

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**
Case No. _____

HARVEY BRITTON FORD and KATHY)	
REGENIA FORD, on behalf of themselves)	
and all others similarly situated,)	CLASS ACTION
)	COMPLAINT
Plaintiffs,)	
)	JURY TRIAL DEMANDED
v.)	
)	
FORD MOTOR COMPANY,)	
)	
Defendant.)	

Plaintiffs Harvey Britton Ford and Kathy Regenia Ford (husband and wife), on behalf of themselves and all other persons similarly situated, brings this action against defendant Ford Motor Company and, to the best of their knowledge, information and belief, formed after an inquiry reasonable under the circumstances, alleges as follows:

NATURE OF THE ACTION

1. This is a consumer action on behalf of plaintiffs and a class of other similarly situated North Carolina consumers against defendant Ford, the manufacturer of the Explorer. Between 2011 to 2015, Ford Explorers were built on the same platform with common parts. This model has a distinct and dangerous characteristic: It leaks exhaust emissions (which includes carbon monoxide) into its passenger cabin.
2. The potential exposure to exhaust and carbon monoxide renders these vehicles unsafe to drive.
3. Ford has known about this problem since 2009.
4. In about 2012, Ford issued Technical Service Bulletin 12-12-4 (“TSB 12-12-4”)(Ex. B), titled “Explorer Exhaust Odor in Vehicle,” acknowledging that “[s]ome 2011-2013

Explorer vehicles may exhibit an exhaust odor in the vehicle with the auxiliary climate control system on. Customers may indicate the odor smells like sulfur.” Ford’s TSB 12-12-4 provides instructions which Ford claims will correct the exhaust odor in 2011 through 2013 model year Ford Explorers.

5. Subsequent to TSB 12-12-4, Ford issued Technical Service Bulletin 14-0130 (“TSB 14-0130”) (Ex. C).

6. Titled “Exhaust Odor in Vehicle,” TSB 14-0130 also acknowledges an exhaust odor in Explorer vehicles, and adds the 2014 and 2015 model year Explorers to the list of affected vehicles. TSB 14-0130 includes the same or similar service procedures outlined in TSB 12-12-4, and adds certain procedures not included in TSB 12-12-4. Both TSBs provide that the repairs associated with the TSBs are covered by Ford’s warranty.

7. Ford’s TSBs 12-12-4 and 14-0130, however, do not correct the condition. Ford has serviced thousands of vehicles around the world under TSBs 12-12-4 and 14-0130, generally without success in eliminating the exhaust leak. Ford has bought back hundreds of vehicles around the world, mostly overseas, because it has been unable to fix the leak. Ford has attempted a variety of fixes, all without success.

8. Ford’s TSBs 12-12-4 and 14-0130 also fail to acknowledge that carbon monoxide may enter the passenger compartment of affected vehicles. Ford’s TSBs 12-12-4 and 14-0130 are provided to authorized dealerships, and do not directly notify non-Ford automotive repair facilities about the defects associated with TSBs 12-12-4 and 14-0130. Further, although Ford has received numerous complaints relating to exhaust entering the passenger compartments of 2011 through 2015 model year Ford Explorers, Ford has not provided any notice to plaintiffs or

the proposed class members about the defect and the potential exposure to dangerous carbon monoxide in the 2011 through 2015 model-year Ford Explorers.

9. The systemic nature of the exhaust leakage and the inability of Ford to find a fix have been conceded by a Ford representative, under oath, at a non-binding arbitration concerning a claim made by a Ford Explorer owner that his car was leaking exhaust into the passenger cabin. In urging that the arbitrator rule against the vehicle owner, the Ford representative testified on January 2, 2015 (a true and correct copy of this transcript is appended as **Exhibit A** to this Class Action Complaint):

- A. “It seems to be happening across the only -- across the design line. They can't -- so then it really is a design issue, not a problem with this particular vehicle.” Exhibit A at 50:2–6.**
- B. “There is another fine line there that, you know, this is happening across the -- the Explorers over a number of years. It -- it doesn't seem to be a problem with an individual part or an individual vehicle that was misbuilt. It does seem to be a design issue.” Exhibit A at 83:13–18.**
- C. “And then, in terms of -- of repairs, as I said, we're working on it. I wish I had a better answer for that. I don't, and I can only apologize on behalf of Ford for that, because, you know, it's obviously taking longer than anybody wants, especially our customers who have the vehicle.” Exhibit A at 51:2–8.**
- D. “In terms of the request for repairs, as soon as we can get it -- get them done, as soon as we have a robust fix, something that's going to actually do the job, we would love to get it done. That should be very soon. I know that that's what the customer was told, you know, all those months ago; but we do feel that we've taken steps along the way. We have come out with the two technical service bulletins trying to address it, and we do want to get it fixed. So we are not saying no to a repair; we are just saying we have to have the fix first.” Exhibit A at 84:25–85:12.**

10. Ford sold or leased hundreds of thousands of defective vehicles nationwide. Each such vehicle was sold or leased in a dangerous and defective condition because each such vehicle contains design or manufacturing flaws, and/or an exhaust and/or HVAC system that permit(s)

exhaust and other gases, including toxic carbon monoxide, to enter the passenger compartment during the normal and customary use of such vehicles.

11. Ford designed, manufactured, sold and leased the 2011 through 2015 model year Ford Explorer when it knew or should have known of such defects, or Ford otherwise learned of such defects and failed to notify plaintiffs and the proposed class members of the defect in the 2011 through 2015 model year Ford Explorers that exposed plaintiffs, the proposed class members, and others, to a life safety hazard.

12. Plaintiff and the members of the proposed classes reasonably expect to have their Ford vehicles operate in a normal and customary manner free from exposure to potentially noxious and potentially deadly exhaust gases entering the vehicle's cabin during normal and expected use.

JURISDICTION AND VENUE

13. This Court has diversity jurisdiction over this action under 28 U.S.C. § 1332(d) because the amount in controversy for the Class exceeds \$5,000,000, exclusive of interest and costs, there are more than 100 class members, and more than two-thirds of the class is diverse from Ford.

14. The Court has personal jurisdiction over Ford because Ford conducts substantial business in this District, and some of the actions giving rise to this complaint took place in this District.

15. Venue is proper in this District under 28 U.S.C. § 1391 because, among other things, a substantial part of the events or omissions giving rise to the claims occurred in this District, and caused harm to class members residing in this District.

PARTIES

16. Plaintiffs Harvey Britton Ford and Kathy Regenia Ford are residents of Hartford, Tennessee.

17. Defendant Ford Motor Company is a Delaware corporation with its principal place of business in Michigan. In this Complaint, “Ford” refers to the named defendant and all related, successor, predecessor, parent, and subsidiary entities to which these allegations pertain.

PLAINTIFF’S INDIVIDUAL ALLEGATIONS

18. On or about February 6, 2014, plaintiffs bought a new 2014 Ford Explorer, VIN number 1FM5K8F87EGB40343, from “Four Seasons Ford,” an authorized Ford dealership in Hendersonville, North Carolina.

19. The 2014 Ford Explorer purchased by plaintiffs was dangerous and defective when purchased because its design and exhaust and/or HVAC systems permitted an exhaust odor, exhaust and other gases, including carbon monoxide, to enter the passenger compartment of the vehicle. The defect is latent in nature because it is not obvious or ascertainable upon reasonable examination or inspection.

20. At the time of the purchase, plaintiffs were not notified that the 2014 Ford Explorer they purchased was defective, nor were they notified that they and all occupants would be exposed to carbon monoxide and other potentially dangerous gases while driving in the 2014 Ford Explorer during its normal and customary use.

21. Plaintiffs brought their 2014 Ford Explorer in for service to authorized Ford dealerships on numerous occasions, with complaints of an exhaust odor present in the passenger compartment while the 2014 Ford Explorer was in use.

22. Plaintiffs experienced an exhaust odor inside the passenger cabin of their 2014 Ford Explorer within weeks of the vehicle's purchase.

23. On or about August 26, 2014, plaintiffs brought their 2014 Ford Explorer in for service to Ken Wilson Ford, an authorized Ford dealership in Canton, North Carolina and complained about an exhaust odor inside the passenger compartment of her vehicle while the vehicle was being driven. At that time, the subject vehicle had been driven 11,336 miles, and was well within the 3 year/36,000 mile warranty period. The authorized Ford dealership prescribed and performed TSB 14-0130, which was intended to correct the problem.

24. The work performed under the TSB did not eliminate the exhaust smell. Accordingly, on or about September 9, 2014, plaintiffs returned to Ken Wilson Ford to complain about the problem. The authorized Ford dealership requested that plaintiffs leave their vehicle with the dealership while the service department could address their concerns.

25. The following day, a representative from Ken Wilson Ford informed the plaintiffs that they had contacted defendant Ford Motor Company for guidance.

26. Plaintiffs picked up their Explorer on or about September 26, 2014. On or about September 30, 2014, plaintiffs again noticed an exhaust odor in the passenger cabin of the Ford Explorer.

27. On or about October 2, 2014, plaintiffs brought their Ford Explorer to a second authorized Ford dealership, Four Season's Ford in Hendersonville, North Carolina. An agent or representative from the dealership's service department told plaintiffs that Ford engineers were working on the problem and that they would contact plaintiffs once a solution had been found.

28. Four Season's Ford communicated directly with Defendant Ford Motor Co. about the plaintiffs' complaints through a dealership hotline. The dealership informed Ford that TSB

14-0130 had been performed. Ford advised the dealership that the exhaust issue was “currently under investigation.” Four Season’s Ford then explained to plaintiffs that they could not fix the problem.

29. On or about October 7, 2014, Plaintiffs contacted Defendant Ford Motor Co. directly, and spoke with a customer service representative named “Lucy.” Lucy informed plaintiffs that there was no repair that could be made to their vehicle.

30. On or about November 13, 2014, plaintiffs again spoke directly with a Ford service representative named “Chris” who informed them that plaintiffs’ Ford case inquiry had been closed.

31. In November 2014, plaintiffs again directly contacted Ford and spoke with “Lucy” concerning their inquiry about the exhaust odor. Following this conversation, Plaintiffs received a letter from Teresa Wesley, identified as a Ford customer service representative, concerning their inquiry with Ford about the exhaust odor. No fix or repair was offered by Defendant Ford Motor Co.’s service agents.

32. Neither Ford nor its authorized dealerships have been able to fix the vehicle. Plaintiffs continue to experience the exhaust odor when accelerating the vehicle. On multiple occasions, plaintiffs have plugged in a carbon monoxide detector inside the vehicle. More than once, the monitor’s alarm has sounded while plaintiffs have been driving the car.

33. Carbon monoxide is an odorless, colorless, and tasteless gas that is toxic to humans.

34. On multiple occasions, plaintiffs and/or their passengers have become nauseated, dizzy, or sick from exposure to the gases inside the passenger compartment.

35. To date, Ford has not repaired plaintiffs' 2014 Ford Explorer, nor has Ford acknowledged to plaintiffs or the members of the proposed class that the 2011 through 2015 model year Ford Explorers contain design flaws and/or defective exhaust and/or HVAC systems permitting exhaust, carbon monoxide and other potentially dangerous gases into the passenger compartments of those vehicles.

GENERAL ALLEGATIONS

1. Ford's Sale and Leasing of Defective and Dangerous Vehicles

36. Ford began selling and leasing a new generation of Ford Explorers – considered the fifth generation of Explorer vehicles – with the 2011 model year Ford Explorer.

37. The subsequent model-year Ford explorers are not dramatically different in design from the 2011 Explorer. These Explorers, including those sold today, are all known as “fifth generation” Explorers.

38. The 2011 through 2015 model year Ford Explorers were designed, engineered, and manufactured by Ford with design flaws and/or defective exhaust and/or HVAC systems that permit carbon monoxide and exhaust to enter into the passenger compartments of those vehicles while they are driven in a normal and customary manner.

39. Ford designed, manufactured, assembled, inspected, distributed, sold, and leased the 2011 through 2015 model year Ford Explorers in a manner so as to render the subject vehicles defective and unsafe for their intended use and purpose by, among other things:

- (a) Designing the vehicles such that exhaust and other gases, including carbon monoxide, may enter the passenger compartments of the vehicles;
- (b) Designing the bumpers and/or tailpipes on the vehicles such that exhaust and other gases, including carbon monoxide, may accumulate behind the bumper and within the interior and exterior panels, allowing those gases to permeate the passenger compartments of the vehicles;

- (c) Designing, manufacturing and assembling the vehicles using defective rear air extractors which permit exhaust and other gases, including carbon monoxide, to enter the passenger compartments of the vehicles;
- (d) Designing, manufacturing and assembling the liftgates in the rear of the vehicles using defective drain valves, which permit exhaust and other gases, including carbon monoxide, to enter the passenger compartments of the vehicles;
- (e) Designing, manufacturing and assembling the vehicles with sheet metal panels and overlaps which permit exhaust and other gases, including carbon monoxide, to enter the passenger compartments of the vehicles;
- (f) Designing, manufacturing and assembling the vehicles with joints and seams which permit exhaust and other gases, including carbon monoxide, to enter the passenger compartments of the vehicles; and,
- (g) Designing, manufacturing and assembling the vehicles with rear auxiliary air conditioning system parts which are defectively designed and/or located too close in proximity to the driver side rear air extractor, such that exhaust and other gases, including carbon monoxide, may enter the auxiliary air conditioning system and the passenger compartments of the vehicles.

40. Ford knew or should have known that the 2011 through 2015 model year Explorers were dangerous and defective such that drivers and passengers of those vehicles may be exposed to carbon monoxide and other dangerous gases while the vehicles are in operation.

41. The defective vehicles were sold or leased pursuant to express and implied warranties. At the time the defective vehicles were sold or leased by Ford directly and through its authorized agents, the vehicles were in violation of express and implied warranties. All of the defective vehicles are still within the effective dates of the express warranties, or the time or mileage limits in the express warranties should be inapplicable given Ford's fraudulent conduct, among other factors.

42. In promoting, selling and repairing its defective vehicles, Ford acts through numerous authorized dealers who act, and represent themselves to the public, as exclusive Ford

representatives and agents. That the dealers act as Ford's agents is demonstrated by the fact that:

(i) the warranties provided by Ford for the defective vehicles directs consumers to take their vehicles to authorized dealerships for repairs or services; (ii) Ford dictates the nature and terms of the purchase contracts entered into between its authorized dealers and consumers; (iii) Ford directs its authorized dealers as to the manner in which they can respond to complaints and inquiries concerning defective vehicles; and (iv) Ford has entered into agreements and understandings with its authorized dealers pursuant to which it authorizes and exercises substantial control over the operations of its dealers and the dealers' interaction with the public.

43. Ford's control over the actions of its dealers is also evidenced by its implementation of the company's express and implied warranties as they relate to the defects alleged herein. Authorized Ford dealerships are instructed by Ford to address complaints of an exhaust odor by prescribing and implementing TSBs 12-12-4 and 14-0130. Implementation of the TSBs is not triggered by complaints of carbon monoxide entering the passenger cabin.

2. Ford Acknowledged the Subject Vehicles' Defective Condition in TSBs 12-12-4 and 14-0130

44. In response to customer complaints of an exhaust odor in the passenger compartments of the subject vehicles, Ford issued TSB 12-12-4 in or about December 2012. TSB 12-12-4 was intended to provide instructions to authorized Ford dealerships to correct the presence of an exhaust odor in 2011 through 2013 model year Ford Explorers.

45. In or about July 2014, Ford issued TSB 14-0130, which added 2014 and 2015 model year Explorers to the list of affected vehicles. TSB 14-0130 was intended to provide instructions to authorized Ford dealerships to correct the presence of an exhaust odor in 2011 through 2015 model year Ford Explorers.

46. Even after issuing TSBs 12-12-4 and 14-0130, Ford did not inform plaintiff or the members of the proposed class of the defects in 2011 through 2015 model year Ford Explorers, despite the fact that those defects presented life safety issues to occupants of the vehicles.

47. Notably, TSBs 12-12-4 and 14-0130 fail to disclose that the exhaust odor acknowledged therein is accompanied in the passenger compartment by toxic and potentially lethal carbon monoxide and other gases.

48. At all material times, Ford has failed to inform customers who purchased and/or leased 2011 through 2015 model-year Ford Explorers that they are unsafe for operation or that they were designed, engineered, and manufactured such that exhaust and other gases, including carbon monoxide, may enter the passenger compartments of such vehicles.

3. Ford's TSBs 12-12-4 and 14-0130 Fail to Repair the Defects

49. Ford's TSBs 12-12-4 and 14-0130 fail to repair the exhaust odor problem, and vehicles which have received the repairs outlined in TSBs 12-12-4 and 14-0130 may continue to have exhaust and other gases, including carbon monoxide, enter the passenger compartment.

50. TSBs 12-12-4 and 14-0130 identify flaws in the initial design and manufacture of the 2011 through 2015 model-year Ford Explorers, and prescribe repairs and/or replacements which are inadequate and equally flawed and defective.

51. In TSBs 12-12-4 and 14-0130, Ford requires installation or use of the following replacement parts in the subject vehicles, among others: (i) a dual rate air extractor (part number BB5Z-61280B62-A under TSB 12-12-4 and part number BB5Z-61280B62-B under TSB 14-0130); (ii) valve assembly auto drains (part number 4M8Z-54280B62-A); and (iii) Motorcraft® Seam sealer (part number TA-2).

52. The replacement parts and service, however, fail to prevent exhaust and other gases, including carbon monoxide, from entering the passenger cabins of the subject vehicles.

53. The problem common to the Explorer models results from primarily three facts.

54. The first fact is that engine exhaust tends to splash against the rear outside liftgate of the car. This tends to worsen at higher speeds.

55. The second fact is the subject Ford models are not remotely airtight. Part of this is intentional. Drainholes are cut into the cars' rear liftgates; just as water can run down these holes, exhaust can float up through them. Moreover, part of this particular problem results from poor workmanship and inferior products: the rubber mounting that cushions the liftgate window against the liftgate itself is not airtight; gaps caused by poor placement and inconsistent use of adhesive leaves observable gaps. In addition, the cars at issue have air extractors built above the rear tires. These extractors are supposed to act like check valves and modulate the flow of air, and air pressure, in the passenger cab. But the flaps on the extractors are poorly made. They stiffen and curl and don't sit flat over the extractor's opening when they should.

56. The third fact is that at certain air conditioning settings – and especially when the air conditioning is set at maximum (which causes the air inside the cabin to recycle) – the air pressure inside the passenger cabin drops.

57. The result of these factors is that the vehicles' engine exhaust, which tends to build up against the rear liftgate at high speeds, is pulled into the passenger cabin through the many holes and gaps in the back end of the car because the pressure inside the cab is less than the pressure outside.

4. Ford's Conduct and/or Inaction Has Damaged Plaintiffs and Members of the Proposed Class

58. Plaintiffs and each member of the proposed class has sustained ascertainable losses and damages in connection with their lease or purchase of the vehicles.

59. Plaintiffs and each class member has not received what he or she paid for: a car that can be safely and comfortably driven without the presence of exhaust fumes in the cabin.

60. Plaintiffs and the class members have been damaged by Ford's conduct and/or inaction, as they have been exposed to harmful carbon monoxide and exhaust, they unknowingly leased or purchased defective vehicles that cannot be safely operated, they have been forced to pay, or will pay, substantial amounts of money to repair the vehicles, if a repair can be made, and the value of their affected vehicles has been diminished because of this defect.

61. A vehicle containing the defect described – that is, a defect that permits the entry of carbon monoxide and other gases into the passenger compartment of the vehicle – is worth less than a vehicle free from such defect. Given that the defect renders driving the subject vehicles a health hazard that is potentially deadly, the vehicles are valueless. At the time plaintiffs purchased and leased their vehicles, they paid a price based on the value of such a vehicle free of such defect.

62. Plaintiffs and the class have been damaged and are entitled to compensation because (a) they overpaid (whether through purchase price or lease cost) for the car and (b) their Explorers' value has diminished due to the defect.

CLASS ACTION ALLEGATIONS

63. Plaintiffs seek to bring this case as a class action, pursuant to Fed. R. Civ. P. 23(a)(1)-(4) and (b)(2) and/or (b)(3). The proposed class is as follows:

All persons who purchased or leased directly from a Ford authorized dealership in North Carolina at least one of the following vehicles: 2011 Ford Explorer, 2012 Ford Explorer, 2013 Ford Explorer, 2014 Ford Explorer or 2015 Ford Explorer.

64. **Numerosity.** Members of the class are so numerous that individual joinder of all members is impracticable. Based upon information and belief, Ford has sold or leased tens of thousands of 2011 through 2015 model year Ford Explorers in North Carolina. All of these vehicles are covered by TSBs 12-12-4 and 14-0130, and contain a defect that may cause carbon monoxide or exhaust to enter the passenger compartments of such vehicles.

65. **Existence of Common Questions of Law and Fact.** Common questions of law and fact exist as to all members of the class. These include, but are not limited to: whether the 2011 through 2015 model year Ford Explorers have been sold or leased subject to express and/or implied warranties; whether the 2011 through 2015 model year Ford Explorers are defective such that carbon monoxide and exhaust may enter the passenger compartments of such vehicles; whether the 2011 through 2015 model year Ford Explorers suffer from a design defect, are unreasonably dangerous and/or are unfit for their intended use; whether Ford has knowledge of such defect; when Ford learned of such defect; whether Ford failed to disclose the defect to plaintiffs and the class; whether Ford misrepresented that the affected vehicles were safe; whether Ford has a fix to the defect and, if so, how much the fix will cost; whether the defect reduces the value of the affected vehicles; whether Ford's express warranties cover the latent defects; whether Ford breached its warranties made to plaintiffs and the class; whether Ford negligently designed/engineered/manufactured the affected vehicles; whether Ford concealed the defect; and whether plaintiffs and the class have suffered damages as a result of the conduct alleged, and if so, the measure of such damage.

66. **Typicality.** The claims of plaintiffs are typical of the claims of the class, as plaintiff and the members of the class have purchased or leased defective vehicles and have been harmed in some manner by Ford's conduct.

67. **Adequacy.** Plaintiffs will fairly and adequately protect the interests of the class. Plaintiffs' interests do not conflict with the interests of the members of the class. Further, plaintiffs have retained counsel competent and experienced in complex class action litigation. Plaintiffs and her counsel are committed to vigorously prosecuting this action.

68. **Predominance and Superiority.** A class action is superior to other available methods for the fair and efficient adjudication of this controversy, since joinder of all the individual class members is impracticable. Questions of law and fact common to the members of the class predominate over any questions affecting only individual members. Likewise, because the damages suffered by each individual class member may be relatively small, the expense and burden of individual litigation would make it very difficult or impossible for individual Class members to redress the wrongs done to each of them individually, and the burden imposed on the judicial system would be enormous.

69. The prosecution of separate actions by the individual class members would also create a risk of inconsistent or varying adjudications for individual class members, which would establish incompatible standards of conduct for Ford. The conduct of this action as a class action presents far fewer management difficulties, conserves judicial resources and the parties' resources, and protects the rights of each Class member. Further, plaintiff anticipates no difficulty in the management of this litigation as a class action.

70. For all of the foregoing reasons, a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

COUNT I

BREACH OF EXPRESS WARRANTY

71. Plaintiff repeats and re-alleges the allegations in Paragraphs 1 through 70 as if fully set forth herein.

72. This count is brought on behalf of the class.

73. For each defective vehicle sold by Ford, an express written warranty was issued which covered the vehicle, warranting the vehicle to be free of defects in materials and workmanship at the time of delivery.

74. Ford's express warranties are intended to benefit the customer, including plaintiff and the members of the class.

75. When plaintiff and members of the class purchased and/or leased their 2011 through 2015 model year Ford Explorers, Ford expressly warranted that it would pay for all repairs and parts to replace defects introduced during the design and manufacturing process.

76. Plaintiffs, and the members of the class, relied upon Ford's express warranties, and the existence of such warranties, when purchasing or leasing the vehicles.

77. Ford breached its express warranties by offering for sale, and selling or leasing as safe, defective vehicles that were by design and construction unsafe, thereby subjecting occupants of the defective vehicles purchased or leased by plaintiffs and members of the class to the risk of injury or death.

78. The defect at issue in this litigation was present in the subject vehicles at the time of sale or lease to plaintiffs and the members of the class.

79. The defect at issue in this litigation must be corrected by Ford, and the expenses of such repairs must be borne by Ford, per Ford's express warranties.

80. Ford breached its express warranties (and continues to breach its express warranties) because it has not fixed the defect causing carbon monoxide and exhaust to enter the passenger compartment of the subject vehicles, nor has it covered the expenses associated with correcting the defect.

81. Plaintiffs and the members of the class have performed the duties required of them under the terms of the warranties, except as may have been excused or prevented by the conduct of Ford or by operation of law in light of Ford's conduct described throughout this Complaint.

82. Ford has received timely notice regarding the problems at issue in this litigation, and notwithstanding, Ford has failed and refused to offer an effective remedy.

83. Plaintiffs and the members of the class have suffered damages caused by Ford's breach of the express warranties and are entitled to recover compensatory damages, including but not limited to the cost of repairs and diminution in value.

COUNT II

BREACH OF IMPLIED WARRANTY

84. Plaintiffs repeat and re-allege the allegations in Paragraphs 1 through 83 as if fully set forth herein.

85. This Count is brought on behalf of the class.

86. Ford impliedly warranted that the subject vehicles, which Ford designed, manufactured, sold or leased, were merchantable, fit for the ordinary purposes for which they were intended to be used, and were not otherwise injurious to consumers. The ordinary purpose for which the subject vehicles are used is, among other things, to drive in a manner that does not unnecessarily and unreasonably expose occupants to needless harm or risk.

87. Ford breached its implied warranty of merchantability when it designed, manufactured, distributed, sold and leased the 2011 through 2015 model year Ford Explorers in an unsafe and un-merchantable condition. The subject vehicles threaten to expose occupants to carbon monoxide and other dangerous gases while the vehicles are being driven in a normal and customary manner. The subject vehicles were therefore unfit for their ordinary purpose.

88. Plaintiffs and each of the members of the class have had sufficient direct dealings with either Ford or its agent dealerships to establish privity of contract between Ford, on the one hand, and plaintiffs and each of the members of the class, on the other hand. Notwithstanding, privity is not required because plaintiffs and each of the members of the class are the intended beneficiaries of Ford's written warranties and its contractual relationships with Ford dealerships. The dealers were not intended to be the ultimate consumers of the subject vehicles, and have no rights under the warranty agreements provided by Ford. Ford's express warranties were designed for and intended to benefit the consumers only. Plaintiffs and the members of the class were the intended consumers of the subject vehicles.

89. Ford has received timely notice regarding the problems at issue in this litigation, and notwithstanding, Ford has failed and refused to offer an effective remedy.

90. Plaintiffs and the members of the class have suffered damages caused by Ford's breach of the implied warranty of merchantability and are entitled to recover compensatory damages, including but not limited to the cost of repairs and diminution in value.

COUNT III

VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT (15 U.S.C. § 2301, *et seq.*)

91. Plaintiffs repeats and re-alleges the allegations in Paragraphs 1 through 90 as if fully set forth herein.

92. This Count is brought on behalf of the class.

93. Plaintiffs are “consumers” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

94. Ford is a “supplier” and “warrantor” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)-(5).

95. The subject 2011 through 2015 model-year Ford Explorers are “consumer products” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

96. 15 U.S.C. § 2310(d)(1) provides a cause of action for any consumer who is damaged by, among other things, the failure of a warrantor to comply with written or implied warranties.

97. Ford sells and leases its vehicles subject to express warranties which are written warranties within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(6). Ford additionally sells and leases its vehicles subject to implied warranties within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(7).

98. When plaintiffs and members of the class purchased and/or leased their 2011 through 2015 model year Ford Explorers, Ford expressly warranted that it would pay for all repairs and parts to remedy defects introduced during the design and manufacturing process.

99. When plaintiffs and members of the class purchased and/or leased their 2011 through 2015 model year Ford Explorers, Ford impliedly warranted that the vehicles were merchantable, fit for the ordinary purposes for which they were intended to be used, including the guarantee that they were in a safe and non-defective condition for use by owners and lessees,

and were not otherwise injurious to consumers. Ford was under a duty to design, construct, manufacture, inspect and test the vehicles so as to make them suitable for the ordinary purpose of their use.

100. The subject 2011 through 2015 model year Ford Explorers share a common defect in that they have been designed and manufactured such that exhaust and other gases, including carbon monoxide, may enter the passenger compartment of such vehicles during their normal and customary use. Ford is aware of the defect, and has acknowledged the problem of an exhaust odor inside the passenger compartment of such vehicles by its issuance of TSBs 12-12-4 and 14-0130. However, TSBs 12-12-4 and 14-0130 do not disclose the presence of carbon monoxide inside the passenger compartment of the subject vehicles, nor do they fix the problem of exhaust and other gases entering the passenger compartment. Ford has breached its express and implied warranties by failing to disclose a life safety defect in the subject vehicles, by failing to fix the defects in the subject vehicles, and by selling or leasing vehicles which are unsafe and unfit for the ordinary purposes for which they are intended to be used.

101. Plaintiffs and each of the members of the class have had sufficient direct dealings with either Ford or its agent dealerships to establish privity of contract between Ford, on the one hand, and plaintiffs and each of the members of the class, on the other hand. Notwithstanding, plaintiffs and each of the members of the class are the intended beneficiaries of Ford's express and implied warranties. The dealers were not intended to be the ultimate consumers of the subject vehicles, and have no rights under the warranty agreements provided by Ford. Ford's warranties were designed for and intended to benefit the consumers only.

102. Affording Ford a reasonable opportunity to cure its breach of written warranties would be unnecessary and futile here. Ford has known, or should have known, or was reckless

in not knowing of its misrepresentations or omissions concerning the subject vehicles' defect resulting in exhaust and other gases, including carbon monoxide, entering the passenger compartment of such vehicles. Notwithstanding, Ford has failed to disclose the existence of this defect and the risk of carbon monoxide exposure, and has failed to rectify the situation. Plaintiffs, on numerous occasions, afforded Ford an opportunity to cure by bringing their vehicle into an authorized Ford dealership for service, and notifying the dealership of an exhaust odor in the passenger compartment. Notwithstanding, the defect in plaintiff's vehicle was not repaired. Neither TSB 12-12-4 nor TSB 14-0130 repairs the defect. Under the circumstances, any requirement that plaintiff afford Ford a reasonable opportunity to cure its breach of warranties is excused and thereby deemed satisfied.

103. The amount in controversy of plaintiffs' individual claims meets or exceeds the sum of \$25. The amount in controversy of this action exceeds the sum of \$50,000.00, exclusive of interest and costs, computed on the basis of all claims to be determined in this lawsuit.

104. Plaintiffs, individually and on behalf of the other class members, seek all damages permitted by law, including diminution in value of their vehicles, in an amount to be proven at trial.

COUNT IV

UNFAIR AND DECEPTIVE TRADE PRACTICES (N.C. Gen. Stat. § 75-1.1 *et seq.*)

105. Plaintiff repeats and re-alleges the allegations in Paragraphs 1 through 104 as if fully set forth herein.

106. This Count is brought on behalf of the class.

107. Plaintiff and the members of the class are “injured persons” within the meaning of the North Carolina Unfair Trade Practices Act and (“UDTPA”) and N.C. Gen. Stat. § 75-16.

108. Ford engaged in trade or commerce in North Carolina within the meaning of the UDTPA and N.C. Gen. Stat. § 75-1.1(a).

109. The UDTPA and N.C. Gen. Stat. § 75-16 affords consumers a private right of action when a person or corporation suffers injury by reason of unfair or deceptive practices as prohibited by the Act.

110. Ford sells and leases its vehicles subject to express and implied warranties and within the meaning of “business activities” under the UDTPA and N.C. Gen. Stat. § 75-1.1(b).

111. When plaintiff and members of the class purchased and/or leased their 2011 through 2015 model year Ford Explorers, Ford expressly warranted that the vehicles would be free from defects in design, materials and workmanship. Ford promised to pay for all repairs and parts to remedy defects introduced during the design and manufacturing process.

112. When plaintiff and members of the class purchased and/or leased their 2011 through 2015 model year Ford Explorers, Ford impliedly warranted that the vehicles were merchantable, fit for the ordinary purposes for which they were intended to be used, including the guarantee that they were in a safe and non-defective condition for use by owners and lessees, and were not otherwise injurious to consumers. Ford was under a duty to design, construct, manufacture, inspect and test the vehicles so as to make them suitable for the ordinary purpose of their use.

113. The subject 2011 through 2015 model year Ford Explorers share a common defect in that they have been designed and manufactured such that exhaust and other gases, including carbon monoxide, may enter the passenger compartment of such vehicles during their normal

and customary use. Ford is aware of the defect, and has acknowledged the problem of an exhaust odor inside the passenger compartment of such vehicles by its issuance of TSBs 12-12-4 and 14-0130. However, TSBs 12-12-4 and 14-0130 do not disclose the presence of carbon monoxide inside the passenger compartment of the subject vehicles, nor do they fix the problem of exhaust and other gases entering the passenger compartment. Ford has breached its express and implied warranties by failing to disclose a life safety defect in the subject vehicles, by failing to fix the defects in the subject vehicles, and by selling or leasing vehicles which are unsafe and unfit for the ordinary purposes for which they are intended to be used.

114. The action and misconduct alleged above was undertaken by Defendant willfully and with knowledge that such actions were unfair, deceptive, unscrupulous and substantially injurious to Plaintiff and members of the proposed class.

115. Plaintiff and each of the members of the class have had sufficient direct dealings with either Ford or its agent dealerships to establish privity of contract between Ford, on the one hand, and Plaintiff and each of the members of the class, on the other hand. Notwithstanding, plaintiff and each of the members of the class are the intended beneficiaries of Ford's express and implied warranties. The dealers were not intended to be the ultimate consumers of the subject vehicles, and have no rights under the warranty agreements provided by Ford. Ford's warranties were designed for and intended to benefit the consumers only.

116. Ford has received timely notice regarding the problems at issue in this litigation, and notwithstanding, Ford has failed and refused to offer an effective remedy.

117. Ford's breach of its express and implied warranties constitutes a producing cause of economic damage to Plaintiff and the members of the class.

118. Ford's conduct as just described amounts to a violation of the established public policy of North Carolina, was in or affecting commerce in North Carolina, was unethical, oppressive, unscrupulous, and substantially injurious to consumers in North Carolina, had the capacity and the tendency to deceive the average consumer, Plaintiff, and each member of the class as to the value, safety and warrantability of the subject 2011 through 2015 model year Ford Explorers.

119. Plaintiff and each member of the class both actually and reasonably relied on Ford's misrepresentation concerning the safety, value, and warrantability of the subject 2011 through 2015 model year Ford Explorers, as evidenced by, among other facts, the purchase and use of the vehicles by the Plaintiff and each member of the class.

120. Plaintiff and each member of the class could not have discovered the existence of the defects as alleged herein through reasonable diligence or investigation prior to the purchase or lease of the subject 2011 through 2015 model year Ford Explorers.

121. Plaintiff, individually and on behalf of the other class members, seeks all damages permitted by law, including without limitation diminution in value of their vehicles and all additional amounts permitted under the UDTPA and N.C. Gen. Stat. § 75-16, in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs, on their own behalf and on behalf of the Class, respectfully request judgment against Ford:

(a) Certifying the class and appointing plaintiffs and their counsel to represent the class;

(b) Ordering Ford to provide notice to the class of the defect with the design of the vehicles, and/or the exhaust and/or HVAC systems in the 2011 through 2015 model year Ford Explorers that causes carbon monoxide and exhaust to enter into the passenger compartments of such vehicles during their normal and customary use;

(c) Ordering Ford to extend the applicable warranties beyond their expiration date to cover repairs associated with the exhaust smell infiltration;

(d) Awarding damages which include, but are not limited to, the cost of any repairs and the diminution of value of the vehicles;

(e) Awarding pre-judgment and post-judgment interest;

(f) Awarding attorneys' fees and costs; and

(g) Awarding any such other relief as this Court may deem just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury of all issues triable.

Dated: July 14, 2016.

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(Motions for Pro Hac Vice Admission
Intended)

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