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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CV 13 3072

MEJ

FILED
JUL 02 2013
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
ORIGINAL

JENNIFER WHALEN, individually and)
on behalf of all others similarly)
situated,)

Plaintiff,)

v.)

FORD MOTOR COMPANY,)

Defendant.)

Case _____

**PLAINTIFF'S ORIGINAL CLASS
ACTION COMPLAINT:**

**(1) Breach of Express Warranty; (2)
Violations of California Business and
Professions Code § 17200; (3)
Violations of Unfair Business Practices
Act; (3) Breach of California
Consumers Legal Remedies Act §
1750; (4) Unjust Enrichment**

JURY TRIAL DEMANDED

Plaintiff Jennifer Whalen ("Plaintiff" or "Whalen"), brings this action against
Ford Motor Company ("Defendant" or "Ford"), by and through her attorneys,
individually and on behalf of all others similarly situated, and alleges as follows:

INTRODUCTION

1
2
3 1. This is a class action lawsuit brought by Plaintiff on behalf of herself
4 and a class of current and former owners and lessees of Ford and Lincoln vehicles
5 (the "Class Vehicles" or "Vehicles") equipped with the SYNC® and MyFord Touch®
6 or MyLincoln Touch® control systems (the "Sync System").

8 2. The Sync System is a video interface that, *inter alia*, displays driving
9 directions, serves as a rear view camera when the vehicle is in reverse gear,
10 operates the radio, adaptive cruise control, phone and other controls, and
11 automatically calls for help in the event of an emergency or accident. The Sync
12 System is an integral and safety-related part of the Class Vehicles. Indeed, Ford
13 has aggressively touted the functions and features of its Sync Systems in mass
14 marketing campaigns directed to consumers.

18 3. Unbeknownst to purchasers and lessees of the Class Vehicles,
19 however, Sync System suffers from a material design defect that prevents it from
20 working properly. This action arises from Ford's failure to disclose to Plaintiff and
21 other consumers that the Sync Systems in the Class Vehicles are predisposed to a
22 defect that inevitably causes the Sync Systems in the Class Vehicles to stop
23 operating properly (the "Sync System Defect").

26 4. Ford is, and at all relevant times has been, well aware of the Sync
27 System Defect. In 2011, Ford CEO Alan Mulally acknowledged in an interview with
28

1 *Automotive News* that that company was undertaking to fix problems with Sync
2 and MyFord Touch.¹ Ford's knowledge is also evidenced by numerous service
3 bulletins it issued related to the problem, and by the overwhelming number of
4 consumers who have complained about the Sync System. Ford has even initiated
5 a warranty extension and issued a variety of software updates in an effort to
6 address the Sync System Defect. As discussed below, however, these initiatives
7 have failed to remedy the problems in the Sync System. At bottom, Ford has done
8 nothing more than temporarily and improperly repair the Control System Defect,
9 or replace it with other similarly defective and inherently failure-prone Sync
10 Systems.
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15 5. As a result of Ford's unfair, deceptive and/or fraudulent business
16 practices, owners and/or lessees of Class Vehicles, including Plaintiff, have
17 suffered an ascertainable loss of money and/or property and/or loss in value.
18

19 6. Had Plaintiff and other Class members known about the Sync System
20 Defect at the time of purchase or lease, they would not have bought or leased the
21 Class Vehicles, or would have paid substantially less for them.
22

23 7. Plaintiff brings this action to redress Defendant's violations of
24 consumer fraud statutes, and also seek recovery for Defendant's breach of
25
26

27
28 ¹ <http://www.autonews.com/apps/pbcs.dll/article?AID=/20111107/OEM06/311079975/1182#axzz2WmXtnKBV>

1 warranties.

2
3 **JURISDICTION AND VENUE**

4 8. This Court has subject matter jurisdiction of this action pursuant to 28
5 U.S.C. §1332 of the Class Action Fairness Act of 2005 because: (i) there are 100 or
6 more class members, (ii) there is an aggregate amount in controversy exceeding
7 \$5,000,000, exclusive of interest and costs, and (iii) there is minimal diversity
8 because at least one plaintiff and one defendant are citizens of different states.
9
10 This Court has supplemental jurisdiction over the state law claims pursuant to 28
11 U.S.C. § 1367.
12

13
14 9. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391
15 because Defendant transacts business in this district, is subject to personal
16 jurisdiction in this district, and therefore is deemed to be a citizen of this district.
17 Defendant has advertised in this district and has received substantial revenue and
18 profits from its sales and/or leasing of Class Vehicles in this district; therefore, a
19 substantial part of the events and/or omissions giving rise to the claims occurred,
20 in part, within this district.
21
22

23
24 10. Venue is also proper in this District because this lawsuit involves
25 Plaintiff's purchase of a vehicle, malfunctions experienced with the vehicle, and
26 unsuccessful attempts to have the vehicle repaired, all of which occurred within
27 this District, in Petaluma, Sonoma County, California.
28

1 11. This Court has personal jurisdiction over Defendant because it has
2 conducted substantial business in this judicial district, and intentionally and
3 purposefully placed Class Vehicles into the stream of commerce within this district
4 and throughout the United States.
5

6
7 **THE PARTIES**

8 **A. Plaintiff Whalen**

9 12. Plaintiff Jennifer Whalen (“Whalen”) is a citizen of the State of
10 California, residing in Windsor, Sonoma County, California.
11

12 13. In April of 2012, Whalen purchased a new Model Year (“MY”) 2013
13 Ford Explorer from Henry Curtis Ford, an authorized Ford dealer in Petaluma,
14 Sonoma County, California.
15

16 14. Plaintiff Whalen purchased (and still owns) this vehicle for personal,
17 family and/or household uses. Her vehicle bears Vehicle Identification Number
18 1FM5K7D94DGA12906.
19

20 15. The Ford Explorer purchased by Whalen came equipped with a Ford
21 Sync System. Almost immediately after buying her vehicle, Whalen began
22 experiencing problems with her Sync System. Specifically, the rear view camera
23 would freeze, the navigation system took an unreasonably long period of time to
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1 calculate destinations, and the music did not stream over Bluetooth.² An invoice
2 from Henry Curtis Ford dated April 30, 2012 indicates that the Sync system was
3 rebooted and a “master reset” was performed. The Ford technician’s notes on the
4 invoice also state that it was “found that there are some functions that do not
5 operate.”
6

7
8 16. Unfortunately, the work performed by the Ford technician was not
9 sufficient to fix the problems with Whalen’s Sync System. Whalen returned to the
10 Henry Curtis Ford Service Department a few weeks later complaining of the
11 backup camera freezing again while she was driving. Whalen also experienced the
12 Sync System switching from Sirius radio to the iPod with no warning, and the
13 Bluetooth streaming was not operating. As a result, Whalen had to borrow a
14 loaner car while her new Ford Explorer was being serviced for four (4) days.
15

16
17
18 17. Whalen received her Explorer back on May 14, 2012. Less than a
19 month later, she returned to Henry Curtis Ford for a third time with continued
20 problems related to her Ford Sync System. On this occasion, Whalen complained
21 of the backup camera freezing while driving, the Sync switching from Sirius to
22 iPod, the Bluetooth again being inoperable, and the navigation system being
23 unreasonably slow.
24
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27
28 ² Bluetooth is a wireless technology standard for exchanging data over short distances.

1 18. Whalen received a form letter from Ford Motor Company's Customer
2 Service Division in January 2013 notifying her that her car was part of a "Customer
3 Satisfaction Program (Program Number 12M02)." The letter indicated that Ford
4 was extending the limited warranty on the Accessory Protocol Interface Module to
5 a total of five years. This letter explained that the failure of the Accessory Protocol
6 Interface Module "will render the MyFord Touch® system inoperative." The letter
7 indicated that a service appointment was only necessary if the MyFord Touch®
8 system was inoperative.
9

10
11
12 19. Whalen brought her car back again to the Henry Curtis Ford Service
13 Department in January of 2013 to request that the upgrade referenced in the
14 letter be performed, and because the Sync System was locking up, not responding
15 to voice commands, and not disconnecting phone calls after they had been
16 concluded.
17

18
19 20. Whalen returned her vehicle to the Henry Curtis Ford Service
20 Department yet again on May 14, 2013. This time, the Ford Sync was not properly
21 answering the phone, would not keep the current time, and would stay stuck on
22 previous map locations.
23

24
25 21. The State of California requires drivers to use hands-free equipment
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1 while talking or texting on their cellular telephones.³ In Sonoma County, where
2 Whalen resides, the penalty for a first cell phone-use offense is approximately
3 \$160. Plaintiff Whalen has suffered an ascertainable loss as a result of
4 Defendant's omissions and/or misrepresentations associated with the Sync
5 System, including, but not limited to, out of pocket loss associated with the Sync
6 System Defect and future attempted repairs and diminished value of his vehicle.
7
8

9
10 22. Neither Ford nor any of its agents, dealers or other representatives
11 informed Plaintiff of the existence of the Sync System Defect and/or defective
12 vehicle design prior to purchase.
13

14 **The Defendant**

15 23. Defendant Ford is an automobile design, manufacturing, distribution,
16 and/or servicing corporation headquartered in Dearborn, Michigan and doing
17 business within the United States. Furthermore, Defendant designs,
18 manufactures, distributes, markets and sells passenger vehicles, including the
19 Class Vehicles.
20
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22 24. Upon information and belief, the design, manufacture, distribution,
23 service, repair, modification, installation and decisions regarding the Sync®,
24 MyFordTouch® and MyLincolnTouch® systems within the Class Vehicles were
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28 ³ <http://www.dmv.org/ca-california/safety-laws.php#Cell-Phone-Laws>

1 performed exclusively by Defendant.

2
3 25. Upon information and belief, Defendant Ford develops the owner's
4 manuals and warranty booklets pertaining to the Class Vehicles.

5
6 26. Defendant Ford engages in continuous and substantial business in
7 California.

8
9 **TOLLING OF STATUTES OF LIMITATION**

10 27. Any applicable statute(s) of limitations has been tolled by Defendant's
11 knowing and active concealment and denial of the facts alleged herein. Plaintiff
12 and members of the Class could not have reasonably discovered the true, latent
13 defective nature of the Infotainment System until shortly before this class action
14 litigation was commenced.

15
16 28. Defendant was and remains under a continuing duty to disclose to
17 Plaintiff and members of the Class the true character, quality and nature of the
18 Class Vehicles, that this defect is based on a poor design, and that it will require
19 costly repairs, and diminishes the resale value of the Class Vehicles. As a result of
20 the active concealment by Defendant, any and all applicable statutes of limitations
21 otherwise applicable to the allegations herein have been tolled.
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1 **FACTUAL ALLEGATIONS**

2 **A. The Defective Sync System within the Class Vehicles.**

3 29. Ford SYNC® is a factory-installed, integrated in-vehicle
4 communications and entertainment system that allows users to use a rear-facing
5 camera, make hands-free telephone calls, control music and perform other
6 functions with the use of voice commands.
7

8 30. The SYNC® system consists of applications and user interfaces
9 developed by Ford and other third-party developers utilizing a Windows
10 Embedded Automotive operating system designed by Microsoft.
11

12 31. The original SYNC® (or “SYNC® Gen 1”) was released by Defendant
13 into the retail market in 2007 when Ford installed the system in twelve Ford MY
14 2008 group vehicles in North America.
15

16 32. Ford initially promoted the SYNC® system as a product that provided
17 drivers with the ability to operate Bluetooth-enabled mobile phones and digital
18 media players in Ford vehicles using voice commands, steering wheel controls, and
19 radio controls. Later, SYNC® software was expanded so text messages received by
20 the vehicle operator could be “vocalized” by a digitized female voice named
21 “Samantha” and read aloud through the vehicle’s speaker system.
22

23 33. The SYNC® system also included applications or “apps” such as 911
24 Assist, AppLink, Crew Chief, Garmin Navigation, LogMeIn, and Tool Link.
25
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1 34. The brain of the SYNC® system is the Accessory Protocol Interface
2 Module (“APIM”). The system’s APIM interfaces with all vehicle audio sources as
3 well as high-speed and medium-speed vehicle Controller Area Network buses
4 (“CAN”). The SYNC® system’s Microsoft Windows auto-based operating system
5 can also receive software updates through the use of Class vehicle’s USB port.
6
7

8 35. In 2007, as a standalone option, the suggested retail price for the
9 SYNC® system was \$395.00.
10

11 36. In or around January 2010, Ford announced the release of the
12 MyFord Touch® system (branded as MyLincoln Touch® in Ford’s Lincoln brand
13 products) (collectively referred to as “MyFord Touch®”) as the next-generation of
14 the Ford SYNC® system.
15
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17 37. The MyFord Touch® system is generally available only on medium to
18 high end trim packages, including, but not limited to: C-Max, Escape, Edge,
19 Explorer, Focus, Fusion, Taurus, Flex, Fiesta, F-150 and Lincoln MKX models.
20

21 38. As with the SYNC® system, the MyFord Touch® system was designed
22 to enable drivers to integrate nearly all mobile phones, PDAs and digital media
23 players into their vehicles. Once integrated, the operation of these devices is
24 performed by voice commands, touch-screen inputs, steering wheel controls,
25 radio controls, Bluetooth and Wi-Fi connectivity.
26
27

28 39. The MyFord Touch® system consists of two 4.2” color LCD displays in

1 the gauge cluster, one 8" LCD touch screen in the center stack, a media hub with 2
2 USB ports, SD card reader, RCA video input jacks and 5-way controls located on
3 the steering wheel and SYNC® voice activated communications and entertainment
4 system.
5

6
7 40. As a stand-alone option, Ford's suggested retail price for the MyFord
8 Touch® was approximately \$1,000.00.

9
10 41. Ford actively touts the Sync System. It has a website dedicated solely
11 to it: <http://www.ford.com/technology/sync/>. Among other claims, this website
12 specifically touts the safety-related nature of the system, stating that "SYNC helps
13 you keep your eyes on the road and stay connected to your world." The SYNC
14 System's important safety component is critical since it plays a vital role in, *inter*
15 *alia*, proper operation of the Vehicle's back-up camera, 911 assist, hands-free
16 calling, and adaptive cruise control.
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20 42. The Sync website further highlights the safety-related nature of the
21 System by including several videos, one of which is titled "SYNC SAVED MY LIFE."
22 This video purports to depict someone reading a letter they wrote after being in a
23 serious car accident. Among other things, the narrator on the video says "SYNC
24 saved my life," "if SYNC had not dialed 911, I certainly would have perished at the
25 bottom of that river," "SYNC is there when nobody else is," and "it gave me my
26 life...that's the ultimate technology." The video displays the lines "SYNC. Can call
27
28

1 for help, even if you can't."⁴

2
3 43. This automated emergency function operates through a Sync System
4 called "911 Assist." According to Ford's website, this operates as follows: "In the
5 event of an accident in which an airbag deploys or, in certain vehicles, the fuel
6 pump shutoff is activated, 911 Assist[®] with GPS uses a properly paired and
7 connected mobile phone inside the vehicle to make a call directly to a 911
8 operator and gives emergency responders your exact location."
9

10
11 44. Ford's promotion of the Sync System also capitalizes on the recent
12 enactment of distracted driver laws. Upon information and belief, over a dozen
13 states have enacted laws that prohibit the use of hand-held cell phones while
14 driving. The Sync System website promotes its hands-free calling feature as
15 follows: "You never have to miss a call just because you're behind the wheel. If
16 your phone rings, you can answer with the push of a button, and you can make a
17 call with the sound of your voice."⁵ This website further states that "Calling
18 anyone is as easy as saying his or her name."
19

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22 **B. The TSBs and Warranty Extension.**

23
24 45. Obviously aware of the many Sync Systems problems being
25 experienced by consumers, Ford issued several Technical Service Bulletins ("TSB")
26

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28 ⁴ See <http://www.ford.com/technology/sync/> (last visited June 20, 2013)

⁵ <http://www.ford.com/technology/sync/features/hands-free-calling/>

1 and updates in an unsuccessful effort to resolve them. On or around April 27,
2 2011, Ford issued TSB 11-4-18 pertaining to Ford vehicles equipped with the
3 SYNC® system and the MyFord Touch® or MyLincoln Touch® options. Specifically,
4 Ford's TSB noted that these systems may experience blank screens, missing
5 presets, lack of voice recognition, incorrect dialing of phone numbers and display
6 problems with the backup camera. The TSB recommended reprogramming the
7 software system.
8
9
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11 46. On or around July 22, 2011, Ford issued TSB 11-7-24 – a “succeed to”
12 bulletin from 11-4-18 – again pertaining to the functionality of Ford vehicles
13 equipped with the SYNC® system and the MyFord Touch® or MyLincoln Touch®
14 options. Specifically, this TSB explained that certain Class vehicles, built on or
15 before July 12, 2011, may experience various concerns with “blank/black display
16 screen, radio switches from off to on or changes state after ending a phone call or
17 voice command, phone pairing, incorrect Sirius channel selection using voice
18 command, unable to download photo resolution 800x378, phonebook downloads,
19 AM/FM missing preset display information, voice recognition, voice recognition
20 when using SYNC services, USB device detection, travel link download time, Sirius
21 channel art logo mismatch, Clock intermittently displays incorrect time, traffic
22 direction and information (TDI) calling wrong phone number, travel link
23 subscription, address book downloads, navigation set in kilometers but voice
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1 communicates in miles, and backup camera scrolling display.” As a result, Ford’s
2 TSB recommended performing a software update by fully reprogramming the
3 Accessory Protocol Interface Module (“APIM”), and, where reprogramming was
4 unsuccessful, replacing the APIM.
5

6
7 47. On or around March 6, 2012, Ford issued Customer Satisfaction
8 Program Campaign 12M01 pertaining to Ford vehicles equipped with the SYNC®
9 system and the MyFord Touch® or MyLincoln Touch® options. This Campaign
10 explained that certain MY 2011-2012 Explorer, Edge, MKX and MY 2012 Focus
11 vehicles equipped with the SYNC® system and the MyFord Touch® or MyLincoln
12 Touch® options may require replacement of the APIM, the brain of the SYNC®
13 system. Ford’s 12M01 Campaign extended warranty coverage of the APIM to four
14 years of service from the warranty start date on Ford vehicles and five years on
15 Lincoln vehicles, regardless of mileage.
16
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20 48. On or about November 5, 2012, Ford issued TSB 12-11-1 due to
21 concerns with “navigation, voice recognition, call sound quality, phone pairing
22 and/or system performance” in the following Class vehicles:
23

- 24 • 2011-2013 Edge, MKX and Explorer
- 25 • 2012-2013 Focus
- 26 • 2013 MKT, Taurus, MKS, Fusion, Escape, Flex and F-150

27 As a result, Ford’s TSB provided steps for a full software update of the APIM
28 to the latest software version now available, version V3.5.1. Those Class vehicles

1 equipped with navigation required a new A4 level SD-card for proper navigation
2 function.

3
4 49. On or about November 8, 2012, Ford issued Campaign
5 “DEMONSTRATION/DELIVERY HOLD - Application Performance Upgrade 11A01”
6 because software was released to “improve overall system functionality, voice
7 recognition, screen refresh rates, response to touch, and to simplify screens for
8 ease of use” due to concerns with “navigation, voice recognition, call sound
9 quality, phone pairing and/or system performance.” As a result, a “full image
10 reprogram of the APIM” was to be completed on the following Class vehicles:
11
12

- 13 • 2011 Explorer
- 14 • 2011-2012 Edge, MKX
- 15 • 2012 Focus

16
17 As a result, Ford’s TSB provided steps for a full software update of the APIM
18 to the latest software version now available, version V3.5.1. Those Class vehicles
19 equipped with navigation required a new A4 level SD-card for proper navigation
20 function.
21

22 50. On or about November 15, 2012, Ford issued TSB 12-11-2 because
23 certain vehicles equipped with the SYNC® system and the MyFord Touch® or
24 MyLincoln Touch® options, built on or before May 14, 2012, exhibited “a voice
25 prompt indicating SYNC’s Service’s Traffic, Directions or Information (TDI) is unable
26 to locate the vehicle or a Global Position System (GPS) issue is present.” As a
27
28

1 result, Ford instructed that technicians perform a reprogram of the Global Position
2 Satellite Module (GPSM) on the following Class vehicles:

- 3
- 4 • 2010-2011 Fiesta, Focus, Mustang
- 5 • 2010-2012 Fusion Taurus
- 6 • 2010 Explorer Sport Trac
- 7 • 2010-2011 Explorer
- 8 • 2010-2012 E-Series, Edge, Escape, Expedition, F-150, F-Super Duty,
Flex
- 9 • 2010-2012 MKS, MKZ
- 10 • 2010-2011 MKX
- 11 • 2010-2012 Navigator
- 12 • 2010 Milan, Mountaineer
- 13 • 2010-2011 Mariner
- 14 • 2011-2012 Edge, MKX
- 15 • 2012 Focus

14 51. On or about January 14, 2013, Ford issued Campaign

15 “DEMONSTRATION/DELIVERY HOLD - Application Performance Upgrade 12A04”

16
17 because software was released to “improve overall system functionality and
18 performance including navigation, voice recognition, call sound quality, and phone
19 pairing.” As a result, and due to new software, Dealers were instructed “to inspect
20 the APIM software level and if necessary, reprogram the Accessory Protocol
21 Interface Module ...” If the system was unresponsive, inoperative, or if the vehicle
22 software update was unsuccessful, Dealers were instructed to replace the APIM in
23 the following Class vehicles:

- 24
- 25
- 26
- 27 • 2011 Edge, Explorer, MKX
- 28 • 2012 Edge, Explorer, MKX, Focus

- 2013 Edge, Explorer, MKX, Focus, Escape, Flex, Fusion, Taurus, MKS, MKT, F-150

52. A Ford "Special Service Message" dated March 29, 2013 states:

32162 2011-2013 Vehicles – MyTouch Functional Issues Due to Phonebook Content – Contact Volume.

Some MyTouch equipped vehicles may experience multiple functional issues such as slow navigation calculations, displayed time jump or audio popping during initial ignition on cycle. These conditions can be created by the size of the contact list within the customers phone book. The amount of data within the contact list can create a processing problem for the module during a key on cycle. This can be resolved by limiting the number and/or content within the contact list. In addition, the automatic phonebook download feature can be set to off by selecting phone, settings, manage phone book, turn auto phone book off. Additional phone contacts can be added by manually re-downloading phone book in that same menu. Recommend following Workshop Manual section 415-00 for additional diagnostics and ensure a master reset is performed. **EFFECTIVE DATE: 29-MARCH-2013**

53. On June 17, 2013, Ford issued a press release titled "SYNC and MyFord Touch Sold on 79 Percent of New Ford Vehicles, New Technology Drives Quality Satisfaction." Ford announced that combined, SYNC® and MyFord Touch® systems are sold on 79 percent of new 2013 Ford vehicles. According to Ford, customers cite to these features as "top purchase drivers much more often than competitors." Despite touting the successes of SYNC® and MyFord Touch® systems, Ford contradicted that position by stating the "F-150 blends touch screen capability with traditional buttons and knobs, ***a similar balance planned for future Ford vehicles.***" (emphasis added). Ford also explained that it intends to release "another downloadable upgrade planned for this summer" in an attempt to

1 further correct the SYNC® and MyFord Touch® systems.

2 **C. Similar Experiences and Complaints by Consumers.**

3
4 54. Plaintiff's experiences are by no means isolated or outlying
5 occurrences. Indeed, the internet is replete with examples of blogs and other
6 websites where consumers have complained of the exact same Sync System
7 Defect within the Class Vehicles.
8

9
10 55. For example, a website titled "syncsucks.com" lists the following
11 "most common Sync/MyFord Touch issues" all of which are symptoms of the same
12 defective APIM.
13

- 14
- 15 • Screen goes black and won't come back on
 - 16 • Back-up camera goes black without warning while backing up
 - 17 • Sync system restarts without warning while driving
 - 18 • Sync system freezes up completely even after the vehicle is turned off
 - 19 • Says phone connected, yet voice says no phone connected when asking to dial number
 - 20 • Displays phone is connected, yet after repeated efforts it will not respond to ANY voice command
 - 21 • Music randomly starts playing while using the phone
 - 22 • Randomly jumps from audio source to audio source
 - 23 • Keeps disconnecting USB iPod
 - 24 • Will not recognize multiple brand-new USB jump drives
 - 25 • Never really got to enjoy my six months of satellite radio as Sync said I had no subscription — forcing me to call Sirius multiple times to try and sort that out.⁶

26 Another website called <http://fordsyncproblems.com/>, was created by a

27
28 ⁶ <http://www.syncsucks.com/>.

1 consumer in response to "Ford's inability to resolve issues with my newly
 2 purchased 2012 Ford Escape." This person claims that "When making a phone call
 3 through the Sync system I can hear the phone conversation clearly through the car
 4 speakers BUT the person on the other end of the conversation cannot hear me
 5 clearly; it either sounds like I am in a tunnel or it is very choppy. The quality of the
 6 conversation gets worse as your speed increases."⁷ There are several other similar
 7 websites.⁸

8
 9
 10
 11 56. Likewise, the database maintained by the National Highway Traffic
 12 Safety Administration contains several similar complaints by consumers, some of
 13 which are set forth below:
 14

15 **Date Complaint Filed:** 12/09/2011

16 **Date of Incident:** 12/08/2011

17 **NHTSA ID Number:** 10439143

18 **Manufacturer:** Ford Motor Company

19 **Vehicle Identification No. (VIN):** 2FMDK4KC9BB...

20 **SUMMARY:** VEHICLE EQUIPPED WITH MYFORD TOUCH SYSTEM.
 21 SYSTEM CONTROLS HEATING/DEFROSTING SYSTEM. THIS SYSTEM
 22 HAS FAILED TO OPERATE PROPERLY ON MULTIPLE OCCASIONS. FORD
 23 MOTOR COMPANY IS AWARE OF ISSUE AND HAS NOT CORRECTED IT.
 24 FORD SHOULD NOT BE ALLOWED TO MARKET VEHICLES THAT DO
 25 NOT HAVE PROPERLY FUNCTIONING HEATING/DEFROSTING
 26 CONTROLS. THESE VEHICLES ARE DANGEROUS AND THE ISSUE IS
 27 WELL KNOWN BY INTERNET SEARCHES. PEOPLE RELY ON VEHICLES TO

28 ⁷ <http://fordsyncproblems.com/5001.html>

⁸ See <http://www.fordfusionclub.com/showthread.php?t=413068>;
<http://www.focusfanatics.com/forum/showthread.php?t=260838>;
<http://jalopnik.com/gm-hasnt-really-found-that-new-thing-yet-for-ford-its-485829232>.

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OPERATE PROPERLY IN WINTER CONDITIONS. THIS NEEDS TO BE ADDRESSED. THANK YOU FOR YOUR HELP. *TR⁹

Date Complaint Filed: 04/10/2013

Date of Incident: 04/09/2013

NHTSA ID Number: 10505787

Manufacturer: Ford Motor Company

Vehicle Identification No. (VIN): 2LMDJ6JK0DB...

SUMMARY: WHILE DRIVING ON THE HIGHWAY AT ABOUT 65MPH, THE SYNC SYSTEM SCREEN WENT BLACK, AFTER ABOUT 5 MINUTES, THE SYSTEM CAME BACK UP. I WAS UTILIZING THE NAVIGATION SYSTEM AT THE TIME AND WAS FORCED TO STOP, RE-ENTER THE DETAILS OF THE LOCATION I WAS INTENDING TO VISIT. THE SYNC SYSTEM SHOULD NEVER JUST RESTART ITSELF WITHOUT WARNING A DRIVER. I AM CONCERNED THERE IS A MORE SEVERE PROBLEM WITH THE MAIN CONTROL SYSTEM WITH THIS PARTICULAR VEHICLE AS THREE OTHER ISSUES HAPPENED WITHIN A WEEK OF EACH OTHER. 1. BLIB MODULE (BLIND SPOT AND CROSS TRAFFIC SENSORS FAULTED AND NEEDED REPLACEMENT) 2. SYNC SYSTEM REBOOTS ITSELF WHILE DRIVING AND UTILIZING NAVIGATION 3. LOW PRESSURE ERROR POPS UP, STEERING BECOMES IMPOSSIBLE, ACCELERATION DIES, AND BRAKING SLUGGISH. CAR REQUIRED SHUTDOWN AND RESTART TO RESOLVE. *TR

Date Complaint Filed: 06/19/2013

Date of Incident: 06/15/2013

NHTSA ID Number: 10520751

Manufacturer: Ford Motor Company

Vehicle Identification No. (VIN): 2LMDJ8JK9DB...

SUMMARY: VEHICLE STOPPED RECEIVING TRAFFIC INFO ON NAVIGATION SCREEN. ALL OTHER DATA RECEIVED VIA "SYNC" SYSTEM FROM SIRIUS OPERATING CORRECTLY. DEALER REPLACED COMPUTER MODULE THEY IDENTIFIED AS CONTROLLING THIS FUNCTION. NO CHANGE IN CONDITION. PROBLEM ESCALATED TO FORD TECH PEOPLE. A MONTH AGO, THE RADIO FUNCTIONS FAILED. IT REQUIRED A SYSTEM UPGRADE.

⁹ <http://www-odi.nhtsa.dot.gov>

1 **Date Complaint Filed:** 11/15/2010

2 **Date of Incident:** 10/20/2010

3 **NHTSA ID Number:** 10365783

4 **Manufacturer:** Ford Motor Company

5 **Vehicle Identification No. (VIN):** 2FMDK4KC9BB...

6 **SUMMARY:** THIS IS A PREEMPTIVE COMPLAINT, AS I THANKFULLY
7 HAVE NOT HAD AN ACCIDENT YET. THE MYFORDTOUCH SYSTEM IN
8 ALL 2011 FORD MOTOR CO VEHICLES ARE DEFECTIVE. THE SYSTEM
9 HAS A MULTITUDE OF DEFECTS, BUT THE SAFETY RELATED DEFECT IS
10 THAT THE SYSTEM CAN SPONTANEOUSLY REBOOT AT ANY TIME
11 WITH NO WARNING TO THE DRIVER. THIS CAN HAPPEN AT RANDOM,
12 AND MULTIPLE TIMES WITHIN A SHORT PERIOD OF TIME. WHEN
13 BACKING UP THIS SHUTS DOWN THE BACKUP CAMERA WHICH
14 COULD RESULT IN INJURIES TO CHILDREN WHO GET BEHIND THE
15 VEHICLE. AT NIGHT THIS CAUSES THE SCREEN TO SUDDENLY GO FULL
16 WHITE AT FULL BACKLIGHT, WHICH IS EXTREMELY DISTRACTING TO A
17 DRIVER AT NIGHT. ANOTHER SAFETY ISSUE WOULD BE WHEN THE
18 SYSTEM REBOOTS WHEN THE DRIVE IS BEING GUIDED TO AN
19 EMERGENCY FACILITY OR IS ON THE PHONE WITH 911. FORD
20 ACKNOWLEDGED THE PROBLEMS TO DEALERSHIPS ON OCT 20TH
21 AND INFORMED THEM NOT TO DO ANYTHING AT THIS TIME. MANY
22 CUSTOMERS HAVE BEEN REPORTING THESE PROBLEMS ON THE
23 OWNER2OWNER WEBSITE FOR THE FORD SYNC SYSTEM. I AM
24 SUBMITTING THIS COMPLAINT IN HOPES IT CAN BE DEALT WITH
25 BEFORE SOMEONE GETS HURT RATHER THAN AFTER. THANK YOU
26 *TR

20 **Date Complaint Filed:** 01/05/2012

21 **Date of Incident:** 11/23/2011

22 **NHTSA ID Number:** 10442557

23 **Manufacturer:** Ford Motor Company

24 **Vehicle Identification No. (VIN):** 1FMH K8D 8X...

25 **SUMMARY:** THE FORD SYNC SYSTEM DECIDED TO DO AN UPGRADE
26 AND DISABLED ALL RELATED FEATURES FOR ABOUT 30 MINUTES.
27 THIS INCLUDED AUDIO, CELL PHONE LINK, RADIO, HEATER AND THE
28 REAR VIEW CAMERA! IT HAS OCCURRED AGAIN AND APPEARS TO
 ALWAYS HAPPEN IMMEDIATELY AFTER STARTING THE CAR, WHICH IS
 WHEN THE REAR VIEW CAMERA IS VERY LIKELY TO BE NEEDED. *TR

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Date Complaint Filed: 08/08/2011
Component(s): EQUIPMENT
Date of Incident: 07/28/2011
NHTSA ID Number: 10418053
Manufacturer: Ford Motor Company
Vehicle Identification No. (VIN): 2FMDK3JC3BB...
SUMMARY: FORD SYNC SYSTEM HAS BEEN FREEZING, BACK UP CAMERA BLACKING OUT, GPS STALLING. CAR HAS BEEN RETURNED TO DEALER 3 TIMES FOR A REBOOT SYSTEM. DEALER SAID IT HAS TO DO WITH THE NEW SYSTEM AND THERE BEING BUGS. *TR

Date Complaint Filed: 11/20/2011
Component(s): EQUIPMENT , VISIBILITY
Date of Incident: 08/31/2011
NHTSA ID Number: 10437068
Manufacturer: Ford Motor Company
Vehicle Identification No. (VIN): 1FMHK8F8XCG...
SUMMARY:
THIS FORM DOES NOT ALLOW ENTRY OF MULTIPLE DATES. THERE IS AN ISSUE WITH MYFORDTOUCH WITH THIS VEHICLE THAT IS CONTINUAL. PUTTING IN ONE DATE IS POINTLESS. THE CLIMATE (DEFROSTER, ETC) SYSTEM AND THE NAVIGATION SYSTEM ARE PART OF THIS MODULE, ALONG WITH PHONE AND AUDIO FEATURES. THIS MODULE LOCKS CONTINUALLY AND IT IS DANGEROUS BECAUSE YOU CAN'T CONTROL THE DEFROSTER OR NAVIGATION SYSTEM MANUALLY WHEN THIS OCCURS. REPEATED TRIPS TO THE DEALER HAVE BEEN FRUITLESS AND MY WIFE WAS IN DANGEROUS SITUATIONS SEVERAL TIMES IN HEAVY TRAFFIC CORRIDOR CONDITIONS IN NORTHERN NEW JERSEY. IT IS UNCONSCIONABLE THAT FORD IS SELLING THESE VEHICLES FOR NEARLY \$50,000 THAT ARE DEFECTIVE AND THEY KNOW THEY ARE DEFECTIVE.

Date Complaint Filed: 10/28/2010
Component(s): EQUIPMENT
Date of Incident: 09/27/2010
NHTSA ID Number: 10362842
Manufacturer: Ford Motor Company
Vehicle Identification No. (VIN): 2LMDJ8JK8BB...
SUMMARY:

1 THE SIRIUS TRAVEL LINK (THRU MYLINCOLN TOUCH) DOES NOT
 2 WORK AND HAS NOT WORKED FROM DAY 1 OF PICKING UP THE SUV
 3 ON 9/27/10. AT FIRST LINCOLN WOULD NOT ADMIT ANY ISSUES BUT
 4 NOW THEY FINALLY DO BUT DO NOT SAY WHEN A FIX WILL BE
 5 AVAILABLE. I SHOULD HAVE BEEN TOLD THAT OPTION WAS NOT
 6 WORKING BEFORE THEY HAD ME SIGN A LEASE FOR THE CAR. ALOT
 7 OF US ARE PAYING FOR SOMETHING THAT DOES NOT WORK AND
 8 DO NOT KNOW IF IT EVER WILL. *TR

9 **Date Complaint Filed:** 12/15/2010

10 **Component(s):** VISIBILITY

11 **Date of Incident:** 12/10/2010

12 **NHTSA ID Number:** 10370847

13 **Manufacturer:** Ford Motor Company

14 **Vehicle Identification No. (VIN):** 2FMDK3JC0BB...

15 **SUMMARY:**

16 SYNC/MY TOUCH CONSOLE ON 2011 FORD EDGE LOCKS UP OR
 17 GOES DEAD. THERE IS NO WAY TO ACTIVATE THE WINDSHIELD
 18 DEFROST WITHOUT THE TOUCH SCREEN. DEALERSHIP SERVICE
 19 DEPARTMENT HAS BEEN UNABLE TO UNLOCK SCREEN. THIS
 20 PROBLEM HAS BEEN WIDELY REPORTED ON OWNERS WEBSITE FOR
 21 THE 2011 EDGES, BUT FORD DOES NOT SEEM TO HAVE A FIX FOR IT.
 22 IT IS WINTER AND I NEED TO RUN DEFROST. *TR

23 **Date Complaint Filed:** 06/01/2011

24 **Component(s):** ELECTRICAL SYSTEM

25 **Date of Incident:** 04/05/2011

26 **NHTSA ID Number:** 10404872

27 **Manufacturer:** Ford Motor Company

28 **Vehicle Identification No. (VIN):** 2LMDJ6JK5BB...

SUMMARY:

WHEN DRIVING DOWN THE HIGHWAY, THE SYNC SCREEN GOES
 COMPLETELY BLANK. AT THIS POINT I HAVE NO ACCESS TO HEAT,
 A/C, DEFROSTER, RADIO, OR BACKUP CAMERA. ON OCCASION THE
 SCREEN HAS BEEN BLANK FOR UP TO ONE HUNDRED MILES. I DON'T
 WORRY ABOUT THE DEFROSTER IN THE SUMMER BUT IN THE
 WINTER THIS IS A DEFINITE SAFETY CONCERN. NOT HAVING THE
 BACKUP CAMERA IS RISKY FOR THERE MAY BE SMALL CHILDREN
 BEHIND THE VEHICLE. I'VE BEEN IN CONTACT WITH FORD MOTOR

1 COMPANY. THEY TELL ME THERE ENGINEERING DEPARTMENT IS
2 WORKING ON A FIX BUT THERE IS NO ETA NOR DO THEY HAVE ANY
3 IDEA WHEN OF IF THEY CAN FIX IT. THE CONSUMER WANTED TO
4 INCLUDE THE FILE NUMBER ASSIGNED TO HER BY FORD MOTOR
5 COMPANY. COMPLAINT # 441951441

6 **Date Complaint Filed:** 11/30/2011

7 **Component(s):** ELECTRICAL SYSTEM , VEHICLE SPEED CONTROL

8 **Date of Incident:** 02/01/2011

9 **NHTSA ID Number:** 10437851

10 **Manufacturer:** Ford Motor Company

11 **Vehicle Identification No. (VIN):** 1FMHK8F8XBG...

12 **SUMMARY:**

13 MORE LIKE ADAPTIVE 'CURSE' CONTROL. MY 2011 EXPLORER
14 LIMITED 4X4 WITH THE ADAPTIVE CRUISE ALWAYS CATCHES THE
15 REAR OF SEMI TRUCKS IN OTHER LANES, CAUSING IT TO APPLY FULL
16 BRAKES AND PEOPLE BEHIND ME ALMOST CRASH INTO ME. MY
17 2011 LIMITED IS TOTALLY FACTORY ORIGINAL, NO TOW BARS. HERE
18 IN CALIFORNIA THE SEMI TRUCK SPEED IS 55 WHILE AUTOS CAN GO
19 65-70MPH (AND IN MOST CASES EVERYONE GOES 80+). SO WHEN
20 I'M GOING ALONG AT 65-70 WITH NO VEHICLES HEAD OF ME IN MY
21 LANE AND THE THING GOES 100% BRAKES I ALMOST CRASH. I ALSO
22 GET THE CRUISE CONTROL TOTALLY DISABLED BECAUSE OF AN
23 ERROR IN THE SYNC MODULES. THE SYNC COMPUTER MODULES
24 CONTROL THE ADAPTIVE CRUISE, STABILITY CONTROL, BACK UP
25 DETECTION SYSTEM, AUTO WIPERS, AUTO PARKING SYSTEM,
26 TRACTION CONTROL, 4X4 SYSTEM, ETC, ETC. I FEAR THAT THE SRS IS
27 ALSO TIED INTO THESE SAME SYNC COMPUTER MODULES. FORD
28 CLAIMS THE SYNC SYSTEM AUTOMATICALLY RESETS/REBOOTS
ITSELF EVERY 24 HOURS WHILE THE VEHICLE IS OFF TO AVOID
SYSTEM OUTAGES. WHAT HAPPENS MOST OF THE TIME IS THE
SYSTEM WILL RUN (EVEN THOUGH THE SCREEN IS OFF) FOR ABOUT
A WEEK UNTIL, WHILE DRIVING, THE SYNC COMPUTER CRASHES
JUST LIKE HOME COMPUTERS & CELL PHONES DO IF LEFT ON
CONTINUOUSLY. WHILE THIS CRASH IS TAKING PLACE THE TOUCH
SCREEN FREEZES, MUSIC PLAYING WILL STOP, OR CHANGE VOLUME,
OR CHANGE TRACK, OR CHANGE SOURCE; WIPERS WILL STOP
WORKING, CRUISE CONTROL WILL SHUT OFF, BACKUP CAMERA
SYSTEM GOES DOWN OR SCREEN FREEZES WHILE BACKING UP, 4X4

1 IS DISABLED, CENTER DISPLAYS WILL GO BLANK. MY 2011 EXPLORER
2 HAS BEEN IN THE FORD SERVICE DEPT FOR SYNC MODULE
3 REPLACEMENT AND REPROGRAMMING 4 TIMES NOW SINCE JAN
4 2011. STILL NO FIX. *KB

5 **Date Complaint Filed:** 02/25/2012

6 **Component(s):** ELECTRICAL SYSTEM

7 **Date of Incident:** 12/05/2011

8 **NHTSA ID Number:** 10449336

9 **Manufacturer:** Ford Motor Company

10 **Vehicle Identification No. (VIN):** 2FMDK4KC5BB...

11 **SUMMARY:**

12 PURCHASED MY 2011 EDGE LIMITED DEC. 2010, HAD INTERMITTENT
13 SYNC PROBLEMS STARTING APPROX JUNE 2011. DID AN UPGRADE
14 OFF THE SYNC MY RIDE WEBSITE IN NOV 2011 AND THAT STARTED
15 ALL THE SYNC PROBLEMS. THEY INCLUDE: NAVIGATION FAILURE
16 WHILE ON A TRIP, THAT WAS FUN, BEING LOST WITH 2 CARS OF
17 FAMILY FOLLOWING US. BACKUP CAMERA WORKS OR NOT,
18 DEPENDS ON THE DAY. DASHBOARD LIGHTS BLINKING ON & OFF
19 WHILE DRIVING, BLUETOOTH DISCONNECTING MY PHONE ALMOST
20 EVERYDAY. THE SYNC SYSTEM LIKES TO TURN OFF, BLACK SCREEN,
21 RESETS ITSELF WITHOUT DOING ANYTHING EXCEPT TURNING THE
22 CAR ON! SOMETIMES WHEN I LEAVE THE CAR THE SYNC SYSTEM &
23 RADIO WILL STAY ON EVEN AFTER I LOCK THE CAR. 2X IT HAS GONE
24 TO THE DEALER, 2X I GET THE CAR BACK & AM TOLD I HAVE TO DEAL
25 WITH IT AS THERE IS NO FIX TO THE GLITCH IN THE SYSTEM. SO, 42K
26 FOR A NEW CAR, ALSO PURCHASED AN EXTENDED WARRANTY,
27 WHEN ALL WARRANTY'S ARE EXPIRED WHO WILL PAY FOR FORDS
28 "GLITCH"? I WILL NEVER RECOMMEND THIS CAR TO ANYONE. *TR

1 **Date Complaint Filed:** 10/31/2012

2 **Component(s):** ELECTRICAL SYSTEM

3 **Date of Incident:** 06/15/2011

4 **NHTSA ID Number:** 10482741

5 **Manufacturer:** Ford Motor Company

6 **Vehicle Identification No. (VIN):** 2FMDK4KC9BB...

7 **SUMMARY:**

8 TL* THE CONTACT OWNS A 2011 FORD EDGE. THE CONTACT STATED
9 THAT WHILE PARKED THE CONTACT NOTICED THE SYNC

1 TECHNOLOGY ON THE TOUCH SCREEN WAS NOT FUNCTIONING
2 PROPERLY AFFECTING THE AIR CONDITIONER, RADIO, CELL PHONE
3 SYNC, AND NAVIGATION SYSTEM. THE CONTACT STATED HE WAS
4 CONSTANTLY DISTRACTED AND LOOKING AWAY FROM THE ROAD
5 TO CANCEL OR SWITCH FUNCTIONS ON THE SCREEN. THE VEHICLE
6 WAS TAKEN TO THE DEALER FOR DIAGNOSTIC TESTING FOURTEEN
7 DIFFERENT TIMES. THE TECHNICIAN PERFORMED VARIOUS
8 SOFTWARE UPDATES AND REPLACED THE COMPUTER THREE
9 DIFFERENT TIMES BUT THE FAILURE CONTINUED. THE VEHICLE WAS
10 NOT REPAIRED. THE APPROXIMATE FAILURE MILEAGE WAS 200.

11 **CLASS ACTION ALLEGATIONS**

12 57. Plaintiff brings this action pursuant to FED. R. CIV. P. 23(a), 23(b)(2),
13 and/or 23(b)(3), on her own behalf, and on behalf of the Class and Subclass
14 initially defined as:

15 Class: All persons and entities in the United States (including its Territories
16 and the District of Columbia) who are current or former owners and/or
17 lessees of a Class Vehicle (defined as a Ford or Lincoln vehicles equipped
18 with a SYNC® and MyFord Touch® or MyLincoln Touch® control system).

19 California Subclass: All members of the Class who purchased or leased a
20 Class Vehicle in California.

21 58. Excluded from the Class are Defendant, its affiliates, employees,
22 officers and directors, persons or entities that purchased the Class Vehicles for
23 resale, and the Judge(s) assigned to this case. Plaintiff reserves the right to
24 modify, change or expand the Class definition.

25 59. Numerosity: Upon information and belief, the members of the Class
26 and California Subclass are so numerous that joinder of all members is
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28

1 impracticable. While the exact number and identities of individual members of
2 the Class and California Subclass are unknown at this time, such information being
3 in the sole possession of Defendant and obtainable by Plaintiff only through the
4 discovery process, Plaintiff believes that thousands of Class Vehicles have been
5 sold and leased in California alone.
6

7
8 60. Existence and Predominance of Common Questions of Fact and Law:

9
10 Common questions of law and fact exist as to all members of the Class. These
11 questions predominate over the questions affecting individual Class members.

12 These common legal and factual questions include, but are not limited to:

13
14 a. whether the electronic Sync Systems in the Class Vehicles contain a
15 defect;

16
17 b. whether the Sync System Defect causes the electronic Sync System
18 systems to fail in the Class Vehicles;

19
20 c. whether Defendant knowingly failed to disclose the existence and
21 cause of the Sync System Defect in Class Vehicles;

22
23 d. whether Defendant's conduct violates consumer protection statutes
24 asserted herein;

25
26 e. whether, as a result of Defendant's omissions and/or
27 misrepresentations of material facts related to the Sync System Defect, Plaintiff
28 and members of the Class have suffered ascertainable loss of monies and/or

1 property and/or value;

2 f. whether Plaintiff and Class members are entitled to monetary
3 damages and/or other remedies and, if so, the nature of any such relief.

4
5 61. Typicality: All of the Plaintiff's claims are typical of the claims of the
6 Class since Plaintiff purchased a Class Vehicle with a Sync System Defect, as did
7 each member of the Class. Furthermore, Plaintiff and all members of the Class
8 sustained monetary and economic injuries including, but not limited to,
9 ascertainable loss arising out of Defendant's wrongful conduct. Plaintiff is
10 advancing the same claims and legal theories on behalf of herself and all absent
11 Class members.
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15 62. Adequacy: The Plaintiff is an adequate representative because her
16 interests do not conflict with the interests of the Class that she seeks to represent,
17 she has retained counsel competent and highly experienced in complex class
18 action litigation, and she intends to prosecute this action vigorously. The interests
19 of the Class will be fairly and adequately protected by Plaintiff and her counsel.
20
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22 63. Superiority: A class action is superior to all other available means of
23 fair and efficient adjudication of the claims of Plaintiff and members of the Class.
24 The injury suffered by each individual Class member is relatively small in
25 comparison to the burden and expense of individual prosecution of the complex
26 and extensive litigation necessitated by Defendant's conduct. It would be virtually
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28

1 impossible for members of the Class to individually and effectively redress the
2 wrongs done to them. Even if the members of the Class could afford such
3 individual litigation, the court system could not. Individualized litigation presents
4 a potential for inconsistent or contradictory judgments. Individualized litigation
5 increases the delay and expense to all parties, and to the court system, presented
6 by the complex legal and factual issues of the case. By contrast, the class action
7 device presents far fewer management difficulties, and provides the benefits of
8 single adjudication, economy of scale, and comprehensive supervision by a single
9 court. Upon information and belief, members of the Class can be readily identified
10 and notified based on, *inter alia*, Defendant's vehicle identification numbers
11 (VINs), warranty claims, registration records, and the database of complaints.
12

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14 64. Defendant has acted, and refused to act, on grounds generally
15 applicable to the Class, thereby making appropriate final equitable relief with
16 respect to the Class as a whole.
17

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21 **VIOLATIONS ALLEGED**

22 **COUNT I**
23 **BREACH OF EXPRESS WARRANTY**
24 **(On Behalf of all Class Members)**

25 65. Plaintiff and the Class incorporate by reference each preceding and
26 succeeding paragraph as though fully set forth at length herein.

27 66. Defendant expressly warranted that the Class Vehicles were of high
28

1 quality and, at a minimum, would actually work properly. Defendants also
2 expressly warranted that they would repair and/or replace defects in material
3 and/or workmanship free of charge that occurred during the applicable warranty
4 periods.
5

6
7 67. Defendant breached this warranty by selling to Plaintiff and Class
8 members the Class Vehicles with known defective Sync Systems, which fail to
9 function properly, and by failing to properly repair the defective Sync Systems
10 when Plaintiff and the Class members presented their vehicles to authorized Ford
11 dealers.
12

13
14 68. As a result of the Defendant's actions, Plaintiff and Class members
15 have suffered economic damages including but not limited to costly repairs, loss of
16 vehicle use, substantial loss in value and resale value of the vehicles, and other
17 related damage.
18

19
20 69. Plaintiff and Class members have complied with all obligations under
21 the warranty, or otherwise have been excused from performance of said
22 obligations as a result of Defendant's conduct described herein.
23

24 **COUNT II**
25 **VIOLATION OF THE CALIFORNIA BUSINESS**
26 **AND PROFESSIONS CODE § 17200**
27 **(On Behalf of the California Class)**

28 70. Plaintiff and the Class incorporate by reference the allegations of all
foregoing Paragraphs as if such had been set forth in full herein.

1 71. The California Unfair Competition Law (“UCL”) prohibits acts of
2 “unfair competition,” including any “unlawful, unfair or fraudulent business act or
3 practice” and “unfair, deceptive, untrue or misleading advertising.”
4

5 72. Defendant has engaged in unfair competition and unfair, unlawful or
6 fraudulent business practices by the conduct, statements, and omissions described
7 above, and by knowingly and intentionally concealing from Plaintiff and Class
8 members that the Class Vehicles suffer from a design defect (and the costs, risks,
9 and diminished value of the Vehicles as a result of this problem). Defendant
10 should have disclosed this information because they were in a superior position to
11 know the true facts related to this design defect, and Plaintiff and Class members
12 could not reasonably be expected to learn or discover the true facts related to this
13 defect.
14

15 73. These acts and practices have deceived Plaintiff and are likely to
16 deceive the public. In failing to disclose the design defect and suppressing other
17 material facts from Plaintiff and Class members, Defendant breached their duties
18 to disclose these facts, violated the UCL, and caused injuries to Plaintiff and Class
19 members. The omissions and acts of concealment by Defendant pertained to
20 information that was material to Plaintiff and Class members, as it would have
21 been to all reasonable consumers.
22

23 74. The injuries suffered by Plaintiff and Class members are greatly
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1 outweighed by any potential countervailing benefit to consumers or to
2 competition. Nor are they injuries that Plaintiff and Class members should or
3 could have reasonably avoided.
4

5 75. Defendant's acts and practices are unlawful because they violate
6 California Civil Code §§ 1709, 1710 and 1750 *et seq.*, and California Commercial
7 Code § 2313.
8

9 76. Plaintiff seeks to enjoin further unlawful, unfair and/or fraudulent
10 acts or practices by Defendant under CAL. BUS. & PROF. CODE § 17200.
11

12 77. Notwithstanding anything else alleged in this Complaint, Plaintiff does
13 not seek monetary damages under the CLRA at this time. Plaintiff has provided
14 Ford with notice of its alleged violations of the CLRA pursuant to California Civil
15 Code § 1782(a). If, within 30 days of the date of the notification letter, Ford fails
16 to provide appropriate relief for its violation of the CLRA, Plaintiff will amend this
17 Complaint to seek monetary, compensatory, and punitive damages under the
18 CLRA, in addition to the injunctive and equitable relief that Plaintiff seeks now.
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22 **COUNT III**
23 **VIOLATION OF THE CALIFORNIA CONSUMERS**
24 **LEGAL REMEDIES ACT, CALIFORNIA CIVIL**
25 **CODE § 1750, ET SEQ.**
26 **(On Behalf of the California Class)**

27 78. Plaintiff and the Class incorporate by reference the allegations of all
28 foregoing Paragraphs as if such had been set forth in full herein.

79. California's Consumer Legal Remedies Act ("CLRA") prohibits unfair

1 methods of competition and unfair or deceptive acts or practices undertaken by
2 any person in a transaction intended to result or which results in the sale or lease
3 of goods or services to any consumer.” CAL. CIV. CODE § 1770.
4

5 80. Defendant is a “person” as defined by Civil Code section 1761(c).

6
7 81. Plaintiff and California Class members are consumers who purchased
8 or leased the Class Vehicles.

9
10 82. Defendant engaged in unfair and deceptive acts in violation of the
11 CLRA by the practices described above, and by knowingly and intentionally
12 concealing from Plaintiff and Class members that the Class Vehicles suffer from a
13 design defect (and the costs, risks, and diminished value of the vehicles as a result
14 of this problem). These acts and practices violate, at a minimum, the following
15 sections of the CLRA:
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18 (a)(2) Misrepresenting the source, sponsorship, approval or
19 certification of goods or services;

20 (a)(5) Representing that goods or services have sponsorships,
21 characteristics, uses, benefits or quantities which they do not
22 have, or that a person has a sponsorship, approval, status,
23 affiliation or connection which he or she does not have;

24 (a)(7) Representing that goods or services are of a particular
25 standard, quality, or grade, or that goods are of a particular
26 style or model, if they are of another; and

27 (a)(9) Advertising goods and services with the intent not to sell them
28 as advertised.

83. Defendant’s unfair or deceptive acts or practices occurred repeatedly
in Defendant’s trade or business, were capable of deceiving a substantial portion

1 of the purchasing public, and increase the risk of imposing a serious safety risk on
2 the public.
3

4 84. Defendant knew that the Class Vehicles Sync Systems were
5 defectively designed and/or manufactured, and were not suitable for their
6 intended use.
7

8 85. Defendant was under a duty to Plaintiff and Class members to
9 disclose the defective nature of the Class Vehicles and their Sync Systems because:
10

11 a. Defendant was in a superior position to know the true state of facts
12 about the safety defect and associated repair costs in the Class Vehicles and their
13 Sync Systems;
14

15 b. Plaintiff and the Class members could not reasonably have been
16 expected to learn or discover that the Class Vehicles and their Sync Systems had a
17 dangerous safety and security defect until manifestation of the defect; and
18

19 c. Defendant knew that Plaintiff and the Class members could not
20 reasonably have been expected to learn or discover the safety and security defect
21 and the associated repair costs that it causes until manifestation of the defect.
22
23

24 86. In failing to disclose the Sync System Defect and the associated repair
25 costs that result from it, Defendants have knowingly and intentionally concealed
26 material facts and breached their duty not to do so.
27

28 87. The facts concealed or not disclosed by Defendant to Plaintiff and

1 Class members are material in that a reasonable consumer would have considered
2 them to be important in deciding whether to purchase Defendants' Class Vehicles
3 or pay a lesser price. Had Plaintiff and the Class known about the defective nature
4 of the Class Vehicles and their Sync System, they would not have purchased the
5 Class Vehicles or would have paid less for them.
6
7

8 88. As a direct and proximate result of Defendant's unfair or deceptive
9 acts or practices, Plaintiff and Class members have suffered and will continue to
10 suffer actual damages.
11

12 89. Accordingly, Plaintiff is entitled to equitable relief under the CLRA.
13

14 90. Notwithstanding anything else alleged in this Complaint, Plaintiff does
15 not seek monetary damages under the CLRA at this time. Plaintiff has provided
16 Ford with notice of its alleged violations of the CLRA pursuant to California Civil
17 Code § 1782(a). If, within 30 days of the date of the notification letter, Ford fails
18 to provide appropriate relief for its violation of the CLRA, Plaintiff will amend this
19 Complaint to seek monetary, compensatory, and punitive damages under the
20 CLRA, in addition to the injunctive and equitable relief that Plaintiff seeks now
21
22
23

24 **COUNT IV**
25 **BREACH OF THE IMPLIED**
26 **WARRANTY OF FITNESS FOR A**
27 **PARTICULAR PURPOSE**

28 84. Plaintiff repeats and incorporates herein by reference each and every

1 paragraph of this complaint as though set forth in full in this cause of action.

2
3 85. At the time of contracting, Defendant had reason to know of the
4 Plaintiff's and Class members' particular purpose for purchasing a Class Vehicle
5 with a Sync System. (*i.e.*, for the Sync System to provide directions,
6 entertainment, and the ability to call 911 in an emergency).
7

8 86. Plaintiff and Class members relied on the Defendant's skill or
9 judgment to select or furnish suitable goods, thereby creating an implied warranty
10 that the goods would be fit for such purpose.
11

12 87. The Sync System was not fit for these purposes, thereby causing
13 injuries to Plaintiff and Class members.
14

15 **COUNT V**
16 **UNJUST ENRICHMENT**
17 **(On Behalf of the California Class)**

18 91. Plaintiff and the Class incorporate the foregoing allegations. This
19 count is pled in the alternative to the contract based claims.

20 92. Plaintiff and members of the Class conferred a benefit on Defendant.

21 93. Defendant had knowledge that this benefit was conferred upon them.
22

23 94. Defendant have been unjustly enriched at the expense of Plaintiff,
24 and their retention of this benefit under the circumstances would be inequitable.
25

26 **JURY TRIAL DEMANDED**

27 95. Plaintiff demands a trial by jury of all claims so triable.
28

PRAYER FOR RELIEF

1
2 WHEREFORE, Plaintiff, on behalf of herself and members of the Class,
3
4 respectfully requests that this Court:

5 A. determine that the claims alleged herein may be maintained as a class
6
7 action under Rule 23 of the Federal Rules of Civil Procedure, and issue an order
8 certifying one or more Classes as defined above;

9
10 B. appoint Plaintiff as the representative of the Class and her counsel as
11 Class counsel;

12 C. award all actual, general, special, incidental, statutory, punitive, and
13 consequential damages to which Plaintiff and Class members are entitled;

14 D. award pre-judgment and post-judgment interest on such monetary
15 relief;

16
17 E. grant appropriate injunctive and/or declaratory relief, including,
18 without limitation, an order that requires Defendant to repair, recall, and/or
19 replace the Class Vehicles and to extend the applicable warranties to a reasonable
20 period of time, or, at a minimum, to provide Plaintiff and Class members with
21 appropriate curative notice regarding the existence and cause of the design
22 defect;

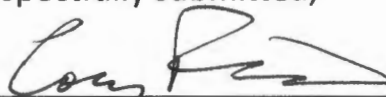
23
24 F. award reasonable attorney's fees and costs; and

25
26 G. grant such further relief that this Court deems appropriate.
27
28

1
2 Dated: July 1, 2013

3 Respectfully submitted,

4 By:



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