochure for the 2013 Fusion Hybrid.²⁷ In that brochure he read "47 mpg in the city and on the highway? Yes, it's true. Building on the award-winning success of the 2012 model, the all-new 2013 Ford Fusion Hybrid achieves 47 combined mpg. City mileage is best in class and 4 mpg better than its nearest class competitor." After reviewing the above-described advertising, Judge Hendrickson purchased a 2013 Fusion Hybrid on or about January 26, 2013, at Joe Machens Capital City Ford Lincoln in Jefferson City, Missouri. Judge Hendrickson would not have purchased the 2013 Fusion Hybrid but for his reliance on Ford's deceptive advertising as described in this paragraph.

K. New York

29. Plaintiff James DeVito is a resident and citizen of Brewster, New York. Plaintiff DeVito spent a year searching for a new fuel efficient car. Mr. DeVito saw television advertisements that stated that the C-MAX "beats Prius v with better mpg."²⁸ After reviewing

²⁷ See Exhibit 4 at p. 5.

²⁸ See Exhibit 1.

the above-described advertising, Plaintiff DeVito purchased a C-MAX on or about December 14, 2012, at Brewster Ford in Brewster, New York. Mr. DeVito would not have purchased the C-MAX but for his reliance on Ford's deceptive advertising as described in this paragraph.

30. Plaintiff Robert Fellows is a resident and citizen of Valley Cottage, New York. In the fall of 2012, Plaintiff Fellows' existing lease of a Prius was coming to an end, and as a result, Plaintiff Fellows was in the market for a new hybrid car. He saw a television commercial for the C-MAX,²⁹ which stated that the C-MAX got better MPG than the Prius v. After reviewing the above-described advertising, Plaintiff Fellows leased a C-MAX in or about October 2012, at Schultz Ford in Nanuet, New York. Mr. Fellows would not have leased the C-MAX but for his reliance on Ford's deceptive advertising as described in this paragraph.

31. Plaintiff Octavio Hoyos is a resident and citizen of the city of Howard Beach, New York. Plaintiff Hoyos owns his own janitorial service business and drives approximately 30,000 miles a year. As a result, in the fall of 2012, he was in the market for a fuel efficient vehicle. He was considering the Prius and the Nissan Leaf. However, he saw a C-MAX television commercial,³⁰ which stated that the C-MAX got better MPG than the Prius v. After reviewing the above-described advertising, Mr. Hoyos purchased a C-MAX on or about December 4, 2012, at Bay Ridge Ford in Brooklyn, New York. Mr. Hoyos would not have purchased the C-MAX but for his reliance on Ford's deceptive advertising as described in this paragraph.

L. Oregon

32. Plaintiff Mark Goodale is a resident and citizen of the city of Beaverton, Oregon. In late 2012, Plaintiff Goodale was in the market for a new fuel efficient car which had room for

²⁹ See Exhibit 1.

³⁰ See Exhibit 1.

four passengers so he could transport his parents comfortably. He considered both the Prius and the Ford Fusion Hybrid. Prior to making his decision, Mr. Goodale went to Ford's website. Mr. Goodale also saw two television advertisements, which touted the Fusion's fuel economy. Mr. Goodale saw a Ford advertisement that stated the Ford Fusion Hybrid was "the most fuel efficient mid-size hybrid sedan in America."³¹ He also saw an advertisement that stated that the Fusion Hybrid "doubled the fuel economy of the average vehicle."³² He also viewed the dealership brochure for the Ford Fusion Hybrid,³³ which stated that the Fusion Hybrid's mpg leadership "47 mpg in the city and on the highway? Yes, it's true. Building on the award-winning success of the 2012 model, the all-new 2013 Ford Fusion Hybrid achieves 47 combined mpg." After reviewing the above-described advertising, Plaintiff Goodale purchased a 2013 Fusion Hybrid on or about January 2, 2013, at Landmark Ford in Tigard, Oregon. Plaintiff Goodale would not have purchased the Fusion Hybrid but for his reliance on Ford's deceptive advertising as described in this paragraph.

M. Pennsylvania

33. Plaintiff Gary Druckenmiller is a resident and citizen of the city of Lewistown, Pennsylvania. In 2012, Mr. Druckenmiller was in the market for a fuel efficient car because he had recently retired and he and his wife were planning to do some travelling with a new vehicle. He considered several cars, including the Ford Fusion EcoBoost as well as the 2013 Fusion Hybrid. Plaintiff Druckenmiller went to a Ford dealership and test-drove the 2013 Fusion Hybrid. He was impressed with the ride and asked his salesperson if the car really got 47 MPG. He was given a brochure for the Fusion Hybrid at the dealership.³⁴ In that brochure, Mr.

³¹ See Exhibit 7.

³² See Exhibit 5.

³³ See Exhibit 4 at p. 5.

³⁴ See Exhibit 4 at p. 5.

Druckenmiller read: “47 mpg in the city and on the highway? Yes, it’s true. Building on the award-winning success of the 2012 model, the all-new 2013 Ford Fusion Hybrid achieves 47 combined mpg.” After reviewing the above-described advertising, Plaintiff Druckenmiller purchased a 2013 Fusion Hybrid in or about December 2012, at State College Ford in State College, Pennsylvania. Mr. Druckenmiller would not have purchased the 2013 Fusion Hybrid but for his reliance on Ford’s deceptive advertising as described in this paragraph.

N. Wisconsin

34. Plaintiff Dennis Harkins is a resident and citizen of the city of Fitchburg, Wisconsin. In the fall of 2012, Plaintiff Harkins was ready to replace his Honda Civic Hybrid. He considered the Toyota Camry Hybrid in addition to the C-MAX. As part of his investigation, Plaintiff Harkins did online research and as part of that research, he saw a Ford video advertisement entitled Hybrid Games.³⁵ After reviewing the above-described advertising, Plaintiff Harkins purchased a C-MAX on November 19, 2012, at Kayser Ford in Madison, Wisconsin. Mr. Harkins would not have purchased the C-MAX but for his reliance on Ford’s deceptive advertising as described in this paragraph.

II. FORD MOTOR COMPANY

35. Ford Motor Company is a global automotive industry leader based in Dearborn, Michigan that manufactures automobiles across six continents. Through dealerships, Ford causes its vehicles to be sold across the U.S. It is the second largest U.S.-based automaker, and is the world’s fifth largest automobile manufacturer. Ford operates 90 plants around the world and employs over 200,000 employees. Ford distributes its vehicles throughout the United States via Ford dealerships, including in New York. Ford is publicly traded on the New York Stock Exchange.

³⁵ See Exhibit 3.

FACTUAL ALLEGATIONS

I. THE IMPORTANCE OF FUEL ECONOMY AND MARKET FOR FUEL-EFFICIENT “HYBRID” VEHICLES

36. Fuel economy is now the primary consideration for consumers when they purchase a new vehicle. A recent research study commissioned by Ford found, for instance, that “[n]ew vehicle buyers across the industry rate good fuel economy as the No. 1 purchase reason.” Separate studies conducted by the Consumer Reports National Research Center and J.D. Power and Associates in 2012 both reached the same conclusion, finding that gas mileage was the biggest influence on consumers’ purchasing decisions.

37. Fuel economy is particularly important to buyers of hybrids and other small cars. As Ford put it, “buyers of small vehicles are most likely to put fuel economy toward the top of their list of purchase considerations.”

38. Consumers not only prefer vehicles that get better gas mileage, they are willing to pay more for those vehicles. A survey conducted by Consumer Reports in late 2011 found that 83% of consumers would be willing to pay more for a vehicle that offers better fuel economy.

39. Automakers have capitalized on consumers’ willingness to pay for better mileage by charging premium prices for “hybrid” vehicles, which combine a standard gas-powered engine with an electric motor to achieve better fuel economy. This “hybrid premium” is typically several thousand dollars.

40. Consumers value high-mileage vehicles not only because of their lower fuel costs, but also because of the vehicles’ environmental benefits. As Ford explains it, “[c]hoosing a car that lessens [consumers’] impact on the environment as well as their wallets can really create peace of mind.”

II. FORDS LACK OF SUCCESS IN THE HYBRID MARKET

41. Ford was one of the last automakers to act upon the importance that consumers were placing on environmentally-friendly vehicles and to offer fuel-efficient hybrid vehicles. It was not until the fall of 2009 that Ford released its first hybrid sedan—the 2010 Fusion Hybrid.

42. The 2010 Fusion Hybrid was marketed as achieving only 36 MPG city, and 41 MPG highway for a combined 39 MPG, which was well behind the fuel economy offered by competing hybrid vehicles. For example, the market-leading 2010 Toyota Prius offered 51 MPG city, 49 highway, for a combined 50 MPG.

43. Although the 2010 Fusion Hybrid was roomier than the 2010 Prius, the relatively low fuel economy offered by the 2010 Ford Fusion proved insufficient to draw consumers away from the competition or convince loyal Ford customers to enter the hybrid market and pay the hybrid premium. As a result, Ford's entrance into the hybrid car market was largely unsuccessful and it achieved only a marginal share of the hybrid market.

44. The 2011 Fusion Hybrid and 2012 Fusion Hybrid were refreshed versions of the 2010 first generation model and did not offer any improvement in fuel economy, and by mid-2012, Ford's share of the hybrid market was languishing at 3%.

III. FORD REVERSES ITS FORTUNES WITH A MASSIVE “47/47/47 MPG” ADVERTISING CAMPAIGN

45. To successfully compete in the hybrid market, Ford knew that it needed to convince consumers that its hybrid vehicles achieved better fuel economy and were superior to Toyota's Prius line. However, Ford's challenge was made more difficult with the arrival of Toyota's Prius V model, which provided space comparable to Ford's 2012 Fusion Hybrid, but was advertised as achieving 44 MPG city, 40 MPG highway, for a combined 42 MPG, significantly better than the fuel economy than the 2012 Fusion Hybrid. Into this competitive

marketplace, Ford launched its 2013 Fusion Hybrid and the new C-MAX (a hatchback that uses the same engine and transmission as the Fusion)— with a massive marketing campaign claiming that Ford had made a quantum leap in fuel efficiency and that these two models would achieve 47 MPG city, 47 MPG hwy, and 47 MPG combined. The 47/47/47 claim set the Fusion Hybrid and the C-MAX apart from Toyota’s Prius line because the Prius only achieved its best fuel economy in city driving. The promise that the 2013 Fusion Hybrid and C-MAX could achieve highway fuel economy equivalent to that in the city was a critical difference and made Ford’s new offerings attractive to customers who drove long distances.

46. Ford’s “47 MPG” advertising campaign was a spectacular success, triggering a rapid turnaround in its hybrid business. In January 2013, Ford announced that its share of the hybrid market had reached 16%—more than a five-fold increase from its 3% market share prior to the launch of the 2013 Fusion Hybrid and C-MAX and the massive advertising campaigns misleading consumers about the Vehicles’ fuel economy.

47. Indeed, in May 2013, Ford announced it was now the second-leading auto company in the hybrid market, and its market share was continuing to grow. In July 2013, Ford announced that its sales of hybrid vehicles was up over 517% over 2012 and was continuing to grow—up 15% from the first quarter of 2013. And in August 2013, Ford announced that it had achieved record hybrid sales for the eleventh consecutive month.

A. The Pervasive Scope of Ford’s “47” Campaign

48. Ford has attributed its sudden turnaround to the “47 MPG,” boasting that its vaunted fuel economy figures are the reason that Toyota and Honda owners are trading in their hybrids for Ford hybrids, and the reason that Ford hybrids are selling well even in traditionally non-hybrid markets.

49. Ford was able to get the “47 MPG” message out so quickly—and convert so many consumers who had previously spurned Ford hybrids—through the pervasiveness and simplicity of its “47” campaign.

50. Ford kicked off its “47” campaign with a September 2012 event in Times Square, with Ryan Seacrest as the emcee and the number “47” featured prominently and in a variety of ways. As Ford put it, “The number 47 takes center stage today in Times Square.” The company’s CEO appeared holding a large sign displaying the number “47” that was projected on giant LED screens, crowds of people wore “47” T-shirts and held up signs to make a “47” montage visible from the sky, and Ford announced its “47 Challenges, 47 Days” multi-media campaign.

51. As the grandiose kick-off to the campaign suggests, Ford’s “47” ad campaign spared no expense to “target[] all hybrid intenders on the fence ... to all age groups, all income levels.” Ford used what it called a “transmedia” campaign “to go with people where they go – desktop to mobile to digital to social to experiential.”

52. Ford’s transmedia campaign was tremendously successful, as potential hybrid consumers could not help but to be exposed to Ford’s “47 MPG” message in a variety of forms. Among the ways that Ford impressed on consumers that the Vehicles offered vastly improved fuel economy:

- a. TV commercials: Ford aired television advertisements thousands of times, in all major media markets, on major networks, and at all times of the day touting the fuel economy of the Vehicles.

- b. Magazine Advertisements: Ford ran hybrid advertisements in numerous and varied magazines—such as *Sports Illustrated*, *Sunset*, *The New Yorker*, and *Time*—with collective national circulations in the tens of millions.
- c. Social Media: Ford used Facebook, Twitter, and other social media to spread the “47 MPG” message. One prominent example was the “47 Challenges, 47 Days” event broadcast over social media. In the “47 Day Photo Challenge,” for example, consumers were asked to submit photos that “captured the spirit of the Hybrid Fusion’s 47 mpg.”
- d. Time Square Launch Event: Described above, where, as Ford put it, the number 47 took center stage.
- e. Webisodes: Ford used an online series of webisodes called “Hybrid Games” that, as of December 2012, had been viewed nearly 417,000 times.
- f. Dealership Advertisements: Ford entered into co-advertising arrangements with its dealerships, which ran advertisements in local newspapers and on the internet touting the Vehicle’s 47 MPG.
- g. Promotional Brochures: Promotional brochures touting the 2013 hybrids’ 47 MPG were available at Ford dealerships throughout the country.
- h. Ford’s Website: Ford’s on-line profiles of its 2013 hybrids touted the fuel economy of the Vehicles.
- i. Press Releases: Ford issued a number of national press releases boasting about it’s the Vehicles’ improved fuel economy and the success of its 47 MPG advertising.

B. The “47” Campaign’s Real-World Message

53. Ford’s “47 MPG” campaign was not designed to convey that its 2013 Fusion Hybrid and C-MAX achieved 47 MPG only in a laboratory setting that would not be reflected in consumers’ real-world gas mileage. To the contrary, Ford’s campaign emphasized that the “47 MPG” was something that the Vehicles would actually deliver and that had relevance to potential hybrid consumers.

54. As Ford has stated, its advertisements are intended to convey that its hybrids offer “‘real vehicle’ performance, technology and value.” Whereas Ford criticized advertisements from other automakers as “too slick,” it professed that “[b]eing more real is another way this [47 mpg] campaign truly reflects the vehicle.”

55. Ford also has recognized that actually “[d]elivering fuel efficiency is important” to consumers. In other words, an MPG rating is not significant to consumers unless that rating is actually delivered in real-world performance.

56. Some of Ford’s advertisements include small type at the bottom that reads, “EPA-estimated 47 city/47 hwy/47 combined mpg. Actual mileage will vary.” This is standard boilerplate language that all automakers include when they make representations about their vehicles’ fuel economy in advertisements, and did not alter the campaign’s overall impression on consumers.

57. Although Ford chose to make the “47” the center of its advertising campaign, nowhere in the campaign did it make a distinction between real-world performance and the EPA-estimated rating. In fact, Ford stressed that the 47 MPG figure was one that its 2013 hybrids actually “deliver,” that “it’s true” the hybrids get 47 MPG, that they actually “achieve” the 47 MPG, and that consumers can expect “47 mpg for me.”

- “The Ford Fusion Hybrid delivers a remarkable 47 mpg city and highway”

- “C-MAX Hybrid is Ford’s first hybrid vehicle to offer 47 mpg across the board.”
- “C-MAX Hybrid delivers EPA-certified 47 mpg city, 47 mpg highway ratings – 7 mpg better than the Toyota Prius v on the highway – for a 47 mpg combined rating.”
- “The Ford Fusion delivers a U.S. EPA-certified 47 mpg city, 47 mpg highway and 47 mpg combined in its hybrid model!”
- “47 mpg in the city and on the highway? Yes, it’s true. The all new Fusion Hybrid achieves 47 combined mpg – doubling the fuel economy of the average vehicle.”
- “Fusion Hybrid gets 47 MPG in the city, on the highway and combined.”
- “47 mpg hybrid for me.”

58. Ford’s representations about the Vehicles’ fuel economy did not stop there. In fact, in a February 6, 2013, “Ford Fusion Lunch Date” interactive web live chat with customers, Gil Portalatin, the Chief Programming Engineer for Electrified Programs and Integration told a customer asking about the ability to get the advertised fuel economy of the 2013 Fusion Hybrid that, “You can get it. It is there.”

59. Additionally, Ford stated “C-MAX Hybrid returns the same fuel economy whether driving cross-country or across the city – stemming mostly from a growing list of Ford innovations that have helped the vehicle to deliver an impressive list of metrics, such as its 570-mile overall range, taking customers from Los Angeles to Las Vegas and back on one tank of gas.”

60. In the same press release, Ford stated, “C-MAX Hybrid to offer ‘real car’ range at 570 miles on one tank of gas, taking customers from Los Angeles to Las Vegas and back on one tank, beating Toyota Prius v by 120 miles.”

61. On the Ford C-MAX official Facebook page, Ford was unequivocal about the C-MAX’s gas mileage. For example, on August 7, 2012, the Company posted the following:

- “ If someone asks what MPG the C-MAX Hybrid gets, you can tell them 47. That's because the all-new 2013 Ford C-MAX Hybrid delivers EPA-certified 47 mpg city and 47 mpg highway ratings for a 47-mpg combined rating.”
- The message that the C-MAX delivered 47 MPG is also evidenced by this August 21, 2012 official Facebook post :
- “Robert W. asked if the C-MAX Hybrid can keep up with the 2013 Escape on long interstate highway trips. With 47/47/47 miles per gallon the C-MAX Hybrid can more than keep up and achieve an estimated 570 miles on a single tank of gas.

62. These representations were false and misleading in that they left reasonable consumers with the overall impression that Ford’s 2013 Fusion Hybrid and C-MAX did, in fact, deliver the 47 MPG and that they would be able to achieve these fuel economy figures under real world driving conditions.

C. Comparisons to Other Hybrid Vehicles

63. Ford underscored the real-world value of the “47 MPG” it was advertising by comparing that figure to other hybrid vehicles that consumers might be considering.

64. For example, Ford boasts that the 2013 Fusion Hybrid “tops the Toyota Camry Hybrid by 8 mpg highway and 4 mpg city, and delivers the highest-ever fuel economy numbers in city and highway driving for a midsize sedan.”

65. Similarly, an ad entitled “Wrong Direction” for the 2013 Fusion Hybrid contained the narration, “Introducing the entirely new Ford Fusion with a Hybrid that’s the most fuel efficient midsize sedan in America.

66. Another ad for the 2013 Fusion Hybrid entitled “New Idea” stated that the 2013 Fusion doubles the fuel economy of the average vehicle.

67. Additionally, Ford advertised that the C-MAX “beats Prius V with better mpg” and is “Miles Per Gallon Ahead of the Competition.”

68. Indeed, Ford regularly compared the mileage of the C-MAX to that of the Toyota Prius. In fact, Ford focused a large part of its fall 2012 C-MAX marketing campaign on a comparison of these two vehicles. Matt VanDyke, director of U.S. Marketing Communications of Ford, described the C-MAX ads as “simple, unique spots that will introduce our first all-hybrid line in North America to Americans by . . . showing how it beats Prius v, especially in fuel economy.”

69. In one ad comparing the C-MAX to the Prius V, Ford touted that the C-MAX also beats Prius V with better MPG.

70. Additionally, in July and August 2012, Ford boasted that the C-MAX raises the bar for hybrid fuel economy and takes customers further than the Toyota Prius.

71. That same theme is used in a cartoon ad containing the headline: “Ford C-MAX vs. Toyota Prius v, How Far on a Tankful?.” That ad depicts the Prius stopping at a gas station first, while the C-MAX continues driving. Then the legend, “C-MAX 571 miles, Prius only 450

Miles,” appears, followed by “C-MAX Hybrid Maximizes a Tank of Gas,” and finally, “Stop Less, Go More”.

72. In another similar ad, “C-MAX Hybrid MPG” a cartoon graphic depicted that the C-MAX beat Prius V in combined MPG. The ad depicted the Prius V as getting 44 MPG combined while C-MAX achieved 47 MPG combined, concluding, “C-MAX Hybrid Maximizes MPG, Stop Less, Go More.”

73. In one internet ad, entitled “The Hybrid Games Challenge: MPG Showdown,” two actors portray reporters trying to determine whether the C-MAX or Prius V had better MPG. In the ad, the announcers state that the total range of the C-MAX is 571 miles while the Prius’ driving range is 450 miles. This information is also displayed graphically on the screen. The announcer then states, “So the C-MAX should go further on a tank of fuel.” Then, a Prius owner and a C-MAX owner are shown purportedly going about daily errands. The ad then depicts the Prius owner having to stop for gas before the C-MAX owner, confirming ostensibly the better MPG of the C-MAX.

74. In another ad entitled “Say Wheeee,” Ford stated that the C-MAX “bests” the Toyota Prius V in MPG, concluding the commercial with the statement: “Say Hi to the all new 47 combined mpg C-MAX Hybrid.” The video component of the ad showed an image of the vehicle with an accompanying “47 mpg” graphic.

75. Another “Say Wheeee” ad states that “C-MAX has lots more horsepower than Prius v, a hybrid that C-MAX also bests in mpg.”

76. An ad entitled “Be Great” contained the narration, “Meet the five passenger Ford C-MAX Hybrid . . . [that] beats Prius v with better MPG . . . Say hi to the all new 47 combined mpg C-MAX Hybrid.”

77. Additionally, Ford stated that the C-MAX “delivers EPA-certified 47 mpg city, 47 mpg highway ratings – 7 mpg better than the Prius v” and claimed that customers would pay less at the dealership and less at the pump for a C-MAX versus a Prius V.

78. Ford refers to the C-MAX as “[t]he country’s most fuel-efficient and affordable hybrid” and touted that the “C-MAX Hybrid at 47 mpg combined beats Prius v by 7 mpg in the compact hybrid utility segment.”

79. These comparisons were false and misleading as they created the impression that Plaintiffs would attain better mileage with the C-MAX than they would be able to with a Prius or other non-Ford hybrid vehicle. However, the Prius actually achieves better MPG than the C-MAX in real-world driving conditions.

80. The only overall impression that Ford’s “47” campaign could leave on a reasonable consumer was that Ford’s 2013 hybrids did, in fact, deliver the 47 MPG that Ford featured so prominently and repeatedly in its marketing. As J.D. Power put it, Ford created “marketing excitement to indelibly impress in consumer minds that its new 2013 Ford Fusion ... can be ordered as a hybrid that achieves a 47 mpg combined travel range.”

D. The 2013 Fusion Hybrid and C-MAX Deliver Nowhere Near 47 MPG

81. As Ford’s rapid increase in hybrid market share reflects, consumers were in fact influenced by Ford’s “47” campaign and reasonably believed that the Vehicles would deliver 47 MPG under normal, real-world driving conditions. This view was particularly reasonable considering Ford professed that the 2013 Fusion Hybrid and the C-MAX would get 47 MPG in any type of driving, whether in the city or on the highway.

82. Yet those consumers who were convinced to re-evaluate their position toward Ford’s previously lackluster hybrids and purchase a 2013 Fusion Hybrid or C-MAX would soon learn that they had been misled. The Vehicles did not deliver the promised 47 MPG highway

which set them apart from their competitors, and they did not even come close to 47 in city driving.

83. Shortly after Ford released its 2013 Fusion Hybrid and C-MAX for sale, buyers began complaining in droves about the low gas mileage they were able to achieve—to Ford, to the EPA, to Plaintiffs’ lawyers, and online. The vast majority report an inability to even reach MPG in the high 30s, even when using hyper-milling techniques (as opposed to normal driving conditions), much less the 47 MPG that Ford had promised consumers within its advertising. Additionally, consumers could not attain fuel economy that “beats” Toyota’s Prius.

84. Independent testing has confirmed consumers’ experiences, as even automotive professionals have repeatedly failed to come anywhere near 47 MPG. In October 2012, Larry Vellequette of Automotive News reported that after logging more than 1,000 miles with the C-MAX, he had achieved only slightly above 37 MPG. Even after meeting with Ford’s chief engineer and following his recommendations to improve fuel economy, Mr. Vellequette was still unable to achieve anywhere near 47 MPG.

85. Additionally, *Consumer Reports* tested the 2013 Fusion Hybrid and C-MAX in December 2012 and reported that it was able to achieve only about 39 MPG with the 2013 Fusion Hybrid and 37 MPG with the C-MAX, concluding that Ford overstated the fuel economy of the C-MAX and 2013 Fusion Hybrid “by a whopping 10 and 8 MPG, respectively, or about 20 percent.”

86. In fact, *Consumer Reports* stated that Vehicles had the largest discrepancy between their overall results and the estimates published that *Consumer Reports* had seen among any current models.

87. In April 2013, Autoblog tested the 2013 Fusion Hybrid and reported that under normal use, the 2013 Fusion Hybrid manages only about 37 MPG; the best the professional reviewer was able to accomplish was just over 40 MPG. Other professional drivers and car reviewers achieved similar results.

88. Ford would have known that its 2013 Fusion Hybrid and C-MAX achieved less than 40 MPG under normal driving conditions even before consumers and professional reviewers reported their disappointing results. Prior to the release of any vehicle, Ford and other automakers do field testing where a number of vehicles are subject to extensive real-world driving and the resulting data—which includes actual gas mileage—is recorded and analyzed.

89. Even though Ford knew that its 2013 Fusion Hybrid and C-MAX did not actually get anywhere near 47 MPG, it still chose to implement a massive “47 MPG” advertising campaign overstating the real world fuel economy of the Vehicles. And it continued the “47 MPG” campaign after buyers complained that the Vehicles actually deliver much lower mileage.

90. It is only now that the 2013 model year is almost over, after Ford achieved its much-coveted rise in hybrid market share, and after the lawsuits that comprise this MDL were filed, that Ford has taken steps to acknowledge that its 2013 Fusion Hybrid and C-MAX actually do not get 47 MPG.

E. Ford Acknowledges that the Vehicles Do Not Achieve the Advertised Fuel Economy

91. In an implicit acknowledgement that its “47 MPG” campaign was misleading, Ford is offering 2013 Fusion Hybrid and C-MAX hybrid owners a software upgrade to improve their fuel economy. Even with this upgrade, consumers continue to report average mileage well below 47 MPG. In addition, Ford remains silent about the performance trade-offs associated with the upgrade.

92. Ford lowered the estimated MPG for the C-MAX, from 47/47/47 to 45 city, 40 hwy, for a combined 43 MPG. Thus, Ford now admits that, contrary to its prior representations, the C-MAX does not achieve its best fuel economy in highway driving. Unfortunately, this disclosure comes too late for the myriad Ford customers who bought the vehicle because it purportedly delivered better highway MPG than any of its competitors.

93. Along with the restatement, came an announcement that Ford based the advertised fuel economy figures of the C-MAX on testing of the 2013 Fusion Hybrid and not on testing of the C-MAX itself.

94. Indeed, without ever actually testing the fuel economy of the C-MAX under EPA standards, Ford repeatedly touted its “47 MPG” message creating the impression that consumers would be able to achieve these results under real world conditions.

95. Thus at the time Ford made the statements touting the C-MAX’s class-leading fuel economy, Ford knew that the “47 MPG” estimates were not achieved by the C-MAX. However, Ford continued to defend its advertised figures.

96. Ford is also now offering “good will” payments to C-MAX owners and lessees (but not to 2013 Fusion Hybrid owners and lessees). Although these payments provide partial compensation to C-MAX owners as reimbursement for their increased fuel costs, it is not solving the underlying problem. As one C-MAX owner put it, “C-MAX owners don’t want \$550. They want a car that gets 47 miles per gallon.”

97. As a result of Ford’s misleading “47 MPG” campaign, buyers and lessees of 2013 Fusion Hybrid and C-MAX are stuck with cars that deliver substantially less fuel economy than they reasonably expected (and could have received by buying another hybrid). Their cars will each produce about a half ton more carbon dioxide per year, they will have to re-fuel more often,

and they will incur additional fuel costs. In addition, because the desirability and market value of vehicles is so heavily dependent on fuel economy, their cars are worth less and cannot be re-sold as easily or for as much money.

CLASS ACTION ALLEGATIONS

98. Plaintiffs bring this action as a class action pursuant to Rule 23(a) and (b) of the Federal Rules of Civil Procedure on behalf of themselves and all others similarly situated as members of the following Class: All persons in the United States who purchased and/or leased one of the Vehicles (the "Class"). Specifically excluded from the proposed Class is Ford, its officers, directors, agents, trustees, parents, children, corporations, trusts, representatives, employees, principals, servants, partners, and joint ventures, or entities controlled by Ford, and its heirs, successors, assigns, or other persons or entities related to or affiliated with Ford and/or its officers and/or directors, or any of them; any judge assigned to this action, and any member of their immediate family. Subject to additional information obtained through further investigation and discovery, the foregoing Class definition may be expanded or narrowed by amendment or amended complaint. Plaintiffs expressly reserve the right to move for class certification of different state classes and subclasses.

99. **Numerosity of the Class.** The members of the Class are so numerous that their individual joinder is impracticable. Upon information and belief, Ford sold approximately 30,000 C-MAX and 20,00 Fusion vehicles. Plaintiffs are informed and believe that there are thousands of members in the Class. Inasmuch as the Class members may be identified through business records regularly maintained by Ford and its employees and agents, and through the media, the number and identities of Class members can be ascertained. Members of the Class can be notified of the pending action by e-mail and mail and supplemented by published notice, if necessary.

100. **Existence and Predominance of Common Question of Fact and Law.** There are questions of law and fact common to the Class. These questions predominate over any questions affecting only individual Class members. These common legal and factual issues include, but are not limited to:

- a. whether the Vehicles achieve gas mileage materially lower than the advertised mileage;
- b. whether the Vehicles achieve mileage range on a single tank of gas materially less than the advertised range;
- c. whether Ford's overstatement of its Vehicles' fuel economy was materially misleading;
- d. whether Ford's advertisements were false and deceptive in conveying that the Vehicles would achieve the advertised gas mileage in normal, real-world highway usage;
- e. whether Ford's advertisements failed to provide material disclosures that the gas mileage cannot be achieved in normal, real-world highway usage;
- f. whether Ford willfully concealed the misrepresentations regarding MPG or recklessly disregarded their falsity;
- g. whether Ford breached any warranties in selling the Vehicles which misrepresented MPG;
- h. whether Ford's conduct violates the laws as set forth in the causes of action;
- i. whether Plaintiffs and Class members are entitled to equitable or injunctive relief;

- j. whether Plaintiffs and the Class are entitled to restitution or damages, and what is the proper measure of damages;
- k. whether Ford's software upgrade to improve fuel economy was in response to this litigation;
- l. whether Ford's goodwill payments to C-MAX consumers was in response to this litigation; and
- m. whether there are undisclosed performance trade-offs associated with Ford's software upgrade.

101. **Typicality.** The claims of the representative Plaintiffs are typical of the claims of each member of the Class. Plaintiffs, like all other Class members, have sustained damages arising from Ford's violations of the laws, as alleged herein. The representative Plaintiffs and Class members were and are similarly or identically harmed by the same unlawful, deceptive, unfair, systematic, and pervasive pattern of misconduct engaged in by Ford.

102. **Adequacy.** The representative Plaintiffs will fairly and adequately represent and protect the interests of the Class members and have retained counsel who are experienced and competent trial lawyers in complex litigation and class action litigation. There are no material conflicts between the claims of the representative Plaintiffs and the members of the Class that would make class certification inappropriate. Counsel for the Class will vigorously assert the claims of all Class members.

103. **Predominance and Superiority.** This suit may be maintained as a class action under Federal Rule of Civil Procedure 23(b)(3) because questions of law and fact common to the Class predominate over the questions affecting only individual members of the Class, and a class action is superior to other available means for the fair and efficient adjudication of this dispute.

The damages suffered by individual Class members are small compared to the burden and expense of individual prosecution of the complex and extensive litigation needed to address Ford's conduct. Further, it would be virtually impossible for Class members to individually redress effectively the wrongs done to them. Even if Class members themselves could afford such individual litigation, the court system could not. In addition, individualized litigation increases the delay and expense to all parties and to the court system resulting from complex legal and factual issues of the case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. By contrast, the class action device presents far fewer management difficulties; allows the hearing of claims which might otherwise go unaddressed because of the relative expense of bringing individual lawsuits; and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

104. Plaintiffs contemplate the eventual issuance of notice to the proposed Class members setting forth the subject and nature of the instant action. Upon information and belief, Ford's own business records and electronic media can be utilized for the contemplated notices. To the extent that any further notices may be required, Plaintiffs would contemplate the use of additional media and/or mailings.

105. Additionally, this action is properly maintained as a class action pursuant to Rule 23(b) of the Federal Rules of Civil Procedure, in that:

- a. without class certification and determination of declaratory, injunctive, statutory, and other legal questions within the class format, prosecution of separate actions by individual members of the Class will create the risk of:

- i. inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for the parties opposing the Class; or
 - ii. adjudication with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- b. the parties opposing the Class have acted or refused to act on grounds generally applicable to each member of the Class, thereby making appropriate final injunctive or corresponding declaratory relief with respect to the Class as a whole; or
- c. common questions of law and fact exist as to the members of the Class and predominate over any questions affecting only individual members, and a class action is superior to other available methods of the fair and efficient adjudication of the controversy, including consideration of:
 - i. the interests of the members of the Class in individually controlling the prosecution or defense of separate actions;
 - ii. the extent and nature of any litigation concerning controversy already commenced by or against members of the Class;
 - iii. the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
 - iv. the difficulties likely to be encountered in the management of a class action.

CAUSES OF ACTION

**FIRST CAUSE OF ACTION
(Violation of California Business & Professions Code §17200, *et seq.*,
Unfair Competition Law)
on Behalf of All Plaintiffs or, Alternatively, the California Plaintiffs**

106. Plaintiffs and the Class incorporate by reference the previous allegations as if fully set forth herein.

107. The Unfair Competition Law (the “UCL”) defines unfair business competition to include any “unfair,” “unlawful,” or “fraudulent” business act or practice. The UCL also provides for injunctive relief, restitution, and disgorgement of profits for violations.

108. Ford’s unlawful, unfair, and fraudulent business acts and practices are described throughout this Complaint and include, but are not limited to, the following. First, Ford falsely advertises the fuel economy of the Vehicles as best in class and beating rival Prius V. Second, Ford advertisements refer to the Vehicles as “the 47 combined mpg C-MAX Hybrid” and/or state that the Vehicles “get,” “achieve,” or “offer” 47 MPG however, this is untrue, and drivers do not achieve anything nearing this level of fuel efficiency in real-world driving. Third, insofar as Ford purports to be advertising fuel economy estimates, it does so while failing to disclose that the fuel economy figures they repeatedly tout are estimates and not based on real-world fuel economy. Furthermore, Ford’s advertisements do not comply with FTC regulations governing advertising of fuel economy as set forth in 16 C.F.R. §259.2(a). Fourth, Ford fails to provide the disclaimer that the advertised rates will vary with actual MPG ratings achieved in the real world, consistent with the requirements of 40 C.F.R. §600.302-08(b)(4). Fifth, Ford provides additional affirmative misrepresentations that indicate that consumers should expect the Vehicles to achieve the advertised fuel economy in normal, real-world use. Lastly, Ford failed to disclose that the

MPG figures that they repeatedly touted and advertised for the C-MAX are not based on actual tests of the C-MAX.

109. In addition to the above, Ford's conduct constitutes violations of California Civil Code §§1572-1573, 1709, 1711, and 1770 and the common law. Furthermore, Ford's practices violate the declared legislative policies as set forth by the federal government in 40 C.F.R. §600.307(a)(ii)(A); and §§600.302-08(b)(4) and 16 C.F.R. §259.2(a). Plaintiffs reserve the right to allege other violations of law, which constitute other unlawful business acts or practices. Such conduct is ongoing and continues to this date.

110. Ford's acts, omissions, misrepresentations, practices, and non-disclosures alleged herein also constitute "unfair" business acts and practices within the meaning of the UCL in that Ford's conduct is substantially injurious to consumers, offends public policy, and is immoral, unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs any alleged benefits attributable to such conduct.

111. As stated herein, Plaintiffs allege violations of consumer protection, unfair competition, and truth-in-advertising laws in California resulting in harm to consumers. Plaintiffs assert violations of the public policy by engaging in false and misleading advertising, unfair competition, and deceptive conduct towards consumers. The conduct constitutes violations of the unfair prong of the UCL. There were reasonably available alternatives to further Ford's legitimate business interests, other than the conduct described herein.

112. Plaintiffs and the Class have been damaged by said practices in that they relied on Ford's misrepresentations and omissions regarding the Vehicles' fuel economy when purchasing or leasing the Vehicles. Pursuant to California Business and Professions Code §§17200 and 17203, Plaintiffs, on behalf of themselves and all others similarly situated, seek relief as prayed

for below, including judgment and equitable relief against Ford and an order requiring Ford to immediately cease such acts of unlawful, unfair, and fraudulent business practices and requiring Ford to engage in a corrective marketing campaign.

SECOND CAUSE OF ACTION
(Violation of California Business & Professions Code §17500, *et seq.*,
False Advertising Laws)
on Behalf of All Plaintiffs or, Alternatively, the California Plaintiffs

113. Plaintiffs and the Class incorporate by reference the previous allegations as if fully set forth herein.

114. Ford disseminated advertisements in print, online, and on television formats containing materially misleading and deceptive information and omitted material information, as discussed throughout this Complaint, for purposes of inducing customers to purchase and/or lease the Vehicles, in violation of California Business and Professions Code §17500, *et seq.* Ford have spent millions of dollars to advertise, including through its websites on the Internet, to call attention to or give publicity to Ford's Vehicles' fuel economy through its advertising campaign. Ford uniformly and falsely advertise the fuel efficiency of the Vehicles as described herein.

115. The above-described false, misleading, and deceptive advertising Ford disseminated continues to have the likelihood to deceive.

116. In making and disseminating the statements alleged herein, Ford should have known their advertisements were untrue and misleading in violation of California Business and Professions Code §17500, *et seq.* Plaintiffs and Class members based their decisions to purchase and/or lease their Vehicles in substantial part on Ford's misrepresentations and omitted material facts. The revenues to Ford attributable to products sold in those false and misleading advertisements amount to millions of dollars for their Vehicles. Plaintiffs and the Class were

injured in fact and lost money or property as a result, both in terms of purchase price, diminution of value, and the differential higher cost of fuel.

117. Plaintiffs and the Class have been damaged by said practice and seek relief as prayed below.

THIRD CAUSE OF ACTION
(Violation of California Civil Code §1750 *et seq.*,
Consumer Legal Remedies Act)
on Behalf of All Plaintiffs or, Alternatively, the California Plaintiffs

118. Plaintiffs and the Class incorporate by reference the previous allegations as if fully set forth herein.

119. The following definitions come within the meaning of the Consumer Legal Remedies Act (“CLRA”) (Cal. Civ. Code §1750, *et seq.*):

- a. The members of the Class, all of whom purchased and/or leased the Vehicles manufactured and sold by Ford are “consumers” (Cal. Civ. Code §1761(d));
- b. Ford is a “person” (Cal. Civ. Code §1761(c));
- c. Plaintiffs’ and each and every Class members’ purchase and/or lease of the Vehicle constitute a “transaction” (Cal. Civ. Code §1761(e)); and
- d. The Vehicles are “goods” (Cal. Civ. Code §1761 (a)).

120. Ford’s acts and practices as discussed throughout this Complaint constitute “unfair or deceptive acts or practices” by Ford that are unlawful, as enumerated in California Civil Code §1770(a).

121. Such misconduct materially affected the purchasing decisions of Plaintiffs and the members of the Class as Plaintiffs and the Class relied on Ford’s misstatements and omissions regarding the Vehicles’ fuel economy when purchasing or leasing the Vehicles.

122. Plaintiffs seek restitution and injunctive relief pursuant to California Civil Code §1780.

123. On or about December 11, 2012, Plaintiff Pitkin notified Ford of the unlawful acts and practices described above by written notice which contained a demand that Ford pay damages in the amount of the reimbursement cost for Plaintiff and all other purchasers of the purchase price of the Vehicles.

124. Pursuant to California Civil Code §1782(b), Ford was required to respond to Plaintiffs' CLRA letters within 30 days of its receipt by either correcting, repairing, replacing, or rectifying the violation set forth in the notice and demand or by agreeing to correct, repair, replace, or rectify the violation within a reasonable time. Ford failed to respond to Plaintiffs' notices and demands.

125. As a result of the California Civil Code §1770 violations described above, Plaintiffs and each and every member of the Class have suffered actual damages.

126. Plaintiffs seek actual damages and restitution pursuant to California Civil Code §1780. Furthermore, Ford acted with oppression, fraud, and/or malice in engaging in the California Civil Code §1770 violations described above. As a result, Plaintiffs are entitled to punitive damages pursuant to California Civil Code §1780.

**FOURTH CAUSE OF ACTION
(Violations of Arizona Consumer Fraud Act)
on Behalf of the Arizona Plaintiff**

127. The Arizona Plaintiff and the Class incorporate by reference the previous allegations as if fully set forth herein.

128. This cause of action is brought pursuant to the Arizona Consumer Fraud Act §§44-1521-1534 (the "ACFA").

129. At all relevant times, the Arizona Uniform Trade Practices Act §§44-1522 was in effect and applicable to the transactions at issue in this case.

- a. The members of the Arizona Class, all of whom purchased or leased the Vehicles manufactured and sold by Ford, are “consumers,” as enumerated in ACFA §§44-1521-1534;
- b. Ford is a person as enumerated in ACFA §§44-1521-1534;
- c. The purchase or lease of the Vehicle constitutes a “transaction,” as enumerated in ACFA §§44-1521-1534; and
- d. The Vehicles are “goods” or “merchandise,” as enumerated in ACFA §§44-1521-1534.

130. Ford’s acts and practices, as discussed throughout this Complaint, constitute “unfair or deceptive acts or practices” by Ford, that are unlawful, as enumerated in ACFA §§44-1521-1534.

131. Such misconduct materially affected the purchasing decisions of the Arizona Plaintiff and the members of the Class.

132. The Arizona Plaintiff is a person and the Vehicles are defined as “merchandise” by the ACFA.

133. Ford violated and continue to violate the ACFA by engaging in the following practices proscribed by ACFA §§44-1521 and 1534, which were intended to result in and did result in the sale and/or lease of the Vehicles:

- a. disseminated advertisements in print, online, and television formats materially containing misleading and deceptive information and omitted material

information, as discussed throughout this Complaint, for purposes of inducing customers to purchase the Vehicles, in violation of ACFA §§44-1521,1534;

- b. utilized suppression or omission in connection with the sale or advertisement of the Vehicles and whether or not any person has in fact been misled, deceived, or damaged thereby;
- c. caused the likelihood of confusion or of misunderstanding as to the approval of goods;
- d. represented that the Vehicles have characteristics, benefits, quantities, or qualities that they do not have;
- e. represented that the Vehicles are of a particular standard, quality, or grade, when they are not; and
- f. engaged in any other unfair or deceptive conduct in trade or commerce.

134. The Arizona Plaintiff and members of the Class purchased and or leased the Vehicles.

135. Ford has been regularly engaged, as part of its general business practice, in a scheme of: (a) wrongfully misrepresenting the quality of the Vehicles; and (b) wrongfully making these misrepresentations for the purpose of selling and/or leasing the Vehicles or for obtaining an increased price for these Vehicles.

136. As described herein, Ford used and employed unfair and/or deceptive acts or practices within the meaning of ACFA §§44-1521-1534, *et seq.*

137. Ford's misrepresentations, concealment, and omissions regarding the fuel economy of the Vehicles were likely to deceive and likely to cause misunderstanding.

138. Ford intended that the Arizona Plaintiffs and other Class members would rely on its misrepresentations, concealment, omissions, and/or deceptions regarding the Vehicles' fuel economy.

139. The Arizona Plaintiff and other Class members, by purchasing and/or leasing the Vehicles, did, in fact, rely on Ford's misrepresentations, concealment, omissions, and deceptions.

140. Ford's conduct constitutes multiple, separate violations of the ACFA.

141. The Arizona Plaintiff and Class members have sustained an ascertainable loss of money or property as a result of a reckless or knowing use or employment by Ford of a method, act, or practice.

142. Therefore, the Arizona Plaintiff and the Class are entitled to statutory damages, punitive damages, and equitable and injunctive relief, as well as reasonable attorneys' fees and costs under Arizona Statutes §44-1528, 31, *et seq.*

FIFTH CAUSE OF ACTION
(Violations of Colorado Revised Statutes §6-1-101, *et seq.*,
the Colorado Consumer Protection Act)
on Behalf of the Colorado Plaintiff

143. The Colorado Plaintiff and the Class incorporate by reference the previous allegations as if fully set forth herein.

144. Ford's actions alleged herein were carried out in the course of their primary business described above.

145. The Vehicles are "goods" or "merchandise" (Colorado Consumer Protection Act, Colo. Rev. Stat. §6-1-105(1)).

146. Ford's actions described above constitute deceptive trade practices in violation of the Colorado Consumer Protection Act, Colo. Rev. Stat. §6-1-105(1), in that they issued untrue

and misleading statements relating to the characteristics, qualities, standard, and performance of Ford Vehicles.

147. The deceptive practices and false advertising regarding the Vehicles' fuel economy induced the Colorado Plaintiff and the Class to purchase and/or lease Ford's Vehicles and pay a higher price for the Vehicles, and have the tendency to attract consumers for this purpose. These deceptive statements were material to the Colorado Plaintiff and Class members and significantly impact the public, who are actual or potential consumers.

148. Upon information and belief, Ford's deceptive practices have been executed knowingly, willfully, and deliberately.

149. As a direct and proximate result of Ford's actions described above, the Colorado Plaintiff and Class members have been injured in fact and suffered damages, and seek relief pursuant to Colo. Rev. Stat. §6-1-113(2)(a) and reasonable attorneys' fees pursuant to Colo. Rev. Stat. §6-1-113(2)-(3).

**SIXTH CAUSE OF ACTION
(Violations of Connecticut General Statutes §§42-110a, *et seq.*,
the Connecticut Unfair Trade Practices Act)
on Behalf of the Connecticut Plaintiff**

150. The Connecticut Plaintiff and the Class incorporate by reference the previous allegations as if fully set forth herein.

151. Ford's actions alleged herein were carried out in the conduct of their primary business described above.

152. Ford's actions alleged herein violated the Connecticut Unfair Trade Practices Act ("CUTPA") in that they constituted unfair acts and/or deceptive practices prohibited by CUTPA.

153. Ford's acts and/or practices were unfair and/or deceptive, in part, because they violate Connecticut Regulation 42-110b-18, which prohibits false advertising, in that they issued

untrue and misleading statements relating to the characteristics, qualities, standard, and performance of Ford's merchandise. Ford uniformly and falsely advertised the Vehicles' fuel efficiency. These deceptive statements were material to the Connecticut Plaintiff and Class members.

154. Ford's actions alleged herein were unfair in that they offended public policy, or were within the penumbra of common laws or statutes and/or other established concepts of unfairness, and were immoral, unethical, oppressive, or unscrupulous.

155. Ford's actions alleged herein were done with a reckless indifference to the rights of the Connecticut Plaintiff and Class members or were an intentional and wanton violation of those rights.

156. Connecticut Plaintiff and members of the Class suffered ascertainable loss of money or property as a result of Ford's unfair acts and/or deceptive practices, and seek relief in the form of damages, punitive damages, injunctive relief, and attorneys' fees, pursuant to Conn. Gen. Stat. §42-110g(a), (d).

157. The Connecticut Plaintiff shall mail a copy of this Complaint to the Connecticut Attorney General and Commissioner of Consumer Protection pursuant to Conn. Gen. Stat. §42-110g(c).

SEVENTH CAUSE OF ACTION
(Violations of the Florida Deceptive and Unfair Trade Practices Act,
Fla. Stat. §501.201, *et seq.*)
on Behalf of the Florida Plaintiffs

158. The Florida Plaintiffs and the Class incorporate by reference the previous allegations as if fully set forth herein.

159. This cause of action is brought on behalf of the Florida Plaintiffs and the Class pursuant to the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §501.201, *et seq.*

(“FDUTPA”). The stated purpose of the FDUTPA is to “protect the consuming public . . . from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.” Fla. Stat. §501.202(2).

160. The Florida Plaintiffs and members of the Class are consumers as defined by Fla. Stat. §501.203. The Vehicles are goods within the meaning of the FDUTPA. Ford is engaged in trade or commerce within the meaning of the FDUTPA.

161. Florida Statutes §501.204(1) declares unlawful “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.”

162. Florida Statutes §501.204(2) states that “due consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to [section] 5(a)(1) of the Federal Trade Commission Act.” Ford’s unfair and deceptive practices are likely to mislead and have misled the consumer acting reasonably in the circumstances, and violate Fla. Stat. §500.04 and 21 U.S.C. §343.

163. Ford has violated the FDUTPA by engaging in the unfair and deceptive practices as described herein which offend public policies and are immoral, unethical, unscrupulous, and substantially injurious to consumers. Ford uniformly and falsely advertised the Vehicles’ fuel efficiency and failing to disclose that the fuel economy figures repeatedly touted and advertised for the C-MAX were not based on actual tests performed on the C-MAX.

164. The Florida Plaintiffs and Class have been aggrieved by Ford’s unfair and deceptive practices in that they paid for the Vehicles after exposure to the false and misleading advertising regarding the Vehicles’ fuel economy.

165. The damages suffered by the Florida Plaintiffs and the Class were directly and proximately caused by Ford's deceptive, misleading, and unfair practices, as more fully described herein.

166. Pursuant to Fla. Stat. §501.211(1), the Florida Plaintiffs and the Class seek a declaratory judgment and court order enjoining the above-described wrongful acts and practices of Ford and for restitution and disgorgement.

167. Additionally, pursuant to Fla. Stat. §§501.211(2) and 501.2105, the Florida Plaintiffs and the Class make claims for damages, attorneys' fees, and costs.

EIGHTH CAUSE OF ACTION
(Violation of Illinois Consumer Fraud and Deceptive Business Practices Act,
§815 Illinois Compiled Statutes Annotated 505/1, *et seq.*)
on Behalf of the Illinois Plaintiffs

168. The Illinois Plaintiffs and the Class incorporate by reference the previous allegations as if fully set forth herein.

169. This cause of action is brought pursuant to the Illinois Consumer Fraud and Deceptive Business Practices Act ("ILCS"), §815 ILCS 505/1, *et seq.*

170. The Illinois Plaintiffs and members of the Class purchased and/or leased the Vehicles. The Illinois Plaintiffs and members of the Class purchased and/or leased the Vehicles for their own use as consumers, and not for resale.

171. At the time the Illinois Plaintiffs and members of the Class purchased their Vehicles, they were unaware that Ford misrepresented the Vehicles' fuel economy. The Illinois Plaintiffs and members of the Class believed they were purchasing vehicles that could achieve the represented fuel economy.

172. The Illinois Plaintiffs and Class members are persons as defined by the ILCS, §815 ILCS 505/1(c).

173. The ILCS, §815 ILCS 505/2, provides as follows:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact... in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby.

174. The ILCS further provides in §815 ILCS 505/10a as follows:

Any person who suffers actual damage as a result of a violation of this Act committed by any other person may bring an action against such person. The court, in its discretion may award actual economic damages or any other relief which the court deems proper.

175. As described herein, Ford's misconduct, material misstatements and omissions, and unfair, unethical, and unscrupulous conduct, which occurred in the course of conduct involving trade or commerce, are unlawful. Ford engaged in wrongful conduct while at the same time obtaining, under false pretenses, significant sums of money, including money from Plaintiffs and the Class.

176. Ford's unlawful acts in violation of the ILCS include the following:

- a. omitting, suppressing, and/or concealing the material fact that the Vehicles could not achieve the fuel economy advertised by Ford;
- b. affirmatively misrepresenting to purchasers, through advertising and other means, the fuel efficiency of the Vehicles as described herein;
- c. failing to alert the public and purchasers regarding the Vehicles' true fuel efficiency; and
- d. unlawfully promoting and marketing the Vehicles' fuel efficiency including misrepresentations that the Vehicles achieved the represented fuel economy.

177. The Illinois Plaintiffs and the Class were deceived and suffered actual damages in violation of §815 ILCS 505/2, when they paid for Ford's Vehicles based on Ford's omissions and misrepresentations, and when the Vehicles, in fact, could not achieve the represented fuel economy.

178. Ford intended that the Illinois Plaintiffs and the Class rely on their representations regarding the Vehicles' fuel economy.

179. Furthermore, Ford's illegal and wrongful conduct, as set forth above, including Ford self-dealing, misrepresentations, and material omissions, intended to benefit Ford at the expense of the Illinois Plaintiffs and the Class, constituted outrageous conduct, was perpetrated by evil motive, and with reckless indifference to the rights of the Illinois Plaintiffs and others, justifying the imposition of punitive damages.

180. The Illinois Plaintiffs and the Class therefore request actual damages in an amount to be proven at trial, punitive damages, and reasonable attorneys' fees and costs.

181. The Illinois Plaintiffs shall mail a copy of this Complaint to the Illinois Attorney General pursuant to §815 ILCS 505/10a(d).

**NINTH CAUSE OF ACTION
(Violation of the Illinois Uniform Deceptive Trade Practices Act,
§815 ILCS 510/1, *et seq.*)
on Behalf of the Illinois Plaintiffs**

182. The Illinois Plaintiffs and the Class incorporate by reference the previous allegations as if fully set forth herein.

183. As §815 ILCS 510/2 provides: “[a] person engages in a deceptive trade practice when, in the course of his or her business, vocation, or occupation, the person: . . . (2) causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services; . . . (5) represents that goods or services have sponsorship,

approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he or she does not have; . . . (7) represents that goods or services are of a particular standard, quality, or grade or that goods are a particular style or model, if they are of another; . . . (9) advertises goods or services with intent not to sell them as advertised; . . . [and] (12) engages in any other conduct which similarly creates a likelihood of confusion or misunderstanding.”

184. Ford are “persons” within the meaning of §815 ILCS 510/1(5).

185. The Vehicles sold and/or leased to the Illinois Plaintiffs and members of the Class were not of the particular characteristics, uses, benefits, or qualities represented by Ford.

186. The Vehicles sold and/or leased to the Illinois Plaintiffs and members of the Class were not of the particular standard, quality, and/or grade represented by Ford.

187. Specifically, Ford sold and/or leased vehicles to the Illinois Plaintiffs and Class that could not achieve the represented fuel economy.

188. The Illinois Plaintiffs and members of the Class are likely to be damaged as a result of the foregoing wrongful conduct of Ford. §815 ILCS 505/7 permits the Court to enter injunctive relief to require Ford to stop the unfair and deceptive conduct alleged herein and to assess costs and attorneys’ fees against Ford for their willful deceptive trade practices.

TENTH CAUSE OF ACTION
(Violation of the Maryland Consumer Protection Act
Md. Code Com. Law §13-101, *et seq.*)
on Behalf of the Maryland Plaintiff

189. The Maryland Plaintiff and the Class hereby incorporate by reference the previous allegations as if fully set forth herein.

190. The Maryland Plaintiff is a person within the meaning of the Maryland Consumer Protection Act (“CPA”) for all purposes therein.

191. Ford are person within the meaning of the CPA for all purposes therein.

192. Ford's conduct complained of herein constitutes acts, uses, or employment by Ford of unconscionable commercial practices, deception, fraud, false pretenses, false promises, misrepresentations or knowing concealment, suppression, or omission of material facts with the intent that the Maryland Plaintiff and the other Class members would rely upon such concealment, suppression, or omission in connection with the Vehicles' sale, marketing, and advertisement. Ford's conduct herein is an unfair practice that has the capacity to and did deceive consumers regarding the Vehicles' fuel economy, as alleged herein.

193. All of the conduct alleged herein occurred in the course of Ford's business and is part of a pattern or generalized course of conduct.

194. Ford's actions, as complained of herein, constitute unfair or deceptive trade practices in violation of the CPA, as follows:

- a. Ford used false or misleading statements, descriptions, and representations regarding the Vehicles' fuel economy to mislead the Maryland Plaintiff and other Class members into purchasing and/or leasing the Vehicles;
- b. Ford falsely represented that the Vehicles were of a standard and quality that they were not;
- c. Despite having knowledge of the Vehicles' true fuel efficiency, Ford failed to inform the Maryland Plaintiff and the other Class members that the Vehicles did not achieve the represented fuel economy, thus deceiving them into purchasing and/or leasing the Vehicles;
- d. Ford used deception, fraud, false pretense, false premise, misrepresentation, and/or knowing concealment, suppression, or omission of material facts with

the intent that the Maryland Plaintiff and the other Class members relied on them in their purchases and/or leases of the Vehicles; and

- e. Ford committed other deceptive or unfair trade practices described in Md. Code Com. Law §13-301.

195. The Maryland Plaintiff and the other Class members were injured by Ford's conduct. As a direct and proximate result of Ford's unfair methods of competition and unfair or deceptive acts or practices, the Maryland Plaintiff and the other Class members have suffered actual economic losses.

**ELEVENTH CAUSE OF ACTION
(Violation of the Michigan Consumer Protection Act,
Mich. Comp. Laws §445.901, *et seq.*)
on Behalf of the Michigan Plaintiffs**

196. The Michigan Plaintiffs and the Class incorporate by reference the previous allegations as if fully set forth herein.

197. At all times relevant to this suit, Ford was conducting trade or commerce as defined under Michigan Compiled Laws ("MCL") 445.902(1)(g), which is also known as the Michigan Consumer Protection Act ("MCPA").

198. A party to a transaction covered under the MCPA must provide the other party the promised benefits of the transaction.

199. Michigan courts, and federal courts applying Michigan law, have held that implied warranties contain a "promised benefit" that the product is fit for its intended and foreseeable use.

200. The nature of the Vehicles failed to provide the Michigan Plaintiffs and the other Class members the promised benefits of the implied warranties.

201. Ford has committed unfair and deceptive acts by knowingly placing into the stream of commerce Vehicles that do not conform to Ford's representations or advertisements regarding the Vehicles' fuel economy.

202. Ford committed these and other unfair and deceptive acts with regard to the marketing and sale and/or lease of its Vehicles. For instance, Ford made representations and/or public statements about the fuel economy of the Vehicles, which are unfair and deceptive in violation of Michigan law.

203. Ford knew that the Vehicles did not achieve the represented fuel economy.

204. Ford concealed and/or failed to warn the Michigan Plaintiffs and Class members that the Vehicles could not achieve the represented fuel economy.

205. Such concealment and/or failure to warn constitutes an unfair, unconscionable, or deceptive act or practice within the meaning of the MCPA.

206. Based upon all of these allegations, Ford violated MCL §445.903(1) (p), and (s), as well as other sections of MCL §445.903 to be developed during the course of discovery.

207. The unfair, unconscionable, and deceptive acts committed by Ford caused damages to the Michigan Plaintiffs and Class members.

208. Ford is liable to the Michigan Plaintiffs and Class members under the MCPA for damages for breaching their implied warranties and for the aforesaid unfair, unconscionable, and deceptive acts.

209. The Michigan Plaintiffs and members of the Class are entitled to compensatory damages, injunctive/equitable relief, and attorneys' fees under the MCPA.

210. The allegations made by the Michigan Plaintiff and members of the Class meet the requirements of MCL §445.911(11)(3) because Ford's acts and/or practices violate MCL

§445.903, have been declared unlawful by an appellate court of the state which is either officially reported or made available for public dissemination in accordance with the MCPA, and/or have been declared by a circuit court and/or the United States Supreme Court to constitute unfair or deceptive acts under the specified standards set forth by the FTC.

**TWELFTH CAUSE OF ACTION
(Violation of Minnesota Consumer Fraud Act,
Minnesota Statutes §§325f.68-325f.69)
on Behalf of the Minnesota Plaintiff**

211. The Minnesota Plaintiff and the Class incorporate by reference the previous allegations as if fully set forth herein.

212. This cause of action is brought pursuant to the Minnesota Consumer Fraud Act (“MCFA”), Minn. Stat. §§325F.68-69.

213. The Minnesota Plaintiff and members of the Class purchased and/or leased Ford’s Vehicles. The Minnesota Plaintiff and members of the Class purchased and/or leased Ford’s Vehicles for their own use as consumers, and not for resale.

214. At the time the Minnesota Plaintiff and members of the Class purchased and/or leased Ford’s Vehicles, they were unaware that the Vehicles could not achieve the fuel economy represented by Ford. The Minnesota Plaintiff and members of the Class believed they were purchasing and/or leasing Vehicles that could achieve the fuel efficiency advertised by Ford.

215. The Minnesota Plaintiff and members of the Class are persons within the meaning of the MCFA.

216. The Minnesota Plaintiff and members of the Class have standing to bring this action pursuant to Minn. Stat. §8.31, subd. 3a, known as the Private Attorney General Act, which provides that any person injured by a violation of the MCFA may bring a civil action, including costs of investigation and reasonable attorneys’ fees.

217. The MCFA prohibits “[t]he act, use or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive trade practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby” Minn. Stat. §325F.69, subd. 1.

218. The Minnesota Plaintiff and members of the Class bring this action on behalf of the public interest and the interests of Minnesota purchasers. Among other things, this action is brought to punish Ford and to deter Ford and other parties from engaging in wrongful conduct that is harmful to the public and to the environment, including falsely advertising and affirmatively misrepresenting the Vehicles’ fuel economy.

219. Ford’s commission of unlawful acts in violation of the MCFA includes one or more of the following:

- a. omitting, suppressing, and/or concealing material facts including the Vehicles’ true fuel efficiency;
- b. Omitting, suppressing, and/or concealing the material fact that the Vehicles could not achieve the fuel economy represented by Ford;
- c. affirmatively misrepresenting to purchasers, through advertising and other means, that the Vehicles would achieve the fuel efficiency represented;
- d. failing to alert the public and purchasers regarding the Vehicles’ true fuel efficiency; and
- e. unlawfully promoting and marketing the quality of Ford’s Vehicles, including that the Vehicles achieved the represented fuel economy.

220. As a result of the above unlawful acts, Ford made intentional misrepresentations relating to the sale and/or lease of merchandise to the Minnesota Plaintiff and members of the Class.

221. Ford's misrepresentations caused actual damage to the Minnesota Plaintiff and members of the Class, and constituted the "causal nexus" of the Minnesota Plaintiff's and Class members' damages. Because Ford failed to notify the Minnesota Plaintiff and members of the Class of the Vehicles' true fuel efficiency, the Minnesota Plaintiff and members of the Class purchased and/or leased Ford's Vehicles based on the understanding that they would achieve the fuel economy represented by Ford.

222. Ford's wrongful and illegal acts show a deliberate disregard for the rights of others. Ford had knowledge of facts and/or intentionally disregarded facts that created a high probability of injury to the rights of others, yet Ford deliberately proceeded to act in conscious or intentional disregard of and with indifference to the high degree of probability of injury to the rights of others. Ford's conduct therefore entitles the Minnesota Plaintiff and members of the Class to an award of punitive damages pursuant to Minn. Stat. §549.20.

223. The Minnesota Plaintiff and members of the Class therefore request actual damages in an amount to be proven at trial, punitive damages, and reasonable attorneys' fees and costs.

THIRTEENTH CAUSE OF ACTION
(Violation of the Missouri Merchandising Practices Act,
Missouri Revised Statutes §407.010, *et seq.*)
on Behalf of the Missouri Plaintiffs

224. The Missouri Plaintiffs and the Class incorporate by reference the previous allegations as if fully set forth herein.

225. This cause of action is brought pursuant to the Missouri Merchandising Practices Act, Mo. Rev. Stat. §407.020, *et seq.* (“MPA”).

226. The Missouri Plaintiffs and members of the Class purchased and/or leased Ford’s Vehicles. The Missouri Plaintiffs and members of Class purchased and/or leased Ford’s products for their own use as consumers, and not for resale.

227. At the time the Missouri Plaintiffs and members of the Class purchased and/or leased Ford’s Vehicles, they were unaware that Ford had misrepresented the Vehicles’ fuel economy. The Missouri Plaintiffs and members of the Class believed they were purchasing and/or leasing Vehicles that would achieve the fuel efficiency advertised by Ford.

228. At all relevant times, the Missouri Plaintiffs and members of the Class were purchasers within the meaning of Mo. Rev. Stat. §407.025.1.

229. At all relevant times, Ford conducted trade and commerce in the State of Missouri within the meaning of Mo. Rev. Stat. §407.010(7).

230. At all relevant times, the Missouri Plaintiffs and members of the Class were persons within the meaning of Mo. Rev. Stat. §407.010(5).

231. The MPA, Mo. Rev. Stat. §407.020.1, *et seq.*, provides in pertinent part that:

The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce . . . in or from the state of Missouri, is declared to be an unlawful practice. . . . Any act, use or employment declared unlawful by this subsection violates this subsection whether committed before, during or after the sale, advertisement or solicitation.

232. Ford, individually and/or jointly, by and through their employees, agents, apparent agents, liaisons, and/or sales representatives, engaged in concealment, suppressions, omissions, misrepresentations, unlawful schemes, and/or courses of conduct intended to induce

the Missouri Plaintiffs and members of the Class to purchase and/or lease the Vehicles through one or more of the following unfair and/or deceptive acts and/or practices:

- a. omitting, suppressing, and/or concealing the material fact that the Vehicles could not achieve the fuel efficiency represented by Ford;
- b. omitting, suppressing, and/or concealing material facts including the Vehicles' true fuel efficiency of the Vehicles;
- c. affirmatively misrepresenting to purchasers, including through advertising and other means, the Vehicles' fuel efficiency and that they achieved the represented fuel economy;
- d. failing to alert the public and purchasers of the Vehicles' true fuel economy;
and
- e. unlawfully promoting and marketing the quality of Ford's Vehicles including that the Vehicles achieved the represented fuel economy.

233. Ford's unfair and/or deceptive acts and/or practices violated the MPA, Mo. Rev. Stat. §407.020.

234. The facts which Ford misrepresented, omitted, suppressed, and/or concealed as alleged in the preceding paragraphs were material in that they concerned facts that would have been important to a reasonable consumer in making a decision whether to purchase and/or lease the Vehicles. Fuel efficiency would be material and important to a reasonable consumer in deciding whether to purchase or lease a vehicle.

235. Ford's conduct as alleged in the preceding paragraphs was unfair in that it: (a) offended public policy; (b) was immoral, unethical, oppressive, and/or unscrupulous; and/or (c)

caused substantial economic injury to consumers, namely the Missouri Plaintiffs and members of the Class.

236. Ford's unfair and/or deceptive acts and/or practices alleged in the preceding paragraphs occurred in connection with Ford's conduct of trade and commerce in Missouri.

237. Ford intended for the Missouri Plaintiffs and members of the Class to purchase Ford's Vehicles in reliance upon Ford's unfair and/or deceptive acts and/or practices in the marketing, promotion, and sale of the Vehicles.

238. As a direct and proximate result of Ford's unfair and/or deceptive acts and/or practices, the Missouri Plaintiffs and members of the Class did not receive what they bargained for and believed they were receiving vehicles that achieve the fuel economy advertised by Ford, and have therefore suffered an ascertainable loss.

239. Ford's unfair and/or deceptive acts and/or practices were outrageous due to Ford's evil motive and/or reckless indifference to the rights of others, and were committed with complete indifference to and conscious disregard for Plaintiffs' and the Class' rights, entitling the Missouri Plaintiffs and members of the Class to punitive damages.

240. The Missouri Plaintiffs and members of the Class therefore request actual damages in an amount to be proven at trial, punitive damages, and reasonable attorneys' fees and costs.

241. The Missouri Plaintiffs shall inform the clerk of court that this action is brought under the MPA pursuant to Mo. Rev. Stat. §407.025.7.

**FOURTEENTH CAUSE OF ACTION
(Deceptive Acts and Practices in Violation of N.Y. Gen. Bus. Law §349)
on Behalf of the New York Plaintiffs**

242. The New York Plaintiffs and the Class incorporate by reference the previous allegations as if fully set forth herein.

243. Ford uniformly and falsely advertised the Vehicles' fuel efficiency. Ford's representations and omissions complained of herein are likely to mislead a reasonable consumer acting reasonably under the circumstances.

244. Thus, Ford's actions constitute deceptive trade practices within the meaning of N.Y. Gen. Bus. Law §349(a).

245. As a direct and proximate result of the aforementioned acts of Ford, the New York Plaintiffs and the Class have been harmed.

246. As such, the New York Plaintiffs and the Class are entitled to recover damages under §349.

247. Moreover, pursuant to §349, the New York Plaintiffs and the Class pray for an order enjoining Ford's wrongful conduct.

**FIFTEENTH CAUSE OF ACTION
(False Advertising in Violation of N.Y. Gen. Bus. Law §350, *et seq.*)
on Behalf of the New York Plaintiffs**

248. The New York Plaintiffs and the Class incorporate by reference the previous allegations as if fully set forth herein.

249. Ford's advertisements and representations complained of herein regarding the Vehicles' fuel economy are "misleading in a material respect," as defined by N.Y. Gen. Bus. Law §350-a.

250. As a result, Ford's advertisements and representations are unlawful under N.Y. Gen. Bus. Law §350.

251. As a direct and proximate result of the aforementioned acts of Ford, the New York Plaintiffs and the Class have been harmed.

**SIXTEENTH CAUSE OF ACTION
(Oregon Unlawful Trade Practices Act)
on Behalf of the Oregon Plaintiff**

252. The Oregon Plaintiff and the Class incorporate by reference the previous allegations as if fully set forth herein.

253. This cause of action is brought pursuant to the Oregon Unlawful Trade Practices Act §§ 646.607,608 *et seq.* (the “OUTPA”).

254. The Oregon Plaintiff and Class are persons and the Vehicles are goods as defined by the OUTPA.

255. At all relevant times, the OUTPA was in effect and applicable to the transactions at issue in this case.

256. Ford violated and continues to violate the OUTPA by engaging in the following practices proscribed by the OUTPA, in transactions with Plaintiff, which were intended to result in and did result in the sale or lease of the Vehicles (OUTPA §§ 646.607, 646.608):

- a. employs any unconscionable tactic in connection with the sale or lease goods;
- b. passes off goods or services as those of another;
- c. causes likelihood of confusion or of misunderstanding as to the approval of goods;
- d. represents that goods have sponsorship, approval, characteristics, ingredients, uses, benefits, quantities, or qualities that they do not have;
- e. represents that goods are of a particular standard, quality, or grade, when they are not; and
- f. engages in any other unfair or deceptive conduct in trade or commerce.

257. The Oregon Plaintiff and the Class purchased and/or leased the Vehicles.

258. Ford has been regularly engaged, as part of its general business practice, in a scheme of: (a) wrongfully misrepresenting the quality of the Vehicles; and (b) wrongfully making these misrepresentations for the purpose of selling and/or leasing the Vehicles or for obtaining an increased price for these Vehicles.

259. As described herein, Ford used and employed unfair and/or deceptive acts or practices within the meaning of OR Stat. §646.607,608 *et seq.*

260. Ford's misrepresentations, concealment, omissions, and general conduct were likely to deceive and cause misunderstanding regarding the Vehicles' fuel efficiency.

261. Ford intended that the Oregon Plaintiff and the Class would rely on their misrepresentations, concealment, omissions, and/or deceptions regarding the Vehicles' fuel efficiency.

262. The Oregon Plaintiff and the Class, by purchasing and/or leasing the Vehicles, did, in fact, rely on Ford's misrepresentations, concealment, omissions, and deceptions.

263. Ford's conduct constitutes multiple, separate violations of the OUTPA.

264. The Oregon Plaintiff and the Class members have sustained an ascertainable loss of money or property as a result of a reckless or knowing use or employment by Ford of a method, act, or practice.

265. Therefore, the Oregon Plaintiff and the Class are entitled to statutory damages, punitive damages, and equitable and injunctive relief, as well as reasonable attorneys' fees and costs under OR Stat. §646.608, 638 *et seq.*

266. The Oregon Plaintiff shall mail a copy of this Complaint to the Oregon Attorney General pursuant to OR Stat. §646.638(2).

**SEVENTEENTH CAUSE OF ACTION
(Pennsylvania Unfair Trade Practices and Consumer
Protection Law, 73 P.S. §201-1, *et seq.*)
on Behalf of the Pennsylvania Plaintiff**

267. The Pennsylvania Plaintiff and the Class hereby incorporate by reference the previous allegations as if fully set forth herein.

268. Ford is a person as defined by 73 P.S. §201-2.

269. Ford offered the Vehicles for sale in trade or commerce as defined by 73 P.S. §201-2.

270. As set forth above, Ford engaged in fraudulent conduct in their false marketing of the Vehicles. Ford misrepresented the Vehicles' fuel economy, which Ford knew could not be achieved.

271. Ford's conduct constitutes unfair methods of competition and unfair or deceptive acts or practices as defined by 73 P.S. §201-2(4)(vii), (ix), (xiv), and (xxi).

272. The Pennsylvania Plaintiff and the Class relied on Ford's fraudulent misrepresentations and omissions regarding the Vehicles' fuel efficiency in purchasing and/or leasing their Vehicles.

273. The Pennsylvania Plaintiff and the Class have suffered direct, indirect, incidental, and consequential damages as a proximate result of Ford's wrongful conduct.

**EIGHTEENTH CAUSE OF ACTION
(Violation of the Wisconsin Deceptive Trade Practices Act,
Wisc. Stat. §110.18)
on Behalf of the Wisconsin Plaintiff**

274. The Wisconsin Plaintiff and the Class hereby incorporate by reference the previous allegations as if fully set forth herein.

275. Ford's above-described acts and omissions constitute false, misleading, or deceptive acts or practices under the Wisconsin Deceptive Trade Practices Act ("DTPA"), §110.18.

276. By failing to disclose and misrepresenting the fuel economy of the Vehicles, Ford engaged in deceptive business practices prohibited by the DTPA, including:

- a. representing that the Vehicles have characteristics, uses, benefits, and qualities which they do not have;
- b. representing that the Vehicles are of a particular standard, quality, and grade when they are not;
- c. advertising the Vehicles with the intent not to sell them as advertised;
- d. representing that a transaction involving the Vehicles confers or involves rights, remedies, and obligations which it does not; and
- e. representing that the subject of a transaction involving the Vehicles has been supplied in accordance with a previous representation when it has not. As alleged above, Ford made numerous material statements about the Vehicles' fuel economy that were either false or misleading.

277. Each of these statements contributed to the deceptive context of Ford's unlawful advertising and representations as a whole.

278. Ford's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Wisconsin Plaintiff and members of the Class, about the Vehicles' fuel economy.

279. In purchasing and/or leasing their Vehicles, Wisconsin Plaintiff and the Class members relied on Ford's misrepresentations and/or omissions with respect to the Vehicles' fuel

economy. Ford's representations turned out not to be true because the Vehicles do not achieve the represented fuel economy.

280. Had the Wisconsin Plaintiff and the Class members known this, they would not have purchased and/or leased their Vehicles and/or paid as much for them.

**NINETEENTH CAUSE OF ACTION
(Fraud)
on Behalf of All Plaintiffs**

281. Plaintiffs incorporate the above allegations by reference as if fully set forth herein.

282. Ford's misrepresentations, nondisclosure, and/or concealment of material facts to Plaintiffs and the members of the Class, as set forth above, were known or through reasonable care should have been known by Ford to be false and material and were intended by Ford to mislead Plaintiffs and the Class.

283. Further, Ford's representations were made with the intent that the general public, including Plaintiffs and Class members, rely upon them. Ford's representations were made with knowledge of the falsity of such statements or in reckless disregard of the truth thereof. If Plaintiffs and the Class had been aware of these suppressed facts, Plaintiffs and the Class would not have purchased and/or leased their Vehicles at the price sold and/or leased by Ford. In reliance upon these misrepresentations, Plaintiffs and members of the Class purchased their Vehicles.

284. Upon information and belief, Plaintiffs and the Class allege that Ford misrepresented material facts with the intent to defraud Plaintiffs and the Class. The information withheld from Plaintiffs and Class members is material and would have been considered by a reasonable person, as detailed herein.

285. Plaintiffs and the Class were actually misled and deceived and were induced by Ford to purchase the Vehicles which they would not otherwise have purchased.

286. As a result of Ford's conduct, Plaintiffs and Class members have been damaged. In addition to such damages, Plaintiffs seek punitive or exemplary damages pursuant to California Civil Code §3294 in that Ford engaged in "an intentional misrepresentation, deceit, or concealment of a material fact known to the Ford with the intention on the part of the Ford of thereby depriving a person of property or legal rights or otherwise causing injury."

**TWENTIETH CAUSE OF ACTION
(Negligent Misrepresentation)
on Behalf of All Plaintiffs**

287. Plaintiffs incorporate the above allegations by reference as if fully set forth herein.

288. Ford had a duty to provide honest and accurate information to its customers so that customers could make informed decisions on the substantial purchase of automobiles.

289. The information withheld from Plaintiffs and Class members is material and would have been considered by a reasonable person, as are the misrepresentations regarding the Vehicles, as detailed herein.

290. Ford specifically and expressly misrepresented material facts to Plaintiffs and Class members, as discussed above.

291. Ford knew or in the exercise of reasonable diligence should have known that the ordinary consumer would be misled by Ford's misleading and deceptive advertisements.

292. Plaintiffs and Class members justifiably relied on Ford's misrepresentations and have been damaged thereby.

**TWENTY-FIRST CAUSE OF ACTION
(Breach of Contract)
on Behalf of All Plaintiffs**

293. Plaintiffs incorporate the above allegations by reference as if fully set forth herein.

294. Through their websites, television advertisements, marketing materials, and vehicle window stickers, as more fully set forth herein, Ford conveyed uniform representations and offers regarding the quality and performance of the Vehicles, including that they achieved the represented fuel economy. Plaintiffs and members of the Class accepted Ford's offers and paid to purchase or lease the Vehicles based on those offers.

295. Ford breached the contracts by delivering products that do not perform as offered and promised. Specifically, the Vehicles do not achieve the represented fuel economy.

296. As a direct and proximate cause of Ford's breach, Plaintiffs and Class members were damaged through the purchase price, higher fuel costs, and diminution in the resale value in an amount that will be proven.

**TWENTY-SECOND CAUSE OF ACTION
(Breach of Covenant of Good Faith and Fair Dealing)
on Behalf of All Plaintiffs**

297. Plaintiffs incorporate the above allegations by reference as if fully set forth herein.

298. The law implies a covenant of good faith and fair dealing in every contract.

299. Ford violated the covenant of good faith and fair dealing in their contracts with Plaintiffs and members of the Class by, *inter alia*, misrepresenting to Plaintiffs and the Class the quality and performance of the Vehicles, including that they achieved the represented fuel economy. Plaintiffs and members of the Class accepted Ford's offers and paid to purchase or lease the Vehicles based on those offers.

300. Plaintiffs and the Class members performed all or substantially all of the significant duties required under their agreements with Ford.

301. The conditions required for Ford's performance under the contracts had occurred.

302. Ford did not provide and/or unfairly interfered with the right of Plaintiffs and Class members to receive the full benefits under the agreement due to their misrepresentations.

303. Plaintiffs and Class members were damaged by Ford's breach through the purchase price, higher fuel costs, and diminution in the resale value in an amount that will be proven.

**TWENTY-THIRD CAUSE OF ACTION
(Breach of Express Warranty)
on Behalf of All Plaintiffs**

304. Plaintiffs incorporate the above allegations by reference as if fully set forth herein.

305. Uniform Commercial Code §2-313 provides that an affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the promise.

306. Plaintiffs and Class members formed contracts with Ford at the time Plaintiffs and Class members purchased or leased their Vehicles. The terms of the contracts include the promises and affirmations of fact and express warranties made by Ford about the Vehicles' fuel economy through their marketing and advertising campaigns, on Ford's website and at the dealership, including the window stickers affixed to the Vehicles.

307. Ford's marketing and advertising constitute express warranties, which served as part of the basis of the bargain, and are part of a standardized contract between Plaintiffs and the other members of the Class, on the one hand, and Ford on the other.

308. These express warranties include, but are not limited to Ford's statements that: "Fusion Hybrid gets 47 MPG in the city, on the highway and combined"; "C-MAX Hybrid returns the same fuel economy whether driving cross-country or across the city"; and "C-MAX Hybrid to offer 'real car' range at 570 miles on one tank of gas."

309. Plaintiffs and Class members were exposed to these statements and reasonably relied upon such promises and affirmations of fact contained in Ford's marketing campaign.

310. These warranties were not true, as Ford's Vehicles did not provide the promised fuel efficiency, as described herein.

311. Ford breached the terms of these contracts, including the express warranties, by not providing the products as advertised, as described herein.

312. At all times, California as well as the 47 states listed below, and the District of Columbia, have codified and adopted the provisions of the Uniform Commercial Code governing the express warranty of merchantability: Ala. Code §7-2-313; Alaska Stat. §45.02.313; Ariz. Rev. Stat. §47-2313; Ark. Code Ann. §4-2-313; Cal. Com. Code §2313; Colo. Rev. Stat. §4-2-313; Conn. Gen. Stat. §42a-2-313; Del. Code Ann. tit. 6, §2-313; D.C. Code §28:2-313; Fla. Stat. §672.313; Ga. Code Ann. §11-2-313; Haw. Rev. Stat. Ann. §490:2-313; Idaho Code Ann. §28-2-313; §810 Ill. Comp. Stat. Ann. 5/2-313; Ind. Code Ann. §26-1-2-313; Iowa Code §554.2313; Kan. Stat. Ann. §84-2-313; Ky. Rev. Stat. Ann. §355.2-313; Me. Rev. Stat. tit. 11, §2-313; Md. Code Ann., Com. Law §2-313; Mass. Gen. Laws. ch. 106, §2-313; Mich. Comp. Laws §440.2313; Minn. Stat. §336.2-313; Miss. Code Ann. §75-2-313; Mo. Rev. Stat. §400.2-313; Mont. Code Ann. §30-2-313; Nev. Rev. Stat. §104.2313; N.H. Rev. Stat. Ann. §382-A:2-313; N.J. Stat. Ann. §12A:2-313; N.M. Stat. Ann. §55-2-313; N.Y. U.C.C. Law §2-313; N.C. Gen. Stat. §25-2-313; N.D. Cent. Code §41-02-30; Ohio Rev. Code Ann. §1302.26; Okla. Stat. tit.

12A, §2-313; Or. Rev. Stat. §72.3130; 13 Pa. Cons. Stat. §2313; R.I. Gen. Laws §6A-2-313; S.C. Code Ann. §36-2-313; S.D. Codified Laws §57A-2-313; Tenn. Code Ann. §47-2-313; Tex. Bus.& Com. Code Ann. §2.313; Utah Code Ann. §70A-2-313; Vt. Stat. Ann. tit.9A, §2-313; Va. Code Ann. §8.2-313; Wash. Rev. Code Ann. §62A.2-313; W. Va. Code Ann. §46-2-313; Wis. Stat. §402.313; and Wyo. Stat. Ann. §34.1-2-313.

313. As a result of Ford's breaches of their contracts and express warranties, Plaintiffs and the Class have been damaged in the amount of the purchase price of Ford's products, the diminution of value of their Vehicles, and the increased costs of fuel.

314. All conditions precedent to Ford's liability under this express contract, including notice, have been performed by Plaintiffs and the Class as described above.

TWENTY-FOURTH CAUSE OF ACTION
(Violations of the Magnuson-Moss Warranty Act, 15 U.S.C. §2301, *et seq.*)
on Behalf of All Plaintiffs

315. Plaintiffs incorporate the above allegations by reference as if fully set forth herein.

316. Plaintiffs and Class members are "consumers" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. §2301 *et seq.* ("MMWA").

317. Ford are "suppliers" and "warrantors" within the meaning of the MMWA.

318. The Vehicles are a "consumer product" within the meaning of the MMWA.

319. Ford's written affirmations of fact, promises, and/or descriptions as alleged herein are each a "written warranty" as to the Vehicles' fuel economy and/or there exists an implied warranty for the sale of such product within the meaning of the MMWA.

320. For the reasons detailed above, Ford breached these express and implied warranties, as the Vehicles do not perform as Ford represented or were not fit for their intended

use. Ford have refused to remedy such breaches, and their conduct caused damages to Plaintiffs and members of the Class.

321. The amount in controversy meets or exceeds the sum or value of \$50,000 (exclusive of interest and costs) computed on the basis of all claims to be determined in this suit.

322. Resorting to any informal dispute settlement procedure and/or affording Ford another opportunity to cure these breaches of warranties is unnecessary and/or futile. Any remedies available through any informal dispute settlement procedure would be inadequate under the circumstances, as Ford have failed to remedy the problems associated with the Vehicles, and, as such, have indicated they have no desire to participate in such a process at this time. Any requirement under the MMWA or otherwise that Plaintiffs resort to any informal dispute settlement procedure and/or afford Ford a reasonable opportunity to cure the breach of warranties described above is excused and/or has been satisfied.

323. As a result of Ford's breaches of warranty, Plaintiffs and Class members have sustained damages and other losses in an amount to be determined at trial. Plaintiffs and Class members are entitled to recover damages, specific performance, costs, attorneys' fees, rescission, and/or other relief as is deemed appropriate.

**TWENTY-FIFTH CAUSE OF ACTION
(Unjust Enrichment)
on Behalf of All Plaintiffs**

324. Plaintiffs incorporate the above allegations by reference as if fully set forth herein.

325. Ford have benefited and been enriched by the conduct alleged herein. Ford have generated millions of dollars of revenue from the unlawful conduct described above. Ford have knowledge of this benefit.

326. Ford have voluntarily accepted and retained this benefit.

327. The circumstances, as described herein, are such that it would be inequitable for Ford to retain the ill-gotten benefit without paying the value thereof to Plaintiffs and the Class.

328. Plaintiffs and the Class are entitled to the amount of Ford's ill-gotten gains, including interest, resulting from their unlawful, unjust, unfair, and inequitable conduct as alleged herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the members of the Class, demand judgment against and general and special relief from Ford as follows:

A. An order certifying that the action be maintained as a class action and appointing Plaintiffs and their counsel of record to represent the defined Class;

B. An order under the applicable causes of action set forth above:

a. rescinding the sales of the Vehicles purchased or leased by Plaintiffs and Class members and/or reimbursing Plaintiffs and the Class members (1) the purchase price for those Vehicles or (ii) of all funds improperly obtained by Ford as a result of any such acts and practices declared by this Court to be an unlawful, fraudulent, or an unfair business act or practice, or a violation of laws, statutes, or regulations, or constituting unfair competition, all as alleged herein;

b. disgorging all profits and compensation improperly obtained by Ford as a result of such acts and practices declared by this Court to be an unlawful, fraudulent, or unfair business act or practice, a violation of laws, statutes, or regulations, or constituting unfair competition, and as alleged herein; and

- c. requiring that Ford cease engaging in false advertising and any other unlawful business practices to disseminate an informational campaign to correct its misrepresentations and material omissions.
- C. For damages under the applicable causes of action set forth above;
- D. For punitive damages, pursuant to the applicable causes of action set forth above;
- E. For reasonable attorneys' fees and costs, pursuant to the applicable causes of action set forth above, and any other law or statutes as may be applicable;
- F. For prejudgment interest to the extent allowed by law;
- G. For costs of suit incurred herein; and
- H. For such other and further relief as the Court deems appropriate.

DEMAND FOR JURY TRIAL

Plaintiffs respectfully demand a trial by jury on all issues that may be tried to a jury.

DATED: December 14, 2015

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