

No. S259522

**IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA**

RAUL BERROTERAN

Plaintiff, Petitioner, and Respondent,

v.

THE SUPERIOR COURT OF LOS  
ANGELES COUNTY

Respondent.

FORD MOTOR COMPANY

Real Party in Interest

California Court of Appeal, Second District, Division One Civil No. B296639  
Appeal from Los Angeles Superior Court, Case No. BC542525  
Honorable Gregory Keosian, Judge Presiding

**PLAINTIFF'S MOTION FOR JUDICIAL NOTICE;  
DECLARATIONS OF CYNTHIA E. TOBISMAN AND LAUREN UNGS;  
[PROPOSED] ORDER  
[Filed Concurrently with Answering Brief on the Merits]**

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## MOTION TO TAKE JUDICIAL NOTICE

Under California Rules of Court, rule 8.252(a)(2), in connection with its Answering Brief on the Merits, plaintiff Raul Berroteran, II (“Plaintiff”) moves this Court to take judicial notice of the answer (“Answer”) that real party in interest Ford Motor Company (“Ford”) filed to the complaint (“Class Action Complaint”) in the multi-district litigation and class action case, entitled *MDL No. 2223, In re: Navistar 6.0L Diesel Engine Products Liability Litigation* (the “Class Action”). The Court of Appeal took judicial notice of the Answer in rendering its opinion in this case. (See *Berroteran v. Superior Court* (2019) 41 Cal.App.5th 518, 523 fn. 3 (*Berroteran*).)

The Answer is relevant to comparing the complaint in the present case (“Plaintiff’s Complaint”) to the Class Action Complaint. The version of the Class Action Complaint that is included in the Petitioner’s Exhibits is redacted, making it difficult to compare Plaintiff’s Complaint to the Class Action Complaint. The unredacted Class Action Complaint is not publicly available. However, Ford’s Answer to the Class Action Complaint is publicly available and it reproduces each of the allegations in the Class Action Complaint without any redactions. As a result, the Answer will allow the Court to perform the comparison necessary to resolve the issues presented by this

appeal. In the Court of Appeal’s words, “[t]he answer is relevant because it describes allegations in the federal complaint that were redacted from that complaint.” (*Berroteran, supra*, 41 Cal.App.5th at p. 523 fn. 3.)

Thus, Plaintiff respectfully requests that this Court take judicial notice of the Answer, a true and correct copy of which is attached to this motion as Exhibit A. (See Declaration of Lauren Ungs, ¶ 2.) The Answer is bates-numbered “MJN 30—176” for this Court’s and the parties’ convenience

This Request is based on Evidence Code sections 452, 453, 455, and 459, the accompanying Memorandum of Points and Authorities and Declaration of Cynthia Tobisman, and the briefs filed in these proceedings.

Date: August 31, 2020

Respectfully submitted,

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## MEMORANDUM OF POINTS AND AUTHORITIES

### THIS COURT MAY TAKE JUDICIAL NOTICE OF COURT RECORDS AND PLEADINGS

Reviewing courts may judicially notice the records of any court pursuant to Evidence Code sections 452 and 459. (Evid. Code §§ 452(d), 459; *Taus v. Loftus* (2007) 40 Cal.4th 683, 726.) So, as the Court of Appeal recognized here, “[t]he [A]nswer, filed in federal court, is subject to judicial notice. (Evid. Code, § 452, subd. (d).)” (*Berroteran, supra*, 41 Cal.App.5th at p. 523 fn. 3.)

Ford’s Answer in the Class Action (attached as Exhibit A hereto) is relevant to comparing the allegations in the Class Action Complaint to Plaintiff’s Complaint, and to determining whether the Court of Appeal correctly concluded that Ford had a similar motive and interest in ensuring the accuracy of testimony given in the Class Action depositions as it would have had in a trial of Plaintiff’s individual claims. Ford’s Opening Brief, in trying to suggest the two complaints are not sufficiently similar, even cites to the copy of the Answer that was attached to Plaintiff’s motion for judicial notice in the Court of Appeal (see italics below). Ford argues:

“The Court of Appeal overstated the similarities between the issues in the class action and the issues in *Berroteran’s*

individual case. *The class action involved alleged defects in all of the engines manufactured over a five-year period. (See Plaintiff's MJN in Support of PWM 34-35.)*

Berroteran's case involved problems with a single engine manufactured in 2006. (Vol. 1, exh. 1, p. 12.) Ford's position is that the 6.0-liter engine improved continuously over its five-year run. (See Return to PWM 18.) Whether it did is a key issue in Berroteran's case, since he bought his truck in 2006. (Vol. 1, exh. 1, p. 12.) In the class action, improvements that occurred during the five-year production run were far less important, because they would not have immunized Ford from liability.”

(Op. Br. at p. 33, fn. 5, italics added.)

Thus, a comparison of the two complaints is relevant to Ford's argument that it had a different motive and interest to ensure the accuracy of testimony in the Class Action depositions than it would have in Plaintiff's individual action, and to assessing the Court of Appeal's analysis of the two lawsuits.

The Class Action Complaint included in the Petitioner's Exhibits is redacted. (See 1PE 374-509.) Even with the redactions, it is readily apparent that its allegations substantially overlap Plaintiff's Complaint—i.e., the Class Action

Complaint alleges that Ford installed in 2003-2007 model trucks and vans a defectively designed and manufactured 6.0-liter diesel engine, and that those defects caused poor performance and safety hazards, expensive repairs, and loss of vehicle usage. (See *ibid.*) But the redactions preclude a complete comparison, as the Court of Appeal recognized.

Ford's Answer to the Class Action Complaint, which was not filed under seal, recites all of the allegations in the Class Action Complaint in full, including the originally redacted portions. (Ungs Decl., ¶¶ 4-6.) Because the unredacted Class Action Complaint is not publicly available, the Answer provides the easiest way to compare in full the Class Action Complaint and Plaintiff's Complaint. (Declaration of Cynthia Tobisman, ¶¶ 3-7.) Indeed, a comparison of those two complaints shows their substantial similarity. (*Id.* at ¶¶ 6, 7.) To demonstrate the point and to confirm why judicial notice is warranted, the attached declaration of Cynthia Tobisman contains a side-by-side comparison of factual allegations in Plaintiff's Complaint and the Class Action Complaint (using Ford's publicly-available Answer to the extent any allegation in the publicly-available Class Action Complaint was redacted). (*Id.* at ¶ 7.)

The similarities between the two complaints is no surprise, because Plaintiff modeled his Complaint on the allegations of the

Class Action Complaint, using Ford's Answer to the extent any allegations were originally redacted. (Ungs Decl., ¶¶ 7-8.)

The Court of Appeal judicially noticed the Answer, given its relevance to the issues before this Court. (*Berroteran, supra*, 41 Cal.App.5th at p. 523 fn. 3.) The Answer also is Exhibit 84 in the parties' joint exhibit list, and Plaintiff submitted a copy to the Court of Appeal in Supplemental Petitioner's Exhibits that included the relevant pages of the joint exhibit list and Exhibit 84. (Tobisman Decl., ¶ 2.) In an abundance of caution, Plaintiff also seeks judicial notice of the Answer, as it successfully did in the Court of Appeal.

Date: August 31, 2020

Respectfully submitted,

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Cynthia E. Tobisman

Attorneys for Raul Berroteran II

## DECLARATION OF LAUREN UNGS

I, Lauren Ungs, declare:

1. I am an attorney licensed to practice law in California and a partner in the law firm of Knight Law Group, which represents plaintiff, petitioner, and respondent Raul Berroteran II (“Plaintiff”) in connection with these proceedings.
2. Attached to the motion for judicial notice as Exhibit A is a true and correct copy of the answer (“Answer”) filed by Ford in the multi-district litigation and class action case, entitled *MDL No. 2223, In re: Navistar 6.0L Diesel Engine Products Liability Litigation* (the “Class Action”).
3. The complaint in the Class Action (“Class Action Complaint”) was filed under seal. The publicly-available version contains redactions.
4. Ford’s Answer, in contrast, was not filed under seal.
5. The Answer repeats in full all of the allegations in the Class Action Complaint, including any portions in the publicly-available version of the Class Action Complaint that are redacted.
6. The Class Action docket indicates that although Ford initially moved to file its Answer to the Class Action Complaint



under seal, Ford ultimately withdrew its sealing request and filed its Answer without any redactions. (See docket entry 110 in Class Action, available online at [https://ecf.ilnd.uscourts.gov/cgi-bin/DktRpt.pl?326553447417401-L\\_1\\_0-1](https://ecf.ilnd.uscourts.gov/cgi-bin/DktRpt.pl?326553447417401-L_1_0-1).)

7. I am one of the attorneys that participated in the drafting of the complaint in this action (“Plaintiff’s Complaint”). In representing Plaintiff and other plaintiffs who chose to opt out of the Class Action, my firm attempted to obtain an unredacted version of the Class Action Complaint to use as a model for Plaintiff’s Complaint and the complaints for the other opt-out plaintiffs, since Plaintiff and the other plaintiffs were suing Ford individually based on the same issues and allegations in the Class Action. But the unredacted Class Action Complaint was unavailable on Pacer and does not appear to be publicly available.

8. As a result, my firm used the Class Action Complaint as a model for Plaintiff’s Complaint and the complaints for the other opt-out plaintiffs whom we represent, by relying on the unredacted portions in the publicly-available version of the Class Action Complaint and, to the extent any allegation was redacted, relying on the allegations reproduced in full in Ford’s publicly-available Answer. This is why many of the allegations in

Plaintiff's Complaint and the Class Action Complaint are similar or the same.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct and that this Declaration was executed on August 31, 2020, at Los Angeles, California.

/s/ Lauren Ungs

Lauren Ungs

## DECLARATION OF CYNTHIA TOBISMAN

I, Cynthia Tobisman, declare:

1. I am an attorney licensed to practice law in California and a partner in the law firm of Greines, Martin, Stein & Richland LLP (GMSR). GMSR represents plaintiff, petitioner, and respondent Raul Berroteran II (Plaintiff) in connection with this action. This motion for judicial notice is made in good faith.

2. Exhibit A to the motion for judicial notice, is a true and correct copy of the answer (Answer) filed by Ford in the multi-district litigation and class action case, entitled *MDL No. 2223, In re: Navistar 6.0L Diesel Engine Products Liability Litigation* (the Class Action). The Answer was the subject of Plaintiff's motion for judicial notice in the Court of Appeal, which the Court of Appeal granted. The Answer also is part of the trial court record in that it is Exhibit 84, listed in the parties' joint exhibit list. Plaintiff filed Supplemental Petitioner's Exhibits in the Court of Appeal, which include the relevant pages of the joint exhibit list and Exhibit 84.

3. The Answer is relevant to comparing the complaint in the present case ("Plaintiff's Complaint") to the complaint filed in the Class Action (the "Class Action Complaint").

4. The version of the Class Action Complaint included in the Petitioner's Exhibits is redacted, making it difficult to conduct a full comparison of the Class Action Complaint and Plaintiff's Complaint.

5. We have attempted to obtain the unredacted Class Action Complaint, but it is not publicly available.

6. The Answer that Ford filed to the Class Action is publicly available and it reproduces the allegations that were made in the unredacted Class Action Complaint (and does not itself include any redactions). Thus, the Answer provides a way for the Court to compare the two complaints and to resolve the issues presented by these proceedings.

7. To demonstrate the usefulness of the Answer, the following is a side-by-side comparison, showing some of the factual allegations in Plaintiff's Complaint and the Class Action Complaint. My firm prepared this table at my direction, using Ford's publicly-available Answer to the extent any allegation in the publicly-available Class Action Complaints was redacted. We provided the same table to the Court of Appeal in our judicial-notice motion in that court.

<b>Plaintiff's Complaint</b>	<b>Class Action Complaint</b>
<p><b>28.</b> As described in detail below, Ford: (a) rather than identifying and eliminating the root cause of these defects, produced and sold the vehicle to Plaintiff [sic] and other consumers, knowing it contained a defective engine; (b) adopted through its dealers a “Band-Aid” strategy of offering minor, limited repair measures to customers who sought to have the defects remedied, a strategy that reduced Ford’s warranty expenditures but did not resolve the underlying defects and, in fact, helped to conceal the defects until the applicable warranties expired; and (c) intentionally and fraudulently concealed from Plaintiff and other consumers the existence of these inherent defects prior to the sale or any time thereafter, and fraudulently concealed from Plaintiff its inability to repair these inherent defects, which prevented the truck from conforming to its applicable warranties.</p>	<p><b>23.</b> . . . Ford documents reflect that (1) Ford knew about issues regarding the 6.0L Engine even before the engine’s launch, (2) the same core concerns persisted throughout Ford’s production and sale of the 6.0L Engine, (3) Ford never had a “definitive repair action” for these issues, (4) most, if not all of these concerns had a “common cause,” and (4) [sic] Ford ultimately adopted a band-aid approach to reduce its “warranty spend,” without addressing the “common causes of these problems.</p> <p><b>125.</b> Despite knowing that the engines had major defects and needed to be replaced, Ford only authorized minor recalibrations, adjustments, and replacements of isolated components which Ford knew would not, and in fact did not, adequately repair the engines.</p>
<p><b>29.</b> Ford misrepresented the quality, engine capacity, and towing capacity of the 6.0-liter Navistar diesel engine to Plaintiff at the time of the sale of the vehicle.</p>	<p><b>324.</b> . . . [R]egarding the defective nature of the 6.0L Engines—Ford made uniform misrepresentations to and uniformly withhold [sic] material information from Plaintiffs and all class members.</p>
<p><b>31.</b> At all relevant times, Ford was aware of the defects in the 6.0-liter Navistar diesel engine.</p>	<p><b>96.</b> . . . Ford was well aware of the problems with these engines before it ever launched the 6.0L Engine, and Ford’s failure to adequately address the issues by failing to properly repair or replace these defective engines.</p>
<p><b>32.</b> The defects in the 6.0-liter engine caused Ford to delay the launch of the engine from an August 1, 2002 launch date until November 4, 2002.</p>	<p><b>24.</b> Ford knew about the 6.0L Engine’s critical defects . . . and delayed the launch in an effort to understand and correct the engine’s multiple design flaws.</p>

<b>Plaintiff's Complaint</b>	<b>Class Action Complaint</b>
<p><b>33.</b> On May 15, 2002, as Ford was planning production of the first 2003 vehicles equipped with 6.0-liter Navistar diesel engines, Charlie Freese, Ford's Chief Engineer of Diesel Engines, identified "multiple high risk items" with the vehicles, which would delay Ford's production start. They included Injection Control Pressure Sensor (ICP) failures, piston failures, and injector failures, which were "of particularly great concern." The problems were so serious that Ford considered extending production of the predecessor 7.3-liter engine, in place of the 6.0-liter engine.</p>	<p><b>28.</b> On May 15, 2002, Charlie Freese, Ford's Chief Engineer of Diesel Engines, wrote: "We face multiple high risk items, which will influence a decision to delay J#1" [i.e., Job #1, the beginning of production for the first 2003 6.0-liter diesel engine]. Freese mentioned open issues that were "of particularly great concern," including ICP failures, piston failures, and injector failures. The issue was considered so serious that Ford considered extending its production of the predecessor 7.3-liter engine due to concern that the 6.0L Engine would not be ready for production. . . .</p>
<p><b>34.</b> On May 29, 2002, with the engine build kick-off just four days away, Freese identified additional "major issues" with the 6.0-liter engine, in addition to the ICP failures, piston failures, and injector failures. Those "new concerns" included, among others, problems with the head gaskets, turbo charger, the engine idle, and the injector driver module (IDM).</p>	<p><b>29.</b> On May 29, 2002, Freese emailed a large team of Ford and Navistar personnel regarding the planned timing of Job #1. . . . The email informed the team that only four days remained to close out nine separate "key open issues" in order to meet the June 3, 2002 delayed engine build kick-off. Some of the nine key open issues listed were: No. 2, "Injector Failures Persist"; No. 4, dealing with the design of the ICP sensor which still needed durability validated; No. 5, dealing with testing of head gaskets; No. 7, dealing with a new turbocharger which Ford and Navistar had not even begun to analyze; No. 8, a new rough engine idle problem; and No. 9, a failure of the IDM (injector driver module) during cold operation experienced by multiple vehicles, with no root cause identified.</p>
<p><b>35.</b> On July 30, 2002, Ford held a New Model Launch Meeting at which Ford projected that some problems could not be resolved until after the vehicles were already being produced and sold. At that same meeting, Ford reviewed the</p>	<p><b>30.</b> Ford held a New Model Launch Meeting on July 30, 2002. . . . The 6.0L engine was still considered to have "Major Issues" that Ford did not understand. . . . There was a discussion that some problems would have to be resolved after Job #1, on March 3, 2003,</p>

Plaintiff's Complaint	Class Action Complaint
<p>readiness of suppliers for the F-250, and singled out and rated Navistar (the supplier of the 6.0-liter engine) as “High Risk,” due to lack of durability testing and late design changes.</p>	<p>when the vehicles were already being produced and sold.</p>
<p><b>36.</b> By August 23, 2002, Ford still was addressing injector defects causing idle problems, cold start problems, engine stall problems, and injector failures. Although Navistar sent engines with new process injectors to Ford, the durability tests for these engines were scheduled for completion the week of October 9, 2002, less than a month before production was to begin.</p>	<p><b>32.</b> Pursuant to Charlie Freese’s email, as of August 23, 2002, Ford was still addressing injector defects causing idle problems, cold start problems, engine stall problems, and injector failures. Navistar began a new process for injectors and planned to ship the first three engines with these new process injectors to Ford . . . . Ford’s durability tests for these engines were scheduled for completion the week of October 9, 2002, less than a month before Job #1.</p>
<p><b>37.</b> As the November 4, 2002 production date neared, problems with the 6.0-liter engine persisted; Ford was unable to determine their root cause. Ford decided it could not continue delaying the launch, and instead began producing and selling the F-250 vehicle, knowing its engine was defective.</p>	<p><b>24.</b> . . . Ultimately unwilling to further postpone the launch, Ford decided to launch the engine, despite the fact that the engine contained known defects which Ford did not know how to repair . . . .</p> <p><b>33.</b> Finally, Ford decided it could not continue delaying the launch, and instead began producing and selling a vehicle with a known defective engine.</p>
<p><b>38.</b> On November 12, 2002, Steven Henderson, a Ford executive, wrote that Ford was “in the middle of the 6.0L launch, and ... things are not going well.” Although the launch was delayed a week, and the entire Navistar team was working full time, the problems were “not fully resolved yet.”</p>	<p><b>33.</b> On November 12, 2002, Steven Henderson wrote: . . . <b><u>we’re in the middle of the 6.0 launch and . . . things are not going well.</u></b> J1 [Job #1] for the 6.0L was delayed a full week for International to work on these issues, but <b><u>they are not fully resolved yet.</u></b> . . .</p>

<b>Plaintiff's Complaint</b>	<b>Class Action Complaint</b>
<p><b>39.</b> Without remedying the defects, Ford continued to equip subsequent model years of the F-250 [sic] truck, including the 2006 model, with the 6.0-liter engine. Regardless of tweaks made to the 6.0-liter engine by Ford during subsequent model years, these same defects to the engine persisted throughout Ford's production and sale of the trucks.</p>	<p><b>23.</b> . . . (2) the same core concerns persisted throughout Ford's production and sale of the 6.0L Engine, (3) Ford never had a "definitive repair action" for these issues . . . .</p>
<p><b>40.</b> Ford's inability to deal with the problems continued through the 2005 and 2006 model years. In a July 22, 2005 memorandum, Chris Bolen, Ford's director of North America Powertrain Manufacturing, wrote that the problems with the quality of the 6.0-liter engines were having "disastrous effects on this customer and segment."</p>	<p><b>42.</b> On July 22, 2005, Chris Bolen, Ford's Director of North America Powertrain Manufacturing, wrote, "in my 32 years at Ford I have not experienced such [negative] feedback regarding one of our products. . . . our current warranty performance is having disastrous effects on this customer and segment." . . . .</p>
<p><b>41.</b> Evidence of the inherent nature of the defects again emerged in June 2006, when Ford engineers discovered that 6.0-liter engines exceeded Ford's own cylinder pressure specifications for "normally" performing engines. One engineer, Mike Frommann, in a June 2006 email, worried that these specifications might be published or subpoenaed, and could cause Ford to "face a class action." He recommended that all emails discussing the issue be deleted.</p>	<p><b>40.</b> As evidence of that, in June 2006—after the 6.0L had been in production for over four years . . . — Ford engineer Mike Frommann emailed . . . "We don't want to have our cylinder pressure specs published or documented by having them subpoenaed or we might face a class action. . . . I recommend we all delete these emails."</p>
<p><b>42.</b> In January 2007, nearly five years after it discovered the defects, Ford sued its engine supplier, Navistar, for what it termed "exceptionally high repair rates and warranty costs due to quality problems attributable to Navistar," including "design flaws."</p>	<p><b>22.</b> . . . Ultimately, Ford sued its engine supplier, Navistar, for \$493 million for what it termed "exceptionally high repair rates and warranty costs due to quality problems attributable to Navistar," including "design flaws." [fns. omitted.]</p>
<p><b>43.</b> Despite Ford's knowledge of the defective engine, it continued to</p>	<p><b>51.</b> . . . Ford orchestrated and implemented a widespread advertising</p>



<b>Plaintiff's Complaint</b>	<b>Class Action Complaint</b>
<p>represent that the vehicle was of high quality. For example, Mark Fields, Ford's then President of the Americas, publicly proclaimed that the 6.0-liter engine - the very same engine whose design and quality issues led Ford to sue Navistar - was a "great engine." Despite its knowledge of the 6.0-liter engine's many flaws and quality concerns, Ford trained its dealers throughout the country to specifically tout the supposedly superior attributes of the engine, without ever mentioning its troubled history of design, manufacturing, and reliability defects.</p> <p><b>a.</b> Ford continued to conceal its knowledge of the defective engine in its marketing materials. Ford represented that the 2006 Ford F-250 was a "Power Stroke V Turbo Diesel – F-series Super Duty outpulls the competition from a dead stop, in a 0-60 mph tow off. It's done through careful powertrain management from engine to gearing to wheels and tire. The result is more-capable trucks."</p>	<p>and marketing campaign to convince customers that the . . . engines and vehicles were of superior quality, design, manufacture and reliability. In this regard, Mark Fields, Ford's then President of the Americas, publicly proclaimed that the Navistar 6.0L Power Stroke diesel engine—the very same engine whose design and quality issues led Ford to sue Navistar—was a "great engine."</p> <p><b>50(d):</b> "Power Stroke V8 Turbo Diesel—F-Series Super Duty outpulls the competition from a dead stop, in a 0-60 mph tow off. It's done through careful powertrain management from engine to gearing to wheels and tire. The result is more—capable trucks."</p>
<p><b>44.</b> At all relevant times, Ford was aware of its inability to repair the defects in the 6.0-liter Navistar diesel engine.</p>	<p><b>96.</b> . . . Ford was well aware of the problems with these engines before it ever launched the 6.0L Engine, and Ford's failure to adequately address the issues by failing to properly repair or replace these defective engines.</p>

Plaintiff's Complaint	Class Action Complaint
<p>45. On July 30, 2002, Ford held a New Model Launch Meeting at which Ford projected that some problems could not be resolved until after the vehicles were already being produced and sold. At that same meeting, Ford reviewed the readiness of suppliers for the F-250, and singled out and rated Navistar (the supplier of the 6.0-liter engine) as "High Risk," due to lack of durability testing and late design changes.</p>	<p>30. Ford held a New Model Launch Meeting on July 30, 2002. At that meeting, Job #1 was still slated for the Kentucky Plant on November 4, 2002. The 6.0L engine was still considered to have "Major Issues" that Ford did not understand. . . . There was a discussion that some problems would have to be resolved after Job #1, on March 3, 2003, when the vehicles were already being produced and sold.</p> <p>31. . . . Navistar was specifically singled out and rated "High Risk" due to lack of durability testing and late design changes.</p>
<p>46. Ford's vehicles containing the 6.0-liter engines were sold with Ford's Limited Warranty, including the 6.0-liter Power Stroke Diesel Engine warranty, which covers the "engine and engine components against defects in factory-supplied materials or workmanship for five years after the warranty start date or 100,000 miles, whichever occurs first," and provides that "[d]uring this coverage period, authorized Ford Motor Company dealers will repair, replace, or adjust all parts on your vehicle that are defective in factory-supplied materials or workmanship."</p>	<p>53. Ford's vehicles containing the 6.0L Engines were sold with Ford's Limited Warranty, including the 6.0L Powerstroke Diesel Engine warranty, which covers the "engine and engine components against defects in factory-supplied materials or workmanship for five years after the warranty start date or 100,000 miles, whichever occurs first," and provides that "[d]uring this coverage period, authorized Ford Motor Company dealers will repair, replace, or adjust all parts on your vehicle that are defective in factory-supplied materials or workmanship."</p>
<p>47. Throughout Ford's production and sale of the engines, Ford never developed a repair plan in which Ford would comply with the above warranties by identifying and eliminating the root cause of defects to the 6.0-liter engines. As detailed in the September 7, 2004 memorandum from Frank Ligon, Ford's Director of Service Engineering Operations, Ford did "not have a definitive repair action</p>	<p>39. Ford's inability to repair the 6.0L Engine and its core problems is exemplified by a September 7, 2004 memo from Frank Ligon, Ford's Director of Service Engineering Operations, addressing 6.0L "Buy-Backs": . . . <b>At this point we do not have a definitive repair action or production parts to properly address the concern universe.</b> . . .</p>

<b>Plaintiff's Complaint</b>	<b>Class Action Complaint</b>
<p>or production parts to properly address the concern universe.” As revealed in an October 2004 email between Ford executives, Ford rejected pilot programs that would have had Ford technicians assist dealerships with repairs.</p>	<p><b>64.</b> Not only did Ford reject these pilot initiatives, but when suggestions were made that Ford authorize full and complete repairs of defective engines brought into Ford dealerships for repair, Ford rejected those suggestions as too expensive. Mr. Berardi emailed Bill Osbourne on October 8, 2004:</p> <p><i>You had also mentioned throwing the “Kitchen Sink” at the vehicle during the first repair attempt to help eliminate the need to come back a second time. That particular philosophy is opposite of what we have been training our dealers to do and could lead to a very expensive warranty bill across vehicle lines.</i> (Italics added.)</p> <p>Regarding training its dealers to do the opposite, Berardi later admitted that Ford trained its dealers to only “repair whatever component has failed as long as it wasn’t customer abuse or lack of maintenance.”</p>
<p><b>48.</b> Nor did Ford implement a formal recall program that would have required Ford to replace the defective engines. Ford executives had suggested that Ford authorize full and complete repairs of defective engines – essentially throwing the “kitchen sink” at the vehicle in order to help eliminate the need for subsequent repairs. However, in an email on October 8, 2004, Michael Berardi, Ford’s CBG manager, said “[t]hat particular philosophy is opposite of what we have been training our dealers to do and could lead to a very expensive warranty bill across vehicle lines.”</p>	<p><b>See paragraph 64 above</b></p>
<p><b>49.</b> Ford instead had authorized dealers implement a “Band-Aid”</p>	<p><b>75.</b> The 6.0L Engine continuously suffered the same problems and Ford</p>

<b>Plaintiff's Complaint</b>	<b>Class Action Complaint</b>
<p>strategy that allowed the dealers to take only limited repair measures, such as cleaning or replacing individual components, which did not properly remedy or resolve the underlying defect. This strategy reduced Ford's warranty spending but did nothing to fix the underlying root causes of the defects.</p>	<p>never changed its "solution" of reducing its warranty spend. . . . Ford's recommended repairs were only "band-aids" designed not to address the root cause defects in the engine, but merely to postpone recurrence of the malfunctions until the warranty expired and the customer— not Ford—would pay for repairs. . . .</p>
<p><b>50.</b> In 2006, for example, among Ford's "6.0-liter Top Parts Warranty Actions" were new procedures adopted to address "turbo coking" and "EGR coking," issues that had plagued the engine since its inception. According to a July 2007 email between Ford executives, rather than replace the coked turbo charger or EGR valve, Ford commenced a program in mid-2006 of simply "cleaning" the parts in question, thus saving Ford a projected \$9 million and \$2.5 million in warranty spending, respectively, on those two items.</p>	<p><b>54.</b> In 2006, for example, among Ford's "6.0L Top Parts Warranty Actions" were new procedures adopted to address "turbo coking" and "EGR coking," issues that had plagued the engine since its inception. Rather than replace the coked turbo charger or EGR valve, Ford commenced a program in mid-2006 of simply "cleaning" the parts in question, thus saving Ford a projected \$9 million and \$2.5 million in warranty spend, respectively, on those two items. . . . Similarly, in the previously-referenced email from Mr. Horbal to Barb Samardzich in July 2007, Mr. Horbal characterized his "assignments" from a prior PDQR as "Continue to Look for More Service Cost Reductions" with respect to the 6.0L engine.</p> <p>[fns. omitted]</p>

<b>Plaintiff's Complaint</b>	<b>Class Action Complaint</b>
<p><b>51.</b> These minor, limited measures merely addressed the symptoms. For example, the removal of built up soot effectively concealed the seriousness and extent of the underlying root cause - poor combustion. Ford's own study concluded that the cause was improper injector sealing and associated leaks. Moreover, these measures misled customers to believe that the underlying problem had been fixed, when in fact the symptom likely would reoccur on a later date, possibly when the warranty would have expired, typically forcing the additional expenses to be borne by the customer rather than by the dealer.</p>	<p><b>75.</b> The 6.0L Engine continuously suffered the same problems and Ford never changed its "solution" of reducing its warranty spend. That is, through its own internal investigation and its lawsuit with Navistar, Ford knew that the engine was defective, that the defect manifested itself in definitive ways during the engine's use, and that Ford's recommended repairs were only "band-aids" designed not to address the root cause defects in the engine, but merely to postpone recurrence of the malfunctions until the warranty expired and the customer—not Ford—would pay for repairs. Rather than repairing the engine to eliminate damage to the Root-Cause-Damaged Components, Ford simply "kicked the can down the road," and cleaned or replaced the damaged components, knowing full well that the defects in the engine would lead to the failure of the cleaned or new components.</p>
<p><b>53.</b> In Ford's own analysis of the multitude of warranty claims on the troubled 6.0-liter engine, it concluded that the problems associated with the 6.0-liter engine were the result of "the same root cause." As noted above, Ford had attributed the problems to "injector sealing issues." Specifically, leaks between the fuel rail, combustion chamber, and coolant jacket.</p> <p><b>177.</b> In January 2006 – nearly four years after problems first surfaced and as production and sale of the 2006 models already were underway, a Ford engineering study conducted an analysis of warranty claims to determine the root causes of the problems that continued to plague the 6.0-liter engine. Ford</p>	<p><b>37.</b> A Ford engineer acknowledged that the problems with the 6.0L Engine—at least the "usual suspects": injectors, turbo charger, EGR components, fuel system components, and engine components—had the same root causes. In January 2006 (the last year of mass production of the 6.0L and after more than 75% of the 6.0L Engines had been placed in service), Mark Freeland, a Ford engineer under the direction of John Koszewnik, Director, North American Diesel, conducted an analysis of 6.0L warranty claims to determine the root causes of the problems that continued to plague the engine. He made the following observations:</p> <ul style="list-style-type: none"> <li>• "It is likely that these symptoms are all the</li> </ul>

Plaintiff's Complaint	Class Action Complaint
<p>attributed the problems to “the same root cause”: “injector sealing issues” - specifically, leaks between the fuel rail, combustion chamber, and coolant jacket.</p>	<p>result of the same root causes.”</p> <ul style="list-style-type: none"> <li>• “Further I would hypothesize . . . that the same root cause or causes are responsible for the majority of all claims.”</li> <li>• “There had been many changes made to ‘fix the Injector’ warranty issue, but none seem to be effective at reducing the base level of the warranty [spend].”</li> <li>• “The probability of multiple injectors failing simultaneously on the same engine is quite remote, unless the failure is the result of another system issue.”</li> <li>• “THE LIST GOES ON, MANY OTHER SEEMING UNRELATED FAILURES ARE CAUSED BY THE INJECTOR SEALING ISSUES.”</li> </ul> <p>Based on his testing, observations, and analysis, Mr. Freeland concluded the following:</p> <p>CONCLUSIONS:</p> <p>A very large portion, if not most of, the common cause of the Injector, Turbo Charger, EGR Components, Fuel System Components and Engine Components warranty [repairs/spend] is being caused by leaks between the Fuel Rail, the combustion chamber and the coolant jacket.</p> <p>[fns. omitted]</p> <p>59. In January 2006 (after more than 75% of the 6.0L Engines had been placed in service), Ford engineer Mark Freeland analyzed 6.0L Warranty Claims and likewise observed that it is likely that the symptoms were the result of the same root causes, and that the</p>

Plaintiff's Complaint	Class Action Complaint
	<p>same root causes were responsible for the majority of all claims. Mr. Freeland concluded the symptoms were being caused by leaks between the fuel rail, the combustion chamber and the coolant jacket.</p> <p>[fns. omitted.]</p>
<p><b>54.</b> Despite having this critical knowledge, Ford concealed it from consumers, and continuously treated the symptoms rather than the underlying “root cause” of the problem.</p>	<p><b>100.</b> . . . Ford wrongfully concealed the fact (1) that it was equipping vehicles with defective engines which Ford was unable or unwilling to repair, and (2) that its dealerships were making inadequate repairs incapable of addressing the root cause of the vehicles’ malfunctions. . . .</p>
<p><b>55.</b> In addition, Ford has computer systems whereby it monitors warranty claims, communicates with its authorized dealers, and monitors the malfunctions and repair records of all these vehicles. These systems include MORS (Master Owner Relations System), AWS (Analytical Warranty System), and CQIS (Common Quality Indicator System).</p>	<p><b>67.</b> Ford’s warranty repair program includes numerous checks to ensure that problems caused by improper maintenance, owner misuse, accidents, etc. are excluded. Ford’s team leader for Warranty Controls and Warranty Communications attested that:</p> <p>Ford implements various internal controls to ensure that warranty claims are justified, properly supported, and in accordance with Ford’s warranty policies and procedures. Ford applies these internal controls to all warranty claims submitted by its dealers, including claims involving 6.0L engine repairs.</p> <p>[fns. omitted.]</p>
<p><b>56.</b> Through these systems, Ford has detailed information regarding each time a vehicle is brought into a Ford dealership for repair, including but not limited to the symptoms that required the unit be brought in for service, the diagnosis of the problem, the repair authorized by</p>	<p><b>69.</b> Through these systems, Ford has detailed information regarding each time a vehicle is brought into a Ford dealership for repair, including but not limited to the symptoms that required the unit be brought in for service, the diagnosis of the problem, the repair authorized by Ford, and the work performed on the vehicle.</p>

<b>Plaintiff's Complaint</b>	<b>Class Action Complaint</b>
Ford, and the work performed on the vehicle.	
<p><b>57.</b> Ford accumulated a massive database through which it realized that the minor, limited work it was authorizing was inadequate to properly repair these defective engines, and major repairs, including engine replacement, were necessary to address these defects.</p>	<p><b>70.</b> Accordingly, Ford accumulated a massive database through which it realized that the minor repairs it was authorizing were inadequate to properly repair these defective engines, and that major repairs including engine replacement were necessary to address these defects. . . .</p>
<p><b>58.</b> Ford continued its practice of only authorizing minor, ineffective repairs of these engine defects. Ford unfairly benefitted by this practice because Ford knew that after the warranty expired, the vehicle owner, rather than Ford, would have to pay for all future repairs.</p>	<p><b>70.</b> . . . Despite Ford's experience and knowledge of the defects, Ford continued its practice of only authorizing minor ineffective repairs of these engine defects.</p>
<p><b>59.</b> Ford engineers referred to the failing parts as the "usual suspects." In a presentation dated July 10, 2007, Ford stated, "Causal parts are the usual suspects – Cylinder Head/Head Gasket, Engine Ass'y, EGR Cooler, EGR Valve."</p>	<p><b>72.</b> Year after year, the same issues plagued the engine. . . . Similarly, in July 2007, a Ford Product Development Quality Review meeting discussed 6.0L "diesel warranty spend" and noted that: "Causal parts were the usual suspects: Cylinder Head/Head Gasket, Engine Assembly, EGR Cooler, EGR Valve."</p>
<p><b>60.</b> Those "Band-Aid" repair strategies were performed on Plaintiff's vehicle. Defendant represented that the repairs would fix the vehicle, despite its knowledge that the repairs performed would merely postpone the problem in the 6.0-liter Navistar diesel engine until the engine was out of warranty.</p>	<p><b>75.</b> . . . Ford's recommended repairs were only "band-aids" designed not to address the root cause defects in the engine, but merely to postpone recurrence of the malfunctions until the warranty expired and the customer— not Ford—would pay for repairs. . . .</p>
<p><b>61.</b> Ford had a duty to disclose the concealed facts alleged above because Ford knew that Plaintiff did not know a material fact and further knew that such facts were not readily accessible to the Plaintiff because Ford actively concealed those facts.</p>	<p><b>377.</b> Ford owed California Plaintiffs and the California Consumer Fraud Sub-Class a duty to disclose the defects in the Ford vehicles equipped with the defective 6.0L Engines, because it possessed exclusive and superior knowledge of the defects and did not disclose these defects.</p>



<b>Plaintiff's Complaint</b>	<b>Class Action Complaint</b>
<p><b>63.</b> Ford had a duty to disclose the concealed facts alleged above because Ford made several partial or misleading half-truths in its marketing materials and through its authorized sales representatives about the quality, characteristics, reliability, and towing capacity of the 6.0-liter Navistar diesel engine.</p>	<p><b>366.</b> Ford owed Plaintiffs and the Consumer Fraud Class members a duty to disclose the defects in the Ford vehicles equipped with the defective 6.0L Engines, because it possessed exclusive and superior knowledge of the defects and did not disclose these defects.</p>
<p><b>64.</b> Ford had a duty to disclose the concealed facts alleged above because Ford actively concealed material facts in order to induce a false belief.</p>	<p><b>See paragraph 366 above.</b></p>
<p><b>65.</b> Ford intended for Plaintiff to rely on those misrepresentations to conceal the fact that the truck's engine could not be repaired.</p>	<p><b>365.</b> Ford intended that Plaintiffs and the other members of the Consumer Fraud Class rely on its misrepresentations and omissions, so that Plaintiffs and other Consumer Fraud Sub-Class Members would purchase Ford vehicles equipped with the defective 6.0L Engines.</p>
<p><b>69.</b> Because Ford failed to disclose these foregoing facts to Plaintiff, all statute of limitations periods with respect to sales of the 2006 F-250 trucks were tolled by the doctrines of fraudulent concealment, the discovery rule, and/or equitable tolling/estoppel. As alleged herein, Ford wrongfully concealed the fact (1) that it was equipping the trucks with defective engines that Ford was unable or unwilling to repair, and (2) that its dealerships were making inadequate repairs that were incapable of addressing the root cause of the trucks' malfunctions.</p>	<p><b>100.</b> All limitations periods were also tolled by the doctrines of fraudulent concealment, the discovery rule and/or equitable tolling. As alleged herein, Ford wrongfully concealed the fact (1) that it was equipping vehicles with defective engines which Ford was unable or unwilling to repair, and (2) that its dealerships were making inadequate repairs incapable of addressing the root cause of the vehicles' malfunctions. . . .</p>
<p><b>70.</b> Plaintiff did not discover the operative facts that are the basis of the claims alleged herein because the facts were concealed in confidential and privileged documents, which a consumer would not know about and could not obtain.</p>	<p><b>100.</b> . . . Plaintiffs and Class [M]embers did not discover the operative facts that are the basis of their claims because they were concealed in confidential and privileged documents. . . .</p>

<b>Plaintiff's Complaint</b>	<b>Class Action Complaint</b>
<p><b>71.</b> No amount of diligence by Plaintiff could have led to the discovery of these facts because they were kept secret by Ford and, therefore, Plaintiff was not at fault for failing to discover these facts.</p>	<p><b>100.</b> . . . No amount of diligence by Plaintiffs or Class Members could have led to the discovery of these facts because they were kept secret by Ford and, therefore, Plaintiffs and Class Members were not at fault for failing to discover these facts, nor did they have actual or presumptive knowledge of facts sufficient to put them on inquiry. . . .</p>
<p><b>72.</b> Plaintiff did not have actual knowledge of facts sufficient to be put on notice. Plaintiff did not know, nor could have known, about Ford's inability to repair the defects in its engines because, as alleged above, Ford kept this information highly confidential, and its dealership assured Plaintiff that [sic] its repairs were effective.</p>	<p><b>100.</b> . . . No class member knew, or could have known, about Ford's inability to repair the defects in its engines because, as alleged above, Ford kept this information highly confidential, even sending internal warnings not to share this information outside Ford.</p>
<p><b>191.</b> In addition, Ford's deliberate failure to disclose the defects to the 6.0-liter engine was undertaken on a massive scale. Beginning in 2002 and continuing through the 2006 production year and beyond, Ford did not make any disclosures to consumers regarding the engine defects in any of the models years for the F-250 truck product line. Yet, by 2007, the 6.0-liter engine already had "unprecedented repair rates," according to Robert Fascetti, Ford's director of V-Engine and Diesel Engineering for the North American Engine Organization. In a sworn affidavit, Fascetti stated that repairs of the 6.0-liter engine had accounted for "approximately 80% of all of Ford's warranty spending on engines."</p>	<p><b>22.</b> Launched with great fanfare in 2002, by the end of its short production life, Ford's 6.0L Engines had "unprecedented repair rates," accounted for "approximately 80% of all of Ford's warranty spending on engines," and forced Ford to assemble a "team of approximately 70 engineers" to assist Ford's supplier "full time in identifying and resolving problems." Ultimately, Ford sued its engine supplier, Navistar, for \$493 million for what it termed "exceptionally high repair rates and warranty costs due to quality problems attributable to Navistar," including "design flaws." [fns. omitted.]</p>

<b>Plaintiff's Complaint</b>	<b>Class Action Complaint</b>
<p><b>192.</b> At the same time, Ford earned enormous profits as a result of its failure to disclose the defects. During the period that the vehicle was on the market, Ford's F-250 equipped with the 6.0-liter engine provided Ford with high gross profit margins. In addition, because engine replacements cost more than ten times the cost of the lesser repairs implemented by dealers, Ford profited enormously by refusing to authorize necessary major engine repairs or engine replacements during the warranty period, instead only authorizing less expensive services (such as cleanings or injector replacements), which were not adequate repairs and which would merely serve as a temporary measure until the problems resurfaced after the warranty expired.</p>	<p><b>76.</b> Ford unfairly benefited by this practice because Ford knew that after the warranty expired the vehicle owner, rather than Ford, would have to pay for all future repairs. Because engine replacements cost more than ten times the cost of these lesser repairs, Ford profited enormously (at the expense of its customers) by failing to authorize necessary major engine repairs or engine replacements during the warranty period, instead only authorizing cheaper services (like injector replacements) which were not adequate repairs, and would merely serve as a temporary measure until the warranty expired . . . .</p>

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct and that this Declaration was executed on August 31, 2020 at Los Angeles, California.

/s/ Cynthia Tobisman  
Cynthia Tobisman

No. S259522

**IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA**

RAUL BERROTERAN

Plaintiff, Petitioner, and Respondent,

v.

THE SUPERIOR COURT OF LOS  
ANGELES COUNTY

Respondent.

FORD MOTOR COMPANY

Defendant and Real Party in Interest

California Court of Appeal, Second District, Division One Civil No. B296639  
Appeal from Los Angeles Superior Court, Case No. BC542525  
Honorable Gregory Keosian, Judge Presiding

**[PROPOSED] ORDER**

Good cause appearing, Plaintiff's Motion for Judicial Notice  
is granted.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Presiding Justice

**Exhibit A**

**DEFENDANT FORD MOTOR COMPANY'S  
FIRST AMENDED ANSWER TO MASTER  
CLASS ACTION COMPLAINT**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**In re: NAVISTAR DIESEL ENGINE            )                            Case No. 11 C 2496**  
**PRODUCTS LIABILITY                        )                            MDL No. 2223**  
**LITIGATION                                    )**

**This Document Relates to: All cases**

**DEFENDANT FORD MOTOR COMPANY’S  
FIRST AMENDED ANSWER TO MASTER CLASS ACTION COMPLAINT**

Defendant FORD MOTOR COMPANY (“Ford”), by and through its attorneys, in answer to Custom Underground, Inc. (“Custom Underground”); John Barrett; Scott Gray and Heather Gray; Frank Brown Towing, Inc.; Cecil and Tressie Fulton; Karl Strong; Dinonno Enterprise, Inc., d/b/a Cutting Edge Concrete Cutting; Charles Clark; Georjean Vogt; John Prebish; Steve Santelli; Anthony Mawyer; Gena Boggero; Carl Atwell; Phillip Marcum; and James Hutton’s (collectively “Plaintiffs”) Master Class Action Complaint, hereby admits, denies, and alleges as follows:

**I. PARTIES**

1. Plaintiff, Custom Underground, Inc., (“Custom Underground”) is a corporation incorporated in the state of Illinois with its principal place of business in Illinois.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1, and on that basis denies those allegations.

2. Plaintiff, John Barrett (“Barrett”) is an individual who at all relevant times resided in Carlinville, Macoupin County, Illinois.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2, and on that basis denies those allegations.

3. Plaintiffs, Scott and Heather Gray (collectively “Gray), are individuals residing in Ft. Pierce, St. Lucie County, Florida.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3, and on that basis denies those allegations.

4. Plaintiff, Frank Brown Towing, Inc. (“Brown”), is a corporation incorporated and with its principal place of business in Buffalo, Erie County, New York.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4, and on that basis denies those allegations.

5. Plaintiffs, Cecil and Tressie Fulton (collectively “Fulton”), are individuals who at all relevant times resided in Manteca, San Joaquin County, California.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5, and on that basis denies those allegations.

6. Plaintiff, Karl Strong (“Strong”), is an individual who at all relevant times resided in Santa Rosa, Sonoma County, California.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6, and on that basis denies those allegations.

7. Plaintiff, Dinonno Enterprise, Inc., d/b/a Cutting Edge Concrete Cutting (“Dinonno”), is a corporation incorporated in the state of California with its principal place of business in California.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7, and on that basis denies those allegations.

8. Plaintiff, Charles Clark (“Clark”), is an individual who at all relevant times resided in Brooklyn, Jackson County, Michigan.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8, and on that basis denies those allegations.

9. Plaintiff, Georjean Vogt (“Vogt”), is an individual who at all relevant times resided in Tucson, Pima County, Arizona.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9, and on that basis denies those allegations.

10. Plaintiff, John Prebish (“Prebish”), is an individual who at all relevant times resided in Loveland, Larimer County, Colorado.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10, and on that basis denies those allegations.

11. Plaintiff, Steve Santilli (“Santilli”), is an individual who at all relevant times resided in Newington, Hartford, Connecticut.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11, and on that basis denies those allegations.

12. Plaintiff, Anthony Mawyer (“Mawyer”), is an individual who at all relevant times resided in Taylorsville, Alexander County, North Carolina.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12, and on that basis denies those allegations.

13. Plaintiff, Gena Boggero (“Boggero”), is an individual who at all relevant times resided in Greenwood, Greenwood County, South Carolina.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13, and on that basis denies those allegations.

14. Plaintiff, Carl Atwell (“Atwell”), is an individual who at all relevant times resided in Mooresville, Morgan County, Indiana.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14, and on that basis denies those allegations.



15. Plaintiff, Phillip Marcum (“Marcum”), is an individual who at all relevant times resided in Lucasville, Scioto County, Ohio.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15, and on that basis denies those allegations.

16. Plaintiff, James Hutton (“Hutton”), is an individual who at all relevant times resided in Flemington, Hunterdon County, New Jersey.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 16, and on that basis denies those allegations.

17. Defendant, Ford Motor Company, is a Delaware corporation with its principal place of business in Dearborn, Michigan. Defendant Ford is authorized to conduct business in the State of Illinois, and has made its appearance in this case.

**ANSWER:** Ford admits that it is a Delaware corporation with its principal place of business in Dearborn, Michigan. Ford further admits that it is authorized to conduct business in the State of Illinois and that it has appeared in the above-captioned matter by and through its attorneys.

## **II. JURISDICTION AND VENUE**

18. The Court has jurisdiction over Ford because at all relevant times Ford has regularly and systematically transacted business within the State of Illinois as a designer, manufacturer and distributor of motor vehicles, including vehicles equipped with the 6.0-liter diesel engines at issue in this case. Defendant Ford derives substantial revenue from Illinois residents.

**ANSWER:** Ford admits that it is subject to the Court’s jurisdiction.

19. This Court has subject matter jurisdiction over this class action under the Class Action Fairness Act (“CAFA”) because there are more than one-hundred class members, there are members of the Plaintiff class who are citizens of states different from that of Ford, and the aggregate of class members’ claims is more than \$5 million. 28 U.S.C. § 1332(d).

**ANSWER:** Ford admits that this Court has subject matter jurisdiction over this action.

20. Venue is proper in this Court because a substantial part of the events giving rise to Plaintiffs' claims occurred in this district. 28 U.S.C. § 1391(a)(2). Among other things, Ford has major operations in this District, including a large manufacturing plant in Chicago.

**ANSWER:** Ford admits that venue is proper in this Court and that it has a manufacturing plant in Chicago. Ford is without information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 20 and on that basis denies those allegations.

### III. FACTS

21. Ford is, and has been at all relevant times, engaged in the business of developing, designing, manufacturing, testing, assembling, inspecting, marketing, distributing and selling Ford vehicles and/or vehicle chassis equipped with Ford's 6.0-liter diesel engines (hereinafter, "6.0L Engines" or "6.0L").

**ANSWER:** Ford admits that, beginning with model year 2003, Ford assembled and marketed Ford vehicles and/or vehicle chassis equipped with Ford's 6.0-liter Power Stroke diesel engines. Ford further admits that beginning with model year 2003, Ford has in part designed, manufactured, tested, and inspected Ford vehicles and/or vehicle chassis equipped with Ford's 6.0-liter Power Stroke diesel engines. Ford denies every other allegation contained in Paragraph 21.

22. Launched with great fanfare in 2002,<sup>1</sup> by the end of its short production life,<sup>2</sup> Ford's 6.0L Engines had "unprecedented repair rates," accounted for "approximately 80% of all of Ford's warranty spending on engines," and forced Ford to assemble a "team of approximately 70 engineers" to assist Ford's supplier "full time in identifying and resolving problems."<sup>3</sup> Ultimately, Ford sued its engine supplier, Navistar,<sup>4</sup> for \$493 million for what it termed

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<sup>1</sup> Named to *Ward's Auto World* "10 Best Engines" list in 2003. [**Note: The footnotes appearing in this Answer are footnotes from Plaintiffs' Master Class Action Complaint.**]

<sup>2</sup> 2002-06, except for a very limited production post-2006 for Ford's "E Series." The engine was used in Ford truck model years 2003-2007, and a relatively small number of 2008 vehicles.

<sup>3</sup> Robert Fascetti, Director of V-Engine and Diesel Engineering for the North American Engine Organization of Ford Motor Company, Feb. 28, 2007.

<sup>4</sup> Navistar International Transportation Corporation and International Truck and Engine Corporation, hereinafter "Navistar."

“exceptionally high repair rates and warranty costs due to quality problems attributable to Navistar,” including “design flaws.”<sup>5</sup>

**ANSWER:** Ford admits that the 6.0-liter Power Stroke diesel engine launched in 2002 and that it was named in *Ward's Auto World* “10 Best Engines” for 2003. Ford further admits that the 6.0-liter Power Stroke diesel engine was used in Ford vehicles with model years 2003-2010. Ford further admits that Paragraph 22 accurately quotes statements made by Robert Fascetti in an affidavit dated February 27, 2008 and that Mr. Fascetti was at that time the Director of V-Engine and Diesel Engineering for the North American Engine Organization of Ford Motor Company. Ford further admits that Mr. Fascetti’s statements were true. Ford further admits that it brought suit against Navistar International Transportation Corporation and International Truck and Engine Corporation (hereinafter “Navistar”) in *Ford Motor Co. v. Navistar Int’l Transp. Corp., et al.*, Case No. 07-080067-CK, before the Circuit Court of Oakland County, Michigan. Ford denies that its complaint in that lawsuit requested \$493 million. Ford admits that Ford Motor Company’s Brief in Support of Its Motion for Temporary Restraining Order and Preliminary Injunction in that lawsuit stated that Navistar owed Ford over \$400 million. Ford admits that, in Confidential Portions of Ford Motor Company’s Answers and Objections to Defendants’ Court-Ordered Set of Interrogatories, Response to Interrogatory No. 3, filed May 23, 2007 in that action, Ford stated that “6.0L engines have experienced exceptionally high repair rates and warranty costs due to quality problems attributable to Navistar” and that Ford used the term “design flaws” in describing certain of the aforementioned “quality problems.” Ford denies that it sued Navistar for “design flaws.” Ford denies each and every other allegation contained in Paragraph 22, including its footnotes.

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<sup>5</sup> Confidential Portions of Ford Motor Company’s Answers and Objections to Defendants’ Court-Ordered Set of Interrogatories, Response to Interrogatory No. 3, filed May 23, 2007; *Ford Motor Company v. Navistar*, C.A. 07-080067-CK, Circuit Court for the County of Oakland, Michigan (hereinafter “*Ford v. Navistar*”).

23. While Ford's Super Duty truck with the 6.0L Diesel Power Stroke Engine provided Ford the "best [gross profit] margin of any vehicle" Ford sold during the 6.0L's sales history, as early as 2002 numerous issues were identified with the 6.0L Engine, specifically including turbo charger systems, fuel injection systems, head gasket, EGR valves, and coolers plugging. Ford documents reflect that (1) Ford knew about issues regarding the 6.0L Engine even before the engine's launch, (2) the same core concerns persisted throughout Ford's production and sale of the 6.0L Engine, (3) Ford never had a "definitive repair action" for these issues, (4) most, if not all of these concerns had a "common cause," and (4) [sic] Ford ultimately adopted a band-aid approach to reduce its "warranty spend," without addressing the "common causes of these problems.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 23.

**A. Ford Identified Critical Defects Prior to Selling Vehicles Equipped with the 6.0L Engine, Failed to Resolve the Defects, and Sold the Vehicles with Known Defects.**

24. Ford knew about the 6.0L Engine's critical defects in the months leading up to the engine's launch, and delayed the launch in an effort to understand and correct the engine's multiple design flaws. Ultimately unwilling to further postpone the launch, Ford decided to launch the engine, despite the fact that the engine contained known defects which Ford did not know how to repair, and thus could not instruct its dealers how to repair.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 24.

25. For a significant period of time, Ford scheduled August 1, 2002, as the date of first production (*i.e.*, "Job #1") of vehicles with the newly designed 6.0L diesel engine. However, Navistar's plan was to get the base engine reliability up to only 84% by the time of Job #1. Throughout 2002, it was clear that the engine had serious problems.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 25.

26. For example, the Injection Control Pressure Sensor (ICP) continually failed due to excessive heat, and other engine parts were similarly being exposed to excessive heat far beyond the allowable temperature limit of 135 degrees Celsius. In September 2001, underhood temperatures near the ICP were exceeding 180 degrees Celsius. Ford implemented changes to lower underhood temperatures and make components more robust to endure excessive heat, but the ICP continued to fail. Ford and Navistar eventually revised the specifications due to these failures, causing Texas Instruments (the manufacturer of the ICP component) to (1) lose confidence in the ability of the ICP to operate, and (2) require indemnification for product failures.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 26.

27. As of May 2002, Navistar still contended that the cooling system was inadequate and threatened a launch delay if the ICP change was not implemented. Ford finally realized that the Fluorosilicone material was not suitable for the ICP given its inability to handle heat and scrapped it in favor of Viton. Nonetheless, in June 2002, the engine was still exhibiting a “hung idle” malfunction during testing.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 27.

28. On May 15, 2002, Charlie Freese, Ford’s Chief Engineer of Diesel Engines, wrote: “We face multiple high risk items, which will influence a decision to delay J#1” [*i.e.*, Job #1, the beginning of production for the first 2003 6.0-liter diesel engine]. Freese mentioned open issues that were “of particularly great concern,” including ICP failures, piston failures, and injector failures. The issue was considered so serious that Ford considered extending its production of the predecessor 7.3-liter engine due to concern that the 6.0L Engine would not be ready for production. Freese wanted an answer on May 17, 2002 in order to make the decision on the last possible day, Saturday, May 18, 2002.

**ANSWER:** Ford admits that the first sentence of Paragraph 28 accurately quotes language from an email from Charlie Freese dated May 15, 2002. Ford further admits that Mr. Freese was at that time Ford’s Chief Engineer of Diesel Engines. Ford further admits that Mr. Freese’s email identifies “ICP Failures,” “Piston Failures,” and “Injector Failures” as “open issues . . . of particularly great concern.” Ford further admits that Mr. Freese requested information by May 17, 2002 and stated: “If this information is not available by Friday [May 17, 2002], we must seriously consider extending 7.3L production and delaying J#1.” Ford further admits that the May 15, 2002 email states that a decision on the possible extension and delay was required by May 18, 2002. Ford further admits that these statements expressed Mr. Freese’s views at the time they were written.

29. On May 29, 2002, Freese emailed a large team of Ford and Navistar personnel regarding the planned timing of Job #1. The launch team had given up the plan for an August 1, 2002 launch and assessed the risk as “manageable” for a November 4, 2002 launch. Freese’s email noted that “[s]everal recent failures surfaced new concerns, which also require immediate attention.” Freese cautioned, “[w]e must continue working together w/ a continued sense of urgency, to address the remaining open issues,” and further set forth some “key near term concerns,” many of which “require[ed] [sic] over the next few days.” The email informed the team that only four days remained to close out nine separate “key open issues” in order to met

the June 3, 2002 delayed engine build kick-off. Some of the nine key open issues listed were: No. 2, "Injector Failures Persist"; No. 4, dealing with the design of the ICP sensor which still needed durability validated; No. 5, dealing with testing of head gaskets; No. 7, dealing with a new turbocharger which Ford and Navistar had not even begun to analyze; No. 8, a new rough engine idle problem; and No. 9, a failure of the IDM (injector driver module) during cold operation experienced by multiple vehicles, with no root cause identified.

**ANSWER:** Ford admits that Charlie Freese sent an email dated May 29, 2002 to a number of Ford and Navistar personnel and that the email addresses issues related to the 6.0-liter engine build kick-off and Job #1 timing. As for the allegation that "[t]he launch team had given up the plan for an August 1, 2002 launch," Ford is without information sufficient to form a belief as to the truth of the allegation and on that basis denies it. Ford admits that the email states: "As of last week, the launch team assessed the ongoing risk as manageable for 04NOV02." Ford further admits that the email states: "Several recent failures surfaced new concerns, which require immediate attention. We must continue working together w/ a continued sense of urgency to address the remaining open issues. The purpose of this note is to summarize some key near term concerns. Many require closure over the next few days." Ford further admits that the email states: "I understand the engine build kick-off was delayed to Monday (03JUN02). That gives us four days to work on closing-out the key open issues (1 through 9, below)." Ford further admits that among the open issues listed in the email are No. 2 "Injector Failures Persist"; No. 4 "ICP Sensor Qualification on Key Life & Durability Tests"; No. 5 "500 Hour Thermal Cycle Test (Related to Head Gasket Joint Qualification)"; No. 7 "Turbocharger Failure on the Calibration Vehicle in Denver"; No. 8 "New Failure at ATEO – Cold Cylinder and Low Power"; and No. 9 "Intermittent IDM Drop-Out Identified During Cold Operation," which was exhibited on multiple vehicles and for which no root cause was identified. Ford further admits that the May 29, 2002 email expresses Mr. Freese's views at the time the email was written.

30. Ford held a New Model Launch Meeting on July 30, 2002. At that meeting, Job #1 was still slated for the Kentucky Plant on November 4, 2002. The 6.0L engine was still considered to have “Major Issues” that Ford did not understand. The problem of injector plunger scoring (which causes fuel leakage, incomplete combustion and excess soot) was still listed as “Root cause undetermined.” Intermittent engine stall was likewise characterized as a “Major Issue.” There was a discussion that some problems would have to be resolved after Job #1, on March 3, 2003, when the vehicles were already being produced and sold.

**ANSWER:** Ford admits that a presentation entitled “2003.25 Super Duty/Excursion <LR> Milestone Update: New Model Launch Meeting July 30, 2002” shows “Job #1” was scheduled for October-November 2002 and states: “11/4 KTP.” Ford further admits that this document lists “6.0L Major Issues,” which include: “Injector plunger scoring is causing fuel leakage and sump oil dilution,” with “[r]oot cause undetermined.” Ford further admits that the “6.0L Major Issues” also include “Intermittent Engine Stall.” Ford further admits that the presentation projects a March 3, 2003 completion date for some actions. Ford is without information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 30 and on that basis denies those allegations.

31. In reviewing the readiness of suppliers, 21 suppliers of 29 parts were selected as High Impact. Fifteen suppliers with 23 parts were rated Green, but 4 suppliers with 4 parts were rated red, and Ford knew that 2 suppliers with 2 parts had no chance of being ready and were “moved to post Job #1 running changes, meaning that these updates would not be included in the first engines sold. Significantly, Navistar was specifically singled out and rated “High Risk” due to lack of durability testing and late design changes. The recommendation was to “Proceed with International [*i.e.*, Navistar] deep-dive review to confirm root cause and containment of critical issues.”

**ANSWER:** Ford admits that the presentation entitled “2003.25 Super Duty/Excursion <LR> Milestone Update: New Model Launch Meeting July 30, 2002” states that “21 suppliers with 29 parts were selected as High Impact,” “15 suppliers with 23 parts rated GREEN,” and “4 suppliers with 4 parts rated RED.” Ford further admits that the presentation stated that “2 suppliers with 2 parts moved to post Job#1 running changes” and that this statement meant some updates would not be included at Job #1. Ford further admits that this presentation lists

Navistar's "PPAP Risk Assessment" as "High," with the reasons listed as "Late ES Testing / Late Design Changes." Ford further admits that this presentation includes under "Recommendations": "Proceed with International [Navistar] deep-dive review to confirm root cause and containment of critical issues." Ford further admits that the presentation expressed its author's views at the time it was prepared. Ford denies each and every other allegation contained in Paragraph 31.

32. Pursuant to Charlie Freese's email, as of August 23, 2002, Ford was still addressing injector defects causing idle problems, cold start problems, engine stall problems, and injector failures. Navistar began a new process for injectors and planned to ship the first three engines with these new process injectors to Ford on August 28-30, with additional injectors supplied the week of September 2. Ford's durability tests for these engines were scheduled for completion the week of October 9, 2002, less than a month before Job #1.

**ANSWER:** Ford admits that an email from Charlie Freese, dated August 23, 2002, states that it is a "brief 6.0L V8 (2003-1/4MY) Powertrain Issues Update for August 23, 2002" and that the email addresses injector issues related to idle instability, cold starts, engine stalls, and injector failures. Ford is without information sufficient to form a belief as to the truth of the allegation that "Navistar began a new process for injectors" and on that basis denies the allegation. Ford admits that the August 23, 2002 email states that a "new process injector-equipped engine" would be shipped to Ford on August 28, 2002, that a second engine would be shipped on August 29, 2002, and that additional injectors would be supplied the week of September 2, 2002. Ford further admits that the email states that completion of durability tests on these units was projected for the week of October 9, 2002. Ford denies that this August 23, 2002 email refers to "injector defects" or states that "injector defects" caused idle problems, cold start problems, or engine stall problems. Ford admits that the email expresses the views of Mr. Freese at the time it was written.



33. Finally, Ford decided it could not continue delaying the launch, and instead began producing and selling a vehicle with a known defective engine. On November 12, 2002, Steven Henderson wrote:

As you noted, **we're in the middle of 6.0L launch, and as you may have heard, things are not going well.** J1 [Job #1] for the 6.0L was delayed a full week for International to work on these issues, but **they are not fully resolved yet.** The entire International team is either down at the plant or working full time on this issue.

**ANSWER:** Ford admits that Paragraph 33 accurately quotes language from an email from Steven Henderson dated November 12, 2002, except that the email states “the issues” not “these issues” and the email does not include boldface text or underlining. Ford denies each and every other allegation contained in Paragraph 33.

**B. The 6.0L Engine's Defects Caused the Same Primary Components to Malfunction: Injectors, EGR Valves, EGR Coolers, Turbochargers, Oil Coolers, and Rear Seals**

34. Ford's inability to resolve the multiple major defects in the engine pre-launch had the expected result. That is, with defective engines being put in vehicles despite the inability to repair the defects, an unprecedented number of malfunctions began to occur. Moreover, the consistency with which the same components on the 6.0L failed was striking. John Koszewnik, Ford's Director, North American Diesel, identified the primary components that were having problems in 2003 as the “injectors, turbo chargers, EGR valves, [and] EGR coolers.”

**ANSWER:** Ford admits that during a February 16, 2011 deposition, John Koszewnik identified injectors, turbo chargers, EGR valves and EGR coolers as “components that were having problems in the 6.0-liter engine starting in 2003.” Ford further admits that Mr. Koszewnik was formerly Ford's Director of North American Diesel, JV's and Alliances and that Mr. Koszewnik's statements expressed his views. Ford denies each and every other allegation contained in Paragraph 34.

35. Bob Fascetti, Mr. Koszewnik's successor, similarly explained that the “early '03, '04 issues with the 6.0L were the turbo charger systems, fuel injection systems, head gasket, EGR valves, coolers plugging.” Despite the fact that—according to Mr. Fascetti—“Ford assigned 70 engineers to assist Navistar on a full-time basis in identifying and resolving problems with the 6.0-liter engine,” in January 2007, after the 6.0L was no longer in widespread

production, a joint Ford-Navistar meeting involving the 6.0L Engine included an “update” on the same issues that had plagued the engine since its introduction: “Injector Induction Heat, Turbo, EGR Valve, Rear Seal, and EGR Cooler.”<sup>6</sup> Ford’s Quarterback Department Manager, Colin Horbal, present at the meeting, admitted that Ford was still having “quality issues” with these items. Similarly, in July 2007 a Ford Product Development Quality Review (“PDQR”) meeting discussed “diesel warranty spend” and noted that: “Causal parts were the usual suspects: Cylinder Head/Head Gasket, Engine Assembly, EGR Cooler, EGR Valve.”<sup>7</sup>

**ANSWER:** Ford admits that Robert Fascetti testified in a deposition on August 12, 2008 that “early 2003, 2004 issues” related to the 6.0-liter engine included “turbo charger systems, fuel injection systems, head gasket, EGR valves, coolers plugging.” Ford admits that Mr. Fascetti’s statements represented his views. Ford denies that the exact language enclosed in quotation marks in the first sentence of Paragraph 35 appears in the transcript of Mr. Fascetti’s August 12, 2008 deposition. Ford further admits that in an affidavit dated February 28, 2007, Mr. Fascetti stated: “Ford assembled a team of approximately 70 engineers to assist Navistar full-time in identifying and resolving problems with the 6.0L.” Ford further admits that Mr. Fascetti’s statement was true. Ford denies that the exact language contained within quotation marks in the first clause of the second sentence of Paragraph 35 appears in Mr. Fascetti’s affidavit. Ford denies that the 6.0-liter diesel engine was no longer in widespread production in January 2007. Ford admits that an agenda for a Navistar/Ford “International Truck and Engine IDA CTW Commodity Review January 26, 2007” lists an item for the 6.0-liter engine entitled “Update” with sub-items “Injector Induction Heat, Turbo, EGR Valve, Rear Seal, EGR Cooler.” Ford further admits that Colin Horbal attended the January 26, 2007 meeting and that at the time he was Ford’s Manager for the V-Engine North American Diesel Quarterback Department. Ford admits that Mr. Horbal testified in a deposition taken on March 23, 2011 that there had been “quality issues” with the 6.0-liter engine’s injector induction heat, turbo, EGR valve, rear seal

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<sup>6</sup> International Truck & Engine IDA CTW Commodity Review, Jan. 26, 2007.

<sup>7</sup> Colin Horbal email to Barb Samardzich, July 9, 2007.

and EGR cooler in January 2007. Ford admits that Mr. Horbal's testimony represented his views. Ford admits that an email sent by Mr. Fascetti on July 9, 2007 to Barb Samardzich attached a presentation entitled "PDQR, F > 8500, Diesel, July 10, 2007," which included a slide entitled "Diesel Warranty Spend," that stated "Causal parts are the usual suspects – Cylinder Head/Head Gasket, Engine Ass'y, EGR Cooler, EGR Valve." Ford admits that the presentation represented its author's views at the time it was prepared. Ford denies each and every other allegation in Paragraph 35.

36. Not only were these defects consistent throughout time (from the beginning to the end of the production of the 6.0L Engine), they were consistent throughout geography. For example, on April 18, 2005, Don Kaercher from Ford's Customer Service Division wrote that Ford's warranty analysis people, as well as Navistar, confirmed that they were seeing no difference in failure rates for the EGR coking on Edmonton (Canada) vehicles versus Texas vehicles, and that ambient temperature and climate had no impact.

**ANSWER:** Ford admits that an email from Don Kaercher dated April 18, 2005 states that "the warranty analysis people from Ford confirmed they see no difference in failure rates for EGR coking on Edmonton vehicles versus Texas vehicles" and states that Navistar "also said that is what their analysis is showing." Ford further admits that Mr. Kaercher was part of Ford's Customer Service Division. Ford denies each and every other allegation contained in Paragraph 36.

37. A Ford engineer acknowledged that the problems with the 6.0L Engine—at least the "usual suspects": injectors, turbo charger, EGR components, fuel system components, and engine components—had the same root causes. In January 2006 (the last year of mass production of the 6.0L and after more than 75% of the 6.0L Engines had been placed in service), Mark Freeland, a Ford engineer under the direction of John Koszewnik, Director, North American Diesel, conducted an analysis of 6.0L warranty claims to determine the root causes of the problems that continued to plague the engine. He made the following observations:

- "It is likely that these symptoms are all the result of the same root causes."
- "Further I would hypothesize . . . that the same root cause or causes are responsible for the majority of all claims."

- “There had been many changes made to ‘fix the Injector’ warranty issue, but none seem to be effective at reducing the base level of the warranty [spend].”
- “The probability of multiple injectors failing simultaneously on the same engine is quite remote, unless the failure is the result of another system issue.”
- “THE LIST GOES ON, MANY OTHER SEEMING UNRELATED FAILURES ARE CAUSED BY THE INJECTOR SEALING ISSUES.”<sup>8</sup>

Based on his testing, observations, and analysis, Mr. Freeland concluded the following:

**CONCLUSIONS:**

A very large portion, if not most of, the common cause of the Injector, Turbo Charger, EGR Components, Fuel System Components and Engine Components warranty [repairs/spend] is being caused by leaks between the Fuel Rail, the combustion chamber and the coolant jacket.<sup>9</sup>

**ANSWER:** Ford admits that an email from John Koszewnik to Frank Abkenar, Mina Shams, et al., dated February 6, 2006, included an attachment entitled “6.0L Powerstroke Injector: December 2005 Warranty Claims – Analysis of Warranty Claims to find the ‘Technical Contradictions’ which needs to be resolved, before the problem can be solved,” dated January 31, 2006 and marked as prepared by Mark Freeland, who was then a Ford engineer. Ford further admits that, in reference to codes for “No starts, Difficult to Start or Stalls,” the attachment includes the statement: “It is likely that these symptoms are all the result of the same root causes.” Ford further admits that the attachment includes the statement: “Further I would hypothesize that as the shape of the D02/D03/D21 CCC [customer concern codes] is very similar to the shape of all CCC’s combined, that the same root cause or causes are responsible for the majority of all claims.” Ford further admits that the attachment includes the statement: “There have been many changes made to ‘fix the Injector’ warranty issue, but none seem to have been effective at reducing the base level of the warranty.” Ford further admits that the attachment

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<sup>8</sup> John Koszewnik email to Frank Abkenar, Mina Shams, et al., Feb. 6, 2006.

<sup>9</sup> *Id.*

includes the statement: “The probability of multiple injectors failing simultaneously on the same engine is quite remote, unless the failure is the result of another system issue.” Ford further admits that the attachment includes the statement: “THE LIST GOES ON, MANY OTHER SEEMING UNRELATED FAILURES [sic] ARE CAUSED BY THE INJECTOR SEALING ISSUES.” Ford further admits that a page of the attachment entitled “CONCLUSIONS” includes the statement: “A very large portion, if not most of, the common cause of the Injector, Turbo Charger, EGR Components, Fuel System Components and Engine Components is being caused by leaks between the Fuel Rail, the combustion chamber and the coolant jacket.” Ford denies that the attachment states that these conclusions are based on “observations” or “testing.” Ford admits that the attachment represents the views of its author at the time it was prepared. Ford denies that 2006 was the last year of mass production of the 6.0-liter diesel engine. Ford is without information sufficient to form a belief as to the truth of the allegation that 75% of the 6.0-liter diesel engines had been put in service by January 2006 and on that basis denies the allegation. Ford denies each and every other allegation in Paragraph 37, including its footnotes.

38. Ford likewise recognized some of these defects in Technical Service Bulletins (TSB) and Special Service Messages (SSM) issued pertinent to the 6.0L Engines. TSBs are documents Ford issues to its dealers to aid them in locating and repairing certain problems or defects. TSBs describe the symptoms of the problem or defect and either detail a method of diagnosing, mitigating or repairing it, or refer the technician to another Ford document which describes a repair procedure. Ford issued numerous TSBs related to the Root Cause Components of the 6.0L diesel engine system. Ford’s TSBs demonstrate the ongoing problems with Ford’s 6.0L Engine, the fact that Ford was aware of the problems with these engines, and Ford’s failure to adequately address the issues by failing to properly repair or replaces these defective engines.

**ANSWER:** Ford denies each and every allegation in Paragraph 38, except that Ford admits that it has issued Technical Service Bulletins (“TSBs”) and Special Service Messages (“SSMs”) related to the 6.0-liter Power Stroke diesel engine and its components. Ford

specifically denies that it ever admitted that the 6.0-liter Power Stroke diesel engine or any of its components were defective.

**C. Ford Admitted to Having No Definitive Repair Action**

39. Ford's inability to repair the 6.0L Engine and its core problems is exemplified by a September 7, 2004 memo from Frank Ligon, Ford's Director of Service Engineering Operations, addressing 6.0L "Buy-Backs":

This is very confidential!!!

. . . Bottom line is we are not "out of the woods" on this 6.0 . . . . **At this point we do not have a definitive repair action or production parts to properly address the concern universe.** The best course of action is to have the dealer contact the hotline. **I strongly urge that this information NOT be shared at this time until the "official" action is announced.**

Ford's CBG Manager for 2005-2007, Michael Berardi, admitted that—in the context of Ligon's September 2004 admission that Ford lacked a "definitive repair action or production parts to properly address the concern universe"—the same situation continued in 2005 and 2006.<sup>10</sup>

**ANSWER:** Ford admits that Paragraph 39 accurately quotes language from an email from Frank Ligon dated September 7, 2004, except that the email has no boldfaced text. Ford further admits that Mr. Ligon was at that time Ford's Director of Service Engineering Operations. Ford admits that Michael Berardi was a CBG manager for Ford from 2005 to 2007. Ford denies that Paragraph 39 accurately represents Mr. Berardi's testimony in a deposition on January 20, 2011. Ford further denies each and every other allegation in Paragraph 39, including its footnotes.

40. As evidence of that, in June 2006—after the 6.0L had been in production for over four years (and only six months before the end of widespread production)—Ford engineer Mike Frommann emailed regarding one of the "usual suspects," the head gasket:

We unfortunately **exceeded our own** cylinder pressure **specs in normally** performing engines. We don't want to have our cylinder pressure specs published or documented by having them subpoenaed or we might face **a class action.**

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<sup>10</sup> Berardi could not remember whether the same situation continued in 2007.

When we have a **defect**, we have to honor our warranty. . . . **I recommend we all delete these emails.**<sup>11</sup>

**ANSWER:** Ford admits that Paragraph 40 accurately quotes language from an email from Mike Frommann dated June 13, 2006 and that Mr. Frommann was at that time a Ford engineer. Ford admits that the email represented Mr. Frommann's views at the time it was written. Ford admits that production of the 6.0-liter engine began in 2002. Ford denies that June 2006 was six months before the end of widespread production of the 6.0-liter diesel engine. Ford denies each and every other allegation in Paragraph 40, including its footnotes.

41. Not surprisingly, one of the key recipients of Frommann's email, Mina Shams, 6.0L Diesel Pride Campaign leader and Systems Diagnostics Supervisor, did not respond substantively to Frommann's email, but instead—only 16 minutes later—requested his phone number.<sup>12</sup> Also regarding the head gasket, John Koszewnik wrote, on July 8, 2005 that the head gasket was failing due to factors including: (1) a less than robust engine design; (2) poor manufacturing, with a “waviness” in the cylinder head deck that prevented it from sealing properly; and (3) cooling systems that did not sufficiently cool the engine.<sup>13</sup>

**ANSWER:** Ford admits that Mina Shams responded to Mike Frommann's June 13, 2006 email 16 minutes after it was sent and asked for Mr. Frommann's phone number. Ford further admits that Ms. Shams was at that time the 6.0L Diesel Pride Campaign Leader & System Diagnostics Supervisor. Ford further admits that an email from John Koszewnik dated July 8, 2005 stated that there were “a number of factors at work” in relation to the Power Stroke head gaskets, including: (1) “A less than robust engine design”; (2) “Poor manufacturing – cylinder head deck face waviness in excess of what Bruce Bussell believes will seal robustly”; and (3) cooling system problems. Ford denies each and every other allegation contained in Paragraph 41.

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<sup>11</sup> Mike Frommann email to Mina Shams, et al., June 13, 2006 (emphasis added).

<sup>12</sup> *See id.* Ford's admission that 6.0L engines performing “normally” exceed Ford's own cylinder pressure specifications causing gasket leaks confirms that blown head gaskets are caused by a defective design.

<sup>13</sup> John Koszewnik email to Dave Szczupak, et. al. July 8, 2005.

42. On July 22, 2005, Chris Bolen, Ford's Director of North America Powertrain Manufacturing, wrote, "in my 32 years at Ford I have not experienced such [negative] feedback regarding one of our products. It's clear that we still have a lot of work to do to improve Diesel quality levels, and that our current warranty performance is having disastrous effects on this customer and segment." Bob Fascetti, Director of V-Engine and Diesel Engineering for Ford, explained in 2008 that the core problems with the 6.0L "only got fixed to a certain point." Specifically, Mr. Fascetti stated that as to head gasket leaks, it "only got fixed to a certain point" and had "not been solved." As to the EGR valve, it was fixed only "to a degree" and Ford "still fail[s] EGR systems." Similarly, when asked if the EGR cooler was "fixed or not fixed," Mr. Fascetti responded "no," and testified that "neither the [Navistar] engineers nor the Ford engineers made it go to zero."

**ANSWER:** Ford admits that a memorandum from Chris Bolen dated July 22, 2005 states: "[I]n my 32 years at Ford I have not experienced such feedback regarding one of our products. It's clear that we still have a lot of work to do to improve Diesel quality levels, and that our current warranty performance is having disastrous effects on this customer and segment." Ford denies that the word "negative" appears in Mr. Bolen's memorandum. Ford further admits that Mr. Bolen was Ford's Director of North American Powertrain Manufacturing. Ford admits that Robert Fascetti was the Director of V-Engine and Diesel Engineering for the North American Engine Organization of Ford Motor Company. Ford denies that at his deposition on August 12, 2008, Mr. Fascetti explained that "core problems" with the 6.0L engine "only got fixed to a certain point." Ford admits that Mr. Fascetti testified that head gasket leaks "only got fixed to a certain point." Ford denies that Mr. Fascetti specifically testified that head gasket leaks had "not been solved." Ford admits that Mr. Fascetti testified that a problem with poor combustion generation that affected the EGR valve was fixed "to a degree," and that Mr. Fascetti testified: "We still fail EGR systems." Ford further admits that Mr. Fascetti responded "no" when asked if the EGR cooler was "fixed or not fixed," and that Mr. Fascetti testified: "Neither the ITEC engineers nor the Ford engineers made it go to zero." Ford admits that Mr. Fascetti's testimony represented his views.



43. As late as June 22, 2007—six months after Ford stopped mass production of the 6.0L—Ford’s Vice President for Powertrain Product Development, Barb Samardzich, referred to the “continued poor performance of the 6.0L (*i.e.*, worse than our WFA assumptions).”<sup>14</sup> Colin Horbal, Manager of the North American Diesel Quarterback Department, reported to Ms. Samardzich at the July 2007 PDQR that the “warranty spend” on the 6.0L was \$11 million greater than anticipated for the most recent four-month tracking period, despite the fact that “no new failure modes had been identified through claims analysis.” Rather, Mr. Horbal reported that the “increased spend is driven by more claims, not an increase in cost per claim.”<sup>15</sup>

**ANSWER:** Ford admits that Paragraph 43 accurately quotes language from an email sent by Barb Samardzich to Colin Horbal, dated June 22, 2007. Ford further admits that at the time Ms. Samardzich was Ford’s Vice President for Powertrain Product Development and that the email represented her views at the time it was written. Ford denies that it stopped mass production of the 6.0-liter engine six months prior to June 22, 2007. Ford admits that it had a “Way Forward Acceleration Plan.” Ford further admits that an email from Colin Horbal to Ms. Samardzich, dated July 9, 2007, attached a presentation entitled “PDQR: F>8500, Diesel, July 10, 2007.” Ford further admits that on July 9, 2007 Mr. Horbal was Ford’s Manager for the V-Engine North American Diesel Quarterback Department. Ford further admits that a slide in the presentation entitled “Warranty Spend Analysis” includes the statement: “\$11M deficit Jan – Apr.” Ford further admits that a slide entitled “Diesel Warranty Spend” includes the statements “Spend is driven by more claims, not an increase in cost per claim” and “No new failure modes have been identified thru claims analysis.” Ford admits that the presentation represented its author’s views at the time it was prepared. Ford denies each and every other allegation contained in Paragraph 43, including its footnotes.

**D. Ford Sued Navistar Concerning the Defect**

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<sup>14</sup> Barb Samardzich email to Colin Horbal, June 22, 2007. “WFA” was Ford’s “Way Forward Acceleration Plan” to improve financially in all aspects by 15% annually beginning with the 2008 model year.

<sup>15</sup> Colin Horbal email to Barb Samardzich, July 9, 2007.

44. Ultimately, Ford sued Navistar in Michigan state court in March 2007, seeking \$493 million in damages for warranty costs, including a portion of some \$84 million spent buying back vehicles specifically attributable to 6.0L issues.<sup>16</sup> It was in that context that Bob Fascetti, Ford's Director of Diesel Engineering, attested to the following:

Ford has experienced unprecedented repair rates with the 6.0L engines. The 6.0L has had the largest R/1000 (repairs per thousand) rate ever experienced by Ford for an engine in widespread production. In fact, the 6.0L, which represents only 10% of Ford's total engine volume, accounts for approximately 80% of all of Ford's warranty spending on engines. Additionally, warranty spending on the 6.0L accounts for approximately 25% of Ford's overall warranty spending."<sup>17</sup>

**ANSWER:** Ford admits that it brought suit against Navistar in March 2007 in *Ford Motor Co. v. Navistar Int'l Transp. Corp., et al.*, Case No. 07-080067-CK, before the Circuit Court of Oakland County, Michigan. Ford denies that its complaint in that lawsuit requested \$493 million. Ford admits that Ford Motor Company's Brief in Support of Its Motion for Temporary Restraining Order and Preliminary Injunction in that lawsuit stated that Navistar owed Ford over \$400 million. Ford further admits that the same brief and an attached affidavit by Jim Glass stated that Ford had spent over \$84 million in reacquiring vehicles attributable specifically to issues with the 6.0-liter engine. Ford further admits that Paragraph 44 accurately quotes language from an affidavit prepared in the course of that litigation by Robert Fascetti, then Director of V-Engine and Diesel Engineering for the North American Engine Organization of Ford Motor Company, dated February 28, 2007. Ford further admits that Mr. Fascetti's affidavit was true.

45. Ford's documents, testimony, and judicial admissions make it clear that the problems with the 6.0L Engine were the result of defects in the engine design. Yet, in the words of Bob Fascetti, as the Navistar "engine was falling apart," Navistar contended that "most of the failures weren't their problem."

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<sup>16</sup> Ford Motor Company's Brief in Support of Its Motion For Temporary Restraining Order and Preliminary Injunction, *Ford v. Navistar*, CA07-080067-CK, Circuit Court of the County of Oakland, Michigan, at 5-6 and attached Aff. of Jim Glass, Reacquired Vehicle Operations Supervisor, Ford Motor Company, Feb. 28, 2007.

<sup>17</sup> Fascetti Aff., Feb. 28, 2007.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 45, except Ford admits that Paragraph 45 accurately quotes language from an August 12, 2008 deposition of Robert Fascetti.

46. Ford's customers were caught in the crossfire between Ford and Navistar. For example, John Koszewnik, Ford's Director, North American Diesel, in February 2006—the last year of mass production of the 6.0L—complained that he “considered an EGR valve upgrade to be a ‘no brainer’,” but the Ford Program Team “would always fall back on the argument that they didn't pay originally for a **deficient design**, therefore, they weren't going to pay for an upgrade.”<sup>18</sup> Of course, Navistar's “position was simple: no added pricing, no added content.”<sup>19</sup> Koszewnik could not get Ford Motor Company to approve an upgraded EGR valve for the 6.0L, “because there was no agreement with [Navistar] on pricing and content.”<sup>20</sup>

**ANSWER:** Ford admits that the second sentence of Paragraph 46 accurately quotes language from an email from John Koszewnik to Brian Vought, dated February 5, 2006. Ford further admits that at the time Mr. Koszewnik was Ford's Director of North American Diesel, JV's, and Alliances. Ford further admits that in a deposition taken on February 16, 2011, Mr. Koszewnik testified that Ford did not approve an upgraded EGR valve for the 6.0-liter engine “because there was no agreement with [Navistar] on price and content.” Ford further admits that Mr. Koszewnik's statements represent his views. Ford denies that 2006 was the last year of mass production of the 6.0-liter diesel engine. Ford denies each and every other allegation in Paragraph 46, including its footnotes.

47. Similarly, Ford found problems in 86% of the 6.0L's injectors and 95% of its turbochargers returned under warranty when tested under “real world” conditions, refuting Navistar's claim that there were no problems in these same parts.

**ANSWER:** Ford admits that in an affidavit dated February 28, 2007, Mina Shams stated that Navistar refused to pay warranty costs on 6.0-liter fuel injectors, “citing the results of certain

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<sup>18</sup> John Koszewnik email to Brian Vought, Feb. 5, 2006 (emphasis added).

<sup>19</sup> *Id.*

<sup>20</sup> Koszewnik Dep., Feb. 16, 2011, at 279:21-280:25.

tests that Navistar claims failed to identify problems in many injectors that were returned under warranty. However, when the injectors were re-tested under conditions that more closely approximated real-world 'cold-start' conditions, 86% of injectors were found to have problems." Ford further admits that Ms. Shams stated in the same affidavit that Navistar also refused to pay warranty costs on 6.0-liter turbochargers, "again citing the results of post-repair testing. Once again, when more accurate tests were run, the tests found problems in more than 95% of turbochargers returned under warranty." Ford admits that Ms. Shams' statements were true.

48. The pleadings in *Navistar* demonstrate that the problems Ford's customers have experienced with the 6.0L Engines are due to a defectively designed and manufactured engine.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 48. Ford specifically denies that it ever admitted, in *Ford v. Navistar* or elsewhere, that the 6.0-liter Power Stroke engine or any of its components were defective.

E. **Ford Failed to Disclose the 6.0L Engine's Defects While Touting the Engine's Supposedly Superior Attributes.**

49. As the foregoing allegations demonstrate, Ford knew from the outset that there were severe and pervasive design, manufacturing, and quality issues plaguing the Ford 6.0L Engines. Yet, despite this knowledge, Ford never disclosed any of these issues to consumers.

**ANSWER:** Ford denies each and every allegation in Paragraph 49.

50. To the contrary, at the same time that Ford and Navistar were battling over the quality issues and defects plaguing the Ford 6.0L Engines, Ford was making precisely the opposite representations to consumers as to the quality of the engine and the vehicles it powered. For example, in its sales brochure for the 2005 Ford F-250 truck, Ford touted to consumers that:

- a. The 2005 Ford F-250 and Ford F-350 trucks had the "Best Power," explicitly referencing the "6.0L 32 Valve Power Stroke<sup>®</sup> V8 Turbo Diesel;"
- b. The Ford F-250 and F-350 were equipped with a "Best in Class" "Longest-Lasting Diesel Engine;"

- c. “Longest-Lasting Diesel: Cast-Iron Block Head—This proven architecture withstands the higher combustion pressure of peak diesel operation. The stiff bedplate provides rigidity. Electro-Hydraulic Direct Injection (EDHI), 4-valve induction, and electronic engine control promote efficient combustion for optimized horsepower and torque. All-together the 6.0L Power Stroke® is the longest-lasting diesel in its class;” and
- d. “Power Stroke V8 Turbo Diesel—F-Series Super Duty outpulls the competition from a dead stop, in a 0-60 mph tow off. It’s done through careful powertrain management from engine to gearing to wheels and tire. The result is more—capable trucks.”

**ANSWER:** Ford admits that Paragraph 50(a) accurately quotes language from a brochure for the 2005 Ford F-250/F-350 Super Duty Ford truck. Ford admits the same brochure includes the statement “Best in Class” and includes below that statement: “Longest-Lasting Diesel Engine.” Ford admits that Paragraph 50(c) and (d) accurately quote language from the same brochure. Ford denies each and every other allegation contained in Paragraph 50.

51. The sales brochure is but one of the many advertisements and representations that Ford disseminated about the Ford F-Super Duty truck series that were equipped with the 6.0L Engines. Despite knowing that the engines were plagued with what Ford internally described as “unprecedented problems,” Ford orchestrated and implemented a widespread advertising and marketing campaign to convince consumers that the precise opposite was true; namely, that the engines and vehicles were of superior quality, design, manufacture, and reliability. In this regard, Mark Fields, Ford’s then President of the Americas, publicly proclaimed that the Navistar 6.0L Power Stroke diesel engine—the very same engine whose design and quality issues led Ford to sue Navistar—was a “great engine.” Despite its knowledge of the 6.0L Engine’s many flaws and quality concerns, Ford trained its dealers throughout the country to specifically tout the supposedly superior attributes of the engine, without ever mentioning its troubled history of design, manufacturing, and reliability defects.

**ANSWER:** Ford admits that it disseminated advertisements about the Ford F-series Super Duty trucks equipped with the 6.0-liter engine to consumers through various types of media. Ford further admits that Mark Fields referred to the 6.0-liter Power Stroke engine as a “great engine.” Ford denies each and every other allegation contained in Paragraph 51.

**F. Ford Opted to Reduce Warranty Spend Instead of Fixing the Defect and Complying with its Warranty Obligations.**

52. While Ford was pursuing its \$493 million lawsuit against Navistar, Ford shifted its efforts from trying to repair issues with the 6.0L—which was near the end of its production life—to simply reducing Ford’s warranty spend.

**ANSWER:** Ford denies each and every allegation in Paragraph 52.

53. Ford’s vehicles containing the 6.0L Engines were sold with Ford’s Limited Warranty, including the 6.0L Powerstroke Diesel Engine warranty, which covers the “engine and engine components against defects in factory-supplied materials or workmanship for five years after the warranty start date or 100,000 miles, whichever occurs first,” and provides that “[d]uring this coverage period, authorized Ford Motor Company dealers will repair, replace, or adjust all parts on your vehicle that are defective in factory-supplied materials or workmanship.”

**ANSWER:** Ford admits that new Ford vehicles are sold with Ford’s “New Vehicle Limited Warranty.” Ford further admits that the New Vehicle Limited Warranty states that it “covers the direct injection diesel engine and engine components against defects in factory-supplied materials or workmanship for five years after the warranty start date or 100,000 miles, whichever occurs first.” Ford further admits that the New Vehicle Limited Warranty provides that during the applicable coverage period, and subject to certain specified limitations, authorized Ford Motor Company dealers will repair, replace, or adjust covered parts on the covered vehicle that are defective in factory-supplied materials or workmanship.

54. In 2006, for example, among Ford’s “6.0L Top Parts Warranty Actions” were new procedures adopted to address “turbo coking” and “EGR coking,” issues that had plagued the engine since its inception. Rather than replace the coked turbo charger or EGR valve, Ford commenced a program in mid-2006 of simply “cleaning” the parts in question, thus saving Ford a projected \$9 million and \$2.5 million in warranty spend, respectively, on those two items.<sup>21</sup> Mr. Horbal, Ford’s Quarterback Department Manager, later admitted that “simply cleaning the coking off the turbo” would “not address the root cause of what created the coking to begin with,” and that—if only cleaning was done—Ford would save millions in projected warranty spending on that item, but simply postpone the problem for the customer. Similarly, in the previously-referenced email from Mr. Horbal to Barb Samardzich in July 2007, Mr. Horbal

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<sup>21</sup> Colin Horbal email to Rick Renwick, et al, Feb. 20, 2007.

characterized his “assignments” from a prior PDQR as “Continue to Look for More Service Cost Reductions” with respect to the 6.0L engine.<sup>22</sup>

**ANSWER:** Ford admits that an email from Colin Horbal to Rick Renwick et al., dated February 20, 2007, attached a presentation including a slide entitled “6.0L Top Parts Warranty Action.” Ford further admits that at the time Mr. Horbal was the Manager for Ford’s V-Engine North American Diesel Quarterback Department. Ford further admits that a slide in the presentation entitled “6.0L Top Parts Warranty Action” listed “Cleaning” among actions taken in 2006 in relation to “Turbo Coking” and EGR Coking.” Ford further admits that the slide included columns entitled “w/o Action” and “w/ Action” showing costs were \$9 million and \$2.5 million less, respectively, with these two cleaning actions. Ford further admits that Mr. Horbal admitted in a deposition taken on March 23, 2011 that it was “possible” that “simply cleaning the coking off the turbo” would not address the root cause of what caused the coking, but would save warranty spending and postpone the problem for the customer. Ford further admits that Mr. Horbal’s testimony represented his views. Ford further admits that an email from Mr. Horbal to Barb Samardzich, dated July 9, 2007, included a presentation listing among “Open Assignments from May 22 Diesel PDQR Report”: “6.0L: Continue to look for more Service Cost Reductions.” Ford denies each and every other allegation contained in Paragraph 54, including its footnotes.

55. Early in the life of the 6.0L, Ford began discussing extending the warranty beyond 100,000 miles. As early as November 2004 (2 months after Ligon’s “we do not have a definitive repair action” memo), Ford had internal discussions concerning the provision of warranty assistance beyond the 100,000 miles limitation.<sup>23</sup> John Koszewnik, Director, North American Diesel, later confirmed that this was part of what “could be done” to deal with customers.

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<sup>22</sup> Colin Horbal email to Barb Samardzich, et al., July 9, 2007.

<sup>23</sup> Nov. 1, 2004 presentation by Greg Smith, “Operation Diesel III: Proposed Initiative to Address Power Stroke Diesel Concerns and Brand Loyalty.”

**ANSWER:** Ford admits that a presentation entitled “Operation Diesel II: Proposed Initiative to Address Power Stroke Diesel Concerns and Brand Loyalty,” dated November 1, 2004, listing Greg Smith as author, and listing possible forms of additional assistance to owners of Ford trucks with the 6.0-liter engine was discussed internally at Ford. Ford further admits that the listed possibilities included after-warranty assistance beyond the 100,000-mile limitation in certain instances and ESP (extended service plan) without mileage limitations, as well as rental assistance, vehicle payment assistance, and vehicle replacement assistance. Ford denies that the last sentence of Paragraph 55 accurately represents John Koszewnik’s testimony during a February 16, 2011 deposition.

56. Ultimately, Ford adopted an internal extended warranty for fleet and other special customers, providing after-warranty financial assistance up to 6 year/150,000 miles for the 6.0L Engine,<sup>24</sup> and a “financial assistance” program for “retail and small business” owners of Super Duty/E Series trucks, for which “the new vehicle limited warranty ha[d] expired and [which] have less than 6 year/150,000 miles.”<sup>25</sup>

**ANSWER:** Ford admits that it adopted a program for fleet customers to begin April 1, 2009, as set forth in a document entitled “Fleet Management Company (FMC) Customer Loyalty Program (CLP),” and a “Super Duty E-Series Customer Handling Program,” as set forth in a document dated March 16, 2009. Ford further admits that these programs in some instances provided assistance for customers with 6.0-liter diesel engines with less than 6 years or 150,000 miles since the warranty start date. Ford denies each and every additional allegation in Paragraph 56, including its footnotes.

57. Although Ford may contend that changes in the 6.0L Engine improved performance in later versions,<sup>26</sup> it told a dramatically different story when deposed by Navistar,

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<sup>24</sup> Fleet Management Company (FMC) Customer Loyalty Program (CLP), Apr. 1, 2009.

<sup>25</sup> *Id.*, “NEW Super Duty/E-Series Customer Handling Program,” March 16, 2009.

<sup>26</sup> Ford’s list of top issues, which included problems with the root-cause-damaged components was remarkably consistent, demonstrating that regardless of the changes Ford made through the life of the engine, several top issues



stating that repair rates were high for the 2003, 2004, and 2005 engines and, though improved for the 2006 and 2007 engines, they “continued to be high,” despite Ford’s admitted initiatives to “reduce warranty spend” (as opposed to fixing the root causes). Ford’s inability to repair the 6.0L and its core problems, as well as Ford’s desire to sit on the problem rather than adequately address it, is pointedly exemplified by the September 7, 2004 Frank Ligon memo warning that Ford had no definitive repair action, but that Ford must not share that information until an “official action” was announced.

**ANSWER:** As for the allegations contained in Paragraph 57 regarding what “Ford” stated in deposition, Ford lacks sufficient information about the deponent in question to form a belief as to the truth of the allegations and on that basis denies them. Ford lacks sufficient information about the allegations contained in footnote 26 to form a belief about the truth of the allegations and on that basis denies the allegations. Ford denies that Paragraph 57 accurately represents the contents of an email from Frank Ligon dated September 7, 2004. Ford additionally denies each and every other allegation in Paragraph 57, including its footnotes.

58. It seems that no “official action” was ever announced, however, as Michael Berardi admitted that the same absence of a “definitive repair action or production parts to properly address the concern universe” continued in 2005 and 2006 (Berardi could not remember whether it continued in 2007).

**ANSWER:** Ford denies that Paragraph 58 accurately represents statements by Michael Berardi in a January 20, 2011 deposition. Ford additionally denies each and every other allegation in Paragraph 58.

59. In January 2006 (after more than 75% of the 6.0L Engines had been placed in service), Ford engineer Mark Freeland analyzed 6.0L Warranty Claims and likewise observed that it is likely that the symptoms were the result of the same root causes, and that the same root causes were responsible for the majority of all claims.<sup>27</sup> Mr. Freeland concluded the symptoms were being caused by leaks between the fuel rail, the combustion chamber and the coolant jacket.<sup>28</sup>

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remained, nine of which were the same in three or all four of the model year engines analyzed (2003.25, 2004.25, 2005 and 2006).

<sup>27</sup> John Koszewnik email to Frank Abkenar, Mina Shams, et al., Feb. 6, 2006.

<sup>28</sup> *Id.*

**ANSWER:** Ford admits that an email from John Kozewnik to Frank Abkenar, Mina Shams, et al., dated February 6, 2006, included an attachment entitled “6.0L Powerstroke Injector: December 2005 Warranty Claims,” dated January 31, 2006 and marked as prepared by Mark Freeland. Ford further admits that Mr. Freeland was a Ford engineer. Ford further admits that the attachment includes the statement: “It is likely that these symptoms are all the result of the same root causes.” Ford further admits that the attachment includes the statement: “Further I would hypothesize that as the shape of the D02/D03/D21 CCC [customer concern code] is very similar to the shape of all CCC’s combined, that the same root cause or causes are responsible for the majority of all claims.” Ford further admits that a page of the attachment entitled “CONCLUSIONS” includes the statement that certain problems were “caused by leaks between the Fuel Rail, the combustion chamber and the coolant jacket.” Ford further admits that the attachment expressed its author’s views at the time it was prepared. Ford is without information sufficient to form a belief as to the truth of the allegation that more than 75% of the 6.0-liter engines had been placed in service by January 2006 and on that basis denies the allegation.

60. The leaks identified by Mr. Freeland led to poor or incomplete combustion, a systematic problem with this engine that led to components being clogged with soot from coking. Ford’s practice of cleaning or replacing a component clogged with soot did not address the root problem of excess soot production, but instead just prolonged the time until that component or another component failed due to excessive soot. The problem of improper combustion is caused by the defective design of the engine, and not by improper maintenance or owner misuse.

**ANSWER:** Ford denies each and every allegation in Paragraph 60.

61. Six months after Mr. Freeland’s report, another Ford engineer, Mike Frommann, admitted that the 6.0L head gasket problems resulted from “exceed[ing] our own cylinder pressure specs in *normally* performing engines,” warned against having Ford’s cylinder pressure

specs “published or documented” or “subpoenaed” because Ford might face a “*class action*,” and “*recommend[ed] we all delete these emails.*”<sup>29</sup>

**ANSWER:** Ford admits Paragraph 61 accurately quotes words and phrases included in an email from Mike Frommann email to Mina Shams, et al., dated June 13, 2006, except that the email contains no boldfaced or italicized text. Ford denies that Paragraph 61 accurately represents the contents of the June 13, 2006 email.

62. Acknowledging its inability to repair the defects in the 6.0L Engines, Ford considered various pilot initiatives in an attempt to address the problem. Michael Berardi emailed Francisco “Cisco” Codina, Frank Ligon, and Bill Osborn and explained, “[p]er your request to reduce 6.0L RAVs [reacquired vehicles] (based on expanding the current “Stalls/Quit” Pilot initiative), we have developed three specific scenario’s [sic] . . . .”<sup>30</sup> “We do need to keep in mind that these initiatives will not eliminate the RAVs, as customers will continue to come into the dealership multiple times until we can honestly eliminate all the concerns with the 6.0L.”<sup>31</sup>

**ANSWER:** Ford admits that Paragraph 62 accurately quotes language from an email from Mike Berardi to Francisco Codina, Frank Ligon and William Osborne, dated October 8, 2004. Ford further admits that Mr. Berardi’s email attached a presentation providing an overview of a “quit/stalls” pilot program and potential expansions of that program. Ford denies each and every other allegation contained in Paragraph 62, including its footnotes.

63. However, Ford rejected the “Stalls/Quits” Pilot plan to have Ford technicians assist dealerships with repairing defects,<sup>32</sup> as well as the expanded “Stalls/Quits” Pilot Proposals #1 and #2.<sup>33</sup> Berardi’s email regarding these rejected initiatives states: “Please keep in mind that the biggest concern will be finding the proper resources to implement” the program.<sup>34</sup> Berardi later testified that the “resources” at issue were people, and that Ford rejected the proposals.

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<sup>29</sup> Mike Frommann email to Mina Shams, et al., June 13, 2006.

<sup>30</sup> Berardi email to Francisco “Cisco” Codina, et al., Oct. 8, 2004.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

**ANSWER:** Ford admits that Mr. Berardi testified during a January 20, 2011 deposition that the “stall/quits pilot” and two proposed expansions of the pilot were not approved. Ford further admits that Mr. Berardi’s October 8, 2004 email states: “Please keep in mind that the biggest concern will be finding the proper resources to implement.” Ford further admits that Mr. Berardi testified during the January 20, 2011 deposition that the “resources” he referred to in his October 8, 2004 email were people. Ford further admits that Mr. Berardi’s statements expressed his views.

64. Not only did Ford reject these pilot initiatives, but when suggestions were made that Ford authorize full and complete repairs of defective engines brought into Ford dealerships for repair, Ford rejected those suggestions as too expensive. Mr. Berardi emailed Bill Osbourne on October 8, 2004:

You had also mentioned throwing the “Kitchen Sink” at the vehicle during the first repair attempt to help eliminate the need to come back a second time. That particular philosophy is opposite of what we have been training our dealers to do and could lead to a very expensive warranty bill across vehicle lines.

Regarding training its dealers to do the opposite, Berardi later admitted that Ford trained its dealers to only “repair whatever component has failed as long as it wasn’t customer abuse or lack of maintenance.”

**ANSWER:** Ford admits that Paragraph 64 accurately quotes an email from Mike Berardi to Francisco Codina, Frank Ligon and William Osborne, dated October 8, 2004. Ford admits that Mr. Berardi testified that Ford trained dealers to “repair whatever component has failed as long as it wasn’t customer abuse or lack of maintenance”; Ford denies that Mr. Berardi testified that Ford trained dealers to repair “only” whatever component failed in every circumstance. Ford further admits that Mr. Berardi’s email and deposition testimony express his views. Ford denies each and every other allegation contained in Paragraph 64.

65. Recognizing internally its inability to comply with its legal obligation to properly remedy the engine defects within the warranty period, Ford also probed possible options to compensate its customers beyond the original 100,000 mile warranty. To this end, Ford initiated

a new customer handling program for retail and small business owners that provided financial assistance for 6.0L Engine vehicles with expired warranties that still had less than 150,000 miles. This approach made sense, as Rick Renwick testified that the 6.0L Engine was designed to last 250,000 miles, a 100,000 mile warranty was considered a minimum in the market, and Ford was looking into providing a 150,000 mile warranty on the 6.4 engine. Ford also created a Customer Loyalty Program, which included the 6.0L Engine, for its fleet customers, which outlined a 150,000 mileage limit for Ford diesel-engine vehicles.

**ANSWER:** Ford admits that it adopted a Super Duty/E-Series Customer Handling Program that in certain circumstances provided financial assistance to customers with vehicles with 6.0-liter diesel engines with less than 150,000 miles and for which the New Vehicle Limited Warranty was expired. Ford denies that Paragraph 65 accurately represents testimony by Roderick (“Rick”) Renwick in a deposition on January 21, 2011. Ford admits that it instituted a “Fleet Management Customer Loyalty Program” that included a 150,000 mileage limit for “Ford Diesel Engine Vehicles.” Ford denies each and every other allegation contained in Paragraph 65.

66. Ford’s inability to ever develop an effective repair for the defective 6.0L Engine was further confirmed by its development of the 6.4L Diesel Engine—that is, Ford solved the defects in the 6.0L by developing a wholly new engine. In July 2006, Ford engineers explained that “the processes used to develop and launch the 6.4L Power Stroke were significantly improved over the 6.0L in all areas,”<sup>35</sup> and identified “Specific Design Improvements” for the 6.4L in the “usual suspects”: turbo charger, fuel injectors, EGR system, and sealing.<sup>36</sup>

**ANSWER:** Ford admits that a 6.4-liter diesel engine was developed. Ford further admits that an email from Enio Gomez to Robert Fascetti, et al., dated July 13, 2006, attached a presentation that included the statement: “The processes used to develop and launch the 6.4L Power Stroke were significantly improved over the 6.0L in all areas.” Ford further admits that the presentation listed “Turbocharger,” “FIE,” “EGR System,” “Electrical System,” and “Sealing” under “Specific Design Improvements.” Ford admits that the presentation expresses

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<sup>35</sup> Enio Gomes email to Bob Fascetti, et al., July 13, 2006.

<sup>36</sup> *Id.* The only additional specific design improvement identified by the Ford engineers was to the “electrical system,” which is not a subject of this litigation. *Id.*

the views of its authors at the time it was prepared. Ford denies each and every other allegation contained in Paragraph 66, including its footnotes.

67. Ford's warranty repair program includes numerous checks to ensure that problems caused by improper maintenance, owner misuse, accidents, etc. are excluded. Ford's team leader for Warranty Controls and Warranty Communications attested that:

Ford implements various internal controls to ensure that warranty claims are justified, properly supported, and in accordance with Ford's warranty policies and procedures. Ford applies these internal controls to all warranty claims submitted by its dealers, including claims involving 6.0L engine repairs.<sup>37</sup>

**ANSWER:** Ford admits that its warranty repair policies seek to prevent providing paid warranty repairs for problems caused by improper maintenance, owner misuse, and accidents, but denies that it can "ensure" that no such warranty repairs are provided. Ford further admits that Paragraph 67 accurately quotes language from an affidavit prepared by Richard Wooten, then the team leader for warranty controls and warranty communications activity in Ford's Warranty Processing and Communications, dated February 28, 2007. Ford further admits that Mr. Wooten's affidavit was true.

68. For example, Ford's Automated Claims Editing System Version II ("Aces II") User Manual, November 2007, includes among the "Service Advisor Responsibilities": "Make a preliminary evaluation whether work will be covered under warranty," and Ford's Warranty and Policy Manual, November 2005, expressly provides that "all returned warranty parts are inspected" and "[c]laims may be charged back" for specific reasons, including when a "part [is] damaged" "due to improper use or lack of maintenance."

**ANSWER:** Ford admits that Paragraph 68 accurately quotes language from "ACES II: Automated Claims Editing Systems User Manual," dated November 2007. Ford further admits that Paragraph 68 accurately quotes language from Ford's "Warranty and Policy Manual," dated November 2005.

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<sup>37</sup> Aff. of Richard Wooten, Feb. 28, 2007.

69. Through these systems, Ford has detailed information regarding each time a vehicle is brought into a Ford dealership for repair, including but not limited to the symptoms that required the unit be brought in for service, the diagnosis of the problem, the repair authorized by Ford, and the work performed on the vehicle.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 69, except Ford admits that Ford systems contain certain information provided by dealers regarding some repair visits, including information about the symptoms as reported by the customer to the dealer, a description of the work performed by the dealer, and the amount, if any, later paid by Ford to the dealer for that work.

70. Accordingly, Ford accumulated a massive database through which it realized that the minor repairs it was authorizing were inadequate to properly repair these defective engines, and that major repairs including engine replacement were necessary to address these defects. Despite Ford's experience and knowledge of the defects, Ford continued its practice of only authorizing minor ineffective repairs of these engine defects.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 70. Ford specifically denies that it refused to authorize repairs required by the terms of the New Vehicle Limited Warranty or any other applicable warranty.

71. Ford admitted that there were specific common design defects causing the parts to fail. "For many of the engine parts, Ford, Navistar, and/or Navistar's suppliers have identified specific design . . . issues . . . that have caused the parts to fail."<sup>38</sup>

**ANSWER:** Ford admits that an affidavit prepared by Mina Shams, dated February 28, 2007, includes the statement: "For many of the engine parts, Ford, Navistar, and/or Navistar's suppliers have identified specific design and manufacturing issues that are Navistar's responsibility and that have caused the part to fail." Ford admits that at the time she prepared the affidavit Ms. Shams was the 6.0L Diesel Systems Diagnostics Supervisor at Ford. Ford further admits that Ms. Shams' affidavit was filed in *Ford Motor Company v. Navistar International*

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<sup>38</sup> Shams Aff., Feb. 28, 2007 ¶ 3 (Shams was Ford Motor Co.'s 6.0L Diesel Systems Diagnostics Supervisor and filed this affidavit in Ford's case against Navistar).

*Transportation Corp.*, Case No. 07-080067-CK, in the Circuit Court in Oakland County, Michigan. Ford denies each and every other allegation contained in Paragraph 71, including its footnotes. Ford specifically denies that it has admitted that the 6.0-liter engine had “common design defects.”

72. Year after year, the same issues plagued the engine. Indeed, the consistency with which the same components on the 6.0L failed is undeniable. Ford’s two Directors of its diesel product line, John Koszewnik and Bob Fascetti, identified the primary components that were having problems in early 2003 through 2004, as the injectors and fuel injection system, head gasket, turbo chargers, EGR valves, and EGR coolers. David Enerson, Ford’s Product Design Engineer for Diesel Quality, produced matrices of “6.0L top issues & actions” on November 21, 2005, demonstrating that regardless of the changes made by Ford from the first version of the engine (2003.25MY) through the life of the engine, several top issues remained, including issues with the injectors, EGR valve, EGR cooler, turbocharger, oil cooler, and rear seal.<sup>39</sup> The consistency in the list of top issues demonstrates Ford failed to adequately determine and remedy the common defects in these engine components. In January 2007, a joint Ford-Navistar meeting involving the 6.0L Engine included an “update” on the same issues that had plagued the engine since its introduction: “Injector Induction Heat, Turbo, EGR Valve, Rear Seal, and EGR Cooler,”<sup>40</sup> and Ford’s representative at that meeting admitted Ford was still having “quality issues” with these items. Similarly, in July 2007, a Ford Product Development Quality Review meeting discussed 6.0L “diesel warranty spend” and noted that: “Causal parts were the usual suspects: Cylinder Head/Head Gasket, Engine Assembly, EGR Cooler, EGR Valve.”

**ANSWER:** Ford admits that Robert Fascetti testified in a deposition on August 12, 2008 that issues with the 2003 and 2004 6.0-liter diesel engines included the fuel injection systems, head gasket, EGR valves, turbocharger systems, and coolers. Ford further admits that John Koszewnik testified in a deposition on February 16, 2011 that components that were having problems in the 6.0L engine starting in 2003 included injectors, turbochargers, EGR valves, and EGR coolers. Ford further admits that Mr. Fascetti’s and Mr. Koszewnik’s statements represent their views. Ford further admits that an email from David Enerson, dated December 2, 2005, attaches a matrix entitled “6.0L Top Issues/Actions by Production Month,” marked as revised on

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<sup>39</sup> Email from David Enerson, Nov. 21, 2005. Notably, never does Enerson mention improper maintenance or engine modification as a top issue causing vehicle malfunction.

<sup>40</sup> International Truck & Engine IDA CTW Commodity Review, Jan. 26, 2007.



November 21, 2005. Ford further admits that Mr. Enerson was a Product Design Engineer for Diesel Quality. Ford further admits that an agenda for a Navistar/Ford “International Truck and Engine IDA CTW Commodity Review January 26, 2007” lists an item for the 6.0L entitled “Update” with sub-items “Injector Induction Heat, Turbo, EGR Valve, Rear Seal, EGR Cooler.” Ford further admits that Colin Horbal attended the January 26, 2007 review and that he was at that time Ford’s Manager for the V-Engine North American Diesel Quarterback Department. Ford further admits that Mr. Horbal testified in a deposition on March 23, 2011 that there were “quality issues” with the injector induction heat, turbo, EGR valve, rear seal and EGR cooler as of January 26, 2007. Ford further admits that Mr. Hobal’s statements represented his views. Ford further admits that an email from Robert Fascetti to Barb Samardzich, dated July 9, 2007, attached a presentation entitled “PDQR, F > 8500, Diesel, July 10, 2007,” which included a slide entitled “Diesel Warranty Spend,” which stated “Causal parts are the usual suspects – Cylinder Head/Head Gasket, Engine Ass’y, EGR Cooler, EGR Valve.” Ford further admits that the presentation represented its author’s views at the time it was prepared. Ford denies each and every other allegation contained in Paragraph 72, including its footnotes.

73. Ford’s internal investigation into the high cost of warranty repairs on the 6.0L Engine, conducted by Mark Freeland, under the direction of John Koszewnik (Ford’s then Director of North American Diesel), concluded that Customer Concern Codes (“CCCs”) for engines that were difficult or slow to start, would not start, or stalled, were likely symptoms that “are all the result of the same root causes.”<sup>41</sup> Freeland hypothesized, since the findings regarding these CCCs were “very similar to the overall shape of all CCCs combined, *that the same root cause or causes are responsible* for the majority of all claims.”<sup>42</sup>

**ANSWER:** Ford admits that an email from John Kozewnik to Frank Abkenar, Mina Shams, et al., dated February 6, 2006, included an attachment entitled “6.0L Powerstroke

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<sup>41</sup> Mark Freeland PowerPoint presentation entitled “6.0L Powerstroke Injector: December 2005 Warranty Claims,” Jan. 31, 2006.

<sup>42</sup> *Id.*

Injector: December 2005 Warranty Claims,” dated January 31, 2006 and marked as prepared by Mark Freeland. Ford admits that Mr. Koszewnik was at that time Ford’s Director for North American Diesel, JV’s and Alliances and that Mr. Freeland was a Ford engineer. Ford further admits that the attachment includes a note in reference to customer concern codes for “No starts; Difficult to Start or Stalls” that states: “It is likely that these symptoms are all the result of the same root causes.” Ford further admits that the attachment includes the statement: “Further I would hypothesize that as the shape of the D02/D03/D21 CCC [customer concern code] is very similar to the shape of all CCC’s combined, that the same root cause or causes are responsible for the majority of all claims,” without italics. Ford admits that the presentation expressed its author’s views at the time it was prepared.

74. Ford’s “solution” to claims concerning the defective 6.0L was consistent if nothing else—that is, while Ford was pursuing its \$493 million lawsuit against Navistar, Ford shifted its efforts from trying to repair issues with the 6.0L (which was near the end of its production life) to simply reducing Ford’s warranty spend.

**ANSWER:** Ford denies each and every allegation in Paragraph 74.

75. The 6.0L Engine continuously suffered the same problems and Ford never changed its “solution” of reducing its warranty spend. That is, through its own internal investigation and its lawsuit with Navistar, Ford knew that the engine was defective, that the defect manifested itself in definitive ways during the engine’s use, and that Ford’s recommended repairs were only “band-aids” designed not to address the root cause defects in the engine, but merely to postpone recurrence of the malfunctions until the warranty expired and the customer—not Ford—would pay for repairs. Rather than repairing the engine to eliminate damage to the Root-Cause-Damaged Components, Ford simply “kicked the can down the road,” and cleaned or replaced the damaged components, knowing full well that the defects in the engine would lead to the failure of the cleaned or new components.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 75. Ford specifically denies that it refused to authorize repairs required by the terms of the New Vehicle Limited Warranty or any other applicable warranty.

76. Ford unfairly benefited by this practice because Ford knew that after the warranty expired the vehicle owner, rather than Ford, would have to pay for all future repairs. Because engine replacements cost more than ten times the cost of these lesser repairs, Ford profited enormously (at the expense of its customers) by failing to authorize necessary major engine repairs or engine replacements during the warranty period, instead only authorizing cheaper services (like injector replacements) which were not adequate repairs, and would merely serve as a temporary measure until the warranty expired. Eventually, of course, Ford solved the defects in the 6.0L Engine when developing a new engine: the 6.4L Diesel Engine. In July 2006 Ford engineers prepared a presentation of the “6.4L Quality Improvements Compared to 6.0L” and noted in that presentation “the processes used to develop and launch the 6.4L Power Stroke were significantly improved over the 6.0L in all areas.”<sup>43</sup> Further, the engineers identified “Specific Design Improvements” in the 6.4L versus the 6.0L. Virtually all of the specific design improvements were in the “usual suspects”: turbo charger, fuel injectors, EGR system, and sealing.<sup>44</sup> The “Turbo Charger Robustness Improvement Actions” addressed the corrosion and coking issues still plaguing the 6.0L, the “Fuel Injection Equipment” improvements included an “industry standard” “common rail” injection system and “testing for robustness,” and the “EGR System Robustness Improvement Actions” focused on the EGR valve sticking, failure, and fouling problems experienced with the 6.0L, plus the EGR cooler failures experienced with the 6.0L. Finally, the “sealing” improvements in the 6.4L versus the 6.0L resulted in “most seals on the engine” being “redesigned as a result of the process.”<sup>45</sup>

**ANSWER:** Ford admits that a 6.4-liter diesel engine was developed. Ford further admits that an email from Enio Gomez to Robert Fascetti, et al., dated July 13, 2006, attached a presentation entitled “6.4L Quality Improvements Compared to 6.0L” that included the statement: “The processes used to develop and launch the 6.4L Power Stroke were significantly improved over the 6.0L in all areas.” Ford further admits that the presentation listed “Turbocharger,” “FIE,” “EGR System,” “Electrical System,” and “Sealing” under the heading “Specific Design Improvements.” Ford further admits that a slide in the presentation entitled “Turbocharger Robustness Improvement Actions” addressed corrosion and coking, among other things. Ford further admits a slide in the presentation entitled “Fuel Injection Equipment” listed “an industry standard plezo-electric high pressure common rail (HPCR) fuel injection system”

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<sup>43</sup> Enio Gomes email to Bob Fascetti, et al., July 13, 2006.

<sup>44</sup> The only additional specific design improvement identified by the Ford engineers was to the “electrical system,” which is not a subject of this litigation.

<sup>45</sup> These documents comparing the designs of the 6.0L and the 6.4L engines detail the defects in the 6.0L engines in explaining how they were eliminated in the design of the 6.4L engine.

and “[e]xtensive sub-system noise factor testing for robustness,” among other things. Ford further admits that a slide in the presentation entitled “EGR System Robustness Improvement Actions” listed “EGR Valve Sticking,” “EGR Valve Failure,” “EGR System Fouling,” and “EGR Cooler Failures.” Ford further admits that a slide in the presentation entitled “Sealing” included the statement: “Most seals on the engine were redesigned as a result of the process.” Ford further admits that the presentation represented its authors’ view at the time it was prepared. Ford denies each and every other allegation contained in Paragraph 76, including its footnotes.

77. Not surprisingly, the repair rates for the 6.4L diesel engine have been “a lot better” than the repair rates for the 6.0L, so much so that after only 1½ years in the field, the repair rates for the 6.4L diesel engine were already better than the “last year of the 6.0L” (which was significantly lower than prior years for the 6.0L, although a significant portion of that reduction was due to Ford’s efforts to “reduce warranty spend” rather than fix the root causes, as discussed above).

**ANSWER:** Ford denies each and every allegation contained in Paragraph 77.

78. Because Ford never redesigned the 6.0L diesel engine and never satisfactorily addressed the root causes of the persistent and systemic engine malfunctions being experienced at unprecedented rates by vehicle owners, and, indeed, had no plan or idea how to fix the defectively designed root-cause components, it could never provide adequate warranty service for the engine. Ford’s “warranty repair,” instead, amounted to nothing more than offering consumers (without telling them as much) a band-aid fix to cover-up a symptom of the malfunctioning vehicle rather than an adequate and proper repair of the actual problem plaguing the vehicles. This band-aid fix did not remedy the defects in the 6.0L Engines, as Ford was required to do under the terms of the warranty, but merely served to postpone the problem, virtually ensuring that aggrieved owners would continue to experience engine problems from the unremedied defective root cause engine components in the near future, and, often times, delaying these repeat problems so that they conveniently (to Ford) would reoccur shortly after the warranty period expired. By failing to adequately repair the defective engines, Ford never lived up to its warranty obligations.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 78.

**G. An Arizona Company Developed a True Root Cause Solution: Redesigned EGR and Oil Coolers.**

79. While agreeing with many of Freeland's observations concerning "common defect," experts at Bullet Proof Diesel, a nationally renowned automotive and diesel specialist based in Mesa, Arizona, and diesel industry publications approached these problems from a different angle. Recent articles in *Four Wheeler* (September 2010), *Diesel World* (November 2010), and *Off Road* (March 2010) summarize their testing and analysis, targeting the EGR and oil coolers:

*Four Wheeler:*

If you have owned a Ford Super Duty pickup with the 6.0L engine, chances are you have experienced an **EGR cooler** failure. Ford released several technical bulletins to its dealer network in an attempt to resolve these problems. However, none of them address the **root cause** of the problem, and though the dealership may replace faulty EGR coolers under warranty, the issues will continue to persist.<sup>46</sup>

*Diesel World:*

[O]ver time, many of the design weaknesses of the 6.0L Power Stroke began to surface. Topping the list was the repetitive failure of the **EGR cooler**.<sup>47</sup>

\* \* \* \* \*

Countless owners have replaced their **EGR coolers** two, three, or more times in the first 100,000 miles, and have installed at least one oil cooler in the truck.<sup>48</sup>

*Off-Road:*

We've seen two major problems that plague most Super Dutys—both of which stem from the oiling system: fuel injection issues (the end result of multiple oiling failure possibilities) and **EGR cooler** issues in which the cooler plugs up with carbon.<sup>49</sup>

**ANSWER:** Ford admits that Paragraph 79 accurately quotes language from Robin Stover, "Power Stroke Bulletproofing Tactics," *Four Wheeler* (September 2010); Kevin Wilson, "6.0L Power Stroke Problems and Solutions, Part I," *Diesel World* (November 2010); and Jerrod Jones, "Permanently Fixing a Powerstroke," *Off-Road* (March 2010). Ford is without

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<sup>46</sup> Robin Stover, *Power Stroke Bulletproofing Tactics*, FOUR WHEELER, Sept. 2010 (emphasis added).

<sup>47</sup> Kevin Wilson, *6.0L Power Stroke Problems and Solutions, Part I*, DIESEL WORLD, Nov. 2010.

<sup>48</sup> *Id.*

<sup>49</sup> Jerrod Jones, *Permanently Fixing a Powerstroke*, OFF-ROAD, March 2010 (emphasis added).

information sufficient to form a belief as to the truth of the other allegations contained in

Paragraph 79, including its footnotes, and on that basis denies those allegations.

80. In November 2010, *Diesel World*, in “6.0L Power Stroke Problems and Solutions: Part I: The Truth About EGR and Oil-Cooler Failures,” stated:

[T]he root of many of the 6.0L problems can be traced to a poor *oil cooler* design. Among the common issues on 6.0L Power Strokes are *EGR cooler* failures, high engine oil temperatures and overheating, injector failure, turbo failure, high-pressure oil pump failure and blown head gaskets. And, according to Bullet Proof Diesel, nearly all of these problems are related to the stock engine cooler.<sup>50</sup>

*Four Wheeler* agrees:

“In almost every case, 6.0L engine failures can be attributed to shortcomings in the *oil cooling* system.”<sup>51</sup>

**ANSWER:** Ford admits that Paragraph 80 accurately quotes language from Kevin Wilson, “6.0L Power Stroke Problems and Solutions, Part I,” *Diesel World* (November 2010) and Robin Stover, “Power Stroke Bulletproofing Tactics,” *Four Wheeler* (September 2010).

81. Bullet Proof Diesel has done what Ford was unwilling to do: develop a solution for the “root causes” of the 6.0L Engine’s problems: redesigned EGR and oil coolers, which can be installed in place of Ford’s standard EGR and oil coolers. Bullet Proof Diesel is “so confident its street-legal EGR cooler is superior to the factory part, the company offers a lifetime warranty on it.”<sup>52</sup> The publications referenced above specifically describe how the defects in Ford’s original design manifest into engine malfunctions and how Bullet Proof’s redesigned components address these root causes.<sup>53</sup> In fact, according to Off-Road: “The BPD [Bullet Proof Diesel] EGR cooler is a much better design, and even one that Ford dealerships recommend to modify their trucks with!”<sup>54</sup>

**ANSWER:** Ford admits that Paragraph 81 accurately quotes language from Kevin Wilson, “6.0L Power Stroke Problems and Solutions, Part I,” *Diesel World* (November 2010)

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<sup>50</sup> Wilson, *6.0L Power Stroke Problems and Solutions, Part I* (emphasis added).

<sup>51</sup> Stover, *Power Stroke Bulletproofing Tactics* (emphasis added).

<sup>52</sup> Wilson, *6.0L Power Stroke Problems and Solutions, Part I*; Wilson, *6.0L Power Stroke Problems and Solutions, Part II*, DIESEL WORLD, Dec. 2010.

<sup>53</sup> Wilson, *6.0L Power Stroke Problems and Solutions, Part I*; Jones, *Permanently Fixing a Powerstroke*.

<sup>54</sup> Jones, *Permanently Fixing a Powerstroke*

and Jerrod Jones, “Permanently Fixing a Powerstroke,” *Off-Road* (March 2010). Ford is without information sufficient to form a belief as to the truth of the other allegations contained in Paragraph 81, including its footnotes, and on that basis denies those allegations.

**H. Plaintiffs and the Class Experienced These Same Symptoms in Their 6.0L Engines and Ford Failed to Repair Them Under Warranty.**

82. Plaintiffs and Class members are owners, lessees and/or operators of Ford vehicles with a 6.0L Engine.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 82, and on that basis denies those allegations.

83. Plaintiffs and Class Members have, at all times, maintained their vehicles according to Ford’s Owners Guide and Owner’s Guide Supplement for 6.0L Engines.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 83, and on that basis denies those allegations.

84. Plaintiffs experienced repeated, common issues with their engines identical to those Ford identified as symptoms brought about by “root causes” of problems in the 6.0L design—*e.g.*, injectors, head gaskets, turbo chargers, EGR valves, and EGR coolers. Indeed, each Named Plaintiff experienced problems with at least one Root-Cause-Damaged Component.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 84, and on that basis denies those allegations.

85. Plaintiffs and Class members have repeatedly brought their vehicles to authorized Ford dealerships for repair, but Ford has failed to fulfill its obligation under Ford’s Limited Warranty to adjust, repair or replace the defects in the 6.0L Engines.

**ANSWER:** As to the allegation that Plaintiffs and Class Members have repeatedly brought their vehicles to authorized Ford dealerships for repair, Ford is without information sufficient to form a belief as to the truth of the allegation, and on that basis denies it. Ford denies

each and every additional allegation contained in Paragraph 85. Ford specifically denies that it failed to fulfill its obligations under the New Vehicle Limited Warranty.

86. Plaintiffs and Class members herein complain that the engines in their vehicles are defective, forcing them to repeatedly bring their vehicles to Ford dealerships for repair, only to have the vehicles break down again due to the defective nature of the engine and/or the inability of Ford, through its dealerships, to repair them properly.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 86.

87. Moreover, when Plaintiffs and Class members brought their vehicles to authorized Ford dealerships during the warranty period and complained about problems they were having, Ford generally failed to authorize the replacement of the defective engines despite the fact that Ford knew the engines were defective, knew that the mechanics in its dealerships were not properly repairing the engines, and knew that the limited repair work Ford authorized its dealerships to perform would not properly repair the vehicles.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 87. Ford specifically denies that it failed to authorize repairs required by the terms of the New Vehicle Limited Warranty or any other applicable warranty.

88. Ford dealerships cannot provide warranted repairs (*i.e.*, repairs at no cost to the customer) beyond those authorized by Ford. Accordingly, Ford's routine failure to authorize the work necessary to properly repair vehicles with defective 6.0L Engines resulted in a breach of Ford's warranty obligations.

**ANSWER:** Ford denies each and every allegation in Paragraph 88. Ford specifically denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty.

89. Ford warranted that its authorized Ford Motor Company dealers would, without charge, repair, replace, or adjust all parts that malfunctioned or failed during normal use during the applicable coverage period due to a defect in factory-supplied materials or factory workmanship.



**ANSWER:** Ford admits that new Ford vehicles are sold with a “New Vehicle Limited Warranty.” Ford denies that Paragraph 89 accurately represents the content of the New Vehicle Limited Warranty.

90. Ford’s limited warranty of repairing and replacing defects failed of its essential purpose because Ford failed to give its dealerships permission to make necessary warranted repairs. Accordingly, they failed to properly repair Plaintiffs and Class members’ vehicles.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 90. Ford specifically denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty.

91. Ford Motor Company, notwithstanding its knowledge of the defects, has not conducted sufficient recalls, has not notified Plaintiffs of the extent of the engines’ inadequacies, has misrepresented to Plaintiffs that the 6.0L Engine problems were caused by factors other than an inherent defect (including improper maintenance and the weather), has misrepresented the supposed attributes of the 6.0L Engine, has failed to disclose known defects in the engines, and has failed to effectively repair or replace the engines and/or parts, or to reimburse Plaintiffs for their damages.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 91.

92. The defective 6.0L Engines have caused Plaintiffs and Class members to suffer a loss of profits as a result of the inability to use the vehicles. Plaintiffs and Class members have also suffered diminution in the value of their vehicles; out-of-pocket expenses for ongoing necessary repairs and/or services to the units; towing costs for disabled units; deductible payments to Ford dealerships for repairs under warranty; expenses associated with leasing or renting temporary vehicles while their Ford vehicles were being repaired; expenses acquiring and maintaining additional vehicles due to unreliability of the 6.0L Engines; expenses of paying wages to drivers who are unable to work due to the lack of sufficient working vehicles, additional costs incurred from employing additional mechanics due to the problems with the 6.0L Engine, and other damages.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 92.

93. Any limitations and exclusions in Ford’s warranty are procedurally and substantively unconscionable because they are inordinately one-sided in Ford’s favor in light of the fact that Ford knew of the inherent defect in the 6.0L Engines as early as 2002 and

nevertheless continued to sell vehicles and vehicle chassis with defective engines without disclosing the inherent defect.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 93.

94. The unconscionability of Ford's remedy limitations is exacerbated by the fact that Ford knew it was selling vehicles and vehicle chassis with defective engines, and knew that its dealerships were consistently failing to repair the defects. Accordingly, Ford attempted to limit its customers' remedies to repairs that it knew would fail to fix the engine, and thus the limited warranty failed of its essential purpose and is unenforceable.

**ANSWER:** Ford denies each and every allegation in Paragraph 94.

95. Plaintiffs and Class members notified Ford (through authorized Ford dealerships) of the multiple problems caused by the engine defects each time Plaintiffs brought their vehicles in for repair. Plaintiffs also notified Ford directly. Plaintiffs, however, were not required to provide such notice because affording Ford a reasonable opportunity for cure its breach of written warranty would have been futile.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 95.

96. As stated above, the Technical Service Bulletins, internal Ford memoranda and emails, and Special Service Messages describing symptoms consistent with those experienced by the Plaintiffs and Class members, demonstrate the ongoing problems with Ford's 6.0L Engine, the fact that Ford was well aware of the problems with these engines before it ever launched the 6.0L Engine, and Ford's failure to adequately address the issues by failing to properly repair or replace these defective engines.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 96, except that Ford admits that it has issued Technical Service Bulletins and Special Service Messages related to the 6.0-liter Power Stroke diesel engine and its components.

97. Additionally, the defective 6.0L Engines present a safety hazard and are unreasonably dangerous to consumers because the defects can cause and have caused sudden and unexpected engine stalling or complete loss of power while driving, thereby contributing to the risk of accidents, which cause personal injury or death.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 97.

98. Because of Ford's failure to properly repair the defective engines, Plaintiffs and Class Members have spent an unprecedented amount of time and money making repeat visits to

various Ford dealership service departments attempting to resolve the engine problems to no avail.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 98.

#### **I. Tolling of Limitations Periods**

99. All limitations periods were tolled from the April 21, 2006 filing date of *Cox House Moving Inc. v. Ford Motor Company* (Case No. 7:06-cv-01218-HMH, D.S.C.), until November 6, 2006, the date class certification was denied, then tolled again from January 8, 2010 to the present, by the filing of *Custom Underground, Inc., et al. v. Ford Motor Company* (Case No. 1:10-cv-00127, N.D. Ill.)

**ANSWER:** Ford denies each and every allegation contained in Paragraph 99.

100. All limitations periods were also tolled by the doctrines of fraudulent concealment, the discovery rule and/or equitable tolling. As alleged herein, Ford wrongfully concealed the fact (1) that it was equipping vehicles with defective engines which Ford was unable or unwilling to repair, and (2) that its dealerships were making inadequate repairs incapable of addressing the root cause of the vehicles' malfunctions. Plaintiffs and Class members did not discover the operative facts that are the basis of their claims because they were concealed in confidential and privileged documents. No amount of diligence by Plaintiffs or Class Members could have led to the discovery of these facts because they were kept secret by Ford and, therefore, Plaintiffs and Class Members were not at fault for failing to discover these facts, nor did they have actual or presumptive knowledge of facts sufficient to put them on inquiry. No class member knew, or could have known, about Ford's inability to repair the defects in its engines because, as alleged above, Ford kept this information highly confidential, even sending internal warnings not to share this information outside Ford.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 100.

#### **IV. PLAINTIFFS' EXPERIENCE WITH THE CLASS VEHICLES**

##### **A. Custom Underground, Inc.**

101. Plaintiff Custom Underground is a corporation with its principal place of business in Illinois.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 101, and on that basis denies those allegations.

102. Custom Underground purchased more than 20 Ford vehicles in Illinois with 6.0L Engines that have posed repeated problems from the start.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 102, and on that basis denies those allegations.

103. While each of Custom Underground's engines were covered by the 5 year/100,000 mile warranty, the defective engines caused the vehicles to exhibit multiple symptoms, including among other things, exhibit poor engine acceleration, poor air conditioning performance, failure to withstand long periods of engine idle, rough idle, difficulty starting the engine, inability to start engine, engine stalling, and complete loss of power while driving. These symptoms were caused by the root cause defects in the engine and/or the consequent malfunction of the Root-Cause-Damaged Components.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 103 that "each of Custom Underground's engines were covered by the 5 year/100,000 mile warranty," and on that basis denies those allegations. Ford denies each and every other allegation contained in Paragraph 103.

104. **Engine 142:** Custom Underground purchased Engine 142, VIN 1FDWF36P15EC46009, on March 11, 2005, from a Ford dealership in Illinois. Pursuant to the Ford warranty, Custom Underground brought the malfunctioning vehicle to authorized Ford dealerships in Wisconsin, including John Amato Ford and Havill-Spoerl Ford, on multiple occasions including the following dates, with the indicated number of miles on the vehicle, and the indicated component(s) repaired or replaced: July 6, 2006 (32,804 miles, EGR cooler), and January 2, 2008 (78,442 miles, injectors 1 and 7).

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 104, and on that basis denies those allegations

105. **Engine 143:** Custom Underground purchased Engine 143, VIN 1FDWF36P85EC46010, on March 11, 2005, from a Ford dealership in Illinois. Pursuant to the Ford warranty, Custom Underground brought the malfunctioning vehicle to an authorized Ford dealership in Illinois, Uftring Ford, on June 22, 2007, and had a warrant repair performed at 72,375 miles to the EGR valve.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 105, and on that basis denies those allegations.

106. **Engine 144:** Custom Underground purchased Engine 144, VIN 1FDWF36PX5EC46011, on March 9, 2005, from a Ford dealership in Illinois. Pursuant to the Ford warranty, Custom Underground brought the malfunctioning vehicle to authorized Ford dealerships in Illinois, including Uftring Ford, on multiple occasions including the following dates, with the indicated number of miles on the vehicle, and the indicated component(s) repaired or replaced: December 13, 2006 (49,776 miles, injectors 2 and 8), and January 31, 2008 (80,262 miles, injectors 1, 2, 3, and 8).

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 106, and on that basis denies those allegations.

107. **Engine 146:** Custom Underground purchased Engine 146, VIN 1FDWF36P35EC46013, on March 11, 2005, from a Ford dealership in Illinois. Pursuant to the Ford warranty, Custom Underground brought the malfunctioning vehicle to authorized Ford dealerships in Illinois, including Uftring Ford, on multiple occasions including the following dates, with the indicated number of miles on the vehicle, and the indicated component(s) repaired or replaced: November 21, 2006 (45,541 miles, 3 injectors), and March 19, 2007 (53,192 miles, injectors 1, 2, 3, 5, 7, and 8).

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 107, and on that basis denies those allegations.

108. **Engine 147:** Custom Underground purchased Engine 147, VIN 1FDWF36P55EC46014, on March 11, 2005, from a Ford dealership in Illinois. Pursuant to the Ford warranty, Custom Underground brought the malfunctioning vehicle to an authorized Ford dealership in Wisconsin, Havill-Spoerl Ford, on March 29, 2007, and had a warranty repair performed at 42,820 miles on injectors 2, 4, 6, and 8.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 108, and on that basis denies those allegations.

109. **Engine 148:** Custom Underground purchased Engine 148, VIN 1FDWF36P75EC46015, on March 11, 2005, from a Ford dealership in Illinois. Pursuant to the Ford warranty, Custom Underground brought the malfunctioning vehicle to an authorized Ford dealership in Wisconsin, Grinwold Ford, on November 26, 2008, and had a warranty repair performed at 95,360 miles to injectors 3 and 8.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 109, and on that basis denies those allegations.

110. **Engine 149:** Custom Underground purchased Engine 149, VIN 1FDWF36P95EC46016, on March 11, 2005, from a Ford dealership in Illinois. Pursuant to the Ford warranty, Custom Underground brought the malfunctioning vehicle to authorized Ford dealerships in Illinois, including Uftring Ford and Woodrum Ford, on multiple occasions including the following dates, with the indicated number of miles on the vehicle, and the indicated component(s) repaired or replaced: March 14, 2006 (23,078 miles, injectors 1, 2, and 3), April 4, 2006 (23,315 miles, injectors 4, 5, 6, 7, and 8), and on March 27, 2006 (23,991 miles, injector leaking).

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 110, and on that basis denies those allegations.

111. **Engine 150:** Custom Underground purchased Engine 150, VIN 1FDWF36P05EC46017, on March 9, 2005, from a Ford dealership in Illinois. Pursuant to the Ford warranty, Custom Underground brought the malfunctioning vehicle to an authorized Ford dealership in Wisconsin, Porcaro Ford, on July 7, 2008, and had a warranty repair performed at 93,253 miles on the EGR cooler.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 111, and on that basis denies those allegations.

112. **Engine 151:** Custom Underground purchased Engine 151, VIN 1FDWF36P25EC46018, on March 11, 2005, from a Ford dealership in Illinois. Pursuant to the Ford warranty, Custom Underground brought the malfunctioning vehicle to an authorized Ford dealership in Indiana, Southworth Ford, on February 15, 2007, and had a warranty repair performed at 36,985 miles to injectors 1, 2, 3, 5, 7, and 8.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 112, and on that basis denies those allegations.

113. **Engine 152:** Custom Underground purchased Engine 152, VIN 1FDWF36P45EC46019, on March 11, 2005, from a Ford dealership in Illinois. Pursuant to the Ford warranty, Custom Underground brought the malfunctioning vehicle to authorized Ford dealerships in Wisconsin, including Tom Peck Ford, on multiple occasions including the following dates, with the indicated number of miles on the vehicle, and the indicated component(s) repaired or replaced: April 18, 2007 (61,353 miles, EGR valve), March 26, 2008 (79,122 miles, injectors), May 22, 2008 (81,333 miles, injectors), and October 28, 2008 (96,597 miles, turbo charger).

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 113, and on that basis denies those allegations.

114. **Engine 154:** Custom Underground purchased Engine 154, VIN 1FDWF36P46EA02291, on June 3, 2005, from a Ford dealership in Illinois. Pursuant to the Ford warranty, Custom Underground brought the malfunctioning vehicle to an authorized Ford dealership in Illinois, Uftring Ford, on June 3, 2007, and had a warranty repair performed at 62,970 miles to multiple injectors and the turbo charger.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 114, and on that basis denies those allegations.

115. **Engine 155:** Custom Underground purchased Engine 155, VIN 1FDWF36P86EA02293, on June 3, 2005, from a Ford dealership in Illinois. Pursuant to the Ford warranty, Custom Underground brought the malfunctioning vehicle to an authorized Ford dealership in Illinois, Sterlins Ford, on May 6, 2008, and had a warranty repair performed at 86,888 miles to the EGR valve.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 115, and on that basis denies those allegations.

116. **Engine 156:** Custom Underground purchased Engine 156, VIN 1FDWF36PX6EA02294, on June 3, 2005, from a Ford dealership in Illinois. Pursuant to the Ford warranty, Custom Underground brought the malfunctioning vehicle to authorized Ford dealerships in Illinois, including Ford of Champaign, Uftring Ford, and Demison Ford, on multiple occasions including the following dates, with the indicated number of miles on the vehicle, and the indicated component(s) repaired or replaced: April 26, 2006 (37, 199 miles, injector 7), May 16, 2006 (38,649 miles, injectors 1, 3, and 8), June 7, 2006 (39,481 miles, injector 5), July 25, 2006 (44,827 miles, injector), November 15, 2006 (57,336 miles, EGR valve), January 18, 2007 (64,003 miles, injectors 1, 3, 5, and 7), and May 18, 2007 (73,183 miles, turbo charger).

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 116, and on that basis denies those allegations.

117. **Engine 157:** Custom Underground purchased Engine 157, VIN 1FDWF36PX6EA02292, on June 3, 2005, from a Ford dealership in Illinois. Pursuant to the Ford warranty, Custom Underground brought the malfunctioning vehicle to authorized Ford dealerships in Illinois, including Uftring Ford, on multiple occasions including the following

dates, with indicated number of miles on the vehicle, and the indicated component(s) repaired or replaced: January 4, 2007 (54,261 miles, injector 7), February 26, 2007 (56,768 miles, injectors 1, 3, and 5), March 10, 2008 (91,318 miles, EGR valve), and April 21, 2008 (94,895 miles, EGR cooler).

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 117, and on that basis denies those allegations.

118. **Engine 159:** Custom Underground purchased Engine 159, VIN 1FDWF36P96EA02299, on June 3, 2005, from a Ford dealership in Illinois. Pursuant to the Ford warranty, Custom Underground brought the malfunctioning vehicle to authorized Ford dealerships in Illinois, including Uftring Ford, on multiple occasions including the following dates, with the indicated number of miles on the vehicle, and the indicated component(s) repaired or replaced: June 5, 2007 (44,894 miles, turbo charger), and February 5, 2008 (63,785 miles, injectors).

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 118, and on that basis denies those allegations.

119. **Engine 160:** Custom Underground purchased Engine 160, VIN 1FDWF36P96EA02298, on June 3, 2005, from a Ford dealership in Illinois. Pursuant to the Ford warranty, Custom Underground brought the malfunctioning vehicle to an authorized Ford dealership in Illinois, Uftring Ford, on December 29, 2006, and had a warranty repair performed at 73,548 miles to injectors 1 and 8.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 119, and on that basis denies those allegations.

120. **Engine 161:** Custom Underground purchased Engine 161, VIN 1FDWF36P36EA02296, on June 3, 2005, from a Ford dealership in Illinois. Pursuant to the Ford warranty, Custom Underground brought the malfunctioning vehicle to authorized Ford dealerships in Illinois, including Uftring Ford, on multiple occasions including the following dates, with the indicated number of miles on the vehicle, and the indicated component(s) repaired or replaced: December 13, 2006 (49,292 miles, injector 5), February 22, 2008 (89,596 miles, injectors), and April 10, 2008 (95,966 miles, injector 8).

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 120, and on that basis denies those allegations.



121. **Engine 162:** Custom Underground purchased Engine 162, VIN 1FDWF36P16EA02295, on June 3, 2005, from a Ford dealership in Illinois. Pursuant to the Ford warranty, Custom Underground brought the malfunctioning vehicle to authorized Ford dealerships in Illinois, including Uftring Ford, on multiple occasions including the following dates, with the indicated number of miles on the vehicle, and the indicated component(s) repaired or replaced: November 16, 2005 (22,058 miles, injectors 1 and 7), March 3, 2006 (23,339 miles, injectors 4 and 6), July 11, 2006 (36,027 miles, injectors 2 and 6), and August 1, 2006 (38,065 miles, injectors 2, 4, and 8).

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 121, and on that basis denies those allegations.

122. Each time Custom Underground complained of the aforementioned engine symptoms and requested that the vehicle be repaired.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 122, and on that basis denies those allegations.

123. Each time, the Ford dealership did not repair the engines or performed an inadequate repair of the engines. Thus, Ford failed to provide appropriate warranty benefits for Custom Underground's vehicles despite the fact that the vehicles fell within the warranty's eligible time and mileage periods.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 123. Ford specifically denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty.

124. As a result, the engines continued to malfunction and Custom Underground was forced repeatedly to bring the malfunctioning vehicles to an authorized Ford dealership for additional repairs, as indicated above. Each time Ford either failed to perform an adequate repair or failed to provide any repair at all.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 124 regarding the functioning of Custom Underground's vehicles, and on that basis denies those allegations. Ford denies each and every additional allegation contained in Paragraph 124.

125. Despite knowing that the engines had major defects and needed to be replaced, Ford only authorized minor recalibrations, adjustments, and replacements of isolated components which Ford knew would not, and in fact did not, adequately repair the engines.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 125. Ford specifically denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty.

126. As a result of Ford's failure to properly repair the engines during the warranty, after the expiration of the warranty, Custom Underground was required to incur repair expenses to address these issues, lost income due to the vehicles being unavailable, and/or suffered other direct and consequential damages.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 126.

127. For example, regarding **Unit 144**, in addition to being damaged more than \$4000 in out-of-pocket repair expenses, Custom Underground was damaged by the extensive periods, totaling more than 50 days, it was without the use of the vehicle due to Ford's inability to repair it.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information sufficient to form a basis as to the truth of the other allegations contained in Paragraph 127, and on that basis denies those allegations.

128. Regarding **Unit 146**, after the warranty expired, Custom Underground was forced to spend more than \$1200 on engine repairs, including a November 13, 2008 replacement of an oil pump assembly and injector pressure regulator, and a December 17, 2009 replacement of an EGR valve.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 128, and on that basis denies those allegations.

129. Regarding **Unit 148**, the warranty repairs did not repair the vehicle, which broke down again on November 6, 2009 when the vehicle had 104,692 miles and was out of warranty. At that point Custom Underground took the vehicle out of service and has been unable to use the vehicle since that time as a result of Ford's refusal to authorize a proper repair when the vehicle was brought in for repairs before the expiration of the warranty.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information sufficient to form a belief as to the truth of the other allegations contained in Paragraph 129, and on that basis denies those allegations.

130. Regarding **Unit 149**, in February 2010, at 112,027 miles and out of warranty, Custom Underground took the vehicle out of service and has been unable to use the vehicle since that point as a result of Ford's refusal to authorize a proper repair when the vehicle was brought in for repairs before the expiration of the warranty.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information sufficient to form a belief as to the truth of the other allegations contained in Paragraph 130, and on that basis denies those allegations.

131. Regarding **Unit 156**, on December 14, 2007, at 105,266 miles and when the vehicle was out of warranty, the engine died. From that point forward, Custom Underground spent over \$5000 trying to repair the engine, which would not have been necessary had Ford authorized an engine replacement or an adequate repair of the engine on any of the multiple occasions the vehicle was brought into a Ford dealership for service when the engine was still under warranty. Additionally, Ford's refusal to authorize an adequate repair when the engine first began exhibiting signs of its defects caused the vehicle to be out of service for more than 100 days, thus damaging Custom Underground by depriving it of the use of this vehicle.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information sufficient to form a belief as to the truth of the other allegations contained in Paragraph 131, and on that basis denies those allegations.

132. Regarding **Unit 147**, because of Ford's refusal to authorize an adequate repair, the engine did not perform properly and Custom Underground was forced to take the vehicle out of service when the warranty expired. Had Ford properly repaired the vehicle when it was brought in for service during the warranty period, Custom Underground would still have use of the vehicle today.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information sufficient to form a belief as to the truth of the other allegations contained in Paragraph 132, and on that basis denies those allegations.

133. Regarding **Unit 151**, on August 12, 2009, the vehicle continued having injector problems. Finally, on October 6, 2009, at 108,913 miles, when the engine warranty had expired and the engine was still experiencing problems, Custom Underground had to take the vehicle out of service. Had Ford properly repaired the vehicle when it was brought in for service during the warranty period, Custom Underground would still have use of the vehicle today.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information sufficient to form a belief as to the truth of the other allegations contained in Paragraph 133, and on that basis denies those allegations.

134. Regarding **Unit 157**, on October 16, 2009, at 108,226 miles, when the engine warranty had expired and the engine was still experiencing problems (making noise, not running, running rough, exhibiting a lack of power), Custom Underground had to pay for repairs itself, spending more than \$3800 at Dennison Ford, an authorized Ford dealership, on engine repairs on November 4 and December 2, 2009.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 134, and on that basis denies those allegations.

135. Regarding **Unit 161**, after the warranty expired, on August 26, 2008 at 113,879 miles, the engine was still not operating correctly. From that point forward, Custom Underground spent about \$7000 at Marion Ford and Uftring in 2008 and 2009 attempting to repair the engine. Had Ford properly repaired the vehicle when it was brought in for service during the warranty period, Custom Underground would not have had to incur these repair expenses.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information

sufficient to form a belief as to the truth of the other allegations contained in Paragraph 135, and on that basis denies those allegations.

136. Regarding **Unit 162**, after the warranty expired, on February 26, 2009 at 112,016 miles, the engine was still not operating correctly, malfunctioning in the same manner as previously. Custom Underground was forced to spend more than \$2400 at Uftring for additional post-warranty engine repairs. Had Ford properly repaired the vehicle when it was brought in for service during the warranty period, Custom Underground would not have had to incur these repair expenses.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information sufficient to form a belief as to the truth of the other allegations contained in Paragraph 136, and on that basis denies those allegations.

137. Various employees of the Ford dealerships admitted to Custom Underground that Ford knew that the engines were defective when the dealerships sold the vehicles to Custom Underground.

**ANSWER:** Ford denies that the engines were defective when the dealerships sold the vehicles to Custom Underground. Ford is without sufficient information to form a belief as to the truth of the other allegations contained in Paragraph 137, and on that basis denies those allegations.

138. Diesel technicians working on Custom Underground's units at the dealerships have acknowledged, in the presence of representatives of Custom Underground, the high volume of problems the Ford 6.0L Engines have experienced.

**ANSWER:** Ford is without sufficient information to form a belief as to the truth of the allegations contained in Paragraph 138, and on that basis denies those allegations.

139. Ford has actual knowledge of the details of the defects in Custom Underground's vehicles, as well as the claims and demands Custom Underground made to Ford for repair of the defects. Custom Underground has notified Ford, either directly or through Ford's dealerships, of

the issues, describing the defects and the problems caused by the defects, and giving Ford multiple opportunities to properly repair or replace the defective engine.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 139.

**B. John Barrett**

140. Plaintiff John Barrett (“Barrett”) is an individual who at all relevant times resided in Carlinville, Macoupin County, Illinois.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 140, and on that basis denies those allegations.

141. Barrett, purchased a new Ford vehicle with a 6.0L Engine, VIN 1FDWE35P44HA86337, in 2004.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 141, and on that basis denies those allegations.

142. While the engine was covered by the 5 year/100,000 mile warranty, the defective engine caused the vehicle to exhibit multiple symptoms, such as exhibiting poor engine acceleration, failure to withstand long periods of engine idle, rough idle, difficulty starting the engine, inability to start engine, engine stalling and complete loss of power while driving. These symptoms were caused by the root cause defects in the engine and/or the consequent malfunction of the Root-Cause-Damaged Components.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 142.

143. Pursuant to the Ford warranty, Barrett brought the malfunctioning vehicle to authorized Ford dealerships on multiple occasions, including on August 29, 2007 when the Ford dealership only authorized an injector and EGR valve repair.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information sufficient to form a belief as to the truth of the other allegations contained in Paragraph 143, and on that basis denies those allegations.

144. This was an inadequate repair which did not adequately repair the engine. Thus, Ford failed to provide appropriate warranty benefits for Barrett's vehicle despite the fact that the vehicle fell within the warranty's eligible time and mileage periods.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information sufficient to form a belief as to the truth of the other allegations contained in Paragraph 144, and on that basis denies those allegations.

145. As a result, the engine continued to malfunction and Barrett was forced to bring the malfunctioning vehicle to an authorized Ford dealership for additional repairs. Each time Ford either failed to perform an adequate repair or failed to provide any repair at all.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information sufficient to form a belief as to the truth of the other allegations contained in Paragraph 145, and on that basis denies those allegations.

146. Despite knowing that the engine had major defects and needed to be replaced, Ford only authorized minor recalibrations, adjustments, and replacement of isolated components which Ford knew would not, and in fact did not, adequately repair the engine.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 146. Ford specifically denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty.

147. As a result of Ford's failure to properly repair the engine during the warranty, on July 3, 2009, when the vehicle had approximately 108,000 miles and was no longer under warranty, it again experienced engine problems. Barrett brought the vehicle to a Ford dealer who initially told him that the engine needed two injectors replaced, but eventually admitted that the engine could not be repaired, and that Barrett needed a complete engine replacement, at a cost of approximately \$16,000.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information

sufficient to form a belief as to the truth of the other allegations contained in Paragraph 147, and on that basis denies those allegations.

148. Barrett spoke with the Ford Service Manager and his top diesel mechanic who admitted that Ford knew at the time it performed the repair in 2007 that the repair was not an adequate repair of the engine. The Ford mechanic also admitted that the 6.0L Engines had a very high failure rate.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegation that Barrett spoke with a Ford Service Manager, and on that basis denies those allegations. Ford denies each and every other allegation contained in Paragraph 148. Ford specifically denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty.

149. Ford has actual knowledge of the details of the defects in Barrett's vehicle, as well as the claims and demands Barrett made to Ford for repair of the defects. Barrett has notified Ford, either directly or through Ford's dealerships, of the issue, describing the defects and the problems caused by the defects, and giving Ford the opportunity to properly repair or replace the defective engine.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 149.

**C. Scott and Heather Gray**

150. Plaintiff Heather and Scott Gray ("Gray") are individuals who at all relevant times resided in St. Lucie County, Florida.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 150, and on that basis denies those allegations.

151. Gray, purchased a new Ford F-350 Super Duty vehicle with a 6.0L Engine, VIN 1FTWW33P15ED38133, on May 25, 2005 at Bartow Ford in Bartow, Florida.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 151, and on that basis denies those allegations.



152. While the engine was covered by the 5 year/100,000 mile warranty, the defective engine caused the vehicle to exhibit multiple symptoms, including starting rough, not accelerating properly, and making a knocking noise in the engine. These symptoms were caused by the root cause defects in the engine and/or the consequent malfunction of the Root-Cause-Damaged Components.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 152.

153. Pursuant to the Ford warranty, Gray brought the malfunctioning vehicle to authorized Ford dealerships in Florida, including Sunrise Ford and Velde Ford, on multiple occasions including on June 9, 2008 when the EGR and Oil Cooler were repaired or replaced. Each time Gray complained of the aforementioned engine symptoms and requested that the vehicle be repaired.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 153, and on that basis denies those allegations.

154. Each time, the Ford dealership did not repair the engine or performed an inadequate repair of the engine. Thus, Ford failed to provide appropriate warranty benefits for Gray's vehicle despite the fact that the vehicle fell within the warranty's eligible time and mileage periods.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information sufficient to form a belief as to the truth of the other allegations contained in paragraph 154 and, on that basis denies those allegations.

155. As a result, the engine continued to malfunction and Gray was forced to repeatedly bring the malfunctioning vehicle to an authorized Ford dealership for additional repairs, as indicated above. Each time Ford either failed to perform an adequate repair or failed to provide any repair at all.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 155, and on that basis denies those allegations.

156. Despite knowing that the engine had major defects and needed to be replaced, Ford only authorized minor recalibrations, adjustments, and replacement of isolated components which Ford knew would not, and in fact did not, adequately repair the engine.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 156. Ford specifically denies that it refused to authorize a repair required by the terms of the New Vehicle Warranty or any other applicable warranty.

157. As a result of Ford's failure to properly repair the engine during the warranty, after the expiration of the warranty, Gray was required to incur repair expenses to address these issues, lost income due to the vehicle being unavailable, and/or suffered other direct and consequential damages.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Warranty or any other applicable warranty. Ford is without information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 157, and on that basis denies those allegations.

158. For example, Gray incurred \$2189.12 in repair expenses in January 2009, as well as significant expenses to rent a replacement vehicle while the Ford vehicle was inoperable. In February 2009, Gray incurred additional expenses in an attempt to repair the turbo. In April 2009, the vehicle broke down again, leading to the replacement of injectors. In April 2010, Gray was forced to spend over \$3500 to replace 8 injectors. In June 2010, Gray was forced to spend over \$2400 to repair the injectors and fuel modulator.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in paragraph 158, and on that basis denies those allegations.

159. Ford has actual knowledge of the details of the defects in Gray's vehicle, as well as the claims and demands Gray made to Ford for repair of the defects. Gray has notified Ford, either directly or through Ford's dealerships, of the issue, describing the defects and the problems caused by the defects, and giving Ford the opportunity to properly repair or replace the defective engine. For example, Gray wrote letters to Ford dealerships and Ford Motor Company complaining of the defects and Ford's inability to properly repair them.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations in the last sentence of Paragraph 159, and on that basis denies those allegations. Ford denies each and every other allegation contained in Paragraph 159.

**D. Gena Boggero**

160. Plaintiff Gena Boggero (“Boggero”) is an individual who at all relevant times resided in Greenwood County, South Carolina.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in paragraph 160 and, on that basis, denies those allegations.

161. Boggero purchased a 2006 Ford F550 truck with a 6.0L Engine, VIN 1FDAF56P66ED52236, from Ford.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in paragraph 161, and on that basis, denies those allegations.

162. Beginning at about 10 days after Boggero purchased her vehicle, the engine constantly malfunctioned.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in paragraph 162, and on that basis denies those allegations.

163. While the engine was covered by the 5 year/100,000 mile warranty, the defective engine caused the vehicle to exhibit multiple symptoms, such as poor engine acceleration, rough idle, difficulty starting the engine, inability to start engine, engine stalling, and complete loss of power while driving. These symptoms were caused by the root cause defects in the engine and/or the consequent malfunction of the Root-Cause-Damaged Components.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 163.

164. Pursuant to the Ford warranty, Boggero brought the malfunctioning vehicle to an authorized Ford dealership in South Carolina, including George Ballentine Ford Lincoln Mercury, multiple times, with the indicated number of miles on the vehicle, and the indicated component(s) repaired or replaced: December 17, 2007 (58,776 miles, EGR valve), January 7, 2008 (59,724 miles, injector pump and injectors), March 24, 2008 (64,222 miles, EGR valve), April 10, 2008 (65,082 miles, EGR valve), July 30, 2008 (72,194 miles, EGR valve),

November 26, 2008 (79,742 miles, EGR cooler and EGR valve), and July 22, 2009 (98,874 miles, EGR cooler, EGR valve, and turbo).

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in paragraph 164, and on that basis denies those allegations.

165. Each time, Boggero complained of the aforementioned engine symptoms, and requested that the vehicle be repaired.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in paragraph 165 and, on that basis, denies those allegations.

166. Each time, the Ford dealership did not repair the engine or performed an inadequate repair of the engine. Thus, Ford failed to provide appropriate warranty benefits for Boggero's vehicle despite the fact that the vehicle fell within the warranty's eligible time and mileage periods.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 166, and on that basis denies those allegations.

167. As a result, the engine continued to malfunction.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 167, and on that basis denies those allegations.

168. Despite knowing that the engine had major defects and needed to be replaced, Ford only authorized minor recalibrations, adjustments, and replacement of isolated components which Ford knew would not, and in fact did not, adequately repair the engine.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 168. Ford specifically denies that it refused to authorize a repair required by the terms of the New Vehicle Warranty or any other applicable warranty.

169. As a result of Ford's failure to properly repair the engine during the warranty, after the expiration of the warranty, Boggero was required to incur repair expenses to address these issues, lost income due to the vehicle being unavailable, and/or suffered other direct and consequential damages.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Warranty or any other applicable warranty. Ford is without information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 169, and on that basis denies those allegations.

170. Boggero's repair expenses include replacing the turbocharger, injectors, multiple EGR coolers, the head gaskets, and the oil cooler, at the cost of more than \$10,000.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 170, and on that basis denies those allegations.

171. Ford has actual knowledge of the details of the defects in Boggero's vehicle, as well as the claims and demands Boggero made to Ford for repair of the defects. Boggero has notified Ford, either directly or through Ford's dealerships, described the defects, the problems caused by the defects, and has repeatedly given Ford the opportunity to repair or replace the defective engine. Specifically, Boggero has notified Ford, either directly or through Ford's dealerships, by describing the defects, the problems caused by the defects, and has repeatedly given Ford the opportunity to repair or replace the defective engine.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 171.

**E. Charles Clark**

172. Plaintiff Charles Clark ("Clark") is an individual who at all relevant times resided in Brooklyn, Jackson County, Michigan.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 172 and, on that basis, denies those allegations.

173. On August 3, 2006, Clark purchased a 2004 Ford F350 with a 6.0L Engine, VIN 1FTSW31P04ED20285.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 173 and, on that basis, denies those allegations.

174. While the engine was covered by the 5 year/100,000 mile warranty, the defective engine caused the vehicle to exhibit multiple symptoms, including blowing white smoke. These symptoms were caused by the root cause defects in the engine and/or the consequent malfunction of the Root-Cause-Damaged Components.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 174.

175. Pursuant to the Ford warranty, Clark's malfunctioning vehicle was brought to authorized Ford dealerships on multiple occasions, including on April 13, 2004 where the Ford dealership repaired or replaced the turbo charger vanes and EGR valve sensor.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 175, and on that basis denies those allegations.

176. The Ford dealership did not repair the engine or performed an inadequate repair of the engine. Thus, Ford failed to provide appropriate warranty benefits for Clark's vehicle despite the fact that the vehicle fell within the warranty's eligible time and mileage periods.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Warranty or any other applicable warranty. Ford is without information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 176 and, on that basis, denies those allegations.

177. As a result, the engine continued to malfunction, including leaking coolant so excessively that it can no longer be driven and Clark cannot afford to pay for additional repairs. Each time in the past Ford either failed to perform an adequate repair or failed to provide any repair at all.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Warranty or any other applicable warranty. Ford is without information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 177 and, on that basis, denies those allegations.

178. Despite knowing that the engine had major defects and needed to be replaced, Ford only authorized minor recalibrations, adjustments, and replacement of isolated components which Ford knew would not, and in fact did not, adequately repair the engine.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 178. Ford specifically denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty.

179. As a result of Ford's failure to properly repair the engine during the warranty, after the expiration of the warranty, Clark is no longer able to use the vehicle, resulting in loss-of-use damages, and/or other direct and consequential damages.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 179, and on that basis denies those allegations.

180. Ford has actual knowledge of the details of the defects in Clark's vehicle, as well as the claims and demands Clark made to Ford for repair of the defects. Clark has notified Ford, either directly or through Ford's dealerships, of the issue, describing the defects and the problems caused by the defects, and giving Ford the opportunity to properly repair or replace the defective engine. Ford gave Clark a "complaint number" but refused to take any action.

**ANSWER:** In regard to the allegation that Ford gave Clark a "complaint number," Ford is without information sufficient to form a belief as to the truth of the allegation, and on that basis denies the allegation. Ford denies each and every other allegation in Paragraph 180.

**F. Dinonno Enterprise, Inc.**

181. Plaintiff Dinonno Enterprise, Inc., d/b/a Cutting Edge Concrete Cutting ("Dinonno") is a corporation incorporated in the state of California with its principal place of business in Simi Valley, Ventura County, California.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 181, and on that basis denies those allegations.

182. Dinonno purchased two new Ford vehicles with 6.0L Engines, a model year 2006 F550 purchased in Indiana, VIN 1FTAF56P46EA73870, on September 30, 2005, and a 2006 F550 purchased in Illinois, VIN 1FDAF56P56EA25665, on August 5, 2005. He also received a 2005 F550 in California, VIN 1FDAF56P35EB87390, on March 27, 2005 as a trade-in for a 2003 vehicle that Ford acknowledged was defective and could not be repaired.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 182, and on that basis denies those allegations.

183. While the engines were covered by the 5 year/100,000 mile warranty, the defective engines caused the vehicles to exhibit multiple symptoms, such as poor engine acceleration, rough idle, difficulty and/or inability to start, engine stalling, and loss of power while driving. These symptoms were caused by the root cause defects in the engine and/or the consequent malfunction of the Root-Cause-Damaged Components.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 183.

184. Pursuant to the Ford warranty, Dinonno brought the malfunctioning vehicles on multiple occasions to authorized Ford dealerships including Sunrise Ford in N. Hollywood, California, and Carmenita Truck Center Ford in Santa Fe Springs, California.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 184, and on that basis denies those allegations.

185. Dinonno brought malfunctioning vehicle, VIN 1FTAF56P46EA73870, to authorized Ford dealerships on multiple occasions, including on March 13, 2007 for injector replacement.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 185, and on that basis denies those allegations.

186. Dinonno brought malfunctioning vehicle, VIN 1FDAF56P56EA2566, to authorized Ford dealerships on multiple occasions including the following dates, each time for injector repair or replacement: December 28, 2007, January 15, 2007, January 19, 2007, March 25, 2007.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 186, and on that basis denies those allegations.



187. Dinonno brought malfunctioning vehicle, VIN 1FDAF56P35EB87390, to authorized Ford dealerships in California on multiple occasions including the following dates, with the indicated component(s) repaired or replaced: March 1, 2006 (EGR cooler and EGR valve); October 2, 2006 (EGR valve, injectors, and turbo); September 24, 2008 (heads and EGR cooler) and November 7, 2008 (turbo).

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 187, and on that basis denies those allegations.

188. Each time Dinonno complained of the aforementioned engine symptoms and requested that the vehicle be repaired.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 188, and on that basis denies those allegations.

189. Each time, the Ford dealership did not repair the engine or performed an inadequate repair of the engine. Thus, Ford failed to provide appropriate warranty benefits for Dinonno's vehicles despite the fact that the vehicles fell within the warranty's eligible time and mileage periods.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 189, and on that basis denies those allegations.

190. As a result, the engine continued to malfunction and Dinonno was forced to repeatedly bring the malfunctioning vehicles to authorized Ford dealerships for additional repairs, as indicated above. Each time, Ford either failed to perform an adequate repair or failed to provide any repair at all.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 190, and on that basis denies those allegations.

191. Despite knowing that the engine had major defects and needed to be replaced, Ford only authorized minor recalibrations, adjustments, and replacement of isolated components which Ford knew would not, and in fact did not, adequately repair the engine.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 191.

192. As a result of Ford's failure to properly repair the engine during the warranty, after the expiration of the warranty, Dinonno was required to incur repair expenses to address these issues, lost income due to the vehicle being unavailable, and/or suffered other direct and consequential damages.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 192, and on that basis denies those allegations.

193. Ford has actual knowledge of the details of the defects in Dinonno's vehicle, as well as the claims and demands Dinonno made to Ford for repair of the defects. Dinonno has notified Ford, either directly or through Ford's dealerships, of the issue, describing the defects and the problems caused by the defects, and giving Ford the opportunity to properly repair or replace the defective engine.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 193.

**G. Karl Strong**

194. Plaintiff Karl Strong ("Strong") is an individual who at all relevant times resided in Santa Rosa, Sonoma County, California.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 194, and on that basis denies those allegations.

195. Strong purchased a 2004 Ford F250 truck with a 6.0-liter diesel engine, VIN 1FTNX21P64ED41727, from Sebastopol Ford in Sebastopol, California on August 21, 2004.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 195, and on that basis denies those allegations.

196. While the engine was covered by the 5 year/100,000 mile warranty, the defective engine caused the vehicle to exhibit multiple symptoms, such as poor engine acceleration, poor air conditioning performance, failure to withstand long periods of engine idle, rough idle, difficulty and/or inability to start, engine stalling, and complete loss of power while driving. These symptoms were caused by the root cause defects in the engine and/or the consequent malfunction of the Root-Cause-Damaged Components.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 196.

197. Pursuant to the Ford warranty, Strong brought the malfunctioning vehicle to an authorized Ford dealership, Hansel Ford in Santa Rosa, California, for repair, complaining of the aforementioned engine symptoms, and requesting that the vehicle be repaired.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 197, and on that basis denies those allegations.

198. The Ford dealership did not repair the engine and/or performed an inadequate repair of the engine, for example, the dealership only replaced the EGR cooler and oil cooler, which did not repair the engine. Thus, Ford failed to provide appropriate warranty benefits for Strong's vehicle despite the fact that the vehicle fell within the warranty's eligible time and mileage periods.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 198 and, on that basis denies those allegations.

199. As a result, the engine continued to malfunction.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 199, and on that basis denies those allegations.

200. Strong was again forced to bring the malfunctioning vehicle to an authorized Ford dealership, including on February 6, 2009 to Hansel Ford. Each time Ford either failed to perform an adequate repair or failed to provide any repair at all.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information

sufficient to form a belief as to the truth of the remaining allegations in Paragraph 200, and on that basis denies those allegations.

201. Despite knowing that the engine had major defects and needed to be replaced, Ford only authorized minor recalibrations, adjustments, and replacement of isolated components which Ford knew would not, and in fact did not, adequately repair the engine.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 201. Ford specifically denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty.

202. As a result of Ford's failure to properly repair the engine during the warranty, after the expiration of the warranty, Strong was required to incur repair expenses to address these issues, lost income due to the vehicle being unavailable, and/or suffered other direct and consequential damages.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 202, and on that basis denies those allegations.

203. For example, Strong had to pay to have the EGR cooler and oil cooler replaced again, and pay for repairs to the head gaskets and EGR valve, after the warranty expired, costing Strong more than \$5,900.

**ANSWER:** Ford is without sufficient information to form a belief as to the truth of the allegations contained in Paragraph 203, and on that basis denies those allegations.

204. Ford has actual knowledge of the details of the defects in Strong's vehicle, as well as the claims and demands Strong made to Ford for repair of the defects. Strong has notified Ford, either directly or through Ford's dealerships, described the defects, the problems caused by the defects, and has repeatedly given Ford the opportunity to repair or replace the defective engine.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 204.

**H. Frank Brown Towing, Inc.**

205. Plaintiff Frank Brown Towing, Inc. (“Brown”) is a corporation incorporated and with its principal place of business in Buffalo, Erie County, New York.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 205, and on that basis denies those allegations.

206. On November 30, 2005, Brown purchased a 2006 Ford F450 truck equipped with the 6.0L Engine, VIN 1FDXX46P36EB47314, in New York.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 206, and on that basis denies those allegations.

207. While the engine was covered by the 5 year/100,000 mile warranty, the defective engine caused the vehicle to exhibit multiple symptoms, such as poor engine acceleration, rough idle, difficulty and/or inability to start, engine stalling, and complete loss of power while driving. The symptoms were caused by the root cause defects in the engine and/or the consequent malfunction of the Root-Cause-Damaged Components.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in the first sentence of paragraph 207, and on that basis denies those allegations. Ford denies each and every other allegation contained in Paragraph 207.

208. Pursuant to the Ford warranty, Brown brought the malfunctioning vehicle to authorized Ford dealerships in New York, including Steve Baldo Ford and West-Herr Ford of Amherst, for repair on multiple occasions, with the indicated number of miles on the vehicle, and the indicated component(s) repaired or replaced: January 2, 2008 (47,021 miles, EGR valve), April 11, 2008 (54,320 miles, EGR valve), May 23, 2008 (57,240 miles, EGR cooler), August 6, 2008 (61,174 miles, EGR valve), December 21, 2009 (89,851 miles, EGR valve), January 6, 2010 (90,489 miles, injector), February 10, 2010 (91,763 miles, EGR cooler and oil cooler), June 29, 2010 (99,635 miles, injector), and July 15, 2010 (100,064 miles, turbo).

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 208, and on that basis denies those allegations.

209. Each time, Brown complained of the aforementioned engine symptoms, and requested that the vehicle be repaired.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 209, and on that basis denies those allegations.

210. Each time, the Ford dealership performed inadequate repairs of the engine, none of which repaired the engine.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 210, and on that basis denies those allegations.

211. Ford's mechanic even suggested that Brown carry a spare EGR valve onboard the truck to make repairs "on the road" should the part fail again.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 211, and on that basis denies those allegations.

212. Thus, Ford failed to provide appropriate warranty benefits for Brown's vehicle, despite the fact that the vehicle fell within the warranty's eligible time and mileage periods.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 212. Ford specifically denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty.

213. As a result, the engine continued to malfunction.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 213, and on that basis denies those allegations.

214. Brown was forced to bring the malfunctioning vehicle to an authorized Ford dealership on multiple occasions as listed above. Each time Ford either failed to perform an adequate repair or failed to provide any repair at all.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 214, and on that basis denies those allegations.

215. Despite knowing that the engine had major defects and needed to be replaced, Ford only authorized minor recalibrations, adjustments, and replacement of isolated components which Ford knew would not, and in fact did not, adequately repair the engine.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 215. Ford specifically denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty.

216. Ford has now told Brown that the truck needs an entire engine replacement, which will cost around \$18,000.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 216.

217. As a result of Ford's failure to properly repair the engine during the warranty, after the expiration of the warranty, Brown was required to incur repair expenses to address these issues, lost income due to the vehicle being unavailable, and/or suffered other direct and consequential damages.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 217, and on that basis denies those allegations.

218. Ford has actual knowledge of the details of the defects in Brown's vehicle, as well as the claims and demands Brown made to Ford for repair of the defects. Brown has notified Ford, either directly or through Ford's dealerships, described the defects, the problems caused by the defects, and has repeatedly given Ford the opportunity to repair or replace the defective engine.

**ANSWER:** Ford denies each and every allegation contained in paragraph 218.

**I. Steve Santilli**

219. Plaintiff Steve Santilli (“Santilli”) is an individual who at all relevant times resided in Newington, New Haven County, Connecticut.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 219, and on that basis denies those allegations.

220. Santilli purchased a 2005 Ford F250 truck with a 6.0-liter diesel engine, VIN 1FT5X21P95EC54862, on March 25, 2005, from Family Ford in Waterbury, Connecticut.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 220, and on that basis denies those allegations.

221. While the engine was covered by the 5 year/100,000 mile warranty, the defective engine caused the vehicle to exhibit multiple symptoms, such as poor engine acceleration, rough idle, difficulty starting the engine, inability to start engine, engine stalling, and complete loss of power while driving. These symptoms were caused by the root cause defects in the engine and/or the consequent malfunction of the Root-Cause-Damaged Components.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 221.

222. In approximately November 2008, Santilli experienced problems with the truck running rough, stalling, and failing to start. Pursuant to the Ford warranty, Santilli brought the malfunctioning vehicle to Interstate Ford, an authorized Ford dealership in Connecticut, complaining of the aforementioned engine symptoms, and requesting that the vehicle be repaired.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 222, and on that basis denies those allegations.

223. The Ford dealership did not repair the engine or performed an inadequate repair of the engine. Thus, Ford failed to provide appropriate warranty benefits for Santilli’s vehicle despite the fact that the vehicle fell within the warranty’s eligible time and mileage periods.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information



sufficient to form a belief as to the truth of the remaining allegations in Paragraph 223, and on that basis denies those allegations.

224. As a result, the engine continued to malfunction.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 224, and on that basis denies those allegations.

225. Santilli was again forced to bring the malfunctioning vehicle to an authorized Ford dealership due to the improper repair. Each time Ford either failed to perform an adequate repair or failed to provide any repair at all.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 225, and on that basis denies those allegations.

226. Despite knowing that the engine had major defects and needed to be replaced, Ford only authorized minor recalibrations, adjustments, and replacement of isolated components which Ford knew would not, and in fact did not, adequately repair the engine.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 226. Ford specifically denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty.

227. As a result of Ford's failure to properly repair the engine during the warranty, after the expiration of the warranty, Santilli was required to incur repair expenses to address these issues, lost income due to the vehicle being unavailable, and/or suffered other direct and consequential damages.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 227, and on that basis denies those allegations.

228. In particular, since his warranty expired, Santilli's vehicle has broken down, and Ford claims that the vehicle will require a new FICM, a new turbocharger, and a new EGR valve.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 228, and on that basis denies those allegations.

229. Ford has actual knowledge of the details of the defects in Santilli's vehicle, as well as the claims and demands Santilli made to Ford for repair of the defects. Santilli has notified Ford, either directly or through Ford's dealerships, described the defects, the problems caused by the defects, and has repeatedly given Ford the opportunity to repair or replace the defective engine.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 229.

**J. John Prebish**

230. Plaintiff John Prebish ("Prebish") is an individual who at all relevant times resided in Loveland, Larimer County, Colorado.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 230, and on that basis denies those allegations.

231. Prebish purchased a 2004 Ford F350 truck with a 6.0-liter diesel engine, VIN 1FTWW33P74ED15146, on December 1, 2004, with 4,951 miles on it.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 231, and on that basis denies those allegations.

232. While the engine was covered by the 5 year/100,000 mile warranty, the defective engine caused the vehicle to exhibit multiple symptoms, such as poor engine acceleration, rough idle, difficulty starting the engine, inability to start engine, engine stalling and/or complete loss of power while driving. These symptoms were caused by the root cause defects in the engine and/or the consequent malfunction of the Root-Cause-Damaged Components.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 232.

233. Pursuant to the Ford warranty, Prebish brought the malfunctioning vehicle to an authorized Ford dealership (Heritage Ford-Lincoln-Mercury, Inc.) multiple times, with the indicated number of miles on the vehicle, and the indicated component(s) repaired or replaced: July 8, 2005 (12,911 miles, EGR valve), October 10, 2006 (31.945 miles, clean and test EGR

valve), January 24, 2008 (51,750 miles, EGR valve), and September 29, 2009 (EGR valve and cooler), complaining of the aforementioned engine symptoms, and requesting that the vehicle be repaired.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 233, and on that basis denies those allegations.

234. The Ford dealership did not repair the engine or performed an inadequate repair of the engine. Thus, Ford failed to provide appropriate warranty benefits for Prebish's vehicle despite the fact that the vehicle fell within the warranty's eligible time and mileage periods.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 234, and on that basis denies those allegations.

235. As a result, the engine continued to malfunction and Prebish was forced to bring the malfunctioning vehicle back for additional repairs as stated above. Each time Ford either failed to perform an adequate repair or failed to provide any repair at all.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 235, and on that basis denies those allegations.

236. Despite knowing that the engine had major defects and needed to be replaced, Ford only authorized minor recalibrations, adjustments, and replacement of isolated components which Ford knew would not, and in fact did not, adequately repair the engine.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 236. Ford specifically denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty.

237. As a result of Ford's failure to properly repair the engine during the warranty, after the expiration of the warranty, Prebish was required to incur repair expenses to address

these issues, lost income due to the vehicle being unavailable, and/or suffered other direct and consequential damages.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 237, and on that basis denies those allegations.

238. Ford has actual knowledge of the details of the defects in Prebish's vehicle, as well as the claims and demands Prebish made to Ford for repair of the defects. Prebish has notified Ford, either directly or through Ford's dealerships, described the defects, the problems caused by the defects, and has repeatedly given Ford the opportunity to repair or replace the defective engine.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 238.

**K. Anthony Mawyer**

239. Plaintiff Anthony Mawyer ("Mawyer") is an individual who at all relevant times resided in Alexander County, North Carolina.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 239, and on that basis denies those allegations.

240. On September 19, 2004, Mawyer purchased a new 2004 Ford F250 truck with a 6.0L Engine, VIN 1FTNW21P64EA09712, from Larry Schronce Ford in North Carolina.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 240, and on that basis denies those allegations.

241. While the engine was covered by the 5 year/100,000 mile warranty, the defective engine caused the vehicle to exhibit multiple symptoms, such as poor engine acceleration, poor air conditioning performance, failure to withstand long periods of engine idle, rough idle, difficulty and/or inability to start, engine stalling, and complete loss of power while driving. These symptoms were caused by the root cause defects in the engine and/or the consequent malfunction of the Root-Cause-Damaged Components.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 241.

242. Pursuant to the Ford warranty, Mawyer brought the malfunctioning vehicle to authorized Ford dealerships in North Carolina, including Larry Schronce Ford, for repair on multiple occasions, with the indicated number of miles on the vehicle, and the indicated component(s) repaired or replaced: January 11, 2005 (6289 miles, injector), July 25, 2005 (12,590, injector), August 8, 2007 (33,123 miles, injector replaced and turbo cleaned), and September 15, 2009 (55,325 miles, EGR valve).

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 242, and on that basis denies those allegations.

243. Each time, Mawyer complained of the aforementioned engine symptoms, and requested that the vehicle be repaired.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 243, and on that basis denies those allegations.

244. Each time, the Ford dealership performed inadequate repairs of the engine, none of which repaired the engine.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 244, and on that basis denies those allegations.

245. Thus, Ford failed to provide appropriate warranty benefits for Mawyer's vehicle despite the fact that the vehicle fell within the warranty's eligible time and mileage periods.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 245.

246. As a result, the engine continued to malfunction.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 246, and on that basis denies those allegations.

247. A Ford service technician admitted to Mawyer that 9 out of 10 trucks equipped with the 6.0L Engine presented for repair exhibit the same problems as Mawyer's vehicle.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 247.

248. Mawyer was forced to return the malfunctioning vehicle to an authorized Ford dealership. Each time Ford either failed to perform an adequate repair or failed to provide any repair at all.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 248, and on that basis denies those allegations.

249. Despite knowing that the engine had major defects and needed to be replaced, Ford only authorized minor recalibrations, adjustments, and replacement of isolated components which Ford knew would not, and in fact did not, adequately repair the engine.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 249.

250. As a result of Ford's failure to properly repair the engine during the warranty, after the expiration of the warranty, Mawyer was required to incur repair expenses to address these issues, lost income due to the vehicle being unavailable, and/or suffered other direct and consequential damages.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 250, and on that basis denies those allegations.

251. Ford has actual knowledge of the details of the defects in Mawyer's vehicle, as well as the claims and demands Mawyer made to Ford for repair of the defects. Mawyer has notified Ford, either directly or through Ford's dealerships, described the defects, the problems caused by the defects, and has repeatedly given Ford the opportunity to repair or replace the defective engine.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 251.

**L. Georjean Vogt**

252. Plaintiff Georjean Vogt (“Vogt”) is an individual who at all relevant times resided in Tucson, Arizona.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 252, and on that basis denies those allegations.

253. Vogt, through a family trust, purchased a new 2003 Ford F350 truck with a 6.0-liter diesel engine, VIN 1FTSW31P83ED32943, on August 10, 2003, in Arizona.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 253, and on that basis denies those allegations.

254. While the engine was covered by the 5 year/100,000 mile warranty, the defective engine caused the vehicle to exhibit multiple symptoms, including running rough, blowing black smoke, turbo whine. These symptoms were caused by the root cause defects in the engine and/or the consequent malfunction of the Root-Cause-Damaged Components.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 254.

255. Pursuant to the Ford warranty, Vogt brought the malfunctioning vehicle to authorized Ford dealerships in Arizona, including Oracle Ford and Holmes Tuttle Ford, on multiple occasions including the following dates, with the indicated number of miles on the vehicle, and the indicated component(s) repaired or replaced: October 26, 2005, (17,573 miles, turbo and EGR valve), August 22, 2006 (22,901 miles, EGR valve), September 20, 2007 (31,081 miles, EGR valve), July 31, 2008 (39,382 miles, turbo charger), and August 21, 2008 (39,641 miles, turbo charger). Each time Vogt complained of the aforementioned engine symptoms and requested that the vehicle be repaired.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 255, and on that basis denies those allegations.

256. Each time, the Ford dealership did not repair the engine or performed an inadequate repair of the engine. Thus, Ford failed to provide appropriate warranty benefits for Vogt’s vehicle despite the fact that the vehicle fell within the warranty’s eligible time and mileage periods.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information

sufficient to form a belief as to the truth of the remaining allegations in Paragraph 256, and on that basis denies those allegations.

257. As a result, the engine continued to malfunction and Vogt was forced to repeatedly bring the malfunctioning vehicle to an authorized Ford dealership for additional repairs. Each time Ford either failed to perform an adequate repair or failed to provide any repair at all.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 257, and on that basis denies those allegations.

258. Despite knowing that the engine had major defects and needed to be replaced, Ford only authorized minor recalibrations, adjustments, and replacement of isolated components that Ford knew would not, and in fact did not, adequately repair the engine.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 258.

259. As a result of Ford's failure to properly repair the engine during the warranty, after the expiration of the warranty, Vogt was required to incur repair expenses to address these issues, lost income due to the vehicle being unavailable, and/or suffered other direct and consequential damages.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 259, and on that basis denies those allegations.

260. For example, on July 31, 2008, Vogt was billed \$1,992.68 by Oracle Ford for turbocharger work and on August 22, 2008 Vogt was billed \$1,127.13 by Oracle Ford for additional engine work.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 260, and on that basis denies those allegations.



261. Ford has actual knowledge of the details of the defects in Vogt's vehicle, as well as the claims and demands Vogt made to Ford for repair of the defects. Vogt has notified Ford, either directly or through Ford's dealerships, of the issue, describing the defects and the problems caused by the defects, and giving Ford the opportunity to properly repair or replace the defective engine.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 261.

**M. Cecil and Tressie Fulton**

262. Plaintiff Cecil and Tressie Fulton ("Fulton") are individuals who at all relevant times resided in Manteca, San Joaquin County, California.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 262, and on that basis denies those allegations.

263. Fulton purchased a new 2004 Ford F250 truck with a 6.0-liter diesel engine, VIN 1FTNW21P14EB66788, in Livermore, California on December 14, 2004.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 263, and on that basis denies those allegations.

264. While the engine was covered by the 5 year/100,000 mile warranty, the defective engine caused the vehicle to exhibit multiple symptoms, including excessive engine noise and other symptoms. The symptoms were caused by the root cause defects in the engine and/or the consequent malfunction of the Root-Cause-Damaged Components.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 264.

265. Pursuant to the Ford warranty, Fulton brought the malfunctioning vehicle to an authorized Ford dealership, including Codioli Ford in Livermore, California, on dates including November 15, 2005, December 5, 2005, January 29, 2007, September 10, 2007, March 25, 2008, April 30, 2008, May 12, 2008, April 27, 2011, and May 23, 2011, complaining of the aforementioned engine symptoms, and requesting that the vehicle be repaired.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 265, and on that basis denies those allegations.

266. The Ford dealership performed inadequate repairs of the engine including repairs or replacements of the turbo (four times), the EGR throttle body, EGR cooler and EGR valve,

EGR cooler, and head gaskets, none of which repaired the engine adequately. Thus, Ford failed to provide appropriate warranty benefits for Fulton's vehicle despite the fact that the vehicle fell within the warranty's eligible time and mileage periods.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 266, and on that basis denies those allegations.

267. As a result, the engine continued to malfunction.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 267, and on that basis denies those allegations.

268. Fulton was forced to bring the malfunctioning vehicle to an authorized Ford dealership, on multiple occasions as listed above. Each time Ford either failed to perform an adequate repair or failed to provide any repair at all.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 268, and on that basis denies those allegations.

269. Despite knowing that the engine had major defects and needed to be replaced, Ford only authorized minor recalibrations, adjustments, and replacement of isolated components which Ford knew would not, and in fact did not, adequately repair the engine.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 269.

270. As a result of Ford's failure to properly repair the engine during the warranty, after the expiration of the warranty, Fulton was required to incur repair expenses to address these issues, lost income due to the vehicle being unavailable, and/or suffered other direct and consequential damages.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information

sufficient to form a belief as to the truth of the remaining allegations in Paragraph 270, and on that basis denies those allegations.

271. Ford has actual knowledge of the details of the defects in Fulton's vehicle, as well as the claims and demands Fulton made to Ford for repair of the defects. Fulton has notified Ford, either directly or through Ford's dealerships, described the defects, the problems caused by the defects, and has repeatedly given Ford the opportunity to repair or replace the defective engine.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 271.

**N. Carl Atwell**

272. Plaintiff Carl Atwell ("Atwell") is an individual who at all relevant times resided in Mooresville, Morgan County, Indiana.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 272, and on that basis denies those allegations.

273. On December 27, 2007, Atwell purchased a pre-owned 2005 Ford F350 truck with a 6.0L Engine, VIN 1FTWW31P85ED18948, from Ray Skillman Ford in Greenwood, Indiana.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 273, and on that basis denies those allegations.

274. While the engine was covered by the 5 year/100,000 mile warranty, the defective engine caused the vehicle to exhibit multiple symptoms including poor engine acceleration, rough idle, difficulty and/or inability to start, engine stalling, and complete loss of power while driving. These symptoms were caused by the root cause defects in the engine and/or the consequent malfunction of the Root-Cause-Damaged Components.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 274, and on that basis denies those allegations.

275. Pursuant to the Ford warranty, Atwell brought the malfunctioning vehicle to authorized Ford dealerships on multiple occasions including the following dates, with the indicated component(s) repaired or replaced: December 17, 2008 (EGR and oil cooler), August 17, 2009 (Injectors 2 and 4), and December 1, 2009 (Injectors 1, 5 and 6).

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 275, and on that basis denies those allegations.

276. Each time Atwell complained of the aforementioned engine symptoms and requested that the vehicle be repaired.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 276, and on that basis denies those allegations.

277. Each time, the Ford dealership did not repair the engine or performed an inadequate repair of the engine. Thus, Ford failed to provide appropriate warranty benefits for Atwell's vehicle despite the fact that the vehicle fell within the warranty's eligible time and mileage periods.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 277, and on that basis denies those allegations.

278. As a result, the engine continued to malfunction and Atwell was forced to repeatedly bring the malfunctioning vehicle to an authorized Ford dealership for additional repairs, as indicated above. Each time, Ford either failed to perform an adequate repair or failed to provide any repair at all.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 278, and on that basis denies those allegations.

279. Despite knowing that the engine had major defects and needed to be replaced, Ford only authorized minor recalibrations, adjustments, and replacement of isolated components which Ford knew would not, and in fact did not, adequately repair the engine.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 279.

280. As a result of Ford's failure to properly repair the engine during the warranty, after the expiration of the warranty, Atwell was required to incur repair expenses to address these issues, lost income due to the vehicle being unavailable, and/or suffered other direct and consequential damages.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 280, and on that basis denies those allegations.

281. For example, Atwell was forced to pay for the replacement of the EGR cooler and oil cooler.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 281, and on that basis denies those allegations.

282. Ford has actual knowledge of the details of the defects in Atwell's vehicle, as well as the claims and demands Atwell made to Ford for repair of the defects. Atwell has notified Ford, either directly or through Ford's dealerships, of the issue, describing the defects and the problems caused by the defects, and giving Ford the opportunity to properly repair or replace the defective engine.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 282.

**O. Phillip Marcum**

283. Plaintiff Phillip Marcum ("Marcum") is an individual who at all relevant times resided in Lucasville, Ohio.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 283, and on that basis denies those allegations.

284. On September 28, 2007, Marcum purchased a pre-owned 2005 Ford F350 truck with a 6.0L Engine, VIN 1FTWW33P45EB17075, from Donnie Smith Auto Sales in Ohio.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 284, and on that basis denies those allegations.

285. The vehicle had 32,100 at the time Marcum purchased the vehicle.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 285, and on that basis denies those allegations.

286. While the engine was covered by the 5 year/100,000 mile warranty, the defective engine caused the vehicle to exhibit multiple symptoms, such as poor engine acceleration, rough idle, difficulty starting the engine, inability to start engine, engine stalling and/or complete loss of power while driving. These symptoms were caused by the root cause defects in the engine and/or the consequent malfunction of the Root-Cause-Damaged Components.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 286.

287. Pursuant to the Ford warranty, Marcum brought the malfunctioning vehicle to an authorized Ford dealership in Ohio, including Barnett Ford, for repair on multiple occasions, with the indicated number of miles on the vehicle, and the indicated component(s) repaired or replaced: August 7, 2009 (60,242 miles, EGR valve), and January 26, 2010 (66,326 miles, turbo and two injectors).

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 287, and on that basis denies those allegations.

288. Each time, Marcum complained of the aforementioned engine symptoms, and requested that the vehicle be repaired.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 288, and on that basis denies those allegations.

289. Each time, the Ford dealership did not repair the engine or performed an inadequate repair of the engine. Thus, Ford failed to provide appropriate warranty benefits for Marcum's vehicle despite the fact that the vehicle fell within the warranty's eligible time and mileage periods.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 289, and on that basis denies those allegations.

290. As a result, the engine continued to malfunction and Marcum was forced to bring the malfunctioning vehicle back for additional repairs. Each time, Ford either failed to perform an adequate repair or failed to provide any repair at all.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 290, and on that basis denies those allegations.

291. For example, in September 2010, after his vehicle's warranty had expired, Marcum returned the vehicle to an authorized dealership when the engine again malfunctioned. Upon discovering that multiple injectors needed replacement, Marcum complained to Ford directly. Despite the expiration of the vehicle's warranty, Ford agreed to split the repair costs of replacing injectors.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 291, and on that basis denies those allegations.

292. Despite knowing that the engine had major defects and needed to be replaced, Ford only authorized minor recalibrations, adjustments, and replacement of isolated components which Ford knew would not, and in fact did not, adequately repair the engine.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 292, and on that basis denies those allegations. Ford specifically denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty.

293. As a result of Ford's failure to properly repair the engine during the warranty, after the expiration of the warranty, Marcum was required to incur repair expenses to address these issues, lost income due to the vehicle being unavailable, and/or suffered other direct and consequential damages.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 293, and on that basis denies those allegations.

294. Ford has actual knowledge of the details of the defects in Marcum's vehicle, as well as the claims and demands Marcum made to Ford for repair of the defects. Marcum has notified Ford, either directly or through Ford's dealerships, described the defects, the problems caused by the defects, and has repeatedly given Ford the opportunity to repair or replace the defective engine.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 294.

295. In particular, Marcum authored a letter to Ohio Attorney General Richard Cordray detailing Marcum's complaints regarding his vehicle and requesting that Ford replace his defective engine. This letter was provided to Ford as part of the Ohio Attorney general's dispute resolution program.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 295, and on that basis denies those allegations.

296. Ford responded that it was not responsible for further repairs to the vehicle after the expiration of the warranty, and that it would not comply with the Marcum's request for engine replacement.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 296, and on that basis denies those allegations.

297. Accordingly, Marcum notified Ford of the breach within a reasonable time, and/or was not required to do so because affording Ford a reasonable opportunity to cure its breach of written warranty would have been futile.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 297.

**P. James Hutton**

298. Plaintiff James Hutton ("Hutton") is an individual who at all relevant times resided in Remington, New Jersey.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 298, and on that basis denies those allegations.

299. On September 8, 2004, Hutton purchased a new 2005 Ford F350 truck with a 6.0L Engine, VIN 1FTWW33P75EA46406, from Ditschman Remington Ford in Remington, New Jersey.



**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 299, and on that basis denies those allegations.

300. While the engine was covered by the 5 year/100,000 mile warranty, the defective engine caused the vehicle to exhibit multiple symptoms, including poor engine acceleration, rough idle, difficulty and/or inability to start, engine stalling, and/or complete loss of power while driving. These symptoms were caused by the root cause defects in the engine and/or the consequent malfunction of the Root-Cause-Damaged Components.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 300.

301. Pursuant to the Ford warranty, Hutton brought the malfunctioning vehicle to Remington Ford, an authorized Ford dealership in New Jersey, on June 22, 2007. The vehicle had 70,357 miles, and Remington Ford replaced the EGR valve and turbo charger.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 301, and on that basis denies those allegations.

302. Hutton complained of the aforementioned engine symptoms, and requested that the vehicle be repaired.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 302, and on that basis denies those allegations.

303. The Ford dealership did not repair the engine or performed an inadequate repair of the engine. Thus, Ford failed to provide appropriate warranty benefits for Hutton's vehicle despite the fact that the vehicle fell within the warranty's eligible time and mileage periods.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 303, and on that basis denies those allegations.

304. As a result, the engine continued to malfunction and Hutton was forced to repeatedly bring the malfunctioning vehicle to an authorized Ford dealership for additional repairs. Each time, Ford either failed to perform an adequate repair or failed to provide any repair at all.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 304, and on that basis denies those allegations.

305. Despite knowing that the engine had major defects and needed to be replaced, Ford only authorized minor recalibrations, adjustments, and replacement of isolated components which Ford knew would not, and in fact did not, adequately repair the engine.

**ANSWER:** Ford denies each and every allegation in Paragraph 305.

306. As a result of Ford's failure to properly repair the engine during the warranty, after the expiration of the warranty, Hutton was required to incur repair expenses to address these issues, and/or suffered other direct and consequential damages.

**ANSWER:** Ford denies that it refused to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty. Ford is without information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 306, and on that basis denies those allegations.

307. Ford has actual knowledge of the details of the defects in Hutton's vehicle, as well as the claims and demands Hutton made to Ford for repair of the defects. Hutton has notified Ford, either directly or through Ford's dealerships, of the issue, describing the defects and the problems caused by the defects, and has given Ford the opportunity to properly repair or replace the defective engine.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 307.

## V. **CLASS ACTION ALLEGATIONS**

308. Pursuant to FED. R. CIV. P. 23, Plaintiffs Gray, Custom Underground, Brown, Fulton, Strong, Dinno, Clark, Marcum, Vogt, Prebish, Santilli, Boggero, Hutton, and Mawyer bring this action for themselves and on behalf of the following class ("**the Inadequate Warranty Repair Class**"), which excludes states requiring pre-litigation notice or reliance and is defined as:

1. All entities and natural persons in the United States (including its Territories and the District of Columbia) who (a) currently own or lease (or who

in the past owned or leased) vehicles with a Ford 6.0-liter diesel engine, referred to herein (and in all Class definitions) as the “Class Vehicles”; and (b) had a warranty repair by a Ford dealership to any of the following “Root-Cause-Damaged Components”: injector, EGR valve, EGR cooler, turbo charger, oil cooler, head gasket, or rear seal.

2. Excepted from the Class Vehicles in this class definition are all vehicles that were only serviced at Ford Dealerships in states requiring reliance or pre-litigation notice as an element of a breach of express warranty claim. Accordingly, the Class will be limited to those who presented a Class Vehicle for service at a Ford Dealership in (1) Alaska, (2) Arizona, (3) California, (4) Colorado, (5) Connecticut, (6) Delaware, (7) Florida, (8) Hawaii, (9) Idaho, (10) Kansas, (11) Louisiana, (12) Maryland, (13) Massachusetts, (14) Michigan, (15) Minnesota, (16) Missouri, (17) Nevada, (18) New Jersey, (19) New York, (20) North Carolina, (21) District of Columbia, (22) Oklahoma, (23) Pennsylvania, (24) South Carolina, (25) Vermont, (26) Virginia, (27) Washington, (28) West Virginia, (29) Wisconsin, or (30) Puerto Rico.

**ANSWER:** Ford denies each and every allegation of Paragraph 308, except admits, based on information and belief, that Paragraph 308 sets forth a putative class that Plaintiffs may seek to certify in this litigation.

309. Pursuant to FED. R. CIV. P. 23, Plaintiffs Custom Underground and Barrett bring this action for themselves and on behalf of the following class (“**the Illinois Inadequate Warranty Repair Class**”):

All entities and natural persons in the United States (including its Territories and the District of Columbia) who (a) currently own or lease a Class Vehicle; and (b) had a warranty repair by a Ford dealership in **Illinois** to any of the following “Root-Cause-Damaged Components”: injector, EGR valve, EGR cooler, turbo charger, oil cooler, head gasket, or rear seal.

**ANSWER:** Ford denies each and every allegation of Paragraph 309, except admits, based on information and belief, that Paragraph 309 sets forth a putative class that Plaintiffs may seek to certify in this litigation.

310. Pursuant to FED. R. CIV. P. 23, Plaintiff Marcum brings this action for himself and on behalf of the following class (“**the Ohio Inadequate Warranty Repair Class**”):

All entities and natural persons in the United States (including its Territories and the District of Columbia) who (a) currently own or lease (or who in the past owned or leased) a Class Vehicle; and (b) had a warranty repair by a Ford dealership **in Ohio** to any of the following “Root-Cause-Damaged Components”: injector, EGR valve, EGR cooler, turbo charger, oil cooler, head gasket, or rear seal.

**ANSWER:** Ford denies each and every allegation of Paragraph 310, except admits, based on information and belief, that Paragraph 310 sets forth a putative class that Plaintiffs may seek to certify in this litigation.

311. Pursuant to FED. R. CIV. P. 23, Plaintiffs Atwell and Custom Underground bring this action for themselves and on behalf of the following class (“**the Indiana Inadequate Warranty Repair Class**”):

All entities and natural persons in the United States (including its Territories and the District of Columbia) who (a) currently own or lease (or who in the past owned or leased) a Class Vehicle; and (b) had a warranty repair by a Ford dealership **in Indiana** to any of the following “Root-Cause-Damaged Components”: injector, EGR valve, EGR cooler, turbo charger, oil cooler, head gasket, or rear seal.

**ANSWER:** Ford denies each and every allegation of Paragraph 311, except admits, based on information and belief, that Paragraph 311 sets forth a putative class that Plaintiffs may seek to certify in this litigation.

312. Pursuant to FED. R. CIV. P. 23, Plaintiffs Hutton, Prebish, and Boggero bring this action for themselves and on behalf of the following class (“**the Implied Warranty Class**”) defined as:

All entities and natural persons in the United States (including its Territories and the District of Columbia) who purchased or leased a Class Vehicle in the States of Alaska, Delaware, Washington, D.C., Hawaii, Louisiana, Nebraska, Nevada, New Jersey, Pennsylvania, West Virginia, Colorado, Oklahoma, or South Carolina.

**ANSWER:** Ford denies each and every allegation of Paragraph 312, except admits, based on information and belief, that Paragraph 312 sets forth a putative class that Plaintiffs may seek to certify in this litigation.

313. Pursuant to FED. R. CIV. P. 23(b)(2) all named Plaintiffs bring this action for declaratory and injunctive relief on behalf of the following nationwide class (“**the Declaratory Relief Class**”) defined as :

All entities and natural persons in the United States (including its Territories and the District of Columbia) who are current owners or lessees of a Class Vehicle. This class seeks a declaration by this Court that Ford’s unilaterally imposed durational limits of the lesser of 5 years or 100,000 miles to its express warranty is unconscionable and unenforceable, and seeks to enjoin Ford from enforcing these durational limits as a basis to deny warranty coverage to any member of the Declaratory Relief Class.

**ANSWER:** Ford denies each and every allegation of Paragraph 313, except admits, based on information and belief, that Paragraph 313 sets forth a putative class that Plaintiffs may seek to certify in this litigation.

314. Pursuant to FED. R. CIV. P. 23, Plaintiffs Custom Underground, Barrett, Gray, Brown, Fulton, Strong, Dinno, Clark, Marcum, Vogt, Santilli, Mawyer, Hutton, and Boggero bring this action for themselves and on behalf of the following class (“**the Consumer Fraud Class**”) defined as:

All entities and natural persons in the United States (including its Territories and the District of Columbia) who purchased or leased a Class Vehicle in the States of California, Florida, Illinois, Michigan, New Jersey, New York, Arizona, Connecticut, North Carolina, South Carolina, or Ohio.

**ANSWER:** Ford denies each and every allegation of Paragraph 314, except admits, based on information and belief, that Paragraph 314 sets forth a putative class that Plaintiffs may seek to certify in this litigation.

315. Pursuant to FED. R. CIV. P. 23, as an alternative to the Consumer Fraud Class, Plaintiffs Custom Underground (on behalf of the Illinois Consumer Fraud Sub-Class), Barrett

(on behalf of the Illinois Consumer Fraud Sub-Class), Gray (on behalf of the Florida Consumer Fraud Sub-Class), Brown (on behalf of the New York Consumer Fraud Sub-Class), Fulton (on behalf of the California Consumer Fraud Sub-Class), Strong (on behalf of the California Consumer Fraud Sub-Class), Dinno (on behalf of the California Consumer Fraud Sub-Class), Clark (on behalf of the Michigan Consumer Fraud Sub-Class), Marcum (on behalf of the Ohio Consumer Fraud Sub-Class), Vogt (on behalf of the Arizona Consumer Fraud Sub-Class), Santilli (on behalf of the Connecticut Consumer Fraud Sub-Class), Mawyer (on behalf of the North Carolina Consumer Fraud Sub-Class), Hutton (on behalf of the New Jersey Consumer Fraud Sub-Class), and Boggero (on behalf of the South Carolina Consumer Fraud Sub-Class) bring this action for themselves and on behalf of the following consumer fraud sub-classes:

**California Consumer Fraud Sub-Class:** All entities and natural persons in the United States (including its Territories and the District of Columbia) who purchased or leased a Class Vehicle in the State of California.

**Florida Consumer Fraud Sub-Class:** All entities and natural persons in the United States (including its Territories and the District of Columbia) who purchased or leased a Class Vehicle in the State of Florida.

**Illinois Consumer Fraud Sub-Class:** All entities and natural persons in the United States (including its Territories and the District of Columbia) who purchased or leased a Class Vehicle in the State of Illinois.

**Michigan Consumer Fraud Sub-Class:** All entities and natural persons in the United States (including its Territories and the District of Columbia) who purchased or leased a Class Vehicle in the State of Michigan.

**New Jersey Consumer Fraud Sub-Class:** All entities and natural persons in the United States (including its Territories and the District of Columbia) who purchased or leased a Class Vehicle in the State of New Jersey.

**New York Consumer Fraud Sub-Class:** All entities and natural persons in the United States (including its Territories and the District of Columbia) who purchased or leased a Class Vehicle in the State of New York.

**Arizona Consumer Fraud Sub-Class:** All entities and natural persons in the United States (including its Territories and the District of Columbia) who purchased or leased a Class Vehicle in the State of Arizona.

**Connecticut Consumer Fraud Sub-Class:** All entities and natural persons in the United States (including its Territories and the District of Columbia) who purchased or leased a Class Vehicle in the State of Connecticut.

**North Carolina Consumer Fraud Sub-Class:** All entities and natural persons in the United States (including its Territories and the District of Columbia) who purchased or leased a Class Vehicle in the State of North Carolina.

**South Carolina Consumer Fraud Sub-Class:** All entities and natural persons in the United States (including its Territories and the District of Columbia) persons who purchased or leased a Class Vehicle in the State of South Carolina.

**Ohio Consumer Fraud Sub-Class:** All entities and natural persons in the United States (including its Territories and the District of Columbia) who purchased or leased a Class Vehicle in the State of Ohio.

**ANSWER:** Ford denies each and every allegation of Paragraph 315, including each subpart, except Ford admits, based on information and belief, that Paragraph 315 sets forth putative sub-classes that Plaintiffs may seek to certify in this litigation.

316. Excepted from the definition of Class Vehicles in all class definitions above are all “Settled Ambulances,” which are defined as vehicles built on an ambulance prep package 47A chassis containing a model year 2003-2007 Ford F-Series or E-Series chassis equipped with a 6.0-liter diesel engine, which were the subject of a prior class action settlement in the Eastern District of Texas. Specifically excluded from all Classes above are: (a) all federal court judges who preside over this case and their spouses; (b) all persons who elect to exclude themselves from the Class; (c) all persons who have previously executed and delivered to Ford Motor Company releases of all their claims for all of their Class Vehicles; and (d) Defendant’s employees, officers, directors, agents, and representatives and their family members.

**ANSWER:** Ford denies each and every allegation of Paragraph 316, except admits, based on information and belief, that Paragraph 316 sets forth qualifications to the putative classes and sub-classes that Plaintiffs may seek to certify in this litigation.

**A. FED. R. CIV. P. 23(a) Prerequisites**

317. The classes are so numerous that joinder of all members is impracticable. At this time, Plaintiffs do not know the exact size of the Class. Based on information and belief, the Class is comprised of at least hundreds of thousands of members and is geographically dispersed throughout the country as to render joinder of all Class members impracticable.

**ANSWER:** Ford admits that the putative classes and sub-classes that Plaintiffs may seek to certify in this action are so numerous as to render joinder of the putative members impracticable.

318. The claims of Plaintiffs and the Class Members involve common questions of fact and law which will predominate over any individual issues. These common issues, include, but are not limited to:

- a. Whether the subject 6.0L Engines are defective, thereby making the vehicles unable to withstand reasonably anticipated use;
- b. Whether the implied warranty of merchantability applied to the subject 6.0L Engines;
- c. Whether Defendant breached the implied warranty of merchantability with respect to the subject 6.0L Engines;
- d. Whether Defendant made express warranties regarding the subject 6.0L Engines, including the warranty that Defendant, through its authorized dealerships, would, without charge, repair, replace, or adjust all parts that malfunctioned or failed during normal use during the applicable coverage period due to a defect in factory-supplied materials or factory workmanship;
- e. Whether Defendant breached its express warranty regarding the subject 6.0L Engines when it failed to adequately repair the defects;
- f. Whether Defendant knew about the 6.0L Engine defects;
- g. When Defendant knew about the 6.0L Engine defects;
- h. Whether Defendant failed to disclose the 6.0L Engine defects;
- i. Whether Defendant concealed the 6.0L Engine defects;
- j. Whether Defendant had and/or has a duty to disclose the 6.0L Engine defects;
- k. Whether the defective nature of the 6.0L Engines constitutes a material fact; and
- l. Whether Defendant violated consumer protection statutes under Illinois law, California law, Florida law, Michigan law, New Jersey law, and New York law, Arizona law, Connecticut law, North Carolina law, and/or South Carolina law.

**ANSWER:** Ford denies each and every allegation in Paragraph 318, including its subparts.



319. The claims of Plaintiffs are typical of the other Class Members' claims. As described above, Defendant expressly warranted to all Class Members that it would, without charge, repair, replace, or adjust all parts that malfunctioned or failed during normal use during the applicable coverage period due to a defect in factory-supplied materials or factory workmanship.

**ANSWER:** Ford denies that the claims of Plaintiffs are typical of other Class Members' claims.

320. Defendant uniformly breached its express warranty to Plaintiffs and Class Members by failing to repair, replace, or adjust defective parts.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 320.

321. Defendant uniformly breached the implied warranty of merchantability to Plaintiffs and all Class Members because the 6.0L Engines are inadequate and incapable of performing the very tasks they were designed to carry out.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 321.

322. Plaintiffs, like all Class Members, used their vehicles in the normal manner for which the 6.0L Engines were designed. Despite Plaintiffs' proper use of the engines, they malfunctioned in a manner which Defendant failed to fix by repairing, replacing or adjusting.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in the first sentence of Paragraph 322 and on that basis denies those allegations. Ford denies each and every other allegation contained in Paragraph 322.

323. Because of the well-known defects, which have been admitted by Ford, it is clear that the Class Members' engines are malfunctioning during normal use due to defects in factory-supplied materials and/or factory workmanship.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 323. Ford specifically denies that it ever admitted that the 6.0-liter Power Stroke engine or any of its components is defective.

324. Plaintiffs, like all Class Members, purchased and leased Ford vehicles designed, manufactured, and distributed by Ford in which the 6.0L Engine was defective. Plaintiffs, like all

Class Members, have been damaged by Ford's misconduct. Further, the factual bases of Ford's misconduct are common to all class members, as—regarding the defective nature of the 6.0L Engines—Ford made uniform misrepresentations to and uniformly withhold material information from Plaintiffs and all class members.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 324.

325. Plaintiffs will fairly and adequately protect the interests of the Classes. Plaintiffs are members of the subject Classes. Plaintiffs' interests coincide with, and are not antagonistic to, other Class Members' interests. Additionally, Plaintiffs have retained counsel experienced and competent in complex, commercial, multi-party, mass tort, consumer, and class action litigation. Plaintiffs' counsel has prosecuted complex class actions in state and federal courts across the country. Plaintiffs' counsel has also prosecuted successfully a class action involving the defective 6.0L Engine.

**ANSWER:** Ford denies that the Plaintiffs will fairly and adequately protect the interests of the proposed classes and that the Plaintiffs' interests coincide with, and are not antagonistic to, other Class Members' interests. Ford is without information sufficient to form a belief as to the truth of the other allegations contained in Paragraph 325 and, on that basis, denies those allegations.

**B. FED. R. CIV. P. 23(b) Prerequisites**

326. Questions of law and fact common to the Class predominate over questions affecting only individual members, and a class action is superior to other available methods for fair and efficient adjudication of the controversy. Individual damages on the matter can be readily calculated by documented income loss and expenses caused by the defects at issue. Thus, the question of individual damages will not predominate over legal and factual questions common to the class. Additionally, Ford has acted or refused to act on grounds that apply generally to the Class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the Class as a whole.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 326.

**VI. CAUSES OF ACTION**

**Count 1: Breach of Implied Warranty of Merchantability  
(Asserted on Behalf of Plaintiffs Hutton, Prebish, Boggero,  
and the Implied Warranty Class)**

327. Plaintiffs and Class Members incorporate by reference those paragraphs set out above as though fully set forth herein.

**ANSWER:** Ford reasserts its answers to Paragraphs 1 through 326 of Plaintiffs' Master Class Action Complaint.

328. Plaintiffs and Class Members purchased or leased vehicles equipped with 6.0L Engines supplied by Defendant Ford.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 328, and on that basis denies those allegations.

329. When the subject 6.0L Engines left Defendant Ford's possession, they were unmerchantable. Plaintiffs and Class Members used their vehicles in the normal manner for which the 6.0L Engines were designed. Despite Plaintiffs' proper use of the engines, they malfunctioned in a manner that Defendant failed to fix by repairing, replacing or adjusting.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 329.

330. The vehicles equipped with 6.0L Engines supplied by Ford are inadequate and incapable of performing the very tasks they were designed to carry out. The inadequacies of the engines include but are not limited to:

- a. The 6.0L Engines are not equipped to withstand extended periods of engine idle;
- b. The 6.0L Engines have poor acceleration;
- c. The 6.0L Engines repeatedly stall;
- d. The 6.0L Engines are frequently incapable of starting;
- e. The 6.0L Engines are difficult to start and run rough; and
- f. The 6.0L Engines require prolonged periods of warm up time before acceleration is possible.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 330, including each subpart.

331. After having the subject vehicles repaired repeatedly, Plaintiffs notified Ford of the breach of warranty claims when they brought their vehicles to a Ford dealership, and/or contacted Ford directly, as described above. Plaintiffs contacted their local Ford dealerships and/or informed a Ford representative of the continuous mechanical malfunctions of the 6.0L

Engine design and suffered repeated unsuccessful attempts by Ford dealerships to repair the problems.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 331.

332. Accordingly, Ford has actual knowledge of the specific defects associated with defective 6.0L Engines and the problems resulting therefrom.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 332.

333. To date, Ford has neither adequately cured the actual engine defects nor replaced the defective engines.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 333.

334. As a result of Ford's breach of implied warranty of merchantability, Plaintiffs suffered damages in the amount of the difference between the value of the vehicles equipped with the defective engines and the value of the vehicles if they had been equipped as warranted.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 334.

335. Plaintiffs also suffered diminution in the value of their vehicles, out-of-pocket expenditures related to the cost to repair/service the engines (including deductibles paid when repairs were covered by warranty, and the full cost of repair when they were not covered), lost profits from the inability to utilize the vehicles equipped with the defective engine (caused by the long delays as Ford dealership mechanics repeatedly and unsuccessfully attempted to diagnose and/or repair the defects), towing charges incurred due to the repeated break-downs of the vehicles, the cost of purchasing additional vehicles necessitated by the repeated problems with the 6.0L Engines, and other damages as described herein.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 335.

336. Defendant Ford's defective 6.0L Engine was the direct and proximate cause of Plaintiffs' injuries.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 336.

**Count 2: Breach of Express Warranty**  
**(Asserted on Behalf of Plaintiffs Gray, Custom Underground, Brown,  
Fulton, Strong, Dinno, Clark, Marcum, Vogt, Prebish, Santilli,  
Boggero, Hutton, Mawyer, and the Inadequate Warranty Repair Classes)**

337. Plaintiffs incorporate by reference those paragraphs set out above as though fully set forth herein.

**ANSWER:** Ford reasserts its answers to Paragraphs 1 through 336 of Plaintiff's Master Class Action Complaint.

338. Ford provided all Plaintiffs with the express 6.0L Powerstroke Diesel Engine warranty, which covers the engine and engine components against defects in factory-supplied materials or workmanship for five years after the warranty start date or 100,000 miles, whichever occurs first, and provides that during this coverage period, authorized Ford Motor Company dealers will repair, replace, or adjust all parts on the vehicle that are defective in factory-supplied materials or workmanship.

**ANSWER:** Ford admits that new Ford vehicles are sold with Ford's New Vehicle Limited Warranty and that the New Vehicle Limited Warranty covers the engine and engine components against defects in factory-supplied materials or workmanship for five years after the warranty start date or 100,000 miles, whichever comes first. Ford further admits that the New Vehicle Limited Warranty states that, with specified limitations, during the applicable coverage period Ford Motor Company dealers will repair, replace, or adjust covered parts on the covered vehicle that are defective in factory-supplied materials or workmanship.

339. This warranty became part of the basis of the bargain.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 339 and, on that basis, denies those allegations.

340. Ford manufactured and sold vehicles equipped with the 6.0L Engine that are covered by the express warranty.

**ANSWER:** Ford admits that it manufactured and sold vehicles equipped with the 6.0-liter Power Stroke diesel engine that are covered by Ford's New Vehicle Limited Warranty.

341. Ford breached this express warranty (1) each time its dealerships failed to properly repair, replace, or adjust the malfunctioning engine and thus failed to return the vehicle to proper working condition, and (2) each time Defendant failed to authorize a Ford dealer to perform an adequate repair of a vehicle, instead only authorizing an inadequate repair which resulted in additional engine repair or replacement expenses after the expiration of the warranty period.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 341. Ford specifically denies that it failed to authorize a repair required by the terms of the New Vehicle Limited Warranty or any other applicable warranty.

342. Ford has actual knowledge of the specific defects associated with defective 6.0L Engines and the problems resulting therefrom.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 342.

343. Plaintiffs (or the prior owners of their Ford vehicles) notified Ford of the breach within a reasonable time and/or were not required to do so because affording Ford a reasonable opportunity to cure its breach of written warranty would have been futile. After having the subject vehicles repaired repeatedly, Plaintiffs notified Defendant of the breach of warranty claims when they brought their vehicles into a Ford dealership, and/or contacted Ford directly, as described above. Plaintiffs contacted their local Ford dealerships and/or informed a Ford representative of the continuous mechanical malfunctions of the 6.0L Engine design and suffered repeated unsuccessful attempts by Ford Dealerships to repair the problems. To date, Defendant has neither adequately cured the actual engine defects nor replaced the defective engines.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 343.

344. Ford was also on notice of the engine defects from the complaints and service requests it received from class members, from repairs of the 6.0L Engines or components thereof, through its own maintenance records, and through its own employees' communications as evidenced in numerous memoranda and email communications.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 344.

345. As a result of Defendant Ford's breach, Plaintiffs suffered damages in the amount of the difference between the value of the vehicles equipped with the defective engines and the value of the vehicles if they had been equipped as warranted.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 345.

346. Plaintiffs also suffered diminution in the value of their vehicles, out-of-pocket expenditures related to the cost to repair/service the engines (including deductibles paid when repairs were covered by warranty, and the full cost of repair when they were not covered), lost profits from the inability to utilize the vehicles equipped with the defective engine (caused by the long delays as Ford dealership mechanics repeatedly and unsuccessfully attempted to diagnose and/or repair the defects), towing charges incurred due to the repeated break-downs of the vehicles, the cost of purchasing additional vehicles necessitated by the repeated problems with the 6.0L Engines, and other damages as described herein.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 346.

347. Defendant Ford's defective 6.0L Engine is the direct and proximate cause of Plaintiffs' injuries.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 347.

348. Plaintiffs and the other class members are entitled to legal and equitable relief against Ford, including damages, consequential damages, specific performance, rescission, attorneys' fees, costs of suit, and other relief as appropriate.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 348.

**Count 3: Declaratory Relief Regarding Unconscionability and Unenforceability of  
Unilaterally Imposed Durational Limits to Ford's Express Warranty  
(Asserted on Behalf of all Plaintiffs and the Declaratory Relief Class)**

349. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

**ANSWER:** Ford reasserts its answers to Paragraphs 1 through 348 of Plaintiff's Master Class Action Complaint.

350. The express 6.0L Powerstroke Diesel Engine warranty was unilaterally and solely drafted by Ford without any negotiation or opportunity for input from any Plaintiffs or members of the Declaratory Relief Class. All terms of the express warranty, including the unilaterally imposed durational limits of 5 years or 100,000 miles were offered by Ford on a "take it or leave it basis," and without affording members of the Declaratory Relief Class any meaningful choice in bargaining for the terms of warranty coverage.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 350.

351. Ford, as the manufacturer of the Class Vehicles and contractee of Navistar, knew, at the time that it unilaterally imposed the terms of its express warranty (including the warranty's durational limits), that the 6.0L Engine was defective and would fail repeatedly beyond the warranty repair period. Ford also knew, at the time that it unilaterally imposed the durational limits on its express warranty, that Ford was unqualified and unable to perform properly the warranty service that it had contracted to offer as part of the 6.0L Powerstroke Diesel Engine warranty, thereby leaving the Class Vehicles defective both within and outside the warranty durational limits unilaterally imposed by Ford. Ford failed to disclose this knowledge to any member of the Declaratory Relief Class, and took affirmative steps to conceal it by continuing to tout the supposed superior attributes and qualities of the 6.0L Engine.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 351.

352. As a result of Ford's knowledge and concealment from consumers of the defects inherent in the 6.0L Engine, its propensity to fail shortly after the warranty durational limits would expire, and Ford's inability to offer appropriate warranty repair service as was called for under the terms of the express warranty, Ford was the party with superior bargaining power.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 352.

353. Ford has and continues to adhere to the durational limits of its express warranty and relies upon these unilaterally imposed durational limits to deny warranty coverage to any Class Vehicle that is presented for warranty repair service either more than 5 years since its in-service date or having more than 100,000 miles. All Plaintiffs have either had Ford deny warranty service to their vehicles as a result of these unilaterally imposed durational limits, or face the certain prospect of Ford denying warranty coverage to their vehicles once these durational limits have been reached.

**ANSWER:** Ford denies that it enforces the durational limits of the New Vehicle Limited Warranty and other applicable warranties in every case. Ford states that, as a customer satisfaction measure, it provides funds that dealers and certain fleets can use to cover some or all of certain repair costs. Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 353 that Plaintiffs have been denied warranty services when the durational limits of their warranties had expired and, on that basis, denies those allegations. Ford denies each and every additional allegation contained in Paragraph 353. Ford specifically denies that it failed to authorize repairs required by the terms of the New Vehicle Limited Warranty or any other applicable warranty.



354. Given that (1) there was no opportunity for bargaining the terms of the warranty (including its durational limits); (2) Ford concealed, during the transactions giving rise to the offering of the express warranty, Ford's unique and superior knowledge as to the defective nature of the Class Vehicles, their propensity to fail shortly after the durational limits, and Ford's inability to offer adequate warranty repair service; and (3) consumers and members of the Declaratory Relief Class had no meaningful choice but to accept Ford's unilaterally imposed warranty terms, the durational limits imposed unilaterally by Ford as part of its warranty contract are procedurally unconscionable, and hence unenforceable.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 354.

355. Given the inherently defective nature of the Class Vehicles, and their propensity to malfunction (or continue to malfunction) and require inordinately expensive repairs shortly after the expiration of the warranty durational limits unilaterally imposed by Ford, and given Ford's non-disclosure and affirmative concealment of these facts, enforcement of the unilaterally imposed durational limits of the 6.0L Powerstroke Diesel Engine express warranty would so oppress and surprise the innocent end-user members of the Declaratory Relief Class as to render these durational limits substantively unconscionable, and hence unenforceable.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 355.

356. Because all members of the Declaratory Relief Class are subject to these same unilaterally imposed durational limits, and all either have been denied warranty coverage by Ford as a result of these durational limits or face the certain prospect of such denial, a real controversy exists between all members of the Declaratory Relief Class and Ford. As such, Plaintiffs and the Declaratory Relief Class may and do seek a declaration of their rights and Ford's obligations regarding the express warranty. Specifically, all Plaintiffs and members of the Declaratory Relief Class seek a declaration by this Court that Ford's unilaterally imposed durational limits on its 6.0L Powerstroke Diesel Engine express warranty are unconscionable and, hence, unenforceable, such that Ford may not enforce or rely on these durational limits as a basis to deny warranty coverage to members of the Declaratory Relief Class or their successors or assignees in the future.

**ANSWER:** Ford admits that members of the putative Declaratory Relief Class seek a declaration of their rights and Ford's obligations regarding the express warranty. Ford denies that they are entitled to a declaration.

357. Because Ford's continued enforcement of these unconscionable durational limits to the 6.0L Powerstroke Diesel Engine warranty would cause members of the Declaratory Relief Class to sustain irreparable harm, all Plaintiffs and the members of the Declaratory Relief Class have standing to and do seek an injunction barring Ford from continuing to enforce the durational limits and relying on these unconscionable limits to deny warranty coverage.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 357, except that Ford admits that members of the putative Declaratory Relief Class seek an injunction. Ford denies that they are entitled to an injunction.

**Count 4: Violation of Similar State Consumer Protection Laws**  
**(Asserted on Behalf of Plaintiffs Custom Underground, Barrett, Gray, Brown, Fulton, Strong, Dinno, Clark, Marcum, Mawyer, Boggero, Santilli, Vogt, Hutton, and the Consumer Fraud Class)**

358. Plaintiffs and the Consumer Fraud Class incorporate the allegations set forth above as if fully set forth herein.

**ANSWER:** Ford reasserts its answers to Paragraphs 1 through 357 of Plaintiff's Master Class Action Complaint.

359. Plaintiffs and the Consumer Fraud Class are "consumers," as defined by the Consumer Fraud Acts under the law of Illinois, California, Florida, Michigan, New Jersey, New York, Arizona, Connecticut, North Carolina, South Carolina, and Ohio who purchased or leased one or more Ford vehicles equipped with a defective 6.0L Engine.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 359 and, on that basis, denies those allegations.

360. Ford is a "person" within the meaning of Consumer Fraud Acts.

**ANSWER:** Ford admits that it is a "person" within the meaning of the consumer fraud acts of Illinois, California, Florida, Michigan, New Jersey, New York, Arizona, Connecticut, North Carolina, South Carolina, and Ohio.

361. Ford's conduct, as set forth herein, occurred in the conduct of "trade or commerce" within the meaning of the Consumer Fraud Acts.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 361.

362. At all relevant times, as described above, the Ford vehicles equipped with the defective 6.0L Engines that Ford sold to Plaintiffs and the Consumer Fraud Class Members were

not of the particular sponsorship, approval, or certification because the Ford vehicles contained defective 6.0L Engines, causing the likelihood of confusion and misunderstanding.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 362.

363. By failing to disclose the defects inherent to the 6.0L Engine and failing to properly repair the defective engines, Ford engaged in unfair or deceptive acts or practices prohibited by the Consumer Fraud Acts, including (1) representing that the Ford vehicles equipped with defective 6.0L Engines have characteristics, use benefits, and qualities which they do not have; (2) representing that the Ford vehicles equipped with the defective 6.0L Engines are of a particular standard, quality, and grade when they are not; (3) advertising the Ford vehicles equipped with the defective 6.0L Engines with the intent not to sell them as advertised; (4) representing that a transaction involving Ford vehicles equipped with the defective 6.0L Engines confers or involves rights, remedies, and obligations which it does not; (5) representing that the subject of a transaction involving the Ford vehicles equipped with the defective 6.0L Engines has been supplied in accordance with a previous representation when it has not; and (6) representing that the Ford vehicles equipped with the defective 6.0L Engines had sponsorship, approval, characteristics, ingredients, uses, and benefits that they do not have.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 363, including each subpart.

364. Ford sold the vehicles equipped with the defective 6.0L Engines to Plaintiffs and the Consumer Fraud Class Members with full knowledge that the Ford vehicles contained the defective 6.0L Engines at issue in the litigation.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 364.

365. Ford intended that Plaintiffs and the other members of the Consumer Fraud Class rely on its misrepresentations and omissions, so that Plaintiffs and other Consumer Fraud Sub-Class Members would purchase Ford vehicles equipped with the defective 6.0L Engines.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 365.

366. Ford owed Plaintiffs and the Consumer Fraud Class members a duty to disclose the defects in the Ford vehicles equipped with the defective 6.0L Engines, because it possessed exclusive and superior knowledge of the defects and did not disclose these defects.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 366.

367. Information regarding these defects, which result in substantial additional repair costs, decreased vehicle performance, and/or vehicle failure, is material to a reasonable consumer in deciding to purchase a vehicle and considering how much to pay for a vehicle.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 367.

368. A reasonable consumer who had known of the defective nature of the 6.0L Engines would not have purchased Ford vehicles equipped with the engine or would have paid less for them.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 368.

369. Ford's unfair or deceptive acts or practices were therefore likely to or had a tendency or capacity to deceive reasonable consumers about the true nature of the Ford vehicles equipped with the defective 6.0L Engines.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 369.

370. Ford's actions impact the public interest because Plaintiffs and members of the Consumer Fraud Class were injured in exactly the same way as thousands of others who purchased and/or leased Ford vehicles equipped with the defective 6.0L Engines as a result of and pursuant to Ford's generalized course of deception.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 370.

371. Ford's conduct was knowing, intentional, and with malice, and demonstrated complete carelessness and recklessness and was in conscious disregard for the rights of Plaintiffs and the Consumer Fraud Class.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 371.

372. As a result of the foregoing acts, omissions, Plaintiffs and the Consumer Fraud Class suffered actual damages as described herein, and these class members are entitled to recover such damages, together with punitive damages, equitable relief, injunctive relief, diminution of value, reasonable attorneys' fees, costs of suit, and such other relief set forth below.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 372.

**Count 5: Violation of California's Consumer Legal Remedies Act**  
**(Asserted on Behalf of Plaintiffs Fulton, Strong, Dinno, and the California Consumer Fraud Sub-Class)**  
**(CAL. CIV. CODE § 1750, et seq.)**

373. Plaintiffs Fulton, Strong, and Dinno ("California Plaintiffs") and the California Consumer Fraud Sub-Class incorporate the allegations set forth above as if fully set forth herein.

**ANSWER:** Ford reasserts its answers to Paragraphs 1 through 372 of Plaintiff's Master Class Action Complaint.

374. Ford is a "person" under CAL. CIV. CODE § 1761(c).

**ANSWER:** Ford admits that it is a person within the meaning of California Civil Code § 1761(c).

375. California Plaintiffs and the California Consumer Fraud Sub-Class are "consumers," as defined by CAL. CIV. CODE § 1761(d), who purchased or leased one or more Ford vehicles equipped with a defective 6.0L Engine.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 375 and, on that basis, denies those allegations.

376. By failing to disclose the defects inherent to the 6.0L Engine and failing to properly repair the defective engines, Ford engaged in unfair or deceptive acts or practices prohibited by the CLRA, CAL. CIV. CODE § 1770, including (1) representing that the Ford vehicles equipped with defective 6.0L Engines have characteristics, use benefits, and qualities which they do not have; (2) representing that Ford vehicles equipped with the defective 6.0L Engines are of a particular standard, quality, and grade when they are not; (3) advertising the Ford vehicles equipped with the defective 6.0L Engines with the intent not to sell them as advertised; (4) representing that a transaction involving Ford vehicles equipped with the defective 6.0L Engines confers or involves rights, remedies, and obligations which it does not; and (5) representing that the subject of a transaction involving the Ford vehicles equipped with the defective 6.0L Engines has been supplied in accordance with a previous representation when it has not.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 376, including each subpart.

377. Ford owed California Plaintiffs and the California Consumer Fraud Sub-Class a duty to disclose the defects in the Ford vehicles equipped with the defective 6.0L Engines, because it possessed exclusive and superior knowledge of the defects and did not disclose these defects.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 377.

378. Information regarding these defects, which result in substantial additional repair costs, decreased vehicle performance, and/or vehicle failure, is material to a reasonable consumer in deciding to purchase a vehicle and considering how much to pay for a vehicle.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 378.

379. A reasonable consumer with knowledge of the defective nature of the 6.0L Engines would not have purchased Ford vehicles equipped with the defective 6.0L Engine or would have paid less for them.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 379.

380. Ford's unfair or deceptive acts or practices were therefore likely to or had a tendency or capacity to deceive reasonable consumers about the true nature of the Ford vehicles equipped with the defective 6.0L Engines.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 380.

381. As a result of its violations of the CLRA, Ford caused actual damage to California Plaintiffs and the California Consumer Fraud Sub-Class including, inter alia, substantial time and money dedicated to repeat visits to various Ford dealership service departments attempting to resolve the engine problems to no avail.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 381.

382. In accordance with CIVIL CODE § 1780 (a), California Plaintiffs and the California Consumer Fraud Sub-Class seek injunctive and equitable relief for Ford's violations of the CLRA. However, in accordance with CIVIL CODE § 1782(d), California Plaintiffs and the California Consumer Fraud Sub-Class will provide notice of the violations described herein and demand that they be rectified by certified mail to the principal place of Ford's business in California and then amend this Complaint to include a request for damages, including actual and punitive damages pursuant to § 1780. California Plaintiffs and the California Consumer Fraud Sub-Class request that this Court enter such orders or judgments as may be necessary to restore to any person-in-interest any money which may have been acquired by means of such unfair business practices, and for such other relief, including attorneys' fees and costs, as provided in CIVIL CODE § 1780, and for such other relief set forth below.

**ANSWER:** Ford admits that California Plaintiffs and the putative California Consumer Fraud Sub-Class seek injunctive and equitable relief. Ford denies that they are entitled to such relief.

**Count 6: Violation of California's Unfair Competition Law**  
**(Asserted on Behalf of Fulton, Strong, Dinnono, and the**  
**California Consumer Fraud Sub-Class)**  
**(CAL. BUS. & PROF. CODE § 17200, *et seq.*)**

383. California Plaintiffs and the California Consumer Fraud Sub-Class incorporate the allegations set forth above as if fully set forth herein.

**ANSWER:** Ford reasserts its answers to Paragraphs 1 through 382 of Plaintiff's Master Class Action Complaint.

384. California Business and Professions Code section 17200 prohibits any "unlawful, unfair, or fraudulent business act or practices." Ford has engaged in unlawful, fraudulent, and unfair business acts and practices in violation of the UCL.

**ANSWER:** Ford admits that California Business and Professions Code § 17200 prohibits "any unlawful, unfair, or fraudulent business act or practice." Ford denies each and every other allegation contained in Paragraph 384.

385. Ford has violated the unlawful prong of section 17200 by its violations of the Consumer Legal Remedies Act, CAL. CIV. CODE § 1750, *et seq.* and various warranty statutes, as set forth above.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 385.

386. Ford has violated the fraudulent prong of section 17200 because the material misrepresentations and omissions regarding the Ford vehicles equipped with the defective 6.0L Engines were both likely to or had a tendency or capacity to deceive a reasonable consumer.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 386.

387. Ford has violated the unfair prong of section 17200 because the acts and practices set forth in the Complaint, including the manufacture and sale of the Ford vehicles equipped with the defective 6.0L Engines, Ford's failure to adequately investigate, disclose or remedy the

defective 6.0L Engines, and Ford's misrepresentations concerning the Ford vehicles equipped with the defective 6.0L Engines, offend established public policy; and because the harm Ford caused to consumers greatly outweighs any benefits associated with those practices. Ford's conduct has also impaired competition within the automotive vehicles market and has prevented California Plaintiffs and the California Consumer Fraud Sub-Class from making fully informed decisions about whether to purchase or lease the Ford vehicles equipped with the defective 6.0L Engines and/or how much they should pay to purchase or lease the Ford vehicles equipped with the defective 6.0L Engines.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 387.

388. California Plaintiffs have standing to pursue this claim on behalf of the California Consumer Fraud Sub-Class because they have suffered an injury in fact, including the loss of money or property, as a result of Ford's unfair unlawful and/or deceptive practices. As set forth above, had Ford disclosed the known defect inherent to the 6.0L Engines, a reasonable consumer would not have purchased Ford vehicles equipped with defective 6.0L Engines or leased and/or paid as much for them. In addition, California Plaintiffs and the California Consumer Fraud Sub-Class have suffered actual damages because their Ford vehicles contained the defective 6.0L Engines.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 388.

389. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of Ford's business. Ford's wrongful conduct is part of a pattern or generalized course of conduct that is still perpetuated and repeated in the State of California.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 389.

390. California Plaintiffs and the California Consumer Fraud Sub-Class request that this Court enter such orders or judgments as may be necessary to enjoin Ford from continuing its unfair, unlawful, and/or deceptive practices and to restore to California Plaintiffs and the California Consumer Fraud Sub-Class any money Ford acquired by unfair competition, including restitution and/or restitutionary disgorgement, as provided in CAL. BUS. & PROF. CODE § 17203 and CAL. CIV. CODE § 3345, and for such other relief set forth below.

**ANSWER:** Ford admits that California Plaintiffs and the putative California Consumer Sub-Class request orders and judgments for injunctive and restitutionary relief. Ford denies that California Plaintiffs and the putative California Consumer Sub-Class are entitled to such relief.



**Count 7: Violation of Florida's Unfair and Deceptive Trade Practices Act**  
**(Asserted on Behalf Plaintiff Gray and the Florida Consumer Fraud Sub-Class)**  
**(FLA. STAT. § 501.201 *et seq.*)**

391. Plaintiffs Gray ("Florida Plaintiffs") incorporate the allegations set forth above as if fully set forth herein.

**ANSWER:** Ford reasserts its answers to Paragraphs 1 through 390 of Plaintiff's Master Class Action Complaint.

392. Ford's business acts and practices alleged herein constitute unfair, unconscionable and/or deceptive methods, acts or practices under the Florida Unfair and Deceptive Trade Practices Act, FLA. STAT. § 501.201, *et seq.* ("FUDTPA").

**ANSWER:** Ford denies each and every allegation contained in Paragraph 392.

393. At all relative times, Florida Plaintiffs and all members of the Florida Consumer Fraud Sub-Class were "consumers" within the meaning of the FUDTPA, FLA. STAT. § 501.203(7).

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 393 and on that basis denies those allegations.

394. Ford's conduct, as set forth herein, occurred in the conduct of "trade or commerce" within the meaning of the FUDTPA, FLA. STAT. § 501.203(8).

**ANSWER:** Ford denies each and every allegation contained in Paragraph 394.

395. Ford's practices, described above, violate the FUDTPA for one or more of the following reasons:

- a. Ford represented that goods or services have sponsorship, approval, characteristics, uses, and benefits that they do not have;
- b. Ford provided, disseminated, marketed, and otherwise distributed uniform false and misleading advertisements technical data and other information to consumers regarding the performance, reliability, quality and nature of the Ford vehicles equipped with the defective 6.0L Engines;
- c. Ford represented that goods or services were of a particular standard, quality, or grade when they were of another;

- d. Ford engaged in unconscionable commercial practices in failing to reveal material facts and information about the Ford vehicles equipped with the defective 6.0L Engines, which did (or tended to) mislead Florida Plaintiffs and the Florida Consumer Fraud Sub-Class about facts that could not reasonably be known by the consumer;
- e. Ford failed to reveal facts that were material to the transactions in light of representations of fact made in a positive manner;
- f. Ford caused Florida Plaintiffs and the Florida Consumer Fraud Sub-Class to suffer a probability of confusion and a misunderstanding of legal rights, obligations, and/or remedies by and through its conduct; and
- g. Ford made material representations and statements of fact to Florida Plaintiffs and the Florida Consumer Fraud Sub-Class that represented or suggested a state of affairs to be other than what they actually were.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 395, including each subpart.

396. Ford owed Florida Plaintiffs and the Florida Consumer Fraud Sub-Class a duty to disclose the defects in the Ford vehicles equipped with the defective 6.0L Engines, because Ford possessed exclusive and superior knowledge of the defects and did not disclose the defects.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 396.

397. Information regarding the defects, which result in substantial additional repair costs, decreased vehicle performance, and/or vehicle failure, is material to a reasonable consumer in deciding to purchase a vehicle and considering how much to pay for a vehicle.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 397.

398. A reasonable consumer with knowledge of the defective nature of the 6.0L Engines would not have purchased Ford vehicles equipped with the defective 6.0L Engine or would have paid less for them.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 398.

399. Ford's conduct in employing these unfair and deceptive trade practices was malicious, willful, wanton, and outrageous such as to shock the conscience of the community and warrant the imposition of punitive damages.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 399.

400. Ford's actions impact the public interest because Florida Plaintiffs and members of the Florida Consumer Fraud Sub-Class were injured in exactly the same way as thousands of others who purchased and/or leased Ford vehicles equipped with the defective 6.0L Engines as a result of and pursuant to Ford's generalized course of deception.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 400.

401. As a result of the foregoing acts, omissions, and practices Florida Plaintiffs and other members of the Florida Consumer Fraud Sub-Class suffered actual damages as described herein, and these class members are entitled to recover such damages, together with punitive damages, equitable relief, injunctive relief, diminution of value, reasonable attorneys' fees, costs of suit, and such other relief set forth below.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 401.

**Count 8: Violation of Illinois Consumer Fraud and Deceptive Business Practices Act**  
**(Asserted on Behalf of Plaintiffs Custom Underground, Barrett,**  
**and the Illinois Consumer Fraud Sub-Class)**  
**(815 ILL. COMP. STAT. 505/1 et seq.)**

402. Illinois Plaintiffs and the Illinois Consumer Fraud Sub-Class incorporate the allegations set forth above as if fully set forth herein.

**ANSWER:** Ford reasserts its answers to Paragraphs 1 through 401 of Plaintiff's Master Class Action Complaint.

403. Illinois Plaintiff and the Illinois Consumer Fraud Sub-Class are "consumers" within the meaning of 815 ILL. COMP. STAT. 505/1(e).

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 403 and on that basis denies those allegations.

404. Ford is a "person" within the meaning of 815 ILL. COMP. STAT. 505/1(c).

**ANSWER:** Ford admits that it is a person within the meaning of 815 Ill. Comp. Stat. 505/1(c).

405. At all relevant times material hereto, Ford conducted trade and commerce in Illinois and elsewhere within the meaning of 815 ILL. COMP. STAT. 505/1(f).

**ANSWER:** Ford admits that it has conducted trade and commerce in Illinois and elsewhere within the meaning of 815 Ill. Comp. Stat. 505/1(f).

406. 815 ILL. COMP. STAT. 505/2 provides in relevant part as follows:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the “Uniform Deceptive Trade Practices Act”, approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby.

**ANSWER:** Ford admits that Paragraph 406 accurately quotes a portion of the language from 815 Ill. Comp. Stat. 505/2.

407. By misrepresenting the characteristics of the 6.0L Engine, failing to disclose the defects inherent to the 6.0L Engine, and failing to properly repair the defective engines, as fully set forth above, Ford engaged in unfair or deceptive acts or practices prohibited by 815 ILL. COMP. STAT. 505/2.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 407.

408. Ford owed Illinois Plaintiffs and the Illinois Consumer Fraud Sub-Class a duty to disclose the defects in the Ford vehicles equipped with the defective 6.0L Engines because it possessed exclusive and superior knowledge of the defects and did not disclose the defects.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 408.

409. Information regarding the defects, which result in substantial additional repair costs, decreased vehicle performance, and/or vehicle failure, is material to a reasonable consumer in deciding to purchase a vehicle and considering how much to pay for a vehicle.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 409.

410. A reasonable consumer with knowledge of the defective nature of the 6.0L Engines would not have purchased Ford vehicles equipped with the defective 6.0L Engine or would have paid less for them.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 410.

411. Ford's unfair or deceptive acts or practices were therefore likely to or had a tendency or capacity to deceive reasonable consumers about the true nature of the Ford vehicles equipped with the defective 6.0L Engines.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 411.

412. Ford intended that Illinois Plaintiffs and the other members of the Illinois Consumer Fraud Sub-Class rely on their misrepresentations and omissions, so that Illinois Plaintiffs and other Illinois Consumer Fraud Sub-Class Members would purchase Ford vehicles equipped with the defective 6.0L Engines.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 412.

413. Ford's conduct was knowing and intentional and with malice, and demonstrated a complete lack of care and recklessness and was in conscious disregard for the rights of Illinois Plaintiffs and the Illinois Consumer Fraud Sub-Class.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 413.

414. As a result of the foregoing acts, omissions, and practices, Illinois Plaintiffs and other members of the Illinois Consumer Fraud Sub-Class have suffered actual damages as described herein, and these class members are entitled to recover such damages, together with punitive damages, equitable relief, injunctive relief, diminution of value, reasonable attorneys' fees, costs of suit, and such other relief set forth below.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 414.

**Count 9: Violation of Illinois Uniform Deceptive Trade Practices Act**  
**(Asserted on Behalf of Plaintiffs Custom Underground, Barrett,**  
**and the Illinois Consumer Fraud Sub-Class)**  
**(815 ILL. COMP. STAT. 510/1 *et seq.*)**

415. Illinois Plaintiffs and the Illinois Consumer Fraud Sub-Class incorporate the allegations set forth above as if fully set forth herein.

**ANSWER:** Ford reasserts its answers to Paragraphs 1 through 414 of Plaintiff's Master Class Action Complaint.

416. Ford is a "person" within the meaning of 815 ILL. COMP. STAT. 510/1(5).

**ANSWER:** Ford admits that it is a “person” within the meaning of 815 Ill. Comp. Stat. 510/1(5).

417. 815 ILL. COMP. STAT. 510/2 provides that a “person engages in a deceptive trade practice when, in the course of his or her business, vocation, or occupation, the person does any of the following: (2) causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services; . . . (5) represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have . . . ; (7) represents that goods or services are of a particular standard, quality, or grade . . . if they are not; . . . [and] (12) engages in any other conduct which similarly creates a likelihood of confusion or misunderstanding.”

**ANSWER:** Ford admits that Paragraph 406 accurately quotes a portion of the language from 815 Ill. Comp. Stat. 510/2, except that 815 Ill. Comp. Stat. 510/2(7) does not include the exact phrase “if they are not.”

418. By misrepresenting the characteristics of the 6.0L Engine, failing to disclose the defects inherent to the 6.0L Engine, and failing to properly repair the defective engines, as fully set forth above, Ford engaged in deceptive acts or practices prohibited by 815 ILL. COMP. STAT. 510/2.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 418.

419. At all relevant times, as described above, the Ford vehicles equipped with the defective 6.0L Engines Ford sold to Illinois Plaintiffs and the Illinois Consumer Fraud Class Sub-Class Members were not of the particular sponsorship, approval, or certification because Ford vehicles contained defective 6.0L Engines, causing the likelihood of confusion and misunderstanding.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 419.

420. Further, Ford represented that the Ford vehicles equipped with the defective 6.0L Engines had sponsorship, approval, characteristics, ingredients, uses, and benefits that they do not have. For example, Ford sold the Ford vehicles equipped with the defective 6.0L Engines to Plaintiffs and the Illinois Consumer Fraud Sub-Class Members with full knowledge that Ford vehicles contained the defective 6.0L Engines defects at issue in the litigation.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 420.

421. Ford's conduct was knowing and intentional and with malice, and demonstrated a complete lack of care and recklessness and was in conscious disregard for the rights of Illinois Plaintiffs and the Illinois Consumer Fraud Sub-Class.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 421.

422. As a result of the foregoing acts, omissions, and practices Illinois Plaintiffs and other members of the Illinois Consumer Fraud Sub-Class have suffered actual damages as described herein, and these class members are entitled to recover such damages, together with punitive damages, equitable relief, injunctive relief, diminution of value, reasonable attorneys' fees, costs of suit, and such other relief set forth below.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 422.

**Count 10: Violations of New Jersey Consumer Fraud Act**  
**(Asserted on Behalf Plaintiff Hutton and the New Jersey Consumer Fraud Sub-Class)**  
**(N.J. STAT. ANN. § 56:8-1 et seq.)**

423. Plaintiff Marcum ("New Jersey Plaintiff") and the New Jersey Consumer Fraud Sub-Class incorporate the allegations set forth above as if fully set forth herein.

**ANSWER:** Ford reasserts its answers to Paragraphs 1 through 422 of Plaintiff's Master Class Action Complaint.

424. New Jersey Plaintiff, the New Jersey Consumer Fraud Sub-Class, and Ford are "persons" with the meaning of the New Jersey Consumer Fraud Act ("NJCFA"), N.J. STAT. ANN. § 56:8-1 (d)

**ANSWER:** Ford admits that it is a "person" within the meaning of N.J. Stat. Ann. § 56:8-1(d). Ford is without information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 424 and on that basis denies those allegations.

425. The NJCFA provides in relevant part as follows:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person

has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice.

N.J. STAT. ANN. § 56:8-2.

**ANSWER:** Ford admits that Paragraph 425 accurately quotes a portion of the language from N.J. Stat. Ann. § 56:8-2.

426. By misrepresenting the characteristics of the 6.0L Engine, failing to disclose the defects inherent to the 6.0L Engine, and failing to properly repair the defective engines, as fully set forth above, Ford engaged in unfair or deceptive acts or practices prohibited by the NJCFA.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 426.

427. Ford's unconscionable conduct described herein included the knowing omission and concealment of material facts concerning the defective 6.0L Engines as set forth above.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 427.

428. Ford owed New Jersey Plaintiff and the New Jersey Consumer Fraud Sub-Class a duty to disclose the defects in the Ford vehicles equipped with the defective 6.0L Engines because it possessed exclusive and superior knowledge of the defects and did not disclose these defects.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 428.

429. Information regarding these defects, which result in substantial additional repair costs, decreased vehicle performance, and/or vehicle failure, is material to a reasonable consumer in deciding to purchase a vehicle and considering how much to pay for a vehicle.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 429.

430. A reasonable consumer with knowledge of the defective nature of the 6.0L Engines would not have purchased Ford vehicles equipped with the defective 6.0L Engine or would have paid less for them.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 430.

431. Ford knew or should have known that reasonable consumers would likely regard information regarding these defects as material to deciding to purchase a vehicle and considering how much to pay for a vehicle.



**ANSWER:** Ford denies each and every allegation contained in Paragraph 431.

432. Ford's unfair or deceptive acts or practices were therefore likely to or had a tendency or capacity to deceive reasonable consumers about the true nature of the Ford vehicles equipped with the defective 6.0L Engines.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 432.

433. Ford intended that New Jersey Plaintiff and the other members of the New Jersey Sub-Class rely on their misrepresentations and omissions, so that New Jersey Plaintiff and other New Jersey Consumer Fraud Sub-Class Members would purchase Ford vehicles equipped with the defective 6.0L Engines.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 433.

434. As a result of the foregoing acts, omissions, and practices New Jersey Plaintiff and the New Jersey Consumer Fraud Sub-Class have suffered an ascertainable loss as set forth above, and these class members are entitled to recover such actual damages, together with appropriate penalties, including treble damages, equitable relief, injunctive relief, diminution of value, reasonable attorneys' fees, costs of suit, and such other relief set forth below.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 434.

435. Pursuant to N.J. STAT. ANN. § 56:8-20, New Jersey Plaintiff will serve the New Jersey Attorney General a copy of this complaint.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 435, and on that basis denies those allegations.

**Count 11: Violation of New York General Business Law**  
**(Asserted on Behalf of Plaintiff Brown and the New York Consumer Fraud Sub-Class)**  
**(Deceptive Acts and Practices, N.Y. GEN. BUS. LAW § 349)**

436. Plaintiff Brown ("New York Plaintiff") and the New York Consumer Fraud Sub-Class incorporate the allegations set forth above as if fully set forth herein.

**ANSWER:** Ford reasserts its answers to Paragraphs 1 through 435 of Plaintiff's Master Class Action Complaint.

437. Ford's business acts and practices alleged herein constitute deceptive acts or practices under the New York General Business Law, Deceptive Acts and Practices, N.Y. GEN. BUS. LAW § 349 ("NYGBL").

**ANSWER:** Ford denies each and every allegation contained within Paragraph 437.

438. Ford's practices, as set forth above, violate the NYGBL for one or more of the following reasons:

- a. Ford engaged in deceptive, unfair, and unconscionable commercial practices in failing to reveal material facts and information regarding the defective 6.0L Engines which did, or tended to, mislead New York Plaintiff and the New York Consumer Fraud Sub-Class about facts that could not reasonably be known by the consumers;
- b. Ford failed to reveal facts that were material to the transactions in light of representations of fact made in a positive manner;
- c. Ford caused New York Plaintiff and New York Consumer Fraud Sub-Class to suffer a probability of confusion and a misunderstanding of legal rights, obligations and/or remedies by and through its conduct;
- d. Ford made material representations and statements of fact to New York Plaintiff and the New York Consumer Fraud Sub-Class that represented or suggested state of affairs to be other than what they actually were;

**ANSWER:** Ford denies each and every allegation contained in Paragraph 438, including each subpart.

439. Ford's actions impact the public interest because New York Plaintiff and members of the New York Consumer Fraud Sub-Class were injured in exactly the same way as thousands of others purchasing and/or leasing Ford vehicles equipped with the defective 6.0L Engines as a result of and pursuant to Ford's generalized course of deception.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 439.

440. Ford owed New York Plaintiff and the New York Consumer Fraud Sub-Class a duty to disclose the defects in the Ford vehicles equipped with the defective 6.0L Engines because it possessed exclusive and superior knowledge of the defects and did not disclose these defects.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 440.

441. Information regarding these defects, which result in substantial additional repair costs, decreased vehicle performance, and/or vehicle failure, is material to a reasonable consumer in deciding to purchase a vehicle and considering how much to pay for a vehicle.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 441.

442. A reasonable consumer with knowledge of the defective nature of the 6.0L Engines would not have purchased Ford vehicles equipped with the defective 6.0L Engine or would have paid less for them.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 442.

443. Ford's unfair or deceptive acts or practices were therefore likely to or had a tendency or capacity to deceive reasonable consumers about the true nature of the Ford vehicles equipped with the defective 6.0L Engines.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 443.

444. Under all of the circumstances, Ford's conduct in employing these unfair and deceptive trade practices was malicious, willful, wanton and outrageous such as to shock the conscience of the community and warrant the imposition of punitive damages.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 444.

445. As a result of the foregoing acts, omissions and practices, New York Plaintiff and other members of the New York Consumer Fraud Sub-Class have suffered actual damages as set forth above, and the New York Consumer Fraud Sub-Class members are entitled to recover such damages, together with punitive damages, equitable relief, injunctive relief, diminution of value, reasonable attorneys' fees, costs of suit, and such other relief set forth below.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 445.

**Count 12: Violation of the Michigan Consumer Protection Act**  
**(Asserted on Behalf of Plaintiff Clark and the Michigan Consumer Fraud Sub-Class)**  
**(MICH. COMP. LAWS § 445.901 *et seq.*)**

446. Michigan Plaintiff and the Michigan Consumer Fraud Sub-Class incorporate the allegations set forth above as if fully set forth herein.

**ANSWER:** Ford reasserts its answers to Paragraphs 1 through 445 of Plaintiff's Master Class Action Complaint.

447. Ford's business acts and practices alleged herein constitute unfair, unconscionable and/or deceptive methods, acts or practices under the Michigan Consumer Protection Act ("MCPA").

**ANSWER:** Ford denies each and every allegation contained in Paragraph 447.

448. Michigan Plaintiff and all members of the Michigan Consumer Fraud Sub-Class are "persons" within the meaning of the MCPA. MICH. COMP. LAWS § 445.902(1)(d).

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 448 and on that basis denies those allegations.

449. Ford is a "person" engaged in "trade or commerce" within the meaning of the MCPA. MICH. COMP. LAWS § 445.902(1)(d) and (g).

**ANSWER:** Ford admits that it is a "person" engaged in "trade or commerce" within the meaning of Mich. Comp. Laws § 445.902(1)(d) and (g).

450. Ford's practices, as described throughout this complaint, violate the MCPA for one of more of the following reasons:

- a. Ford represented that goods or services have sponsorship, approval, characteristics, uses, and benefits that they do not have;
- b. Ford provided, disseminated, marketed, and otherwise distributed uniform false and misleading advertisements; technical data and other information to consumers regarding the performance, reliability, quality and nature of the Ford vehicles equipped with the defective 6.0L Engines;
- c. Ford represented that goods or services were of a particular standard, quality, or grade when they were of another;
- d. Ford engaged in unconscionable commercial practices in failing to reveal material facts and information about the Ford vehicles equipped with the defective 6.0L Engines, which did (or tended to) mislead Michigan Plaintiff and the Michigan Consumer Fraud Sub-Class about facts that could not reasonably be known by the consumer;
- e. Ford failed to reveal facts that were material to the transactions in light of representations of fact made in a positive manner;

- f. Ford caused Michigan Plaintiff and the Michigan Consumer Fraud Sub-Class to suffer a probability of confusion and a misunderstanding of legal rights, obligations, and/or remedies by and through its conduct;
- g. Ford failed to reveal material facts to Michigan Plaintiff and the Michigan Consumer Fraud Sub-Class;
- h. Ford made material representations and statements of fact to Michigan Plaintiff and the Michigan Consumer Fraud Sub-Class or suggested a state of affairs to be other than what they actually were.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 450, including each subpart.

451. Ford owed Michigan Plaintiff and the Michigan Consumer Fraud Sub-Class a duty to disclose the defects in the Ford vehicles equipped with the defective 6.0L Engines because it possessed exclusive and superior knowledge of the defects and did not disclose the defects.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 451.

452. Information regarding the defects, which result in substantial additional repair costs, decreased vehicle performance, and/or vehicle failure, is material to a reasonable consumer in deciding to purchase a vehicle and considering how much to pay for a vehicle.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 452.

453. A reasonable consumer with knowledge of the defective nature of the 6.0L Engines would not have purchased Ford vehicles equipped with the defective 6.0L Engine or would have paid less for them.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 453.

454. Ford's unfair or deceptive acts or practices were therefore likely to or had a tendency or capacity to deceive reasonable consumers about the true nature of the Ford vehicles equipped with the defective 6.0L Engines.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 454.

455. Ford intended that Michigan Plaintiff and the other members of the Michigan Consumer Fraud Sub-Class rely on their misrepresentations and omissions, so that Michigan

Plaintiff and other Michigan Consumer Fraud Sub-Class Members would purchase Ford vehicles equipped with the defective 6.0L Engines.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 455.

456. Under all of the circumstances, Ford's conduct in employing these unfair and deceptive trade practices was malicious, willful, wanton, and outrageous such as to shock the conscience of the community and warrant the imposition of punitive damages.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 456.

457. Ford's actions impact the public interest because Michigan Plaintiff and members of the Michigan Consumer Fraud Sub-Class were injured in exactly the same way as thousands of others who purchased and/or leased Ford vehicles equipped with the defective 6.0L Engines as a result of and pursuant to Ford's generalized course of deception.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 457.

458. As a result of the foregoing acts, omissions and practices Michigan Plaintiff and other members of the Michigan Consumer Fraud Sub-Class suffered actual damages as described herein, and these class members are entitled to recover such damages, together with punitive damages, equitable relief, injunctive relief, diminution of value, reasonable attorneys' fees, costs of suit, and such other relief set forth below.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 458.

459. Pursuant to MICH. COMP. LAWS § 445.905 subd. 3, Michigan Plaintiff will serve the Michigan Attorney General a copy of this complaint.

**ANSWER:** Ford is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 459, and on that basis denies those allegations.

**Count 13: Violation of the South Carolina Unfair Trade Practices Act**  
**(Asserted on Behalf of Plaintiff Boggero and the**  
**South Carolina Consumer Fraud Sub-Class)**  
**(S.C. CODE ANN. § 39-5-10 *et seq.*)**

460. South Carolina Plaintiff and the South Carolina Consumer Fraud Sub-Class incorporate the allegations set forth above as if fully set forth herein.

**ANSWER:** Ford reasserts its answers to Paragraphs 1 through 459 of Plaintiff's Master Class Action Complaint.

461. Ford is a "person" engaged in "trade" and "commerce" within the meaning of S.C. CODE. ANN. § 39-5-10.

**ANSWER:** Ford admits that it is a "person" within the meaning of S.C. Code Ann. § 39-5-10.

462. The South Carolina Unfair Trade Practices Act ("SCUTPA") declares unlawful "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." S.C. CODE. ANN. § 39-5-20.

**ANSWER:** Ford admits that Paragraph 462 accurately quotes language from the South Carolina Unfair Trade Practices Act (S.C. Code Ann. § 39-5-20).

463. By misrepresenting the characteristics of the 6.0L Engine, failing to disclose the defects inherent to the 6.0L Engine, and failing to properly repair the defective engines, as fully set forth above, Ford engaged in unlawful, unfair, or deceptive acts or practices prohibited by the SCUTPA.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 463.

464. Ford owed South Carolina Plaintiff and the South Carolina Consumer Fraud Sub-Class a duty to disclose the defects in the Ford vehicles equipped with the defective 6.0L Engines because it possessed exclusive and superior knowledge of the defects and did not disclose the defects.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 464.

465. Information regarding the defects, which result in substantial additional repair costs, decreased vehicle performance, and/or vehicle failure, is material to a reasonable consumer in deciding to purchase a vehicle and considering how much to pay for a vehicle.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 465.

466. A reasonable consumer with knowledge of the defective nature of the 6.0L Engines would not have purchased Ford vehicles equipped with the defective 6.0L Engine or would have paid less for them.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 466.

467. Ford's unfair or deceptive acts or practices were therefore likely to or had a tendency or capacity to deceive reasonable consumers about the true nature of the Ford vehicles equipped with the defective 6.0L Engines.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 467.

468. Ford's actions impact the public interest because Plaintiff and members of the Consumer Fraud Class were injured in exactly the same way as thousands of others who purchased and/or leased Ford vehicles equipped with the defective 6.0L Engines as a result of and pursuant to Ford's generalized course of deception.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 468.

469. As result of its violations of the SCUTPA, Ford caused actual damage to South Carolina Plaintiff and the South Carolina Consumer Fraud Sub-Class including, inter alia, substantial time and money dedicated to repeat visits to various Ford dealership service departments attempting to resolve the engine problems to no avail.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 469.

470. Ford's conduct in employing these unfair and deceptive trade practices was malicious, willful, wanton, and outrageous such as to shock the conscience of the community and warrant the imposition of punitive damages.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 470.

471. As a result of the foregoing acts, omissions, and practices South Carolina Plaintiff and other members of the South Carolina Consumer Fraud Sub-Class suffered actual damages as described herein, and these class members are entitled to recover such damages, together with punitive damages, equitable relief, injunctive relief, diminution of value, reasonable attorneys' fees, costs of suit, and such other relief set forth below.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 471.

**Count 14: Violation of Arizona Consumer Fraud Act**  
**(Asserted on Behalf of Plaintiff Vogt and the Arizona Consumer Fraud Sub-Class)**  
**(ARIZ. REV. STAT. ANN. § 44-1521 *et seq.*)**

472. Arizona Plaintiff and the Arizona Consumer Fraud Sub-Class incorporate the allegations set forth above as if fully set forth herein.



**ANSWER:** Ford reasserts its answers to Paragraphs 1 through 471 of Plaintiff's Master Class Action Complaint.

473. Arizona Plaintiff, the Arizona Consumer Fraud Sub-Class, and Ford are "persons" with the meaning of the Arizona's Consumer Fraud Act ("ACFA"). A.R.S. § 44-1521.

**ANSWER:** Ford admits that it is a "person" within the meaning of A.R.S. § 44-1521.

Ford is without information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 473 and on that basis denies those allegations.

474. The ACFA prohibits the "act, use or employment by any person of any deception, deceptive act or practice, fraud, false pretense, false promise, misrepresentation, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise whether or not any person has in fact been misled, deceived or damaged thereby." A.R.S. § 44-1522.

**ANSWER:** Ford admits that Paragraph 474 accurately quotes language from the Arizona Consumer Fraud Act (A.R.S. § 44-1522).

475. By misrepresenting the characteristics of the 6.0L Engine, failing to disclose the defects inherent to the 6.0L Engine, and failing to properly repair the defective engines, as fully set forth above, Ford engaged in unfair or deceptive acts or practices prohibited by Arizona's CFA.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 475.

476. Ford owed Arizona Plaintiff and the Arizona Consumer Fraud Sub-Class a duty to disclose the defects in the Ford vehicles equipped with the defective 6.0L Engines because it possessed exclusive and superior knowledge of the defects and did not disclose the defects.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 476.

477. Information regarding the defects, which result in substantial additional repair costs, decreased vehicle performance, and/or vehicle failure, is material to a reasonable consumer in deciding to purchase a vehicle and considering how much to pay for a vehicle.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 477.

478. A reasonable consumer with knowledge of the defective nature of the 6.0L Engines would not have purchased Ford vehicles equipped with the defective 6.0L Engine or would have paid less for them.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 478.

479. Ford's unfair or deceptive acts or practices were therefore likely to or had a tendency or capacity to deceive reasonable consumers about the true nature of the Ford vehicles equipped with the defective 6.0L Engines.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 479.

480. Ford intended that Arizona Plaintiff and the other members of the Arizona Consumer Fraud Sub-Class rely on Ford's misrepresentations and omissions, so that Arizona Plaintiff and other Arizona Consumer Fraud Sub-Class Members would purchase Ford vehicles equipped with the defective 6.0L Engines.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 480.

481. As result of its violations of the ACFA, Ford caused actual damage to Arizona Plaintiff and the Arizona Consumer Fraud Sub-Class including, inter alia, substantial time and money dedicated to repeat visits to various Ford dealership service departments attempting to resolve the engine problems to no avail.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 481.

482. Ford's conduct in employing these unfair and deceptive trade practices was malicious, willful, wanton, and outrageous such as to shock the conscience of the community and warrant the imposition of punitive damages.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 482.

483. As a result of the foregoing acts, omissions, and practices Arizona Plaintiff and other members of the Arizona Consumer Fraud Sub-Class suffered actual damages as described herein, and these class members are entitled to recover such damages, together with punitive damages, equitable relief, injunctive relief, diminution of value, reasonable attorneys' fees, costs of suit, and such other relief set forth below.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 483.

**Count 15: Violation of Connecticut Unfair Trade Practices Act**  
**(Asserted on Behalf of Plaintiff Santilli and the Connecticut Consumer Fraud Sub-Class)**  
**(CONN. GEN. STAT. §§ 42-110a et seq.)**

484. Connecticut Plaintiff and the Connecticut Consumer Fraud Sub-Class incorporate the allegations set forth above as if fully set forth herein.

**ANSWER:** Ford reasserts its answers to Paragraphs 1 through 483 of Plaintiff's Master Class Action Complaint.

485. Ford is a "person" engaged in "trade" and "commerce" within the meaning of CONN. GEN. STAT. § 42-110a(3), (4).

**ANSWER:** Ford admits that it is a "person" engaged in "trade" and "commerce" within the meaning of Conn. Gen. Stat. § 42-110a(3) and (4).

486. Ford's business acts and practices alleged herein constitute unfair, unconscionable and/or deceptive methods, acts or practices under the Connecticut Unfair Trade Practices Act ("CUTPA"). CONN. GEN. STAT. § 42-110b.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 486.

487. By misrepresenting the characteristics of the 6.0L Engine, failing to disclose the defects inherent to the 6.0L Engine, and failing to properly repair the defective engines, as fully set forth above, Ford engaged in immoral, unethical, oppressive, and unscrupulous acts that offend public policy.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 487.

488. Ford owed Connecticut Plaintiff and the Connecticut Consumer Fraud Sub-Class a duty to disclose the defects in the Ford vehicles equipped with the defective 6.0L Engines because it possessed exclusive and superior knowledge of the defects and did not disclose the defects.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 488.

489. Information regarding the defects, which result in substantial additional repair costs, decreased vehicle performance, and/or vehicle failure, is material to a reasonable consumer in deciding to purchase a vehicle and considering how much to pay for a vehicle.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 489.

490. A reasonable consumer with knowledge of the defective nature of the 6.0L Engines would not have purchased Ford vehicles equipped with the defective 6.0L Engine or would have paid less for them.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 490.

491. Ford's unfair or deceptive acts or practices were therefore likely to or had a tendency or capacity to deceive reasonable consumers about the true nature of the Ford vehicles equipped with the defective 6.0L Engines.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 491.

492. Ford's conduct was knowing and intentional and with malice, and demonstrated a complete lack of care and recklessness and was in conscious disregard for the rights of Connecticut Plaintiff and the Connecticut Consumer Fraud Sub-Class.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 492.

493. As a result of the foregoing acts, omissions, and practices Connecticut Plaintiff and other members of the Connecticut Consumer Fraud Sub-Class suffered an ascertainable loss of money or property as described herein, and these class members are entitled to recover such actual damages, together with punitive damages, equitable relief, injunctive relief, diminution of value, reasonable attorneys' fees, costs of suit, and such other relief set forth below.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 493.

494. Pursuant to CONN. GEN. STAT. § 42-110(g)(c), Connecticut Plaintiff will serve the Connecticut Attorney General and Commissioner of Consumer Protect a copy of this complaint.

**ANSWER:** Ford is without sufficient information to form a belief as to the truth of the allegations contained in Paragraph 494, and on that basis denies those allegations.

**Count 16: Violation of North Carolina Consumer Fraud Act**  
**(Asserted on Behalf of Plaintiff Mawyer and the North Carolina**  
**Consumer Fraud Sub-Class)**  
**(N.C. GEN. STAT. § 75-1.1 *et seq.*)**

495. North Carolina Plaintiff and the North Carolina Consumer Fraud Sub-Class incorporate the allegations set forth above as if fully set forth herein.

**ANSWER:** Ford reasserts its answers to Paragraphs 1 through 494 of Plaintiff's Master Class Action Complaint.

496. Ford is engaged in "commerce" within the meaning of N.C. GEN. STAT. § 75-1.1(b).

**ANSWER:** Ford admits the allegations contained in Paragraph 496.

497. By misrepresenting the characteristics of the 6.0L Engine, failing to disclose the defects inherent to the 6.0L Engine, and failing to properly repair the defective engines, as fully set forth above, Ford engaged in unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices affecting commerce under the North Carolina Consumer Fraud Act ("NCCFA").

**ANSWER:** Ford denies each and every allegation contained in Paragraph 497.

498. Ford owed North Carolina Plaintiff and the North Carolina Consumer Fraud Sub-Class a duty to disclose the defects in the Ford vehicles equipped with the defective 6.0L Engines because it possessed exclusive and superior knowledge of the defects and did not disclose the defects.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 498.

499. Information regarding the defects, which result in substantial additional repair costs, decreased vehicle performance, and/or vehicle failure, is material to a reasonable consumer in deciding to purchase a vehicle and considering how much to pay for a vehicle.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 499.

500. A reasonable consumer with knowledge of the defective nature of the 6.0L Engines would not have purchased Ford vehicles equipped with the defective 6.0L Engine or would have paid less for them.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 500.

501. Ford's unfair or deceptive acts or practices were therefore likely to or had a tendency or capacity to deceive reasonable consumers about the true nature of the Ford vehicles equipped with the defective 6.0L Engines.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 501.

502. Ford's conduct was knowing and intentional and with malice, and demonstrated a complete lack of care and recklessness and was in conscious disregard for the rights of North Carolina Plaintiff and the North Carolina Consumer Fraud Sub-Class.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 502.

503. As a result of the foregoing acts, omissions, and practices, North Carolina Plaintiff and other members of the North Carolina Consumer Fraud Sub-Class have suffer an ascertainable loss of money or property as described herein, and these class members are entitled to recover such actual damages, together with punitive damages, equitable relief, injunctive relief, diminution of value, reasonable attorneys' fees, costs of suit, and such other relief set forth below.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 503.

**Count 17: Violation of Ohio's Consumer Sales Practices Act**  
**(Asserted on Behalf Plaintiff Marcum and the Ohio Consumer Fraud Sub-Class)**  
**(OHIO REV. CODE. ANN. § 1345.01 *et seq.*)**

504. Ohio Plaintiff and the Ohio Consumer Fraud Sub-Class incorporate the allegations set forth above as if fully set forth herein.

**ANSWER:** Ford reasserts its answers to Paragraphs 1 through 503 of Plaintiff's Master Class Action Complaint.

505. Ford's business acts and practices alleged herein constitute unfair, unconscionable and/or deceptive methods, acts, or practices under the Ohio Consumer Sales Practices Act ("OCSPA"), OHIO REV. CODE ANN. § 1305.01, *et seq.*

**ANSWER:** Ford denies each and every allegation contained in Paragraph 505.

506. At all relative times, Ohio Plaintiff and all members of the Ohio Consumer Fraud Sub-Class were "consumers" within the meaning of the OCSPA, OHIO REV. CODE ANN. § 1305.01(D).

**ANSWER:** Ford denies that a provision in the Ohio Revised Code Annotated numbered 1305.01(D) exists. Ford is without information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 506 and on that basis denies those allegations.

507. Ford is a “person” within the meaning of the OCSPA, OHIO REV. CODE ANN. § 1305.01(B).

**ANSWER:** Ford admits that it is a “person” within the meaning of the Ohio Consumer Sales Practices Act. Ford denies that a definition of “person” occurs at Ohio Rev. Code Ann. § 1305.01(B).

508. Ford’s practices, described above, violate the OCSPA for one or more of the following reasons:

- a. Ford represented that goods or services have sponsorship, approval, performance characteristics, uses, and benefits that they do not have;
- b. Ford provided, disseminated, marketed, and otherwise distributed uniform false and misleading advertisements technical data and other information to consumers regarding the performance, reliability, quality and nature of the Ford vehicles equipped with the defective 6.0L Engines;
- c. Ford represented that goods or services were of a particular standard, quality, or grade when they were of another;
- d. Ford engaged in unconscionable commercial practices in failing to reveal material facts and information about the Ford vehicles equipped with the defective 6.0L Engines, which did (or tended to) mislead Ohio Plaintiff and the Ohio Consumer Fraud Sub-Class about facts that could not reasonably be known by the consumer;
- e. Ford failed to reveal facts that were material to the transactions in light of representations of fact made in a positive manner;
- f. Ford caused Ohio Plaintiff and the Ohio Consumer Fraud Sub-Class to suffer a probability of confusion and a misunderstanding of legal rights, obligations, and/or remedies by and through its conduct;
- g. Ford made material representations and statements of fact to Ohio Plaintiff and the Ohio Consumer Fraud Sub-Class that represented or suggested a state of affairs to be other than what they actually were.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 508, including each subpart.

509. Ford owed Ohio Plaintiff and the Ohio Consumer Fraud Sub-Class a duty to disclose the defects in the Ford vehicles equipped with the defective 6.0L Engines, because Ford possessed exclusive and superior knowledge of the defects and did not disclose the defects.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 509.

510. Information regarding the defects, which result in substantial additional repair costs, decreased vehicle performance, and/or vehicle failure, is material to a reasonable consumer in deciding to purchase a vehicle and considering how much to pay for a vehicle.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 510.

511. A reasonable consumer with knowledge of the defective nature of the 6.0L Engines would not have purchased Ford vehicles equipped with the defective 6.0L Engine or would have paid less for them.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 511.

512. Under all of the circumstances, Ford's conduct in employing these unfair and deceptive trade practices was malicious, willful, wanton, and outrageous such as to shock the conscience of the community and warrant the imposition of punitive damages.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 512.

513. Ford's actions impact the public interest because Ohio Plaintiff and members of the Ohio Consumer Fraud Sub-Class were injured in exactly the same way as thousands of others who purchased and/or leased Ford vehicles equipped with the defective 6.0L Engines as a result of and pursuant to Ford's generalized course of deception.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 513.

514. As a result of the foregoing acts, omissions, and practices Ohio Plaintiff and other members of the Ohio Consumer Fraud Sub-Class suffered actual damages as described herein, and these class members are entitled to recover such damages, together with punitive damages, equitable relief, injunctive relief, diminution of value, reasonable attorneys' fees, costs of suit, and such other relief set forth below.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 514.

## **VII. DAMAGES**

515. Plaintiffs incorporate the allegations set out above as though fully set forth herein.



**ANSWER:** Ford reasserts its answers to Paragraphs 1 through 514 of Plaintiff's Master Class Action Complaint.

516. Plaintiffs would further show that as a result of the acts and/or omissions of Ford, Plaintiffs have suffered and continue to suffer at least the following damages for which Plaintiffs now sue:

- a. Out of pocket damages for expenditures related to the cost to repair/service the engines;
- b. deductibles paid when repairs were covered by warranty;
- c. towing charges incurred from having incapacitated vehicles towed in for repair;
- d. lost profits from the inability to utilize vehicles equipped with said engine, due to the engine being inoperable, the vehicle being stored at a Ford dealership awaiting a Ford mechanic to repair it, or the vehicle being insufficiently reliable to be put into service;
- e. cost to overhaul and/or replace the engine in all vehicles equipped with 6.0L Engines;
- f. diminution in value of the vehicles attributable to the defect;
- g. decreased value received for vehicles, as a result of the defect, when trading in or selling the vehicle;
- h. increased equipment expenses caused by the need to purchase additional vehicles to keep in reserve (due to the unreliability of the 6.0L Engine and the fact that units spend a large amount of time incapacitated awaiting repair at Ford dealerships);
- i. increased salary expenses caused by the need to hire additional mechanics to deal with the repeated problems with the 6.0L Engine; and
- j. increased expenses caused by the need to keep additional tools and parts on hand to deal with the repeated problems with the 6.0L Engine.

**ANSWER:** Ford denies each and every allegation contained in Paragraph 516, including each subpart.

517. The damages set forth above are sought by Plaintiffs and Class members from and against Defendant.

**ANSWER:** Ford admits that Plaintiffs and putative class members seek the damages as set forth in Plaintiff's Master Class Action Complaint. Ford denies that they are entitled to any damages.

518. WHEREFORE, Plaintiffs pray for judgment against Defendant, Ford Motor Company, for past and future economic losses, declaratory and injunctive relief, reasonable attorneys' fees, prejudgment and post-judgment interest, costs, equitable relief, and such other relief the Court may deem proper.

**ANSWER:** Ford admits that Plaintiffs seek judgment against Ford, past and future economic losses, declaratory and injunctive relief, attorneys' fees, prejudgment and post-judgment interest, costs, and equitable relief. Ford denies that they are entitled to any such relief.

#### **AFFIRMATIVE DEFENSES**

Ford, not being fully advised of all the circumstances surrounding the allegations set forth in Plaintiffs' Master Class Action Complaint, reserves unto itself the affirmative defenses that the claims of Plaintiffs are or may be barred, in whole or in part, for the bases set out below, as the same may prove applicable as discovery proceeds and the evidence is developed in this case:

1. Plaintiffs' Master Class Action Complaint fails to state a claim against Ford upon which relief can be granted.
2. The claims of Plaintiffs and members of the proposed classes are barred by the terms of the applicable limited warranties sold with their vehicles.
3. The claims of Plaintiffs and members of the proposed classes are, in whole or in part, preempted by the Federal National Traffic and Motor Vehicle Safety Act, 49 U.S.C. §§ 30118 *et seq.*

4. As to some or all of Plaintiffs' claims, Plaintiffs and those alleged to be members of the purported classes lack standing to assert claims under the Master Class Action Complaint because they have no cognizable injury with respect to such claims.

5. The claims of Plaintiffs and members of the proposed classes are barred, in whole or in part, by the equitable doctrine of unclean hands and similar rules requiring plaintiffs to do equity to obtain relief.

6. The claims of Plaintiffs and members of the proposed classes are barred, in whole or in part, by the equitable doctrines of waiver, acquiescence, laches, and/or estoppel, in that, including without limitation, plaintiffs unreasonably delayed in bringing their claims.

7. The claims of Plaintiffs and members of the proposed classes are barred, in whole or in part, by the applicable statutes of limitations.

8. The claims of Plaintiffs and members of the proposed classes are barred by the doctrines of *res judicata*, collateral estoppel, and/or other similar doctrines.

9. The claims of Plaintiffs and members of the proposed classes are barred, in whole or in part, because they failed to mitigate their damages and/or took unreasonable, unnecessary, and/or unduly expensive actions in purported mitigation, and Ford is not responsible therefor.

10. The claims of Plaintiffs and members of the proposed classes are barred to the extent that the business practices alleged were carried out for legitimate business reasons.

11. The claims of Plaintiffs and members of the proposed classes are barred, in whole or in part, by the Due Process Clauses of the Constitutions of the United States and the constitutions of the various states under whose laws Plaintiffs bring their claims.

12. Members of the proposed classes who experienced no manifestation of the alleged defects within the limited written warranty period have no claim against Ford upon which relief may be granted.

13. The claims of Plaintiffs and members of the proposed classes are barred if they did not comply with operation and maintenance requirements and with all other conditions precedent to receiving service under the limited written warranty on their vehicles.

14. The claims of Plaintiffs and members of the proposed classes are barred, in whole or in part, if they have failed to give timely and sufficient notice of breach or of other non-compliance, as is required by relevant statutes, customs, or legal principles.

15. The claims of Plaintiffs and members of the proposed classes are barred, in whole or in part, if they misused and/or abused the vehicle on which they claim the warranty was breached.

16. The claims of Plaintiffs and members of the proposed classes are barred, in whole or in part, if their vehicles have been altered.

17. The claims of Plaintiffs and members of the proposed classes are barred, in whole or in part, if their vehicles have been sold, destroyed or otherwise disposed of.

18. The claims of Plaintiffs and members of the proposed classes may be barred, in whole or in part, from recovery due to the intervening negligence or actions of another party.

19. The claims of Plaintiffs and members of the proposed classes are barred, in whole or in part, if the alleged problems in their vehicles involved an intervening cause or were attributable, in whole or in part, to a cause other than the purported vehicle defects alleged by the Master Class Action Complaint.

20. The claims of Plaintiffs and members of the proposed classes are barred, in whole or in part, if they have made statements or taken actions which estop them from asserting their claims.

21. The claims of Plaintiffs and members of the proposed classes are barred, in whole or in part, on the ground that they are subject to the defense of accord and satisfaction.

22. The claims of Plaintiffs and members of the proposed classes are barred, in whole or in part, by release as to those claims.

23. The claims of Plaintiffs and members of the proposed classes may be barred, in whole or in part, on the ground that Ford has discharged its obligations to such claimants.

24. Plaintiffs may not maintain this action as described in the Master Class Action Complaint as a class action.

25. Plaintiffs' claim to proceed as a class action should be denied because variations from vehicle to vehicle preclude the introduction of classwide proof as to the alleged defect or failure mode.

26. Plaintiffs' claim to proceed as a class action should be denied because the claim of a named plaintiff or absentee class member based on a breach of warranty is that of an individual for a separate breach of warranty, unique and without a cognizable class.

27. To the extent that Plaintiffs seek punitive damages, without qualification or limitation, this claim violates Ford's right to due process under the United States Constitution and constitutions of the various states under whose laws Plaintiffs bring their claims.

28. Ford denies it is guilty of conduct referable to which punitive damages could or should be awarded, and denies that Plaintiffs have produced evidence sufficient to support or sustain the imposition of punitive damages against Ford.

29. Plaintiffs are not entitled to punitive damages from Ford pursuant to the facts as alleged in the Master Class Action Complaint.

30. Plaintiffs' claims for punitive damages against Ford are barred by the Fourteenth Amendment to the United States Constitution and by comparable provisions in the constitutions of the various states under whose laws Plaintiffs bring their claims.

31. Imposition of punitive damages in this case against Ford would contravene the Commerce Clause of the United States Constitution in that such an award would constitute, if imposed, an undue and unreasonable burden on interstate commerce.

32. To award punitive damages against Ford in this case would have a chilling effect upon defendant's rights to open access to the courts, in violation of the United States Constitution and state constitutions.

33. To award punitive damages against Ford in this case would violate the Contracts Clause of Article I, Section 10 of the United States Constitution, as an award of punitive damages would impair the contractual obligations of any contracts involving the plaintiff or others claimed to be members of the purported class and Ford.

34. Plaintiff and others claimed to be members of the purported class may be barred, in whole or in part, from recovery, due to spoliation of evidence.

35. The Master Class Action Complaint fails to describe the claims asserted against Ford with sufficient particularity to permit Ford to ascertain what other defenses may exist. Ford therefore reserves the right to assert all defenses which may pertain to the Master Class Action Complaint once the precise nature of such claims has been ascertained.

36. Plaintiffs' claims may be subject to mandatory arbitration.

WHEREFORE, Ford prays that the Court determine and adjudge:

- a. that this suit cannot be maintained as a class action;

- b. that Plaintiffs' Master Class Action Complaint be dismissed on the merits;
- c. that Plaintiffs take nothing by the Master Class Action Complaint;
- d. that Ford be awarded its costs, disbursements and attorneys' fees and expenses incurred herein; and
- e. that Ford be awarded such other and further relief as the Court may deem proper.

**JURY DEMAND**

Ford demands trial by jury on all issues so triable.

Dated: October 7, 2011

Respectfully submitted,

**FORD MOTOR COMPANY**  
**By Counsel**

By: s/ Brian C. Anderson

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**CERTIFICATE OF SERVICE**

I hereby certify that, on October 25, 2011, the foregoing document was served electronically upon all counsel of record via the Court's CM/ECF system.

s/ Dmitry Shifrin



## PROOF OF SERVICE

### STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 5900 Wilshire Boulevard, 12th Floor, Los Angeles, California 90036.

On August 31, 2020, I served the foregoing document described as: **PLAINTIFF'S MOTION FOR JUDICIAL NOTICE; DECLARATIONS OF CYNTHIA E. TOBISMAN AND LAUREN UNGS; [PROPOSED] ORDER** on the parties in this action by serving:

### SEE ATTACHED SERVICE LIST

(X) I electronically filed the document(s) with the Clerk of the Court by using the TrueFiling system. Participants in the case who are registered TrueFiling users will be served by the TrueFiling system. Participants in the case who are not registered TrueFiling users will be served by mail or by other means permitted by the court rules.

( ) By Mail: As follows: I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with United States Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

Executed on August 31, 2020, at Los Angeles, California.

(X) (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

/s/ Chris Hsu

Chris Hsu

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CALIFORNIA COURT OF APPEAL  
[Electronic Service under Rule  
8.212(c)(2)]

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**STATE OF CALIFORNIA**  
Supreme Court of California

***PROOF OF SERVICE***

**STATE OF CALIFORNIA**  
Supreme Court of California

Case Name: **BERROTERAN v. S.C. (FORD MOTOR COMPANY)**

Case Number: **S259522**

Lower Court Case Number: **B296639**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **ctobisman@gmsr.com**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

<b>Filing Type</b>	<b>Document Title</b>
BRIEF	Answering Brief on the Merits
REQUEST FOR JUDICIAL NOTICE	Motion for Judicial Notice

Service Recipients:

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This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

8/31/2020

Date

/s/Chris Hsu

---

Signature

Tobisman, Cynthia (197983)

---

Last Name, First Name (PNum)

Greines Martin Stein & Richland LLP

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Law Firm