

**STATE OF MICHIGAN**  
**IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE**

Jordan Cyr, Adrienne Herbst, Aida Rivas, Alma Martin, Alonso Cano, Amanda Miller, Amber Phelps, Angela Miller, Anna Meader, Ashley Nicholson, Betty Leasure, Brandi Snider, Brandon Anderson, Brenda Limbrick-Sanders, Brian Downing, Caleb Duda, Carmen Hernandez, Carol Alsay, Christina Guerrero, Crystal Yoder, Gary Michael, David Newland, Deborah Snow, Debra Cheetham, Desiree Carey, Donna Wojcik, Elise Rispoli, Elizabeth Gray, Erica Cooper, Frank R Gutierrez, Gabrielle Powlowsky, Gabrille Drayton, Hannah Ware, Heather Goggins, Heidi Collison, Imeisha Washington, Jaavon Colbert, Jackie Easterwood, James Pratt, Janai Stanberry, Janis Aichinger, Japonica Waters, Jason Hamel, Jenna Graham, Jenna Little, Jennifer Faircloth, Jennifer Hobson, Jennifer Taylor, Jeremiah Johnson, Jeremy Tessier, Jessica Bernier, Jessica Evangeline Christie, Jessie Brown, Jillian Hardman, Joanne Heady, Jonathan Sivert, Jordan Truppner, Josafat Rendon, Jose Vazquez, Josh Sentinella, Julie Castagno, Julieanna Morales, Kathleen L Carman, Kay King, KayCee Larson, Kayla Coleman, Kee Claar, Kendra Peeler, Larry Dennison, Lee Vines, Leslie Douglass, Lindsay Gregory, Lisa Murphy, Mallory Smith, Mandi Wright, Marissa Pettit, Maureen Clemon, Melanie Russell, Melissa Gerkin, Michael Yates, Richard Mcguire Jr., Nichole Cruz, Nichole Rom, Nick LaPointe, Nicole Dorr, Nikki Simon, Olivia Kellogg, Pam Norton, Pamela Nearing, Pamela Enderle, Richard McCarthy, Robert Kalbaugh, Robyn White, Rochelle King, Russell Chatwin, Samantha Hill, Sara Tobias, Sarah Jacob, Sarah Van Tassel, Shawn Robert Jolly, Sherryl Dodd, Sonja Alvarez, Sue Wilson, Susie OLaughlin, Sydney Drennan, Tarrah Ciarimboli, Tawny Dmytriw, Teresa Gann, Teresa Spurger, Thelma Warford, Tomeka Hurse, Tracey Voeltner, Victoria Woods, Virginia Hamm, Virginia Wheeler, Vitina White, Walter Baranowski, William Wise

HON.  
Case No. 2017-

17-006058-NZ  
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 CATHY M. GARRETT

Plaintiffs,

-vs-

FORD MOTOR COMPANY, a Delaware  
Corporation,

Defendant.

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### **COMPLAINT AND JURY DEMAND**

There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this complaint pending in this court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a judge, nor do I know of any other civil action, not between these parties, arising out of the same transaction or occurrence as alleged in this complaint that is either pending or was previously filed and dismissed, transferred, or otherwise disposed of after having been assigned to a judge in this court.

Plaintiffs, by their attorneys, The Liblang Law Firm, P.C., and the Stern Law Group, PLLC, complain against the above named Defendants, as follows:

### **GENERAL ALLEGATIONS**

1. Plaintiffs are purchasers or lessees of 2012 Ford Fiesta vehicles equipped with PowerShift transmissions, which vehicles were manufactured, distributed and/or imported by Defendant; an index of the named Plaintiffs, their addresses, vehicle VIN numbers and dates of delivery are attached as Exhibit A. Upon information and belief, Defendant has access to each vehicle's in-service date, applicable warranties, service contract information and warranty or service contract repair history.

2. Defendant, Ford Motor Company ("Ford"), is a Delaware corporation authorized to do business in the State of Michigan and at all times relevant hereto, was engaged in the

manufacture, sale, distribution and/or importing of Ford motor vehicles and related equipment, with its principal offices located in the City of Dearborn, Wayne County, Michigan.

3. At the time of delivery, Plaintiffs' vehicles were covered by Ford's written express new vehicle warranty for a period of 36 month/36,000 mile bumper to bumper and 5-years/60,000 miles drivetrain and, in some cases, an additional extended warranty provided by Ford as part of its Customer Satisfaction Program(s) (copies of the applicable warranty documents are in the possession of Ford).

4. Plaintiffs bring this action as a consolidated action due to the fact that their allegations are all the defective PowerShift transmissions in their vehicles are causing the same symptoms, to-wit: shuddering, slipping, bucking, jerking, hesitation while changing gears, premature internal wear, delays in downshifting and, in some cases, sudden or delayed acceleration.

5. Within the time and mileage parameters of the aforesaid warranties, Plaintiffs presented the vehicle to Ford's authorized dealers for diagnosis and repair of the PowerShift transmission defects, which defects substantially impair the use, value and safety of the vehicles as hereinafter described but, as set forth, *infra*, there is currently no known fix for the defects.

6. Plaintiffs further allege that Ford knew about the defective transmissions as early as 2010 and failed to disclose the defects to Plaintiffs before they purchased or leased their vehicles.

7. Ford has never acknowledged publicly that the transmission defect even exists. To the contrary, Ford actively concealed, and continues to conceal, the transmission defect by, among other things, telling customers that the symptoms associated with the transmission defect were "normal driving conditions." Ford issued multiple Technical Service Bulletins ("TSBs") to its dealers but never directly notified consumers of known problems with the PowerShift Transmission. Ford further perpetuated its cover-up by ultimately issuing two "Customer Satisfaction Programs" that simply offered additional ineffectual repairs without disclosing the truth about the Transmission Defect. Customers whose vehicles were supposedly repaired pursuant to the Consumer Satisfaction Programs have nevertheless continued to experience the transmission defect. The transmission defect has no known repair.

8. None of the of the information in the market that discussed the transmission defect disclosed, fully or at all, the material facts known only to Ford, including that the PowerShift Transmission had serious problems since its early development that Ford simply was unable to fix and that rendered the vehicles unsafe to drive. The PowerShift Transmission was a new technology to Ford that was rushed to the market without disclosing the problems described above so that Plaintiffs could not make informed purchasing decisions.

9. In 2010, Ford knew of the transmission defect and began issuing TSBs to its dealerships in an effort to address it; however, Ford never communicated the TSBs, or the information they contained, directly to Plaintiffs. Instead, Ford prepared a separate series of intentionally sanitized documents for its customers to induce them into believing that their kicking, bucking, shuddering, suddenly accelerating and sling-shooting vehicles were exhibiting “normal driving characteristics.”

10. The problems plaguing the PowerShift Transmission cannot be chalked up to “normal driving characteristics.” Such language is belied by the fact that, on information and belief, Ford has replaced thousands, if not tens of thousands, of PowerShift Transmissions, clutches, or both, due to early catastrophic transmission failure.

11. The PowerShift transmission is an extra-cost option with respect to Plaintiffs’ vehicles, which Ford designed and marketed as a more advanced and fuel efficient alternative to a traditional manual or automatic transmission and offered it as the sole “Automatic” option for the subject vehicles.

12. Each Plaintiff acquired a Ford vehicle equipped with the defective transmission well after Ford knew about the defects in the transmission. The evidence to establish the transmission defect, Ford’s knowledge of the defect, and non-disclosure of the defect to each Plaintiff is highly relevant to each Plaintiff’s claims. Accordingly, each Plaintiff’s case is interrelated and involves common evidence to a degree sufficient to necessitate the consolidation herein.

13. Traditional manual transmissions use a driver controlled clutch. To operate the transmission, the driver presses and releases a foot pedal, which engages and disengages the engine

from the transmission, allowing the vehicle to travel smoothly while the driver manually changes gears.

14. In contrast, the typical automatic transmission frees the driver from operating the clutch through the use of a fluid-filled device called a torque converter. The torque converter substitutes for the manual transmission's clutch, transmitting power from the engine to the transmission through a fluid medium.

15. While typical automatic transmissions offer increased convenience, they are generally less fuel efficient and slower shifting than their manual counterparts. This is because the torque converter transfers power less efficiently than a clutch. As a result, Ford marketed and sold its PowerShift transmissions as a "best of both worlds" alternative, offering a manual transmission's fuel economy with the automatic transmission's ease of operation and shift quality.

16. Ford's PowerShift transmission, while sometimes referred to as an "automatic," is actually a set of computerized manual transmissions. It lacks a torque converter, instead using two "dry" clutches to directly engage and disengage the engine with and from the transmission. Whereas, similar "automated manual" transmissions on the market use "wet" clutches bathed in oil. Ford's PowerShift transmission clutches lack the oil pumps and other components of a "wet" clutch system, and instead operate "dry."

17. Ford designed the vehicles' computerized "automated manual" transmission in an effort to meet heightened governmental and consumer expectations for fuel economy, performance, and efficiency. According to Ford's own press release, dated March 10, 2010, "PowerShift with dry-clutch facings and new energy saving electromechanical actuation for clutches and gear shifts saves weight, improves efficiency, increases smoothness, adds durability, and is sealed with low-friction gear lubricant for the life of the vehicle. This transmission requires no regular maintenance" (see, AutoGuide.Com, Exhibit B).

18. Theoretically, an "automated manual" transmission, i.e., the PowerShift Transmission, should have the convenience of an automatic transmission without sacrificing the fuel efficiency and shift speed of a manually-shifted vehicle. In practice, however, Ford's PowerShift

Transmissions are plagued by numerous problems and safety concerns, rendering the vehicles unreliable and unsafe to drive.

19. The transmission defect causes unsafe conditions including, but not limited to, the vehicles suddenly lurching forward, sudden acceleration, delayed acceleration, and sudden loss of forward propulsion. These conditions present a safety hazard because they severely affect the driver's ability to control the car's speed, acceleration, and deceleration. These conditions make it difficult to safely merge into traffic. Even more troubling, the transmission defect can cause the vehicles to fail to downshift and decelerate when the brakes are depressed. As a result, Plaintiffs have experienced their cars lurching forward into intersections at red lights due to the failure of their braking efforts to stop the car.

20. On information and belief, the transmission defect also causes premature wear to the PowerShift Transmission's clutch plates and other components, which can result in premature transmission failure and requires expensive repairs, including replacement of the transmission and its related components.

21. Beginning as early as 2010, Ford knew or should have known that the vehicles and the PowerShift Transmissions were defective in design and/or manufacturer, which adversely affects the driveability of the vehicles, causing safety hazards.

22. Plaintiffs are informed and belief and based thereon allege that prior to the sale or lease of their vehicles, Ford knew or should have known about the transmission defect through its exclusive knowledge of non-public, internal data about the transmission defect, including but not limited to: pre-release testing data; early consumer complaints about the transmission defect to Ford's dealers who are their agents for vehicle repairs; warranty claim data related to the defect, aggregate data from Ford's dealers; consumer complaints to the National Highway Traffic Safety Administration ("NHTSA") and resulting notice from NHTSA; dealership repair orders; testing conducted in response to owner or lessee complaints; TSBs applicable to the vehicles; the existence of the defect in the substantially identical European and Australian model vehicles; and other internal sources of aggregate information about the problem. Nevertheless, Ford has actively

concealed and failed to disclose this defect to Plaintiffs and the time of purchase or lease and thereafter.

23. Before offering the vehicles for sale in the United States, Ford offered the same vehicles, equipped with a similar dual-clutch transmission, in Europe and Australia. Although the American version utilizes “dry” clutches as opposed to the European and Australian versions’ “wet” clutches, Ford acknowledged that the transmission offered for sale in the United States is “derivative” of the design from the European and Australian models.<sup>1</sup> European and Australian versions of the dual-clutch transmission suffered from similar defects known to Ford as alleged herein.

24. On information and belief, despite developing and patenting the THF technology and spending approximately 6,000 man-hours of computer aided mathematical modeling, simulation and analysis of engine speeds, torque and clutch capacity, as well as spending over \$550 million to build a new transmission manufacturing facility with Getrag in Mexico to produce the PowerShift Transmission, Ford is now canceling the PowerShift program many years prior to its estimated end date.

25. As a result of the transmission defect, in 2010 and 2011, Ford issued several TSBs to its dealers in the United States, but not to its customers,<sup>2</sup> acknowledging problems in the PowerShift Transmission. For example, Ford’s TSB from September 2010, covering the 2011 Ford Fiesta, informed dealers of “concerns such as no engagement or intermittent no engagement in Drive or Reverse when shifting from Park to Drive or Reverse, grinding noise during engagement, and/or a check engine light with transmission control module (TCM) diagnostic trouble code....”

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<sup>1</sup> See, Autoblog.com, “Ford officially announces dual clutch PowerShift gearbox for 2010,” <http://www.autoblog.com/2009/01/21/ford-officially-announces-dual-clutch-powershift-gearbox-for-201/> (last visited March 26, 2017), copy attached as Exhibit C.

<sup>2</sup> Some, but not all, service bulletins are available through the website for the Office of Defect Investigations of the National Highway Traffic Safety Administration.

26. Similarly, Ford's TSB released on January 1, 2011, covering the 2011 Ford Fiesta with the PowerShift Transmission, informs dealers of problems with the PowerShift Transmission causing "a loss of power, hesitation, surge, or lack of throttle response while driving."

27. Throughout 2011, Ford continued to issue various TSBs covering the Ford Fiesta and Ford Focus vehicles which advised dealers of the continuing transmission problems. For example, a Ford TSB released in September of 2011 advised dealers to reprogram the transmission computer if 2011 Ford Fiesta owners complained about "hesitation when accelearting from a low speed after coast down, harsh or late 1-2 upshift, harsh shifting during low-speed tip-in or tip-out maneuvers and/or engine r.p.m. flare when coasting to a stop."

28. Because Ford did not notify Plaintiffs that the PowerShift Transmission is defective, Plaintiffs are subjected to dangerous driving conditions that often occur without warning.

29. The transmission defect was inherent in each Plaintiff's Fiesta's PowerShift Transmission and was present in each Fiesta's PowerShift Transmission at the time of sale or lease.

30. Ford knew about and concealed the transmission defect present in the vehicles, along with the attendant dangerous safety and driveability problems from Plaintiffs at the time of sale, lease, and repair and thereafter. In fact, instead of repairing the defects in the PowerShift Transmission, Ford either refused to acknowledge the defects' existence or performed ineffective software upgrades or other repairs that simply masked the defect or, in some cases, simply provided the Plaintiffs with an extended warranty.

31. If Plaintiffs had known about the transmission defects at the time of purchase or lease, Plaintiffs would not have purchased or leased the vehicles or would have paid substantially less for them.

32. As a result of Defendant's inability to properly and timely diagnose and repair the aforesaid transmission defects and non-conformities, the use, value and safety of the vehicles have been substantially impaired to Plaintiffs and Plaintiffs have otherwise lost faith in their vehicles.

33. As a result of their reliance on Defendant's omissions and/or misrepresentations, Plaintiffs suffered an ascertainable loss of money, property, and/or value of their vehicles, including but not limited to, the purchase or lease price of the vehicles, the cost of the optional PowerShift



Transmission, interest and finance charges, taxes, registration fees, out-of-pocket costs related to repairs to the PowerShift Transmission, the cost and inconvenience of obtaining alternative transportation, the cost of obtaining extended service contracts in an effort to mitigate damages, diminution in the value of the vehicles, and loss of use of the vehicles. Additionally, as a result of the transmission defect, Plaintiffs were harmed and suffered actual damages in that the vehicles' transmissions and related components are substantially certain to fail before their expected useful life has run.

34. Each Plaintiff seeks damages in excess of \$25,000.00 and/or equitable relief, and this cause is otherwise within the jurisdiction and venue of this Court.

### **COUNT I**

#### **BREACH OF EXPRESS WARRANTIES**

35. Plaintiffs incorporate by reference all facts and allegations set forth in this Complaint.

36. The subject vehicles constitute "goods" under the Uniform Commercial Code, Sections 2-105(1) and 2A-103(h).

37. Plaintiffs' purchase or lease of the subject vehicles was accompanied by express warranties as defined in UCC Sections 2-313 and/or 2A-210, written and otherwise offered by Defendant, whereby said warranties were part of the basis of the bargain of upon which Plaintiffs relied.

38. The vehicles were not as warranted and represented in that the vehicles have the transmission defects or conditions described above, as well as defects or conditions as reflected in the various repair orders, technical service bulletins, special service messages, recall documents and consumer complaints in possession of Defendant.

39. As a result of its many defects, said vehicle cannot be reasonably relied on by Plaintiffs for the ordinary purpose of safe, reliable and efficient transportation.

40. Plaintiffs have provided the Defendants with sufficient opportunities to repair or replace the subject vehicles.

41. Plaintiffs have reasonably met all obligations and pre-conditions as provided in the express warranty.

42. Defendant has breached the express warranties by failing to adequately repair the subject vehicles and/or have not repaired the subject vehicles in a timely fashion, and the vehicles remain in a defective condition.

43. Even though the express warranty provided to Plaintiffs limited Plaintiffs' remedy to repair and/or adjust defective parts, the subject vehicle's defects have rendered the limited warranty ineffective to the extent that the limited repair and/or adjustment of defective parts failed of its essential purpose, pursuant to UCC Section 2-719(2) and/or the above remedy is not the exclusive remedy under UCC Section 2-719(1)(b).

44. The subject vehicles continue to contain defects which substantially impair the use and value of the vehicles to Plaintiffs.

45. These defects and non-conformities could not reasonably have been discovered by Plaintiffs prior to Plaintiffs' acceptance of the subject vehicle.

46. Defendant induced Plaintiffs' acceptance of the subject vehicles by agreeing, by means of the express warranty, to remedy, within a reasonable time, those defects which had not been or could not have been discovered prior to acceptance and, further, by Defendant's failure to disclose the aforesaid transmission defects and/or Defendant's active concealment of same.

47. As a result of the transmission defects, the Plaintiffs have lost faith and confidence in the subject vehicles and the Plaintiffs cannot reasonably rely upon the vehicle for the ordinary purpose of safe, reliable and efficient transportation.

48. As a result of Defendant's breaches of express warranties, Plaintiffs have suffered the damages set forth above.

49. To the extent that Plaintiffs' vehicles are covered by a lease or finance contract, Defendant has a duty to indemnify Plaintiffs and hold Plaintiffs harmless should Plaintiffs prevail on their claims for breach of express warranty.

WHEREFORE, Plaintiffs request that this Honorable Court enter a judgment against Defendant granting the following relief:

- a. Declare that acceptance has been properly revoked by Plaintiffs and for damages incurred in revoking acceptance or, alternatively, damages in whatever amount above \$25,000 Plaintiffs are found to be entitled;
- b. A refund of the purchase or lease price paid by Plaintiffs for his or her vehicle;
- c. An Order requiring Defendant to indemnify Plaintiffs and hold Plaintiffs harmless with respect to any lease or finance contract covering the subject vehicles;
- d. Incidental, consequential and actual damages;
- e. Costs, interest, and actual attorney fees; and
- f. Such other relief this Court deems just and equitable.

## **COUNT II**

### **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

50. Plaintiffs incorporate by reference all facts and allegations set forth in this Complaint.

51. Defendant is a “merchant” with respect to motor vehicles under the Uniform Commercial Code Section 2-104(1).

52. The subject vehicles were subject to implied warranties of merchantability under UCC Sections 2-314 and/or Section 2A-212.

53. The subject vehicles were not fit for the ordinary purpose for which such goods are used and/or the vehicles would not pass without objection in the trade for the product description.

54. The transmission defects and problems hereinbefore described rendered the subject vehicle unmerchantable.

55. Defendant failed to adequately remedy the transmission defects in the subject vehicles within a reasonable time, and the vehicles continue to be in unmerchantable condition at the time of filing this Complaint.

56. As a result of Defendant’s breaches of implied warranties, Plaintiffs have suffered the damages set forth above.

57. To the extent that Plaintiffs’ vehicles are covered by a lease or finance contract, Defendant has a duty to indemnify Plaintiffs and hold Plaintiffs harmless should Plaintiffs prevail on their claims for breach of implied warranty.

WHEREFORE, Plaintiffs request that this Honorable Court enter a judgment against Defendant granting the following relief:

- a. Declare that acceptance has been properly revoked by Plaintiffs and for damages incurred in revoking acceptance or, alternatively, damages in whatever amount above \$25,000 Plaintiffs are found to be entitled;
- b. A refund of the purchase or lease price paid by Plaintiffs for his or her vehicle;
- c. An Order requiring Defendant to indemnify Plaintiffs and hold Plaintiffs harmless with respect to any lease or finance contract covering the subject vehicles;
- d. Incidental, consequential and actual damages;
- e. Costs, interest, and actual attorney fees; and
- f. Such other relief this Court deems just and equitable.

### **COUNT III**

#### **REVOCATION OF ACCEPTANCE PURSUANT TO MCL 440.2608 AND/OR DAMAGES PURSUANT TO MCL 440.2714(2)**

58. Plaintiffs incorporate by reference all facts and allegations set forth in this Complaint.

59. The non-conformities described above were latent and not readily discoverable by Plaintiffs upon reasonable inspection and Defendant represented that the aforesaid defects and non-conformities would be cured within a reasonable time; further Defendant failed to disclose and in fact actively concealed the defects and non-conformities as set forth above.

60. Defendant has failed and/or refused to cure the aforesaid non-conformities within a reasonable time.

61. The non-conformities substantially impair the value of the vehicle to Plaintiffs in that the defects or conditions with the vehicles have rendered the vehicles dangerous and unpredictable to operate and have caused Plaintiffs to lose faith in their vehicles.

62. As a result of Defendant's breaches of express and implied warranties, Plaintiffs are entitled to revoke acceptance pursuant to Uniform Commercial Code Sections 2-608 and/or 2A-508 or to damages sufficient to put each Plaintiff in as good a position as he or she would have been had Defendant fully performed.

63. Plaintiffs offer to tender the subject vehicles in exchange for a refund of the purchase or lease price, together with such incidental and consequential damages allowed by law.

64. To the extent that Plaintiffs' vehicles are covered by a lease or finance contract, Defendant has a duty to indemnify Plaintiffs and hold Plaintiffs harmless should Plaintiffs prevail on their claims for revocation.

WHEREFORE, Plaintiffs request that this Honorable Court enter a judgment against Defendant granting the following relief:

- a. Declare that acceptance has been properly revoked by Plaintiffs and for damages incurred in revoking acceptance or, alternatively, damages in whatever amount above \$25,000 Plaintiffs are found to be entitled;
- b. A refund of the purchase or lease price paid by Plaintiffs for his or her vehicle;
- c. An Order requiring Defendant to indemnify Plaintiffs and hold Plaintiffs harmless with respect to any lease or finance contract covering the subject vehicles;
- d. Incidental, consequential and actual damages;
- e. Costs, interest, and actual attorney fees; and
- f. Such other relief this Court deems just and equitable.

#### **COUNT IV**

##### **LIABILITY UNDER MAGNUSON-MOSS WARRANTY ACT (15 USC §2301 ET SEQ)**

65. Plaintiffs incorporate by reference all facts and allegations set forth in this Complaint.

66. This Court has jurisdiction to decide claims brought under 15 USC §2301 et seq, by virtue of 15 USC §2310(d)(1)(A).

67. Plaintiffs are consumers as defined in 15 USC §2301(3).

68. Defendant is a supplier and warrantor as defined in 15 USC §2301(4)(5).

69. The subject vehicles are consumer products as defined in 15 USC §2301(6).

70. The subject vehicles were delivered subject to a written warranty and/or a service contract as those terms are defined in 15 USC 2301(6) and 2301(8), respectively.

71. 15 USC §2301(a)(1), requires Defendant, as warrantor, to remedy any defect, malfunction or nonconformance of the subject vehicle within a reasonable time and without charge to Plaintiffs, as defined in 15 USC §2304(d).

72. In connection with the aforesaid transmission defects, which occurred during the time and mileage parameters of Defendant's written express warranty, Defendant failed to adequately repair same under the warranty within a reasonable time.

73. 15 USC §2310(d)(1) permits Plaintiffs to bring an action against Defendant for any breach of express or implied warranty arising under state law, as well as any violation of the Act.

74. 15 USC §2308(a) prohibits Defendant from disclaiming the implied warranty of merchantability and 15 USC §2308(c) renders any attempted disclaimer invalid.

75. Despite the fact that Plaintiffs have complied with all conditions precedent, Defendant has failed and/or refused to remedy within a reasonable time and without charge, the defects or non-conformities heretofore set forth in this Complaint.

76. As a result of Defendant's breaches of express and implied warranties, Defendant's failure to remedy same within a reasonable time and without charge to Plaintiff, and Defendant's other violations of the Act as set forth in this Complaint, Plaintiffs have suffered the damages set forth in this Complaint.

77. To the extent that Plaintiffs' vehicles are covered by a lease or finance contract, Defendant has a duty to indemnify Plaintiffs and hold Plaintiffs harmless should Plaintiffs prevail on their claims for violation of the Magnuson-Moss Warranty Act.

WHEREFORE, Plaintiffs pray that this Honorable Court enter its Order requiring Defendant to accept return of the subject vehicles and refund Plaintiffs' purchase or lease price, together with taxes, insurance premiums, interest, costs and actual attorney fees as provided by 15 USC §2310(d)(2) or in the alternative, that Plaintiffs be awarded damages in whatever amount above \$25,000 Plaintiffs are found to be entitled, plus interest, costs and actual attorney fees.

#### **COUNT V**

#### **VIOLATION OF MCL 445.901, ET. SEQ.** **(MICHIGAN CONSUMER PROTECTION ACT)**

78. Plaintiffs incorporate by reference all facts and allegations set forth in this Complaint.

79. Plaintiffs are “persons” as defined in the Michigan Consumer Protection Act, MCL 445.902(d).

80. The transactions complained of herein constitute “trade or commerce” as defined in the Michigan Consumer Protection Act, MCL 445.902(g).

81. Defendant engaged in the following unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce:

- a. Representing through its advertising, warranties, and other express representations that the subject vehicles’ transmissions had benefits or characteristics that they did not actually have;
- b. Representing that the vehicles’ transmissions were of a particular standard or quality when they were not;
- c. Advertising the vehicles and in particular the vehicles’ transmissions with the intent not to sell them as advertised and, when so doing, concealing and suppressing facts material to the true characteristics, standards and qualities of the vehicles and transmissions;
- d. At the time of the aforesaid sales and leases, Defendant knew or had reason to know that the vehicle had the defects or non-conformities described above but, failed to disclose this material information to Plaintiffs;
- e. Failing to reveal material facts which tended to mislead Plaintiffs and which facts could not reasonably have been known by Plaintiffs;
- f. Failing to adequately and properly inform Plaintiff of his rights and remedies with respect to the transactions which are the subject of this Complaint;
- g. Misrepresenting Plaintiffs’ rights and/or failing to advise Plaintiffs of remedies with respect to the transactions which are the subject of this Complaint, as hereinbefore alleged;
- h. Attempting to disclaim or limit the implied warranty of merchantability and fitness for use without clearly and conspicuously disclosing same;
- i. Failing to provide promised benefits, both as hereinbefore set forth and as promised or implied by operation of law;
- j. Causing a probability of confusion or of misunderstanding as to Plaintiffs’ legal rights, obligations, and/or remedies with respect to the subject transaction;
- k. Entering into a consumer transaction in which the Plaintiffs purportedly waived a right, benefit, or immunity provided by law, without clearly stating the waiver and obtaining Plaintiffs’ specific consent to the waiver

82. Defendant's deceptive practices were specifically designed to induce Plaintiffs to buy their vehicles with the "upgraded" PowerShift transmission.

83. The above described conduct violated the Michigan Consumer Protection Act, specifically but not limited to MCLA 445.903 and sub-paragraphs thereunder.

84. Upon information and belief, the aforesaid violations were not due to a bona fide error, inasmuch as Defendant failed to have any procedures in place designed to prevent the aforesaid violations and, further, engaged in the same unfair and deceptive acts or practices in connection with the sale or lease of numerous other vehicles. Further, to this day, Defendant continues to engage in the unlawful practices set forth above.

85. As a result of Defendant's violations as set forth above, Plaintiffs have suffered a loss within the meaning of the Act, including both monetary and non-monetary and, also, are entitled to statutory damages, equitable relief and attorney fees as provided in the Michigan Consumer Protection Act, specifically, MCL 445.911.

WHEREFORE, Plaintiffs pray for Judgment against Defendant in whatever amount above \$25,000 Plaintiffs are found to be entitled, together with equitable relief, actual and/or statutory damages, interest, costs, and reasonable attorney fees as provided by statute.

#### **COUNT VI**

#### **UNIFORM COMMERCIAL CODE - UNCONSCIONABILITY**

86. Plaintiffs incorporate by reference all facts and allegations set forth in this Complaint.

87. At all times relevant hereto, Defendant has had superior knowledge concerning the above described transmission defect and which defect was known to Defendant prior to the time of Plaintiffs' purchases or leases.

88. Despite Defendant's superior knowledge, Defendant failed to disclose the defect to Plaintiffs and, further, actively concealed the defect from Plaintiffs.

89. As a result of Defendant's intentional misconduct, any limitation on Plaintiffs' remedies for breach of express or implied warranties would be unconscionable under Uniform Commercial Code Sections 2-302 and/or 2A-108.



WHEREFORE, Plaintiffs pray that this Honorable Court strike any contractual limitations on Plaintiffs' remedies as unconscionable and that Plaintiffs be granted such other and further relief as this Court deems appropriate.

## **COUNT VII**

### **FRAUD AND/OR MISREPRESENTATION, INCLUDING FRAUDULENT CONCEALMENT**

90. Plaintiffs incorporate by reference all facts and allegations set forth in this Complaint.

91. Defendant repeatedly and publicly represented that its PowerShift Transmissions provide superior function, utility, reliability and other benefits and characteristics, to-wit: "PowerShift with dry-clutch facings and new energy saving electromechanical actuation for clutches and gear shifts saves weight, improves efficiency, increases smoothness, adds durability, and is sealed with low-friction gear lubricant for the life of the vehicle. This transmission requires no regular maintenance."

92. Defendant further represented that its PowerShift Transmission was an "option" that was worth paying upwards of \$1,000 per vehicle over and above the equivalent vehicles equipped with manual transmissions and/or automatic transmissions without PowerShift technology.

93. Defendant's representations were expected and intended to induce Plaintiffs to purchase the subject vehicles equipped with PowerShift Transmissions and to pay the increased price for same.

94. Defendant further withheld and continues to withhold information concerning the defects set forth herein, and affirmatively misrepresented and continues to misrepresent the above described symptoms as being "normal," when Defendant knew and continues to know that its representations and omissions are misleading and, in fact, Defendant intended its representations and omissions to mislead Plaintiffs concerning the nature and existence of the above described transmission defects.

95. Plaintiffs, reasonably relying on Defendant's representations and omissions were deceived into purchasing the subject vehicles at prices far in excess of the values which would have been assigned to such vehicles had these transmission defects and dangers been disclosed; further,

Defendant's representations and omissions deceived Plaintiffs concerning the existence of the defects and Plaintiffs' rights and remedies with respect to the transmission defects.

96. Had Plaintiffs known of the true nature of the transmission defects described herein, Plaintiffs would not have purchased or leased the vehicles or, alternatively, would not have paid the contract price therefore.

97. Defendant's representations and omissions as herein alleged were undertaken as an affirmative scheme designed to prevent Plaintiffs from obtaining information about the nature and existence of their claims involving their vehicles' defective PowerShift Transmissions. In furtherance of this scheme, Defendant also represented to Plaintiffs that the symptoms described above were "normal," or were somehow the fault of the Plaintiffs, or that the problems had been repaired. All of these statements were false and made with the intent to deceive and mislead Plaintiffs who relied on the statements to their detriment by failing to submit claims earlier. Furthermore, Defendant actively discouraged Plaintiffs from discovering the nature and existence of their claims by charging "inspection fees" for warranty work in order to deter Plaintiffs from submitting claims timely.

98. Plaintiffs did not discover, and should not have discovered, that the symptoms they were experiencing with the PowerShift Transmissions were not "normal driving characteristics" as represented by Defendant but, rather, indicia of a defect entitling Plaintiffs to bring claims for relief; Plaintiffs have filed this Complaint within 2 years of when they discovered or should have discovered the existence of their claims.

WHEREFORE, Plaintiffs pray that this Honorable Court enter Judgment against Defendant in whatever amount above \$25,000.00 Plaintiffs are found to be entitled, together with interest, costs and attorney fees, plus such other and further relief as this Court deems appropriate.

### **COUNT VIII**

#### **UNJUST ENRICHMENT**

99. Plaintiffs incorporate by reference all facts and allegations set forth in this Complaint.

100. As the intended and expected result of its conscious wrongdoing, Defendant has profited and benefitted from the purchase and leasing of the subject vehicles by Plaintiffs, in that Defendant sold Plaintiffs defective products for the price of non-defective products.

101. Defendant has voluntarily accepted and retained these profits and benefits, derived from Plaintiffs, with full knowledge and awareness that, as a result of Defendant's fraud and other conscious and intentional wrongdoing, Plaintiffs were not receiving products of the quality, nature, fitness, or value that had been represented by Defendant or that Plaintiffs, as reasonable consumers, expected.

102. By virtue of the conscious wrongdoing alleged in this Complaint, Defendant has been unjustly enriched at the expense of the Plaintiffs, who are entitled to in equity, and hereby seek, the disgorgement and restitution of Defendant's wrongful profits, revenue, benefits, to the extent, and in the amount, deemed appropriate by the Court, and such other relief as this Court deems just and proper to remedy Defendant's unjust enrichment.

WHEREFORE, Plaintiffs pray that this Honorable Court enter Judgment against Defendant for equitable relief, including but not limited to, disgorgement and restitution of Defendant's wrongful profits, revenue, benefits, to the extent, and in the amount, deemed appropriate by the Court, and such other relief as this Court deems just and proper to remedy Defendant's unjust enrichment.

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a jury trial in the above entitled cause.

Respectfully submitted,  
THE LIBLANG LAW FIRM, P.C.,  
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