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7 KARLA and VIRGIL ILER, on behalf of
themselves and all others similarly situated
8

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11
12 KARLA and VIRGIL ILER, on behalf of) Case No. '10CV2648 DMS JMA
themselves and all others similarly)
13 situated,) CLASS ACTION
14 Plaintiffs,) **PLAINTIFFS KARLA AND**
15 v.) **VIRGIL ILER'S COMPLAINT**
16 FORD MOTOR COMPANY, a Delaware) **FOR DAMAGES**
corporation, and DOES 1 through 100,)
17 inclusive,)
18 Defendant.)

19
20 Plaintiffs KARLA and VIRGIL ILER ("Plaintiffs"), on behalf of themselves
21 and all others similarly situated, by and through their attorneys of record, bring this
22 class action Complaint against Defendant FORD MOTOR COMPANY ("Ford") and
23 alleges as follows:

24 **NATURE OF THE CASE**

25 1. The rear tailgate of 2002 through 2005 models of the Ford Explorer,
26 Mercury Mountaineer, and Lincoln Aviator suffer from a defect. The defect causes
27 the rear tailgate to crack, which results in a safety risk and diminution of value of the
28 vehicles.

1 2. The vehicles are all manufactured by Ford.

2 3. As a result of Ford's faulty manufacturing and design, the members of
3 the proposed class have suffered damages. Plaintiffs, on behalf of themselves and all
4 others similarly situated, bring claims for (1) Magnuson-Moss Warranty Act; (2)
5 Unfair Competition Under Business and Professions Code section 17200; (3) Breach
6 of Express Warranty; (4) Breach of Implied Warranty of Merchantability; (5) Breach
7 of Implied Warranty of Fitness for a Particular Purpose; (6) Negligence; (7)
8 Fraudulent Concealment and Misrepresentation; and (8) Negligent
9 Misrepresentation.

10 **JURISDICTION AND VENUE**

11 4. This Court has jurisdiction over this action under 28 U.S.C. § 1332(d),
12 because at least one class member is of diverse citizenship from one Defendant, there
13 are more than 100 class members nationwide, and the aggregate amount in
14 controversy exceeds \$5,000,000.00 and minimal diversity exists.

15 5. This Court has personal jurisdiction over Ford because Ford has
16 purposefully availed itself of the privilege of conducting business activities in the
17 State of California by manufacturing, warranting, advertising, and selling its vehicles
18 within the State of California. Additionally, Ford has maintained systematic and
19 continuous business contacts with the State of California.

20 6. Venue is proper in this district under 28 U.S.C. § 1391 because a
21 substantial part of the events or omissions giving rise to the claims occurred and or
22 emanated from this district, and Ford has caused harm to Plaintiffs and the Class
23 members residing in this district.

24 **PARTIES**

25 7. Plaintiffs are, and at all times relevant to this case have been, residents
26 of San Diego, California. Plaintiffs own a 2003 Ford Explorer, which has a large
27 crack in the rear tail gate.

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1 8. Ford is a corporation organized under the laws of the State of Delaware
2 with its principal place of business in Dearborn, Michigan.

3 9. The true names and capacities, whether individual, corporate, or
4 otherwise, of Defendants DOES 1 through 100 are unknown to Plaintiffs, who
5 therefore sues such Defendants by fictitious names, and Plaintiffs will amend this
6 Complaint to show their true names and capacities when they have been ascertained.

7 10. Plaintiffs are informed and believe, and thereon allege, that all
8 Defendants, including the DOE Defendants, are in some way responsible for the
9 matters complained of herein.

10 **FACTUAL ALLEGATIONS**

11 11. Ford markets, distributes, and warrants Ford Explorer, Mercury
12 Mountaineer, and Lincoln Aviator vehicles in the United States.

13 12. Plaintiffs are informed and believe, and thereon allege that the Ford
14 Explorer, Mercury Mountaineer, and Lincoln Aviator are mechanically identical and
15 share the same chassis.

16 13. The 2002 through 2005 model years of the Ford Explorer, Mercury
17 Mountaineer, and Lincoln Aviator vehicles suffer from a defect which causes the rear
18 tailgate of the vehicles to crack.

19 14. Plaintiffs are informed and believe, and thereon allege that Ford
20 received thousands of complaints about this defect, but failed to recall the vehicles in
21 question.

22 15. Plaintiffs are informed and believe, and thereon allege that Ford is
23 aware that the vehicles suffer from this defect, but have failed and refuse to recall the
24 vehicles or fix the vehicles.

25 16. Plaintiffs are informed and believe, and thereon allege that the value of
26 all Class vehicles has declined due to the presence of the defect in Class vehicles.

27 17. Plaintiffs purchased their 2003 Ford Explorer on April 4, 2003 from
28 Mossy Ford, located at 4570 Mission Bay Drive, San Diego, California, 92109.

1 18. Plaintiff's 2003 Ford Explorer developed a crack in the rear tailgate of
2 the vehicle, in the vicinity of the Ford emblem. Said defect was first discovered by
3 Plaintiffs in or about June 2009.

4 19. As a result of the defect, the rear tailgate is a safety risk and the value of
5 Plaintiff's vehicle has declined.

6 20. Plaintiffs requested that Ford repair the crack at its own expense, but
7 Ford refused.

8 21. As a result of Ford's unwillingness to repair the defect at its own
9 expense, Plaintiffs will be forced to pay for repairs of the defect.

10 **CLASS ACTION ALLEGATIONS**

11 22. Plaintiffs brings this action on behalf of themselves and a class of
12 persons initially defined as follows: All current owners or lessees of a 2002 through
13 2005 Ford Explorer, Mercury Mountaineer, and Lincoln Aviator residing in the
14 United States, and all former owners or lessees of a 2002 through 2005 Ford
15 Explorer, Mercury Mountaineer, and Lincoln Aviator residing in the United States
16 ("the Class").

17 23. The Class includes the following Subclasses initially defined as:

- 18 a. All original owners or lessees of a 2002 through 2005 Ford
19 Explorer, Mercury Mountaineer, and Lincoln Aviator residing in
20 the United States, that have repaired or paid another individual or
21 entity to repair a damaged rear tailgate of a 2002 through 2005
22 Ford Explorer, Mercury Mountaineer, and Lincoln Aviator ("the
23 original owners repaired subclass");
- 24 b. All original owners or lessees of a 2002 through 2005 Ford
25 Explorer, Mercury Mountaineer, and Lincoln Aviator residing in
26 the United States, that have not yet repaired or paid another
27 individual or entity to repair a damaged rear tailgate of a 2002

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1 through 2005 Ford Explorer, Mercury Mountaineer, and Lincoln
2 Aviator ("the original owners not repaired subclass");

3 c. All subsequent owners or lessees of a 2002 through 2005 Ford
4 Explorer, Mercury Mountaineer, and Lincoln Aviator residing in
5 the United States, that repaired or paid another individual or
6 entity to repair a damaged rear tailgate of a 2002 through 2005
7 Ford Explorer, Mercury Mountaineer, and Lincoln Aviator ("the
8 subsequent owners repaired subclass");

9 d. All subsequent owners or lessees of a 2002 through 2005 Ford
10 Explorer, Mercury Mountaineer, and Lincoln Aviator residing in
11 the United States, that did not repair or pay another individual or
12 entity to repair a damaged rear tailgate of a 2002 through 2005
13 Ford Explorer, Mercury Mountaineer, and Lincoln Aviator ("the
14 subsequent owners not repaired subclass");

15 24. Excluded from the Class are (1) Ford Motor Company, any affiliate,
16 parent, or subsidiary of Ford Motor Company, and entity in which Ford Motor
17 Company has a controlling interest, any officer, director, or employee of Ford Motor
18 Company, any successor or assign of Ford Motor Company; (2) Anyone employed
19 by counsel for Plaintiffs in this action; (3) Any Judge to whom this case is assigned
20 as well as his or her immediate family and staff; and (4) Anyone who purchased a
21 2002 through 2005 Ford Explorer, Mercury Mountaineer, and Lincoln Aviator for
22 the purpose of resale.

23 25. This action has been brought and may properly be maintained on behalf
24 of the Class proposed above under the criteria of Federal Rule of Civil Procedure
25 Rule 23.

26 **NUMEROSITY**

27 26. Members of the Class are so numerous that their individual joinder
28 herein is impracticable. Plaintiffs are informed and believe, and thereon allege, that

1 hundreds of thousands of the Class vehicles have been sold or leased in the United
2 States. Class members may be notified of the pendency of this action by e-mail,
3 mail, and supplemented (if deemed necessary or appropriate by the Court) by
4 published notice.

5 **PREDOMINANCE OF COMMON QUESTIONS**

6 27. Common questions of law and fact exist as to all members of the Class
7 and predominate over questions affecting only individual Class members. These
8 common questions include the following:

- 9 a. Whether the rear tailgate on the Class vehicles is defective;
10 b. Whether the rear tailgate requires repair;
11 c. Whether Ford has a duty to disclose the defect in the rear tailgate
12 to Plaintiffs and the Class;
13 d. Whether Ford withheld facts concerning the defective rear
14 tailgate from Plaintiffs and the Class;
15 e. Whether Ford engaged in unfair and fraudulent business practices
16 by concealing known defects in the Class vehicles, including the
17 defect that caused the rear tailgate of the Class vehicles to crack;
18 f. Whether Ford breached its express warranty relating to the Class
19 vehicles;
20 g. Whether Ford breached the implied warranty of merchantability;
21 h. Whether Ford breached the implied warranty of fitness for a
22 particular purpose;
23 i. Whether Ford fraudulently misrepresented the condition of the
24 Class vehicles to the Class members;
25 j. Whether Ford negligently misrepresented the condition of the
26 Class vehicles to the Class members;
27 k. Whether Plaintiffs and the Class are entitled to damages and other
28 monetary relief.

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TYPICALITY

28. Plaintiffs' claims are typical of the claims of the Class, because, among other things, Plaintiffs purchased a Class Vehicle, which contains the same defective rear tailgate found in other Class Vehicles.

ADEQUACY

29. Plaintiffs are adequate representatives of the Class because their interests do not conflict with the interests of the members of the Class they seek to represent. Plaintiffs have retained competent counsel that are experienced in complex class action litigation, and Plaintiffs intend to prosecute this action vigorously. The interests of the Class will be fairly and adequately protected by Plaintiffs and their counsel.

SUPERIORITY

30. The class action is superior to other available means for the fair and efficient adjudication of this dispute. The injury suffered by each Class member, while meaningful on an individual basis, is not of such magnitude as to make the prosecution of individual actions against Ford economically feasible. Further, the number of individual actions would swamp courts across the country.

31. In addition to the burden and expense of managing myriad actions arising from the defect, individualized litigation presents a potential for inconsistent or contradictory judgments. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

32. In the alternative, the Class may be certified because:

- a. The prosecution of separate actions by the individual members of the Class would create a risk of inconsistent or varying adjudication with respect to individual Class members which would establish incompatible standards of conduct for Ford;

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- 1 b. The prosecution of separate actions by individual Class members
2 would create a risk of adjudications with respect to them which
3 would, as a practical matter, be dispositive of the interests of
4 other Class members not parties to the adjudications, or
5 substantially impair or impede their ability to protect their
6 interests; and
- 7 c. Ford has acted or refused to act on grounds generally applicable
8 to the Class, thereby making appropriate final and injunctive
9 relief with respect to the members of the Class as a whole.

10 **FIRST CAUSE OF ACTION**

11 **(Violation of Magnuson-Moss Warranty Act – Against all Defendants)**

12 33. Plaintiffs repeat and re-allege the allegations contained in Paragraphs 1
13 through 32, inclusive, and incorporate the same as though set forth in full herein.

14 34. Pursuant to the sale of the Class vehicles to Plaintiffs and the Class
15 members, Ford provided a written warranty and implied warranty on the Class
16 vehicles.

17 35. The sale of the Class vehicles was subject to the provisions and
18 regulations of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, et seq.

19 36. Plaintiffs and the Class members are "consumers" as defined in the
20 Magnuson-Moss Warranty Act. Ford is a "supplier" and "warrantor" as defined by
21 the Magnuson-Moss Warranty Act.

22 37. The Class vehicles are "consumer products" as defined in the
23 Magnuson-Moss Warranty Act and were manufactured and sold after July 4, 1975.
24 The express warranty provided by Ford and/or required by statute to be provided by
25 Ford is a "written warranty" as defined in the Magnuson-Moss Warranty Act. The
26 Class vehicles' implied warranties are covered under 15 U.S.C. § 2301(7).

27 38. Plaintiffs are informed and believe and thereon allege that Ford
28 breached the written warranty with regard to the Class vehicles.

1 39. Plaintiffs are informed and believe and thereon allege that Ford
2 breached the implied warranties with regard to the Class vehicles.

3 40. Plaintiffs and the Class members timely notified Ford of the breach of
4 the warranties and attempted to resolve their claims through Ford's complaint
5 procedures.

6 41. Ford is in violation of the Magnuson-Moss Warranty Act by failing to
7 remedy the defective rear tailgate in the Class vehicles within a reasonable time and
8 without charge.

9 42. Ford is in violation of the Magnuson-Moss Warranty Act by failing to
10 permit the Class members to choose either a refund or replacement without charge,
11 after a reasonable number of repair attempts.

12 **SECOND CAUSE OF ACTION**

13 **(Unfair Competition Under Business and Professions Code section 17200**

14 **– Against All Defendants)**

15 43. Plaintiffs repeat and re-allege the allegations contained in Paragraphs 1
16 through 42, inclusive, and incorporate the same as though set forth in full herein.

17 44. The California Unfair Business Practices Act defines unfair business
18 competition to include any "unfair" or "fraudulent" business act or practice.

19 45. As described herein, Ford concealed known defects in the Class
20 vehicles, including the defect that caused the rear tailgate of the Class vehicles to
21 crack. Ford also sold the Class vehicles with knowledge of the defect that caused the
22 rear tailgate of the Class vehicles to crack.

23 46. Ford's acts and practices herein constitute unfair business acts and
24 practices within the meaning of the California Unfair Business Practices Act as
25 Ford's acts and practices herein described offend established public policy, and
26 because the harm they cause to consumers outweighs any benefits associated with
27 those practices.

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1 47. Ford's acts and practices herein constitute fraudulent business acts and
2 practices within the meaning of the California Unfair Business Practices Act as
3 Ford's acts and practices were likely to deceive a reasonable consumer, and the
4 information would be material to a reasonable consumer.

5 48. As a result of Ford's unfair and fraudulent business practices, the Class
6 members were deceived and purchased the Class vehicles.

7 49. Ford's concealment of the defect in the Class vehicles was material, in
8 that the Class members would not have purchased the Class vehicles had the defect
9 not been concealed.

10 50. As a result of Ford's unfair and fraudulent business practices, Plaintiffs
11 and the Class members have been damaged in an amount to be proven at trial.
12 Plaintiffs are further entitled to injunctive relief, restitution, and disgorgement of
13 profits obtained by Ford as a result of its fraudulent and unfair business acts and
14 practices.

15 **THIRD CAUSE OF ACTION**

16 **(Breach of Express Warranty – Against All Defendants)**

17 51. Plaintiffs repeat and re-allege the allegations contained in Paragraphs 1
18 through 50, inclusive, and incorporate the same as though set forth in full herein.

19 52. Ford sold the Class vehicles to Plaintiffs and the Class members.

20 53. In conjunction with the sale of the Class vehicles, Ford expressly
21 warranted that its dealers would repair or replace all components of the Class
22 vehicles that were defective in factory supplied materials or workmanship.

23 54. Plaintiffs are informed and believe, and thereon allege that Ford
24 breached its express warranty to repair or replace all components of the Class
25 vehicles that were defective in factory supplied materials or workmanship by failing
26 to perform such repairs or replacements relating to the defective rear tailgate.

27 55. As set forth herein, Plaintiffs are informed and believe, and thereon
28 allege that Ford actively concealed the nature of the defective rear tailgate, and sold

1 the Class vehicles with knowledge of the defect. Therefore, any limitations imposed
2 by Ford as to the scope of its obligations under the express warranty described herein
3 are unconscionable, both substantively and procedurally, and are unenforceable as a
4 matter of law. Any such limitations or exclusions were imposed unilaterally by Ford
5 in adhesion contracts with no ability by the Class members to negotiate the terms of
6 limitation of the express warranty.

7 56. Furthermore, the express warranty described herein fails in its essential
8 purpose as the contractual remedy is insufficient to make the Class members whole,
9 due to the fact that Ford has failed to adequately provide the promised remedies
10 within a reasonable time.

11 57. Furthermore, as described herein, at the time that Ford sold the Class
12 vehicles it was aware of the defective rear tailgate. Therefore, Plaintiffs and the
13 Class members were induced to purchase the Class vehicles under false and/or
14 fraudulent pretenses. In these circumstances, any limitations whatsoever precluding
15 the recovery of incidental and/or consequential damages are unenforceable pursuant
16 to California Civil Code section 1668.

17 58. As a result of Ford's breach of its express warranty, Plaintiffs and the
18 Class members have been damaged in an amount to be proven at trial.

19 **FOURTH CAUSE OF ACTION**

20 **(Breach of Implied Warranty of Merchantability – Against All Defendants)**

21 59. Plaintiffs repeat and re-allege the allegations contained in Paragraphs 1
22 through 58, inclusive, and incorporate the same as though set forth in full herein.

23 60. Ford sold the Class vehicles to the Class members.

24 61. A warranty that the Defective vehicles were in merchantable condition
25 and fit for the purpose for which they were sold is implied by law.

26 62. The Class vehicles were not in merchantable condition and were not fit
27 for the ordinary purpose for which they were sold.

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1 63. Plaintiffs and the Class members timely notified Ford of the breach of
2 the implied warranty.

3 64. Plaintiffs and the Class members have had sufficient direct dealings
4 with either Ford or their agent dealerships to establish privity of contract between
5 Plaintiffs, the Class members, and Ford. Notwithstanding the same, privity is not
6 required in this case because Plaintiffs and Class members are intended third-party
7 beneficiaries of contracts between Toyota and its dealers; specifically, they are the
8 intended beneficiaries of Ford's implied warranties.

9 65. As a result of Ford's breach of the implied warranty of merchantability,
10 the Class members have suffered damages in an amount to be proven at trial.

11 **FIFTH CAUSE OF ACTION**

12 **(Breach of Implied Warranty of Fitness for a Particular Purpose**

13 **- Against All Defendants)**

14 66. Plaintiffs repeat and re-allege the allegations contained in Paragraphs 1
15 through 65, inclusive, and incorporate the same as though set forth in full herein.

16 67. Ford sold the Class vehicles to Plaintiffs and the Class members.

17 68. A warranty that the Defective vehicles were fit for the purpose for
18 which they were sold is implied by law.

19 69. Plaintiffs are informed and believe, and thereon allege that Ford had
20 reason to know of Plaintiffs and the Class members' intended use of the Class
21 vehicles and that Plaintiffs and the Class members were relying on Ford's skill to
22 furnish goods suitable for that purpose.

23 70. Plaintiffs and the Class members relied on Ford's skill to furnish
24 vehicles suitable for that purpose.

25 71. The Class vehicles were not reasonably fit for purposes for which they
26 were sold.

27 72. Plaintiffs and the Class members timely notified Ford of the breach of
28 the implied warranty.

1 73. Plaintiffs and the Class members have had sufficient direct dealings
2 with either Ford or their agent dealerships to establish privity of contract between
3 Plaintiffs, the Class members, and Ford. Notwithstanding the same, privity is not
4 required in this case because Plaintiffs and Class members are intended third-party
5 beneficiaries of contracts between Toyota and its dealers; specifically, they are the
6 intended beneficiaries of Ford's implied warranties.

7 74. As a result of Ford's breach of the implied warranty of fitness for a
8 particular purpose, Plaintiffs and the Class members have been damaged in an
9 amount to be proven at trial.

10 **SIXTH CAUSE OF ACTION**

11 **(Negligence – Against all Defendants)**

12 75. Plaintiffs repeat and re-allege the allegations contained in Paragraphs 1
13 through 74, inclusive, and incorporate the same as though set forth in full herein.

14 76. Ford, as manufacturer of the Class vehicles, owed and owes Plaintiffs
15 and the Class members a duty to warn of known defects in the Class vehicles or
16 recall the Class vehicles after a defect became known.

17 77. The Class vehicles all suffer from a defect which causes the rear tailgate
18 to crack.

19 78. Plaintiffs are informed and believe, and thereon allege that Ford knew of
20 the defect that caused the rear tailgate to crack prior to sale of the Class vehicles to
21 Plaintiffs and the Class members.

22 79. Plaintiffs are informed and believe, and thereon allege that Ford failed
23 to warn of the known defect that caused the rear tailgate to crack prior to sale of the
24 Class vehicles to Plaintiffs and the Class members.

25 80. Plaintiffs are informed and believe, and thereon allege that Ford failed
26 to recall the Class vehicles after the defect that caused the rear tailgate to crack
27 became known.

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1 81. As a result, Ford has breached its duty to warn of the known defect that
2 caused the rear tailgate to crack and recall the Class vehicles after the defect became
3 known.

4 82. As a result of Ford's breach of its duty to warn of the known defect that
5 caused the rear tailgate to crack and recall the Class vehicles after the defect became
6 known, Plaintiffs and the Class members have suffered damages in an amount to be
7 proven at trial.

8 **SEVENTH CAUSE OF ACTION**

9 **(Fraudulent Concealment and Misrepresentation – Against all Defendants)**

10 83. Plaintiffs repeat and re-allege the allegations contained in Paragraphs 1
11 through 82, inclusive, and incorporate the same as though set forth in full herein.

12 84. Ford manufactured the Class vehicles.

13 85. The Class vehicles all suffer from a defect which causes the rear tailgate
14 to crack.

15 86. Plaintiffs are informed and believe, and thereon allege that Ford knew of
16 the defect that caused the rear tailgate to crack prior to sale of the Class vehicles to
17 the Class members.

18 87. Plaintiffs are informed and believe, and thereon allege that at the time
19 Ford sold the Class vehicles, Ford's knowledge of the defect that caused the rear
20 tailgate to crack was exclusive.

21 88. Plaintiffs are informed and believe, and thereon allege that Ford
22 concealed the existence of the defect that caused the rear tailgate to crack.

23 89. Plaintiffs are informed and believe, and thereon allege that Ford
24 concealed the existence of the defect with the intention of inducing the Class
25 members to purchase the Class vehicles.

26 90. Plaintiffs are informed and believe, and thereon allege that Ford
27 represented that the Class vehicles were fit for the ordinary purpose for which they
28 were sold.

1 91. The fitness of the Class vehicles for their ordinary use was a material
2 fact for Plaintiffs and the Class members, who purchased the Class vehicles.

3 92. Plaintiffs are informed and believe, and thereon allege that Ford
4 intentionally failed to warn of the known defect to induce Plaintiffs and the Class
5 members to purchase the Class vehicles.

6 93. Plaintiffs and the Class members justifiably relied on Ford's
7 representation that the Class vehicles were fit for the ordinary purpose for which they
8 were sold.

9 94. As a result of Ford's intentional concealment and misrepresentation,
10 Plaintiffs and the Class members purchased the Class vehicles which proved to be
11 defective.

12 95. As a result of Ford's intentional concealment and misrepresentation,
13 Plaintiffs and the Class members have suffered damages in an amount to be proven
14 at trial.

15 **EIGHTH CAUSE OF ACTION**

16 **(Negligent Misrepresentation – Against all Defendants)**

17 96. Plaintiffs repeat and re-allege the allegations contained in Paragraphs 1
18 through 95, inclusive, and incorporate the same as though set forth in full herein.

19 97. Ford manufactured the Class vehicles.

20 98. The Class vehicles all suffer from a defect which causes the rear tailgate
21 to crack.

22 99. Plaintiffs are informed and believe, and thereon allege that Ford knew of
23 the defect that caused the rear tailgate to crack prior to sale of the Class vehicles to
24 Plaintiffs and the Class members.

25 100. Plaintiffs are informed and believe, and thereon allege that Ford
26 represented that the Class vehicles were fit for the ordinary purpose for which they
27 were sold.

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1 101. The fitness of the Class vehicles for their ordinary use was a material
2 fact for Plaintiffs and the Class members, who purchased the Class vehicles.

3 102. Plaintiffs are informed and believe, and thereon allege that Ford had no
4 reasonable ground for believing that the Class vehicles were free from defects.

5 103. Plaintiffs are informed and believe, and thereon allege that Ford
6 intended that Plaintiffs and the Class members rely on its representation that the
7 Class vehicles were fit for the ordinary purpose for which they were sold.

8 104. Plaintiffs and the Class members justifiably relied on Ford's
9 representation that the Class vehicles were fit for the ordinary purpose for which they
10 were sold.

11 105. As a result of Ford's negligent misrepresentation, Plaintiffs and the
12 Class members purchased the Class vehicles which proved to be defective.

13 106. As a result of Ford's negligent misrepresentation, Plaintiffs and the
14 Class members have suffered damages in an amount to be proven at trial.

15 **PRAYER FOR RELIEF**

16 **WHEREFORE**, Plaintiffs, on their own behalf and on behalf of the Class,
17 pray for judgment as follows:

18 **ON ALL CAUSES OF ACTION:**

- 19 1. For an order certifying the Class and appointing Plaintiffs and their
20 counsel to represent the Class;
- 21 2. For judgment against Ford in an amount to be proven at trial;
- 22 3. For injunctive relief;
- 23 4. For restitution;
- 24 5. For prejudgment and post-judgment interest in the maximum amount
25 allowed by law;
- 26 6. For attorney's fees and costs incurred by Plaintiffs as allowable by law;
27 and
- 28 7. For such other and further relief as this Court deems just and proper.

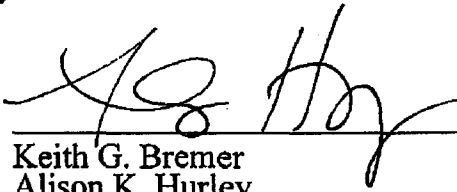
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DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs hereby demand a trial by jury.

Dated: December 22, 2010

BREMER WHYTE BROWN & O'MEARA
LLP

By: 
Keith G. Bremer
Alison K. Hurley
Attorneys for Plaintiffs
KARLA and VIRGIL ILER, on
behalf of themselves and all others
similarly situated

CIVIL COVER SHEET

JS 44 (Rev. 12/07)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Karla and Virgil Iler

DEFENDANTS

Ford Motor Company

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Wayne, Michigan
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)
Keith G. Bremer, SBN: 155920
Alison K. Hurley, SBN: 234042
Bremer Whyte Brown & O'Meara, LLP
20320 S.W. Birch St., Second Floor
Newport Beach, California 92660

Attorneys (If Known)

'10CV2648 DMS JMA

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Incorporated or Principal Place of Business In This State	<input type="checkbox"/>	<input type="checkbox"/>
Citizen of Another State	<input type="checkbox"/>	<input type="checkbox"/>	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Citizen or Subject of a Foreign Country	<input type="checkbox"/>	<input type="checkbox"/>	Foreign Nation	<input type="checkbox"/>	<input type="checkbox"/>

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input checked="" type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motion to Vacate Sentence <input type="checkbox"/> 530 General Habeas Corpus: <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

V. ORIGIN

- (Place an "X" in One Box Only)
- 1 Original Proceeding
 - 2 Removed from State Court
 - 3 Remanded from Appellate Court
 - 4 Reinstated or Reopened
 - 5 Transferred from another district (specify)
 - 6 Multidistrict Litigation
 - 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. Section 1332 (d)

Brief description of cause:
Product defects and fraud

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION DEMAND \$ UNDER F.R.C.P. 23

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE December 22, 2010 SIGNATURE OF ATTORNEY OF RECORD *AGB*

FOR OFFICE USE ONLY: RECEIPT # AMOUNT APPLYING IFF JUDGE MAG. JUDGE