

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

Case No. 1:17-cv-21087-FAM

GEORGE TERSHAKOVEC, DIANA  
TERSHAKOVEC, JOHN AUBREY, BYRON  
HARPER, RICHARD KOWALCHIK,  
ERNESTO LARIOS, SHAUNTI YANIK-  
LARIOS, JACQUES RIMOKH, MARK  
HOCHSPRUNG, FRANK PORTER, GREG  
ROBERTS, WAYNE LINN, STEPHEN  
KELLY, JILL KELLY, JOSH LONG, JOSE  
CRUZ, ATTILA GONDAN, HERBERT  
ALLEY, ERIC KAMPERMAN, TRAVIS  
MCRAE, TODD NEWTON, and ERIC  
EVANS, individually and on behalf of all  
others similarly situated,

Plaintiffs,

vs.

FORD MOTOR COMPANY,

Defendant.

**CLASS ACTION**

**JURY TRIAL DEMANDED**

**SECOND AMENDED CLASS ACTION COMPLAINT**

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George Tershakovec, Diana Tershakovec, John Aubrey, Byron Harper, Richard Kowalchik, Ernesto Larios, Shaunti Yanik-Larios, Jacques Rimokh, Mark Hochsprung, Frank Porter, Greg Roberts, Wayne Linn, Stephen Kelly, Jill Kelly, Josh Long, Jose Cruz, Attila Gondan, Herbert Alley, Eric Kamperman, Travis McRae, Todd Newton, and Eric Evans, (collectively, “Plaintiffs”), individually and on behalf of all others similarly situated (the “Class”), allege the following:

## I. INTRODUCTION

1. **“Track-Capable Performance.” “An All-Day Track Car That’s Also Street Legal.”** This is what Ford told potential track-enthusiast customers to entice them to buy its 2016 Shelby GT350 Mustang. But Shelby GT350 Mustangs were far from the “all-day track cars” that Ford promised. In fact, for more than 70% of all owners, they proved to be unusable on the track. When a Shelby GT350 Mustang driver took Ford’s flagship track-capable car to the track, he or she learned that in 15 minutes or less, the transmission and rear differential would overheat, causing the car to go into Limp Mode at drastically reduced speed and power—an obviously dangerous event when surrounded by speeding cars. The Shelby overheats and goes into Limp Mode, without warning, because, despite its Track-Ready claims, Ford chose to equip the Shelby GT350 Base and Technology Package models with defective powertrain systems that have inadequate transmission and rear differentials. These defects manifest not only in the Track-Ready powertrain systems’ inability to withstand the high-performance demands of race track use, but also create dangerous conditions when drivers are operating the Shelby GT350s on public roadways.

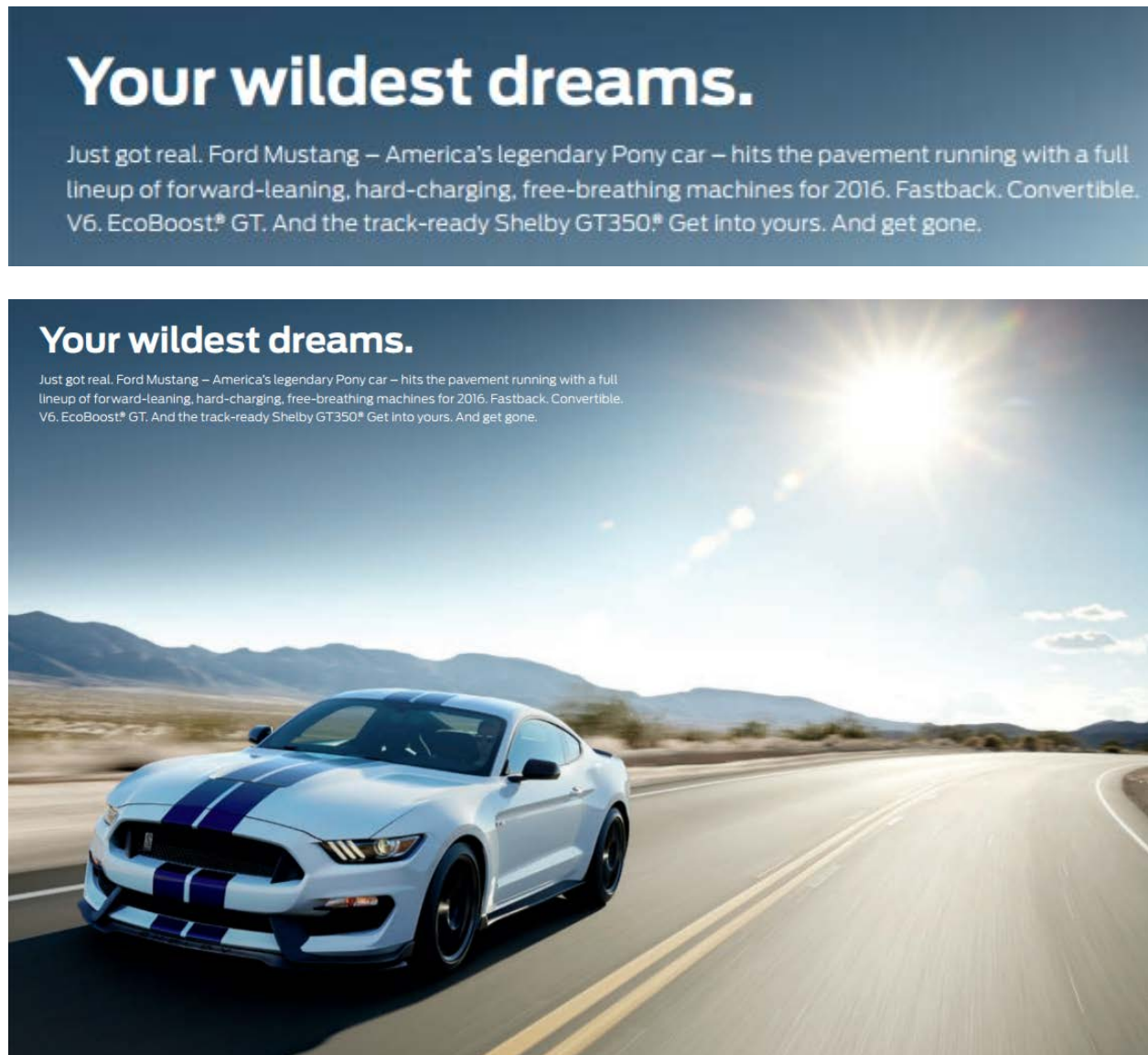
2. There are certain basic rules that all carmakers must follow. When a carmaker sells a car, it has a duty to ensure that the car functions properly and safely for its advertised use and is free from defects. When a carmaker discovers a defect, it must disclose the defect and

make it right or cease selling the car. When a carmaker provides a warranty, it must stand by that warranty. This case arises from defendant Ford Motor Company's ("Ford") breach of these rules. Ford deceived its customers when it sold the 2016 Shelby GT350 Mustang Base and Technology Package models (the "Shelbys") with the promise that they were Track-Ready; they were, in fact, unusable and unsafe for that purpose.

3. The original Shelby was introduced in 1965 and established the Mustang's high-performance track credentials. It was named after Carroll Shelby, the legendary race car driver and automotive designer. When it was reintroduced in 2014, Ford marketed the Shelby as a "track-capable" car in the tradition of the original Shelby. Consumers, through Ford's marketing, came to associate the Shelby with race track use. In fact, the Shelby garnered such an iconic place in the psyche of high-performance driving enthusiasts that generations of such individuals dreamed of one day driving these vehicles and owning heirlooms to pass along to loved ones to also use at the track. This track-ready dream, however, came at a premium price. Many Shelbys were sold tens of thousands of dollars above the list price—and double or triple the price of a regular Mustang GT. Enthusiasts, however, were willing to pay the premium to own such a distinct piece of automotive history and to realize their dream of owning a high-performance vehicle.

4. At the time of Ford's 2016 model year launch, the Shelby was introduced as a limited edition, track-capable car. For instance, one marketing representation made by Ford announced: "In developing the all-new Shelby GT350 Mustang and GT350Rt—the most potent track-oriented production Mustangs ever—nothing was left on the table in terms of weight

reduction and track-capable performance.”<sup>1</sup> Ford also used the term “track-ready Shelby” in its advertising. For example:<sup>2</sup>



5. Ford also described the track performance capability of the Shelby with various terms, including, but not limited to, “Track-Ready,” “track capable,” “track tuned,” “track car,”

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<sup>1</sup> Ford, *Innovative Engineering*, available at <https://media.ford.com/content/fordmedia/fna/us/en/products/cars/mustang/2016-gt350-350r-press-kit/innovative-engineering.pdf> (last accessed Mar. 22, 2017), at p. 9.

<sup>2</sup> 2016 Ford Mustang brochure, available at <http://www.ford.com/services/assets/Brochure?make=Ford&model=Mustang&year=2016&postalCode=11101> (last accessed Mar. 22, 2017), at p. 3.

“track tested,” “track-oriented,” and the “Most Capable Production Mustang Ever.” At times in this Complaint, Ford’s promises will be referred to as “Track-Ready.”

6. As Ford intended, Plaintiffs purchased 2016 Shelby Mustangs, in part, for track use. However, these vehicles are not fit for track use due to powertrain systems that cause the transmission and rear differentials to overheat prematurely and provide no ability for the driver to monitor transmission and differential temperatures. This overheating sends the car into Limp Mode, without any sort of warning or explanation of the deceleration—a dangerous condition on a race track full of speeding cars. In addition to manifesting on the track, the defect also activates the dangerous Limp Mode—again without any warning or explanation of the deceleration—on public roadways. The defect also degrades the 2016 Shelby over time. As a result, the Track-Ready powertrain system that Ford promised is defective. One solution for this overheating problem is the addition of transmission and differential coolers. However, Ford chose not to include these components in the manufacture and design of the 2016 Shelby.

7. Customer experiences with the Shelby on the track differ dramatically from Ford’s promise of a Track-Ready vehicle and chronicle the activation of Limp Mode. Shelby testimonial websites and Ford customer service files are replete with complaints from consumers who reasonably believed that their Shelby would in fact be Track-Ready, but instead they have been put at risk of collisions on race tracks and public roadways when the defective transmissions and rear differentials overheat, causing the cars to go into Limp Mode without warning at drastically reduced speed and performance.

8. Ford is aware of the defect and in the 2017 model of the Shelby, it fixed the defective Track-Ready powertrain system by installing coolers for all trim levels. In addition, Ford has belatedly and inconspicuously admitted the defect by advising owners to buy rear

differential and transmission coolers for their 2016 model year cars—at their own expense—in order to actually make them Track-Ready as advertised. But this advisement is untrue. The overheating issues cannot simply be fixed by the installation of inexpensive coolers, as Ford’s recommendation would suggest. Further, Ford has admitted that the execution of these recommended aftermarket repairs may also represent further violations of the express warranties—a risk any reasonable consumer would hesitate to undertake.

9. But Ford cannot shift its warranty obligations onto its customers. If the Shelbys need transmission and rear differential coolers to actually perform as advertised, then Ford should have equipped the cars with these components to its customers. Ford should also not recommend aftermarket repairs if performing such repairs may constitute a violation of the company’s express warranties.

10. Plaintiffs bring this action individually and on behalf of all other current and former owners of the 2016 Base and Technology Package model Shelby Mustangs. Plaintiffs seek damages and other equitable relief.

## **II. JURISDICTION**

11. This Court has jurisdiction pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because the proposed Class consists of 100 or more members; the amount in controversy exceed \$5,000,000, exclusive of costs and interest; and minimal diversity exists. This Court also has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

## **III. VENUE**

12. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial part of the events or omissions and/or misrepresentations giving rise to Plaintiffs’ claims occurred in

this District. Plaintiffs George and Diana Tershakovec took delivery of their Shelby in this District and Ford has marketed, advertised, and sold Shelbys within this District.

#### **IV. PARTIES**

##### **A. Plaintiffs**

##### **1. Florida Plaintiffs**

##### **a. George and Diana Tershakovec**

13. Plaintiffs George and Diana Tershakovec (the “Tershakovec Plaintiffs”) reside in Miami, Florida.

14. The Tershakovec Plaintiffs share a passion for high-performance vehicles. The 2016 Shelby represented the car of their dreams and the Tershakovec Plaintiffs were excited to finally make this dream a reality. In February 2016, the Tershakovec Plaintiffs purchased a 2016 Shelby Mustang with the Technology Package from Maxwell Ford, an authorized Ford dealer located in Austin, Texas. The Tershakovec Plaintiffs were interested in purchasing a Shelby that was capable of occasional track use and conducted most of their Shelby research from their home in Florida. The Tershakovec Plaintiffs also communicated with various dealers and were exposed to Ford’s misrepresentations and/or omissions in that state and made their purchase decision there.

15. The Tershakovec Plaintiffs purchased and still own this Shelby. Unknown to the Tershakovec Plaintiffs at the time they purchased the Shelby, the Shelby suffered from a defective Track-Ready powertrain system, which has caused them out-of-pocket loss, attempted and future attempted repairs, and diminished value of the Shelby. Ford knew about these defects at the time of purchase but did not disclose the defects to the Tershakovec Plaintiffs. So the Tershakovec Plaintiffs purchased their Shelby on the reasonable but mistaken belief that their

Shelby would be safe and reliable on public roadways and that the Shelby was capable of occasional track use.

16. The Tershakovec Plaintiffs selected and ultimately purchased their Shelby, in part, because the Shelby was represented to be Track-Ready and track-capable and was marketed as Ford's iconic high-performance vehicle within the Mustang family. During their Shelby research, the Tershakovec Plaintiffs reviewed print and online advertisements similar to those included in this Second Amended Complaint. These advertisements contained images of the 2016 Shelby on race tracks and clearly stated how various components in all 2016 Shelbys were Track-Ready, or track-capable, and that these Shelbys offered many track-specific features.

17. Some of the features included in the 2016 Shelby were items that a reasonable consumer would believe to be present in a Shelby equipped for occasional track use—including a Flat-Plane Crank engine, which is designed specifically for very high revolutions. The Tershakovec Plaintiffs also noted other tracking features in the 2016 Shelby, such as the MagneRide suspension tuned for the track, enhanced electric steering, performance braking system, and specific driver tunable software settings, including a setting specifically marked for Track Use Only. There are also "Track Apps" and a heads-up tachometer display.

18. The Tershakovec Plaintiffs recall reviewing the Ford website for the 2016 Shelby in detail. The Tershakovec Plaintiffs also spoke with Ford salespeople at Maxwell Ford, Saw Grass Ford, Ford (Broward), Elder Ford Tampa, Metro Ford Miami, Greenway Ford Orlando, and Midway Ford Miami about their intent to use the Technology Model 2016 Shelby for occasional track use and were not informed that they would be unable to do so. Ford also produced and distributed uniform materials to dealerships with the expectation that this information would be passed onto the consumer through dealer interactions.

19. None of the information reviewed by the Tershakovec Plaintiffs contained any disclosure relating to any defects in the Track-Ready powertrain system or disclosed that not all models of the Shelby were capable of safe driving on public roadways or occasional track use. None of the salespeople at the various Ford dealerships disclosed this information either. If Ford had disclosed to the Tershakovec Plaintiffs that their Shelby suffered from defects that would prevent the full use of their Shelby and pose safety risks, then they would not have purchased their Shelby or would have paid less for it.

20. The Tershakovec Plaintiffs took delivery of their Shelby in February 2016. Around May or June 2016, the Tershakovec Plaintiffs learned of the defects in their Shelby when reading about other 2016 Shelby owners on various internet forums who experienced Limp Mode in a matter of minutes while on the track. They also read on the forums and elsewhere that their Shelby could also experience Limp Mode while driving on public roadways. After learning about the safety implications inherent with a Shelby going into Limp Mode, the Tershakovec Plaintiffs decided not to take their Shelby to the track.

21. In December 2016, the Tershakovec Plaintiffs contacted Ford to express their concerns and seek relief. They had multiple telephone conversations with Ford customer service agents and a Ford regional manager for the Southeast. Additionally, in the fall of 2016, the Tershakovec Plaintiffs emailed Mark Fields, Chief Executive Officer of Ford, to express their concerns and seek relief. The Tershakovec Plaintiffs also contacted Bradley Gayton, Group Vice President and General Counsel for Ford, via email. At no point during these telephone or email conversations did Ford provide any resolution to address their concerns or provide satisfactory relief.



22. After conducting research into the diminished resale value of 2016 Shelbys, the Tershakovec Plaintiffs estimate that due to the Track-Ready powertrain defects , they would incur a loss of \$20,000 if they tried to sell their Shelby—in addition to the \$10,000 premium they paid over MSRP.

23. To date, the Tershakovec Plaintiffs have never received any notification from Ford about any potential repair or aftermarket modification that would repair the overheating issue and render their Shelby safe to drive on public roadways, or during occasional track use, that would also be compliant with Ford’s express warranties.

24. While the Tershakovec Plaintiffs were aware at the time of purchase that their Shelby came with express warranties, they were not aware that executing any of the aftermarket repairs specifically recommended by Ford, such as the addition of transmission or differential coolers, could void the express warranties for the entire Shelby.

25. The Track-Ready powertrain defects can cause unexpected Limp Mode manifestations thereby significantly impairing the safety, reliability, and operability of the Shelbys to such an extent that they are rendered unfit for the ordinary purpose of driving on public roadways.

26. The Tershakovec Plaintiffs have not yet completed any repairs relating to the defective Track-Ready powertrain system.

27. The Tershakovec Plaintiffs paid the full MSRP, in addition to a \$10,000 premium, for their Shelby.

28. Due to Ford’s failure to disclose the Track-Ready and track-capable defects , Tershakovec Plaintiffs were denied the benefit- of- the- bargain at the time of sale, and paid a premium for the car that they would not have. Plaintiffs have also suffered additional damage

relating to the cost of repair needed to make the car operate as a reasonable consumer would have expected.

**b. John Aubrey**

29. Plaintiff John Aubrey resides in Parkland, Florida.

30. A long time Ford customer, Mr. Aubrey was delighted to finally purchase his dream car. On November 10, 2015, Mr. Aubrey ordered a 2016 Shelby Mustang with the Base Package from Gilbert Ford, an authorized Ford dealer located in Okeechobee, Florida. Mr. Aubrey was interested in purchasing a Shelby that was capable of occasional track use and conducted most of his Shelby research from his home in Florida. Mr. Aubrey also communicated with various dealers and was exposed to Ford's misrepresentations and/or omissions in that state and made his purchase decision there.

31. Mr. Aubrey purchased and still owns this Shelby. Unknown to Mr. Aubrey at the time he purchased the Shelby, the Shelby suffered from a defective Track-Ready powertrain system, which has caused him out-of-pocket loss, attempted and future attempted repairs, and diminished value of the Shelby. Ford knew about these defects at the time of Mr. Aubrey's purchase but did not disclose the defect to Mr. Aubrey. So Mr. Aubrey purchased his Shelby on the reasonable but mistaken belief that his Shelby would be safe and reliable on public roadways and that the Shelby was capable of occasional track use.

32. Mr. Aubrey selected and ultimately purchased his Shelby, in part, because the Shelby was represented to be Track-Ready or track-capable and was marketed as Ford's iconic track vehicle within the Mustang family. During his Shelby research, Mr. Aubrey reviewed print and online advertisements similar to those included in this Second Amended Complaint. These advertisements contained images of the 2016 Shelby on race tracks and clearly stated how

various components in all 2016 Shelbys were Track-Ready, or track-capable, and that these Shelbys offered many track-specific features.

33. Some of the features included in the 2016 Shelby were items that a reasonable consumer would believe to be present in a Shelby equipped for occasional track use—including a Flat-Plane Crank engine, which is designed specifically for very high revolutions. Mr. Aubrey also noted other tracking features in the 2016 Shelby, such as the MagneRide suspension tuned for the track, enhanced electric steering, performance braking system, and specific driver tunable software settings, including a setting specifically marked for Track Use Only. There are also “Track Apps” and a heads-up tachometer display.

34. Mr. Aubrey reviewed the website for the 2016 Shelby in detail. He specifically recalls the following statement from the Ford website, which helped lead him to believe that the Base Model Shelby could be driven on a track: “All-new Shelby Mustang is a thoroughbred capable of tackling the world’s most challenging roads and racetracks.” Mr. Aubrey also spoke with Ford salespeople at Gilbert Ford about his intent to use the Base Model 2016 Shelby for occasional track use and was not informed that he would be unable to do so. Ford also produced and distributed uniform materials to dealerships with the expectation that this information would be passed onto the consumer through dealer interactions.

35. None of the information reviewed by Mr. Aubrey contained any disclosure relating to any defects in the Track-Ready powertrain system or disclosed that not all models of the Shelby were capable of safe driving on public roadways or occasional track use. Nor did the sales people at Gilbert Ford disclose this information. If Ford had disclosed to Mr. Aubrey that his Shelby suffered from defects that would prevent the full use of his Shelby and pose safety risks, then he would not have purchased his Shelby or would have paid less for it.

36. Mr. Aubrey took delivery of his Shelby in December 2015. On February 14, 2016, Mr. Aubrey participated in a High Performance Driving Education (“HPDE”) event at Palm Beach International Raceway with his Shelby. He was accompanied by a driving instructor at all times. After approximately 12 minutes, Mr. Aubrey’s car went into Limp Mode. Mr. Aubrey became very concerned that he was potentially damaging his Shelby and stopped his track activities for the day. When Mr. Aubrey began to research the issue, he found dozens more examples of individuals with Base and Technology Package Shelybs experiencing Limp Mode both at the track and during highway use.

37. Mr. Aubrey contacted both his dealership and Ford to express his concerns, but they were unable to provide any meaningful aid, nor could they direct him to a recommended repair.

38. In March 2016, Mr. Aubrey contacted Ford via written letter to express his concerns and seek relief. In the letter, he specifically requested permission to install a Tremec TR-3160 6-speed transmission with built-in cooler in his Shelby or, as an alternative, have an aftermarket cooler installed and warranted by Ford.

39. Around April 2016, Ford responded to Mr. Aubrey as per the following: “You have asked us to authorize your dealer to install a Tremec TR-3160 6 speed transmission with built in cooler or an aftermarket cooler. We must decline your request. Your Ford warranty states that we will perform repairs necessary to correct any manufacturer’s defects . . . . Ford Motor Company does not recommend changes to our products. Only changes that have been thoroughly tested and approved by Ford Engineering should be considered. In this case, Ford part numbers will be issued and parts made available for purchase through our dealers. The installation or use of any aftermarket product will not necessary void the New Vehicle Limited Warranty

(“NVLW” or “Limited Warranty”). However, if the aftermarket product fails or causes a Ford part to fail, the cost of the repair and any related damage(s) will not be covered by your Ford warranty.” As such, Ford failed to provide any resolution to address his concerns or provide satisfactory relief.

40. To date, Mr. Aubrey has not received any other notification from Ford about any potential repair or aftermarket modification that would render his Shelby safe to drive on public roadways, or during occasional track use, that would also be compliant with Ford’s express warranties.

41. The Track-Ready powertrain defects can cause unexpected Limp Mode manifestations thereby significantly impairing the safety, reliability, and operability of the Shelbys to such an extent that they are rendered unfit for the ordinary purpose of driving on public roadways.

42. Mr. Aubrey has not yet completed any repairs relating to the defective Track-Ready powertrain system.

43. Due to safety concerns and the Shelby’s inability to be used for its intended purpose, Mr. Aubrey no longer drives his vehicle on the track.

44. While Mr. Aubrey was aware at the time of purchase that his Shelby came with express warranties, he was not aware that executing any of the aftermarket repairs recommended by Ford, such as the addition of transmission or differential coolers, could void the express warranties for the entire Shelby.

45. Mr. Aubrey paid the full MSRP, in addition to a \$4,000 premium, for his Shelby.

46. Due to Ford’s failure to disclose the Track-Ready and track-capable defects , Mr. Aubrey was denied the benefit- of- the- bargain at the time of sale and paid a premium for the

car that he otherwise would not have. Plaintiff has also suffered additional damage relating to the cost of repair needed to make the car operate as a reasonable consumer would have expected.

**c. Byron Harper**

47. Plaintiff Byron Harper is ordinarily a resident of the State of Florida. Mr. Harper is currently serving as a member of the U.S. Department of Defense in Europe.

48. Mr. Harper first contacted the dealer about purchasing the new Shelby in 2014. In June 2015, when the dealer was granted allocations by Ford, Mr. Harper was so excited to purchase a 2016 Shelby that he put forth a \$500 deposit to enter a special raffle where 29 military members could qualify for special rates and promotions. Mr. Harper was thrilled to learn that he was successful in the raffle and immediately provided the additional \$2,000 the dealer required to begin the ordering process. In August 2015, Military Auto Source submitted Mr. Harper's order for a 2016 Shelby Mustang with the Technology Package. Mr. Harper was interested in purchasing a Shelby that was capable of occasional track use.

49. Mr. Harper purchased and still owns this Shelby. Unknown to Mr. Harper at the time he purchased the Shelby, the Shelby suffered from a defective Track-Ready powertrain system, which has caused him out-of-pocket loss, attempted and future attempted repairs, and diminished value of the Shelby. Ford knew about these defects at the time of Mr. Harper's purchase but did not disclose the defects to Mr. Harper. So, Mr. Harper purchased his Shelby on the reasonable but mistaken belief that his Shelby would be safe and reliable on public roadways and that the Shelby was capable of occasional track use.

50. Mr. Harper selected and ultimately purchased his Shelby, in part, because the Shelby was represented to be Track-Ready and track-capable and was marketed as Ford's iconic race vehicle within the Mustang family. During his Shelby research, Mr. Harper reviewed print and online advertisements similar to those included in this Second Amended Complaint. These

advertisements contained images of the 2016 Shelby on race tracks and clearly stated how various components in all 2016 Shelbys were Track-Ready, or track-capable, and that these Shelbys offered many track-specific features.

51. Some of the features included in the 2016 Shelby were items that a reasonable consumer would believe to be present in a Shelby equipped for occasional track use—including a Flat-Plane Crank engine, which is designed specifically for very high revolutions. Mr. Harper also noted other tracking features in the 2016 Shelby, such as the MagneRide suspension tuned for the track, enhanced electric steering, performance braking system, and specific driver tunable software settings, including a setting specifically marked for Track Use Only. There are also “Track Apps” and a heads-up tachometer display.

52. Mr. Harper also recalls reviewing the Ford website for the 2016 Shelby in detail. Mr. Harper also interacted with the Ford-authorized Military Auto Source dealer. Ford also produced and distributed uniform materials to dealerships with the expectation that this information would be passed onto the consumer through dealer interactions.

53. None of the information reviewed by Mr. Harper contained any disclosure relating to any defects in the Track-Ready powertrain system or disclosed that not all models of the Shelby were capable of safe driving on public roadways or occasional track use. None of the representatives through the Military Auto Source program disclosed this information either. If Ford had disclosed to Mr. Harper that his Shelby transmission suffered from defects that would prevent the full use of his Shelby and pose safety risks, then he would not have purchased his Shelby or would have paid less for it.

54. Mr. Harper took delivery of his Shelby in April 2016. Subsequently, a friend stated that he had experienced Limp Mode while driving a 2016 Shelby on the Autobahn in

Germany. As Mr. Harper continued to conduct online research, he learned of other 2016 Shelby owners on various internet forums who experienced Limp Mode in a matter of minutes while on the track. He also read on the forums and elsewhere that his Shelby could also experience Limp Mode while driving on public roadways, which was consistent with what his friend had experienced. After learning about the safety implications inherent with a Shelby going into Limp Mode, Mr. Harper decided not to take his Shelby to the track.

55. In the summer of 2016, Mr. Harper called Ford several times and exchanged emails to express his concerns and seek relief. The representative indicated to Mr. Harper that a “fix” was going to be provided, but Ford failed to provide any resolution to address his concerns or provide satisfactory relief.

56. The Track-Ready powertrain defects can cause unexpected Limp Mode manifestations thereby significantly impairing the safety, reliability, and operability of the Shelsebys to such an extent that they are rendered unfit for the ordinary purpose of driving on public roadways.

57. Mr. Harper has not yet completed any repairs relating to the defective Track-Ready powertrain system.

58. To date, Mr. Harper has not received any notification from Ford about any potential repair or aftermarket modification that would render his Shelby safe to drive on public roadways, or during occasional track use, that would also be compliant with express warranty.

59. While Mr. Harper was aware at the time of purchase that his Shelby came with express warranties, he was not aware that executing any of the aftermarket repairs specifically recommended by Ford, such as a new transmission or cooler kit, can void the express warranties for the entire Shelby.



60. Mr. Harper paid the full Military Auto Sales price for his Shelby.

61. Due to Ford's failure to disclose the Track-Ready and track-capable defects , Mr. Harper was denied the benefit- of- the- bargain at the time of sale and paid a premium for the car that he otherwise would not have. Plaintiff has also suffered additional damage relating to the cost of repair needed to make the car operate as a reasonable consumer would have expected.

**d. Richard Kowalchik**

62. Plaintiff Richard Kowalchik resides on Merritt Island, Florida.

63. Mr. Kowalchik has been purchasing Ford vehicles almost exclusively for the past 40 years. It came as no surprise, then, that in September 2015, Mr. Kowalchik ordered a 2016 Shelby Mustang with the Technology Package from Paradise Ford, an authorized Ford dealer located in Cocoa, Florida. Mr. Kowalchik was interested in purchasing a Shelby that was capable of occasional track use and conducted most of his Shelby research from his home in Florida. Mr. Kowalchik also communicated with multiple dealers and was exposed to Ford's misrepresentations and/or omissions in that state and made his purchase decision there.

64. Mr. Kowalchik purchased and still owns this Shelby. Unknown to Mr. Kowalchik at the time he purchased the Shelby, the Shelby suffered from a defective Track-Ready powertrain system, which has caused him out-of-pocket loss, attempted and future attempted repairs, and diminished value of the Shelby. Ford knew about these defects at the time of Mr. Kowalchik's purchase but did not disclose the defects to Mr. Kowalchik. So, Mr. Kowalchik purchased his Shelby on the reasonable but mistaken belief that his Shelby would be safe and reliable on public roadways and that the Shelby was capable of occasional track use.

65. Mr. Kowalchik selected and ultimately purchased his Shelby, in part, because the Shelby was represented to be Track-Ready and track-capable and was marketed as Ford's iconic high-performance vehicle within the Mustang family. During his Shelby research, Mr.

Kowalchik reviewed print and online advertisements similar to those included in this Second Amended Complaint. These advertisements contained images of the 2016 Shelby on race tracks and clearly stated how various components in all 2016 Shelbys were Track-Ready, or track-capable, and that these Shelbys offered many track-specific features.

66. Some of the features included in the 2016 Shelby were items that a reasonable consumer would believe to be present in a Shelby equipped for occasional track use—including a Flat-Plane Crank engine, which is designed specifically for very high revolutions.

Mr. Kowalchik also noted other tracking features in the 2016 Shelby, such as the MagneRide suspension tuned for the track, enhanced electric steering, performance braking system, and specific driver tunable software settings, including a setting specifically marked for Track Use Only. There are also “Track Apps” and a heads-up tachometer display.

67. Mr. Kowalchik also recalls reviewing the Ford website for the 2016 Shelby in detail. Mr. Kowalchik also spoke with Ford salespeople at Paradise Ford about his intent to use the Technology Model 2016 Shelby for occasional track use and was not informed that he would be unable to do so. Ford also produced and distributed uniform materials to dealerships with the expectation that this information would be passed onto the consumer through dealer interactions.

68. None of the information reviewed by Mr. Kowalchik prior to purchase contained any disclosure relating to any defects in the Track-Ready powertrain system or disclosed that not all models of the Shelby were capable of safe driving on public roadways or occasional track use. Nor did Ford direct the salespeople at Paradise Ford to disclose this information. If Ford had disclosed to Mr. Kowalchik that his Shelby suffered from defects that would prevent the full use of his Shelby and pose safety risks, then he would not have purchased his Shelby or would have paid less for it.

69. Mr. Kowalchik took delivery of his Shelby in January 2016. Three months after taking delivery, Mr. Kowalchik learned that Ford would be making the Track Package standard on all new 2017 vehicles.

70. In September 2016, Mr. Kowalchik attended a Track Attack event in Utah. While attending this event, Mr. Kowalchik spoke with one of the other participants who told him his Technology Package GT350 went into Limp Mode while driving on a public roadway.

71. When Mr. Kowalchik returned home, he started searching various internet forums and finding stories of others who experienced Limp Mode. Many of the articles were related to track day events where, within a matter of minutes while on the track, the Shelby experienced Limp Mode.

72. To date, Mr. Kowalchik has not received any notification from Ford about any potential repair or aftermarket modification that would render his Shelby safe to drive on public roadways, or during occasional track use, that would also be compliant with Ford's express warranties.

73. The Track-Ready powertrain defects can cause unexpected Limp Mode manifestations thereby significantly impairing the safety, reliability, and operability of the Shelseys to such an extent that they are rendered unfit for the ordinary purpose of driving on public roadways.

74. Mr. Kowalchik has not yet completed any repairs relating to the defective Track-Ready powertrain system.

75. Mr. Kowalchik paid the full MSRP, in addition to a \$5,000 premium, for his Shelby.

76. Due to Ford's failure to disclose the Track-Ready and track-capable defects , Mr. Kowalchik was denied the benefit- of- the- bargain at the time of sale and paid a premium for the car that he otherwise would not have. Plaintiff has also suffered additional damage relating to the cost of repair needed to make the car operate as a reasonable consumer would have expected.

**2. California Plaintiffs**

**a. Ernesto Larios and Shaunti Yanik-Larios**

77. Plaintiffs Ernesto Larios and Shaunti Yanik-Larios (the "Larios Plaintiffs") reside in Los Angeles, California.

78. In April 2016, the Larios Plaintiffs purchased a 2016 Shelby Mustang with the Technology Package from North County Ford, an authorized Ford dealer located in Vista, California. The Larios Plaintiffs were interested in purchasing a Shelby that was capable of occasional track use and conducted most of their Shelby research from their home in California. The Larios Plaintiffs also communicated with various dealers and were exposed to Ford's misrepresentations and/or omissions in that state and made their purchase decision there.

79. The Larios Plaintiffs purchased and still own this Shelby. Unknown to the Larios Plaintiffs at the time they purchased the Shelby, the Shelby suffered from a defective Track-Ready powertrain system, which has caused them out-of-pocket loss, future attempted repairs, and diminished value of the Shelby. Ford knew about these defects at the time of purchase but did not disclose the defects to the Larios Plaintiffs. So the Larios Plaintiffs purchased their Shelby on the reasonable but mistaken belief that their Shelby would be safe and reliable on public roadways and that the Shelby was capable of occasional track use.

80. The Larios Plaintiffs selected and ultimately purchased their Shelby, in part, because the Shelby was represented to be Track-Ready and track-capable and was marketed as

Ford's iconic high-performance vehicle within the Mustang family. During their Shelby research, the Larios Plaintiffs reviewed print and online advertisements similar to those included in this Second Amended Complaint. These advertisements contained images of the 2016 Shelby on race tracks and clearly stated how various components in all 2016 Shelbys were Track-Ready, or track-capable, and that these Shelbys offered many track-specific features.

81. Some of the features included in the 2016 Shelby were items that a reasonable consumer would believe to be present in a Shelby equipped for occasional track use—including a Flat-Plane Crank engine, which is designed specifically for very high revolutions. The Larios Plaintiffs also noted other tracking features in the 2016 Shelby, such as the MagneRide suspension tuned for the track, enhanced electric steering, performance braking system, and specific driver tunable software settings, including a setting specifically marked for Track Use Only. There are also “Track Apps” and a heads-up tachometer display.

82. The Larios Plaintiffs recall reviewing the Ford website for the 2016 Shelby in detail. The Larios Plaintiffs also spoke with Ford salespeople at North County Ford about their intent to use the Technology Model 2016 Shelby for occasional track use and were not informed that they would be unable to do so. Ford also produced and distributed uniform materials to dealerships with the expectation that this information would be passed onto the consumer through dealer interactions.

83. None of the information reviewed by the Larios Plaintiffs contained any disclosure relating to any defects in the Track-Ready powertrain system or disclosed that not all models of the Shelby were capable of safe driving on public roadways or occasional track use. None of the salespeople at the various Ford dealerships disclosed this information either. If Ford had disclosed to the Larios Plaintiffs that their Shelby suffered from defects that would prevent

the full use of their Shelby and pose safety risks, then they would not have purchased their Shelby or would have paid less for it.

84. Shortly after purchase, the Larios Plaintiffs became aware of the Limp Mode manifestation as it pertained to vehicles operating on a track. After reviewing that information, the Larios Plaintiffs decided not to track their vehicle but continued to rely on it for ordinary use.

85. The Larios Plaintiffs first experienced the defects in their Shelby when their car went into Limp Mode in the summer of 2016 while traveling along the Angeles Crest highway. Since that incident, Plaintiffs experienced the Limp Mode manifestation two additional times while traveling on public roadways.

86. Shortly after experiencing the first Limp Mode manifestation in 2016, the Larios Plaintiffs contacted Galpin Ford to express their concerns. They were ultimately redirected to Ford Motor Company. They contacted Ford Motor Company to express their concerns and seek relief. At no point during these encounters did Ford provide any resolution to address their concerns or provide satisfactory relief.

87. To date, the Larios Plaintiffs have never received any notification from Ford about any potential repair or aftermarket modification that would repair the overheating issue and render their Shelby safe to drive on public roadways, or during occasional track use, that would also be compliant with Ford's express warranties.

88. The Larios Plaintiffs enquired with Galpin Ford about buying back their vehicle. Galpin Ford assessed their vehicle at approximately \$40,000, a much lower price than would be paid for a typical (i.e. non-2016 model year) Shelby with similar age and mileage. The lower assessed value was due directly to the limp mode issue and reduced demand for that model year.

89. While the Larios Plaintiffs were aware at the time of purchase that their Shelby came with express warranties, they were not aware that executing any of the aftermarket repairs specifically recommended by Ford, such as the addition of transmission or differential coolers, could void the express warranties for the entire Shelby.

90. The Track-Ready powertrain defects can cause unexpected Limp Mode manifestations thereby significantly impairing the safety, reliability, and operability of the Shelbys to such an extent that they are rendered unfit for the ordinary purpose of driving on public roadways.

91. The Larios Plaintiffs have not yet completed any repairs relating to the defective Track-Ready powertrain system.

92. The Larios Plaintiffs paid approximately \$68,377 for their Shelby.

93. Due to Ford's failure to disclose the Track-Ready and track-capable defects , Plaintiffs were denied the benefit- of- the- bargain at the time of sale for the car that they would not have. Plaintiffs have also suffered additional damage relating to the cost of repair needed to make the car operate as a reasonable consumer would have expected.

**b. Jacques Rimokh**

94. Plaintiff Jacques Rimokh resides in Burbank, California.

95. In September 2015, Mr. Rimokh ordered a 2016 Shelby Mustang with the Technology Package from Saginaw Valley Ford, an authorized Ford dealer located in Saginaw, Michigan. Mr. Rimokh was interested in purchasing a Shelby that was capable of occasional track use and conducted all of his Shelby research from his home in California. Mr. Rimokh also communicated with various dealers and was exposed to Ford's misrepresentations and/or omissions in that state and made his purchase decision there.

96. Mr. Rimokh purchased and still owns this Shelby. Unknown to Mr. Rimokh at the time he purchased the Shelby, the Shelby suffered from a defective Track-Ready powertrain system, which has caused him out-of-pocket loss, attempted and future attempted repairs, and diminished value of the Shelby. Ford knew about these defects at the time of Mr. Rimokh's purchase but did not disclose the defects to Mr. Rimokh. So Mr. Rimokh purchased his Shelby on the reasonable but mistaken belief that his Shelby would be safe and reliable on public roadways and that the Shelby was capable for use on occasional track days.

97. Mr. Rimokh selected and ultimately purchased his Shelby because the Shelby was represented to be Track-Ready and track-capable and was marketed as Ford's iconic high-performance vehicle within the Mustang family. During his Shelby research, Mr. Rimokh reviewed print, online, and television advertisements similar to those included in this Second Amended Complaint. These advertisements contained images of the 2016 Shelby on race tracks and clearly stated how various components in all 2016 Shelbys were Track-Ready, or track-capable, and that these Shelbys offered many track-specific features.

98. Some of the features included in the 2016 Shelby were items that a reasonable consumer would believe to be present in a vehicle equipped for occasional track use—including a Flat-Plane Crank engine, which is designed specifically for very high revolutions. Mr. Rimokh also noted other tracking features in the 2016 Shelby, such as the MagneRide suspension tuned for the track, enhanced electric steering, performance braking system, and specific driver tunable software settings, including a setting specifically marked for Track Use Only. There are also "Track Apps" and a heads-up tachometer display.

99. Mr. Rimokh recalls reviewing the Ford website for the 2016 Shelby. Mr. Rimokh also spoke with Ford salespeople at Saginaw Valley Ford about his intent to use the Technology



Model 2016 Shelby for occasional track use and was not informed that he would be unable to do so. Ford also produced and distributed uniform materials to dealerships with the expectation that this information would be passed onto the consumer through dealer interactions.

100. None of the information reviewed by Mr. Rimokh contained any disclosure relating to any defects in the Track-Ready powertrain system or disclosed that not all models of the Shelby were capable of safe driving on public roadways or occasional track use. None of the salespeople at Saginaw Valley Ford disclosed this information either. If Ford had disclosed to Mr. Rimokh that his Shelby suffered from defects that would prevent the full use of his Shelby and pose safety risks, then he would not have purchased his Shelby and would have purchased another track-capable car.

101. Mr. Rimokh took delivery of his Shelby in December 2015. In March 2016, Mr. Rimokh decided to take his car to the track and experienced the Limp Mode during all three track sessions.

102. Mr. Rimokh contacted Ford on at least two occasions in 2016 to raise his concerns and seek relief. Ford indicated to Mr. Rimokh that a “fix” might be provided, but Ford failed to provide any resolution to address his concerns or provide satisfactory relief.

103. To date, Mr. Rimokh has not received any notification from Ford about any potential repair or aftermarket modification that would render his Shelby safe to drive on public roadways, and for occasional track use, that would also be compliant with Ford’s express warranties.

104. While Mr. Rimokh was aware at the time of purchase that his Shelby Mustang came with express warranties, he was not aware that executing any of the aftermarket repairs

specifically recommended by Ford, such as the addition of transmission or differential coolers, could void the express warranties for the entire Shelby.

105. The Track-Ready powertrain defects can cause unexpected Limp Mode manifestations thereby significantly impairing the safety, reliability, and operability of the Shelybs to such an extent that they are rendered unfit for the ordinary purpose of driving on public roadways.

106. Mr. Rimokh has not yet completed any repairs relating to the defective Track-Ready powertrain system.

107. Due to safety concerns and the Shelby's inability to be used for its intended purpose, Mr. Rimokh does not attempt to drive his Shelby on the track.

108. Mr. Rimokh paid the full MSRP for his Shelby.

109. Due to Ford's failure to disclose the Track-Ready and track-capable defects , Mr. Rimokh was denied the benefit- of- the- bargain at the time of sale for the car that he otherwise would not have. Plaintiff has also suffered additional damage relating to the cost of repair needed to make the car operate as a reasonable consumer would have expected.

### **3. Illinois Plaintiffs**

#### **a. Mark Hochsprung**

110. Plaintiff Mark Hochsprung resides in Oak Lawn, Illinois.

111. Mr. Hochsprung has been highly interested in cars his entire life and was really excited when he learned that Ford was offering once again a Shelby Mustang to consumers. In October 2015, Mr. Hochsprung ordered a 2016 Shelby Mustang with the Base Package from Warrensburg Ford, an authorized Ford dealer located in Warrensburg, Missouri. Mr. Hochsprung was interested in purchasing a Shelby that was capable of occasional track use and conducted most of his Shelby research from his home in Illinois. Mr. Hochsprung also communicated with

various dealers and was exposed to Ford's misrepresentations and/or omissions in that state and made his purchase decision there.

112. Mr. Hochsprung purchased and still owns this Shelby. Unknown to Mr. Hochsprung at the time he purchased the Shelby, the Shelby suffered from a defective Track-Ready powertrain system, which has caused him out-of-pocket loss, attempted and future attempted repairs, and diminished value of the Shelby. Ford knew about these defects at the time of Mr. Hochsprung's purchase but did not disclose the defects to Mr. Hochsprung. So, Mr. Hochsprung purchased his Shelby on the reasonable but mistaken belief that his Shelby would be safe and reliable on public roadways and that the Shelby was capable of occasional track use.

113. Mr. Hochsprung selected and ultimately purchased his Shelby, in part, because the Shelby was represented to be Track-Ready and track-capable and was marketed as Ford's iconic high-performance vehicle within the Mustang family. During his Shelby research, Mr. Hochsprung reviewed print and online advertisements similar to those included in this Second Amended Complaint. These advertisements contained images of the 2016 Shelby on race tracks and clearly stated how various components in all 2016 Shelbys were Track-Ready, or track-capable, and that these Shelbys offered many track-specific features.

114. Some of the features included in the 2016 Shelby were items that a reasonable consumer would believe to be present in a Shelby equipped for occasional track use, including a Flat-Plane Crank engine, which is designed specifically for very high revolutions. Mr. Hochsprung also noted other tracking features in the 2016 Shelby, such as the MagneRide suspension tuned for the track, enhanced electric steering, performance braking system, and

specific driver tunable software settings, including a setting specifically marked for Track Use Only. There are also “Track Apps” and a heads-up tachometer display.

115. Mr. Hochsprung also recalls reviewing the Ford website for the 2016 Shelby in detail. Mr. Hochsprung also spoke with Ford salespeople at Warrensburg Ford about his intent to use the Base Model 2016 Shelby for occasional track use and was not informed that he would be unable to do so. Ford also produced and distributed uniform materials to dealerships with the expectation that this information would be passed onto the consumer through dealer interactions.

116. None of the information reviewed by Mr. Hochsprung contained any disclosure relating to any defects in the Track-Ready powertrain system or disclosed that not all models of the Shelby were capable of safe driving on public roadways or occasional track use. Nor did the sales people at Warrensburg Ford disclose this information. If Ford had disclosed to Mr. Hochsprung that his Shelby suffered from defects that would prevent the full use of his Shelby and pose safety risks, then he would not have purchased his Shelby or would have paid less for it.

117. Mr. Hochsprung took delivery of his Shelby in January 2016. After taking delivery, he soon learned of the defects in his Shelby when reading about other 2016 Shelby owners on various internet forums who experienced Limp Mode in a matter of minutes while on the track. He also read on the forums and elsewhere that his Shelby could also experience Limp Mode while driving on public roadways. After learning about the safety implications inherent with a Shelby going into Limp Mode, Mr. Hochsprung decided not to take his Shelby to the track. Mr. Hochsprung had made a reservation to attend one of Ford’s Track Attack events, but drove a Ford performance loaner vehicle instead of his own.

118. To date, Mr. Hochsprung has not received any notification from Ford about any potential repair or aftermarket modification that would render his Shelby safe to drive on public roadways, or during occasional track use, that would also be compliant with Ford's express warranties.

119. While Mr. Hochsprung was aware at the time of purchase that his Shelby came with express warranties, he was not aware that executing any of the aftermarket repairs specifically recommended by Ford, such as the addition of transmission or differential coolers, can void the express warranties for the entire Shelby.

120. The Track-Ready powertrain defects can cause unexpected Limp Mode manifestations thereby significantly impairing the safety, reliability, and operability of the Shelbys to such an extent that they are rendered unfit for the ordinary purpose of driving on public roadways.

121. Mr. Hochsprung has not yet completed any repairs relating to the defective Track-Ready powertrain system.

122. Mr. Hochsprung paid the full MSRP, in addition to a \$5,000 premium, for his Shelby.

123. Due to Ford's failure to disclose the Track-Ready and track-capable defects , Mr. Hochsprung was denied the benefit- of- the- bargain at the time of sale and paid a premium for the car that he otherwise would not have. Plaintiff has also suffered additional damage relating to the cost of repair needed to make the car operate as a reasonable consumer would have expected.

**b. Frank Porter**

124. Plaintiff Frank Porter resides in Chicago, Illinois.

125. Plaintiff Porter is an avid sports car and tracking enthusiast. In April 2017, Mr. Porter purchased a 2016 Shelby Mustang with the Technology Package from Cucci Ford, an authorized Ford dealer located in East Dundee, Illinois. Mr. Porter was interested in purchasing a Shelby that was capable of occasional track use and conducted most of his Shelby research from his home in Illinois. He also attended an auto show in his home state, where he received Ford promotional materials on the Shelby and communicated with a dealer. Thus, Mr. Porter was exposed to Ford's misrepresentation and/or omissions in that state and made his purchase decision there.

126. Mr. Porter purchased and still owns this Shelby. Unknown to Mr. Porter at the time he purchased the Shelby, the Shelby suffered from a defective Track-Ready powertrain system, which has caused him out-of-pocket loss, attempted and future attempted repairs, and diminished value of the Shelby. Ford knew about these defects at the time of Mr. Porter's purchase but did not disclose the defects to Mr. Porter. So Mr. Porter purchased his Shelby on the reasonable but mistaken belief that his Shelby would be safe and reliable on public roadways and that the Shelby was capable of occasional track use.

127. Mr. Porter selected and ultimately purchased his Shelby, in part, because the Shelby was represented to be Track-Ready and track-capable and was marketed as Ford's iconic high-performance vehicle within the Mustang family. During his Shelby research, Mr. Porter reviewed print and online advertisements similar to those included in this Second Amended Complaint. These advertisements contained images of the 2016 Shelby on race tracks and clearly stated how various components in all 2016 Shelbys were Track-Ready, or track-capable, and that these Shelbys offered many track-specific features.

128. Some of the features included in the 2016 Shelby were items that a reasonable consumer would believe to be present in a Shelby equipped for occasional track use—including a Flat-Plane Crank engine, which is designed specifically for very high revolutions. Mr. Porter also noted other tracking features in the 2016 Shelby, such as the MagneRide suspension tuned for the track, enhanced electric steering, performance braking system, and specific driver tunable software settings, including a setting specifically marked for Track Use Only. There are also “Track Apps” and a heads-up tachometer display.

129. Mr. Porter recalls reviewing the Ford website for the 2016 Shelby in detail. Mr. Porter also spoke with Ford salespeople at a Chicago auto show about his intent to use the Technology Model 2016 Shelby for occasional track use and was not informed that he would be unable to do so. He also spent a significant amount of time at Cucci Ford interacting with the salespeople there. Ford also produced and distributed uniform materials to dealerships with the expectation that this information would be passed onto the consumer through dealer interactions.

130. None of the information reviewed by Mr. Porter contained any disclosure relating to any defects in the Track-Ready powertrain system or disclosed that not all models of the Shelby were capable of safe driving on public roadways or occasional track use. None of the salespeople at Cucci Ford disclosed this information either. If Ford had disclosed to Mr. Porter that his Shelby suffered from defects that would prevent the full use of his Shelby and pose safety risks, then he would not have purchased his Shelby or would have paid less for it.

131. Mr. Porter purchased his Shelby in April 2017. In mid-2017, Mr. Porter learned of the defects in his Shelby when, while driving his car on a track, his car went into Limp

Mode. He lost power and had to pull off to the side of the road. He has since experienced Limp Mode several more times while attempting to track his car.

132. In November 2017, Mr. Porter contacted the Cucci Ford dealership to raise his concerns and seek relief. Ford failed to provide any resolution to address his concerns or provide satisfactory relief.

133. To date, Mr. Porter has not received any notification from Ford about any potential repair or aftermarket modification that would render his Shelby safe to drive on public roadways, or during occasional track use, that would also be compliant with Ford's express warranties.

134. While Mr. Porter was aware at the time of purchase that his Shelby came with express warranties, he was not aware that executing any of the aftermarket repairs specifically recommended by Ford, such as a new transmission or cooler kit, can void the express warranties for the entire Shelby.

135. Mr. Porter has not yet completed any repairs relating to the defective Track-Ready powertrain system.

136. Mr. Porter paid approximately \$59,174 for his Shelby GT350.

137. Due to Ford's failure to disclose the Track-Ready and track-capable defects, the Shelby vehicles were not only sold as not Track-Ready, but they could also be unsafe on the road. As such, Mr. Porter was denied the benefit-of-the-bargain at the time of sale and paid a premium for the car that he otherwise would not have. Plaintiff has also suffered additional damage relating to the cost of repair needed to make the car operate as a reasonable consumer would have expected.



**4. Missouri Plaintiff**

**a. Greg Roberts**

138. Plaintiff Greg Roberts resides in Springfield, Missouri.

139. In the fall of 2016, Mr. Roberts purchased a 2016 Shelby Mustang with the Technology Package from Friendly Ford, an authorized Ford dealer located in Springfield, Missouri. Mr. Roberts was interested in purchasing a Shelby that was capable of occasional track use and conducted most of his Shelby research in Missouri. As such, he was exposed to Ford's misrepresentations and/or omissions in that state and made his purchase decision there.

140. Mr. Roberts purchased and still owns this Shelby. Unknown to Mr. Roberts at the time he purchased the Shelby, the Shelby suffered from a defective Track-Ready powertrain system, which has caused him out-of-pocket loss, attempted and future attempted repairs, and diminished value of the Shelby. Ford knew about these defects at the time of Mr. Roberts' purchase but did not disclose the defects to Mr. Roberts. So, Mr. Roberts purchased his Shelby on the reasonable but mistaken belief that his Shelby would be safe and reliable on public roadways and that the Shelby was capable of occasional track use.

141. Mr. Roberts selected and ultimately purchased his Shelby, in part, because the Shelby was represented to be Track-Ready and track-capable and was marketed as Ford's iconic high-performance vehicle within the Mustang family. During his Shelby research, Mr. Roberts reviewed print and online advertisements similar to those in this Second Amended Complaint. These advertisements contained images of the 2016 Shelby on race tracks and clearly stated how various components in all 2016 Shelseys were Track-Ready, or track-capable, and that these Shelseys offered many track-specific features.

142. Some of the features included in the 2016 Shelby were items that a reasonable consumer would believe to be present in a Shelby equipped for occasional track use, including a

Flat-Plane Crank engine, which is designed specifically for very high revolutions. Mr. Roberts also noted other tracking features in the 2016 Shelby, such as the MagneRide suspension tuned for the track, enhanced electric steering, performance braking system, and specific driver tunable software settings, including a setting specifically marked for Track Use Only. There are also “Track Apps” and a heads-up tachometer display.

143. Mr. Roberts also recalls reviewing the Ford website for the 2016 Shelby in detail. Mr. Roberts also spoke with Ford salespeople at Friendly Ford about his intent to use the Technology Model 2016 Shelby for occasional track use and was not informed that he would be unable to do so. Ford also produced and distributed uniform materials to dealerships with the expectation that this information would be passed onto the consumer through dealer interactions.

144. None of the information reviewed by Mr. Roberts contained any disclosure relating to any defects in the Track-Ready powertrain system or disclosed that not all models of the Shelby were capable of safe driving on public roadways or occasional track use. Nor did the sales people at Friendly Ford disclose this information. If Ford had disclosed to Mr. Roberts that his Shelby suffered from defects that would prevent the full use of his Shelby and pose safety risks, then he would not have purchased his Shelby or would have paid less for it.

145. Mr. Roberts took delivery of his Shelby in October 2016. A few months later, Mr. Roberts learned of the defects in his Shelby when reading about other 2016 Shelby owners on various internet forums who experienced Limp Mode in a matter of minutes while on the track. He also read on the forums and elsewhere that his Shelby could also experience Limp Mode while driving on public roadways.

146. Mr. Roberts also conducted research online and learned that while aftermarket installations were available at the owner's cost, installing these modifications may violate Ford's express warranties.

147. To date, Mr. Roberts has not received any other notification from Ford about any potential repair or aftermarket modification that would render his Shelby safe to drive on public roadways, or during occasional track use, that would also be compliant with Ford's express warranties.

148. While Mr. Roberts was aware at the time of purchase that his Shelby came with express warranties, he was not aware that executing any of the aftermarket repairs specifically recommended by Ford, such as the addition of transmission or differential coolers, could void the express warranties for the entire Shelby.

149. The Track-Ready powertrain defects can cause unexpected Limp Mode manifestations thereby significantly impairing the safety, reliability, and operability of the Shelybs to such an extent that they are rendered unfit for the ordinary purpose of driving on public roadways.

150. Mr. Roberts has not yet completed any repairs relating to the defective Track-Ready powertrain system.

151. Mr. Roberts paid the full MSRP for his Shelby.

152. Due to Ford's failure to disclose the Track-Ready and track-capable defects , Mr. Roberts was denied the benefit- of- the- bargain at the time of sale for the car that he otherwise would not have. Plaintiff has also suffered additional damage relating to the cost of repair needed to make the car operate as a reasonable consumer would have expected.

**5. New Jersey Plaintiff**

**a. Wayne Linn**

153. Plaintiff Wayne Linn resides in Pennsville, New Jersey.

154. Mr. Linn has always been a “Ford Guy” and enjoys collecting cars. In September 2015, Mr. Linn ordered a 2016 Shelby Mustang with the Technology Package from Carman Ford, an authorized Ford dealer located in New Castle, Delaware. Mr. Linn was interested in purchasing a Shelby that was capable of occasional track use and conducted most of his Shelby research from his home in New Jersey. Mr. Linn also communicated with various dealers and was exposed to Ford’s misrepresentations and/or omissions in that state and made his purchase decision there.

155. Mr. Linn purchased and still owns this Shelby. Unknown to Mr. Linn at the time he purchased the Shelby, the Shelby suffered from a defective Track-Ready powertrain system, which has caused him out-of-pocket loss, attempted and future attempted repairs, and diminished value of the Shelby. Ford knew about these defects at the time of Mr. Linn’s purchase but did not disclose the defects to Mr. Linn. So, Mr. Linn purchased his Shelby on the reasonable but mistaken belief that his Shelby would be safe and reliable on public roadways and that the Shelby was capable of occasional track use.

156. Mr. Linn selected and ultimately purchased his Shelby, in part, because the Shelby was represented to be Track-Ready and track-capable and was marketed as Ford’s iconic high-performance vehicle within the Mustang family. During his Shelby research, Mr. Linn reviewed print and online advertisements similar to those in this Second Amended Complaint. These advertisements contained images of the 2016 Shelby on race tracks and clearly stated how various components in all 2016 Shelseys were Track-Ready, or track-capable, and that these Shelseys offered many track-specific features.

157. Some of the features included in the 2016 Shelby were items that a reasonable consumer would believe to be present in a Shelby equipped for occasional track use, including a Flat-Plane Crank engine, which is designed specifically for very high revolutions. Mr. Linn also noted other tracking features in the 2016 Shelby, such as the MagneRide suspension tuned for the track, enhanced electric steering, performance braking system, and specific driver tunable software settings, including a setting specifically marked for Track Use Only. There are also “Track Apps” and a heads-up tachometer display.

158. Mr. Linn also recalls reviewing the Ford website for the 2016 Shelby in detail. Mr. Linn also spoke with Ford salespeople at Carmen Ford about his intent to use the Technology Model 2016 Shelby for occasional track use and was not informed that he would be unable to do so. Ford also produced and distributed uniform materials to dealerships with the expectation that this information would be passed onto the consumer through dealer interactions.

159. None of the information reviewed by Mr. Linn contained any disclosure relating to any defects in the Track-Ready powertrain system or disclosed that not all models of the Shelby were capable of safe driving on public roadways or occasional track use. Nor did the sales people at Carmen Ford disclose this information. If Ford had disclosed to Mr. Linn that his Shelby suffered from defects that would prevent the full use of his Shelby and pose safety risks, then he would not have purchased his Shelby or would have paid less for it.

160. Mr. Linn took delivery of his Shelby in November 2015. Soon after taking delivery, Mr. Linn learned of the defects in his Shelby when reading about other 2016 Shelby owners on various internet forums who experienced Limp Mode in a matter of minutes while on the track. He also read on the forums and elsewhere that his Shelby could also experience Limp

Mode while driving on public roadways. After learning about the safety implications inherent with a Shelby going into Limp Mode, Mr. Linn decided not to take his Shelby to the track.

161. To date, Mr. Linn has not received any other notification from Ford about any potential repair or aftermarket modification that would render his Shelby safe to drive on public roadways, or during occasional track use, that would also be compliant with Ford's express warranties.

162. While Mr. Linn was aware at the time of purchase that his Shelby came with express warranties, he was not aware that executing any of the aftermarket repairs specifically recommended by Ford, such as the addition of transmission or differential coolers, could void the express warranties for the entire Shelby.

163. The Track-Ready powertrain defects can cause unexpected Limp Mode manifestations thereby significantly impairing the safety, reliability, and operability of the Shelybs to such an extent that they are rendered unfit for the ordinary purpose of driving on public roadways.

164. Mr. Linn has not yet completed any repairs relating to the defective Track-Ready powertrain system.

165. Mr. Linn paid the full MSRP for his Shelby, in addition to a \$6,000 premium.

166. Due to Ford's failure to disclose the Track-Ready and track-capable defects , Mr. Linn was denied the benefit- of- the- bargain at the time of sale and paid a premium for the car that he otherwise would not have. Plaintiff has also suffered additional damage relating to the cost of repair needed to make the car operate as a reasonable consumer would have expected.

**6. New York Plaintiffs**

**a. Stephen and Jill Kelly**

167. Plaintiffs Stephen and Jill Kelly (the “Kelly Plaintiffs”) reside in Oneida, New York.

168. The Kelly Plaintiffs are track enthusiasts. In January 2016, the Kelly Plaintiffs purchased a 2016 Shelby Mustang with the Technology Package from Fenton Ford, an authorized Ford dealer located in Camden, New York. The Kelly Plaintiffs were interested in purchasing a Shelby that was capable of occasional track use and conducted most of their Shelby research from their home in New York. The Kelly Plaintiffs also communicated with various dealers and were exposed to Ford’s misrepresentations and/or omissions in that state and made their purchase decision there.

169. The Kelly Plaintiffs purchased and still own this Shelby. Unknown to the Kelly Plaintiffs at the time they purchased the Shelby, the Shelby suffered from a defective Track-Ready powertrain system, which has caused them out-of-pocket loss, future attempted repairs, and diminished value of the Shelby. Ford knew about these defects at the time of purchase but did not disclose the defects to the Kelly Plaintiffs. So the Kelly Plaintiffs purchased their Shelby on the reasonable but mistaken belief that their Shelby would be safe and reliable on public roadways and that the Shelby was capable of occasional track use.

170. The Kelly Plaintiffs selected and ultimately purchased their Shelby, in part, because the Shelby was represented to be Track-Ready and track-capable and was marketed as Ford’s iconic high-performance vehicle within the Mustang family. During their Shelby research, the Kelly Plaintiffs reviewed print and online advertisements similar to those included in this Second Amended Complaint. These advertisements contained images of the 2016 Shelby

on race tracks and clearly stated how various components in all 2016 Shelbys were Track-Ready, or track-capable, and that these Shelbys offered many track-specific features.

171. Some of the features included in the 2016 Shelby were items that a reasonable consumer would believe to be present in a Shelby equipped for occasional track use—including a Flat-Plane Crank engine, which is designed specifically for very high revolutions. The Kelly Plaintiffs also noted other tracking features in the 2016 Shelby, such as the MagneRide suspension tuned for the track, enhanced electric steering, performance braking system, and specific driver tunable software settings, including a setting specifically marked for Track Use Only. There are also “Track Apps” and a heads-up tachometer display.

172. The Kelly Plaintiffs recall reviewing the Ford website for the 2016 Shelby in detail. The Kelly Plaintiffs also spoke with Ford salespeople at Fenton Ford about their intent to use the Technology Model 2016 Shelby for occasional track use and were not informed that they would be unable to do so. Ford also produced and distributed uniform materials to dealerships with the expectation that this information would be passed onto the consumer through dealer interactions.

173. None of the information reviewed by the Kelly Plaintiffs contained any disclosure relating to any defects in the Track-Ready powertrain system or disclosed that not all models of the Shelby were capable of safe driving on public roadways or occasional track use. None of the salespeople at the various Ford dealerships disclosed this information either. If Ford had disclosed to the Kelly Plaintiffs that their Shelby suffered from defects that would prevent the full use of their Shelby and pose safety risks, then they would not have purchased their Shelby or would have paid less for it.



174. The Kelly Plaintiffs first experienced the defects in their Shelby when their car went into Limp Mode on July 12, 2016 at Watkins Glen International race track.

175. Around July 22, 2016, the Kelly Plaintiffs contacted Ford to express their concerns and seek relief. At no point during these encounters did Ford provide any resolution to address their concerns or provide satisfactory relief.

176. To date, the Kelly Plaintiffs have never received any notification from Ford about any potential repair or aftermarket modification that would repair the overheating issue and render their Shelby safe to drive on public roadways, or during occasional track use, that would also be compliant with Ford's express warranties.

177. While the Kelly Plaintiffs were aware at the time of purchase that their Shelby came with express warranties, they were not aware that executing any of the aftermarket repairs specifically recommended by Ford, such as the addition of transmission or differential coolers, could void the express warranties for the entire Shelby.

178. The Track-Ready powertrain defects can cause unexpected Limp Mode manifestations thereby significantly impairing the safety, reliability, and operability of the Shelybs to such an extent that they are rendered unfit for the ordinary purpose of driving on public roadways.

179. The Kelly Plaintiffs have not yet completed any repairs relating to the defective Track-Ready powertrain system.

180. The Kelly Plaintiffs paid the full MSRP for their Shelby.

181. Due to Ford's failure to disclose the Track-Ready and track-capable defects , Plaintiffs were denied the benefit- of- the- bargain at the time of sale for the car that they would

not have. Plaintiffs have also suffered additional damage relating to the cost of repair needed to make the car operate as a reasonable consumer would have expected.

**7. Oregon Plaintiff**

**a. Josh Long**

182. At all times relevant to this lawsuit, Plaintiff Josh Long resided in Portland, Oregon,

183. Plaintiff Long is an avid sports car and tracking enthusiast. In May 2016, Mr. Long purchased a 2016 Shelby Mustang with the Technology Package from Landmark Ford, an authorized Ford dealer located in Tigard, Oregon. Mr. Long was interested in purchasing a Shelby that was capable of occasional track use and conducted his Shelby research from his home in Oregon. He viewed Ford's materials online and also spoke with the Ford sales people at the Ford dealership. Thus, he was exposed to Ford's misrepresentation and/or omissions in that Oregon and purchased his car there.

184. Mr. Long purchased and still owns this Shelby. Unknown to Mr. Long at the time he purchased the Shelby, the Shelby suffered from a defective Track-Ready powertrain system, which has caused him out-of-pocket loss, attempted and future attempted repairs, and diminished value of the Shelby. Ford knew about these defects at the time of Mr. Long's purchase but did not disclose the defects to Mr. Long. So Mr. Long purchased his Shelby on the reasonable but mistaken belief that his Shelby would be safe and reliable on public roadways and that the Shelby was capable of occasional track use.

185. Mr. Long selected and ultimately purchased his Shelby, in part, because the Shelby was represented to be Track-Ready and track-capable and was marketed as Ford's iconic high-performance vehicle within the Mustang family. During his Shelby research, Mr. Long reviewed print and online advertisements similar to those included in this Second Amended

Complaint. These advertisements contained images of the 2016 Shelby on race tracks and clearly stated how various components in all 2016 Shelbys were Track-Ready, or track-capable, and that these Shelbys offered many track-specific features.

186. Some of the features included in the 2016 Shelby were items that a reasonable consumer would believe to be present in a Shelby equipped for occasional track use—including a Flat-Plane Crank engine, which is designed specifically for very high revolutions. Mr. Long also noted other tracking features in the 2016 Shelby, such as the MagneRide suspension tuned for the track, enhanced electric steering, performance braking system, and specific driver tunable software settings, including a setting specifically marked for Track Use Only. There are also “Track Apps” and a heads-up tachometer display.

187. Mr. Long recalls reviewing the Ford website for the 2016 Shelby in detail. Mr. Long also spoke with Ford salespeople at the dealership in Tigard, Oregon about his intent to use the Technology Model 2016 Shelby for occasional track use and was not informed that he would be unable to do so. Ford also produced and distributed uniform materials to dealerships with the expectation that this information would be passed onto the consumer through dealer interactions.

188. None of the information reviewed by Mr. Long contained any disclosure relating to any defects in the Track-Ready powertrain system or disclosed that not all models of the Shelby were capable of safe driving on public roadways or occasional track use. None of the salespeople at Landmark Ford disclosed this information either. If Ford had disclosed to Mr. Long that his Shelby suffered from defects that would prevent the full use of his Shelby and pose safety risks, then he would not have purchased his Shelby or would have paid less for it.

189. Mr. Long placed his order for his Shelby on March 16, 2016. Not long after Mr. Long received his Shelby, in the fall of 2016, Mr. Long's car went into Limp Mode while he was driving the car on a public roadway. He had to pull off to the side of the road and allow the car to cool down. Mr. Long has since experienced Limp Mode on the track, where it occurs every 10-15 minutes during a track session.

190. In February 2017, Mr. Long has contacted the Landmark Ford dealership several times to raise his concerns and seek relief. Mr. Long also called Ford to report the defect. Ford failed to provide any resolution to address his concerns or provide satisfactory relief.

191. To date, Mr. Long has not received any notification from Ford about any potential repair or aftermarket modification that would render his Shelby safe to drive on public roadways, or during occasional track use, that would also be compliant with Ford's express warranties.

192. While Mr. Long was aware at the time of purchase that his Shelby came with express warranties, he was not aware that executing any of the aftermarket repairs specifically recommended by Ford, such as a new transmission or cooler kit, can void the express warranties for the entire Shelby.

193. The Track-Ready powertrain defects can cause unexpected Limp Mode manifestations thereby significantly impairing the safety, reliability, and operability of the Shelbys to such an extent that they are rendered unfit for the ordinary purpose of driving on public roadways.

194. Mr. Long has not yet completed any repairs relating to the defective Track-Ready powertrain system.

195. Mr. Long paid the full MSRP price in addition to a premium of approximately \$10,000 for his Shelby GT350.

196. Due to Ford's failure to disclose the Track-Ready and track-capable defects, the Shelby vehicles were not only sold as not Track-Ready, but they could also be unsafe on the road. As such, Mr. Long was denied the benefit- of- the- bargain at the time of sale and paid a premium for the car that he otherwise would not have. Plaintiff has also suffered additional damage relating to the cost of repair needed to make the car operate as a reasonable consumer would have expected.

**8. Pennsylvania Plaintiff**

**a. Jose Cruz**

197. Plaintiff Jose Cruz resides in Honesdale, Pennsylvania.

198. Mr. Cruz has been a track enthusiast for the last six years. In August 2015, Mr. Cruz ordered a 2016 Shelby Mustang with the Technology Package from Phil's Ford of Port Jervis, an authorized Ford dealer located in Port Jervis, New York. Mr. Cruz was interested in purchasing a Shelby that was capable of occasional track use and conducted most of his Shelby research from his home in Pennsylvania. Mr. Cruz also communicated with various dealers and was exposed to Ford's misrepresentations and/or omissions in that state and made his purchase decision there.

199. Mr. Cruz purchased and still owns this Shelby. Unknown to Mr. Cruz at the time he purchased the Shelby, the Shelby suffered from a defective Track-Ready powertrain system, which has caused him out-of-pocket loss, attempted and future attempted repairs, and diminished value of the Shelby. Ford knew about these defects at the time of Mr. Cruz's purchase but did not disclose the defects to Mr. Cruz. So, Mr. Cruz purchased his Shelby on the reasonable but mistaken belief that his Shelby would be safe and reliable on public roadways and that the Shelby was capable of occasional track use.

200. Mr. Cruz selected and ultimately purchased his Shelby, in part, because the Shelby was represented to be Track-Ready and track-capable and was marketed as Ford's iconic high-performance vehicle within the Mustang family. During his Shelby research, Mr. Cruz reviewed print and online advertisements similar to those in this Second Amended Complaint. These advertisements contained images of the 2016 Shelby on race tracks and clearly stated how various components in all 2016 Shelbys were Track-Ready, or track-capable, and that these Shelbys offered many track-specific features.

201. Some of the features included in the 2016 Shelby were items that a reasonable consumer would believe to be present in a Shelby equipped for occasional track use, including a Flat-Plane Crank engine, which is designed specifically for very high revolutions. Mr. Cruz also noted other tracking features in the 2016 Shelby, such as the MagneRide suspension tuned for the track, enhanced electric steering, performance braking system, and specific driver tunable software settings, including a setting specifically marked for Track Use Only. There are also "Track Apps" and a heads-up tachometer display.

202. Mr. Cruz also recalls reviewing the Ford website for the 2016 Shelby in detail. Mr. Cruz also spoke with Ford salespeople at Phil's Ford about his intent to use the Technology Model 2016 Shelby for occasional track use and was not informed that he would be unable to do so. Ford also produced and distributed uniform materials to dealerships with the expectation that this information would be passed onto the consumer through dealer interactions.

203. None of the information reviewed by Mr. Cruz contained any disclosure relating to any defects in the Track-Ready powertrain system or disclosed that not all models of the Shelby were capable of safe driving on public roadways or occasional track use. Nor did the sales people at Phil's Ford disclose this information. If Ford had disclosed to Mr. Cruz that his

Shelby suffered from defects that would prevent the full use of his Shelby and pose safety risks, then he would not have purchased his Shelby or would have paid less for it.

204. Mr. Cruz took delivery of his Shelby in April 2016. About a month after taking delivery, Mr. Cruz experienced Limp Mode while on a public road. A few months later, he experienced another Limp Mode manifestation while driving on Route 209 in Pennsylvania.

205. Mr. Cruz raised his concerns about the Limp Mode manifestation and requested relief with the service representatives at Phil's Ford and at Gibbon's Ford. The service representatives told Mr. Cruz they were unaware of any issues with the Shelby and was unable to provide Mr. Cruz with any assistance or resolution to address his concerns or provide satisfactory relief.

206. In April 2017, Mr. Cruz also contacted Ford to raise his concerns about Limp Mode and request relief. Ford recommended the purchase of a Ford-branded cooler kit and an external pump manufactured by a third party, but also indicated they would not cover the cost of the repair for the transmission cooler. Ford recommended the purchase of a Ford-branded cooler kit and a third-party external electric pump. Ford indicated they would not cover the cost of the repair for the transmission cooler. Ford also indicated that as of April 2017, they had no repair or any other type of solution for the differential cooler. Ford also did not clarify with Plaintiff whether the proposed installation would violate any of Ford's express warranties. As such, Ford failed to provide any resolution to address his concerns or provide satisfactory relief.

207. To date, Mr. Cruz has not received any other notification from Ford about any potential repair or aftermarket modification that would render his Shelby safe to drive on public roadways, or during occasional track use, that would also be compliant with Ford's express warranties.

208. While Mr. Cruz was aware at the time of purchase that his Shelby came with express warranties, he was not aware that executing any of the aftermarket repairs specifically recommended by Ford, such as the addition of transmission or differential coolers, could void the express warranties for the entire Shelby.

209. The Track-Ready powertrain defects can cause unexpected Limp Mode manifestations thereby significantly impairing the safety, reliability, and operability of the Shelbys to such an extent that they are rendered unfit for the ordinary purpose of driving on public roadways.

210. Mr. Cruz has not yet completed any repairs relating to the defective Track-Ready powertrain system.

211. Mr. Cruz paid \$53,000 for his Shelby.

212. Due to Ford's failure to disclose the Track-Ready and track-capable defects , Mr. Cruz was denied the benefit- of- the- bargain at the time of sale and paid a premium for the car that he otherwise would not have. Plaintiff has also suffered additional damage relating to the cost of repair needed to make the car operate as a reasonable consumer would have expected.

## **9. Tennessee Plaintiff**

### **a. Attila Gondan**

213. Plaintiff Attila Gondan resides in Germantown, Tennessee.

214. Mr. Gondan was looking forward to purchasing his fourth Mustang. In August 2015, Mr. Gondan ordered a 2016 Shelby Mustang with the Technology Package from Landers Ford, an authorized Ford dealer located in Collierville, Tennessee. Mr. Gondan was interested in purchasing a Shelby that was capable of occasional track use and conducted most of his Shelby research from his home in Tennessee. Mr. Gondan also communicated with various dealers and



was exposed to Ford's misrepresentations and/or omissions in that state and made his purchase decision there.

215. Mr. Gondan purchased and still owns this Shelby. Unknown to Mr. Gondan at the time he purchased his Shelby, the Shelby suffered from a defective Track-Ready powertrain system, which has caused him out-of-pocket loss, attempted and future attempted repairs, and diminished value of the Shelby. Ford knew about these defects at the time of Mr. Gondan's purchase but did not disclose the defects to Mr. Gondan. So, Mr. Gondan purchased his Shelby on the reasonable but mistaken belief that his Shelby would be safe and reliable on public roadways and that the Shelby was capable of occasional track use.

216. Mr. Gondan selected and ultimately purchased his Shelby, in part, because the Shelby was represented to be Track-Ready and track-capable and was marketed as Ford's iconic high-performance vehicle within the Mustang family. During his vehicle research, Mr. Gondan reviewed print and online advertisements similar to those included in this Second Amended Complaint. These advertisements contained images of the 2016 Shelby on race tracks and clearly stated how various components in all 2016 Shelbys were Track-Ready, or track-capable, and that these Shelbys offered many track-specific features.

217. Some of the features included in the 2016 Shelby were items that a reasonable consumer would believe to be present in a Shelby equipped for occasional track use—including a Flat-Plane Crank engine, which is designed specifically for very high revolutions. Mr. Gondan also noted other tracking features in the 2016 Shelby, such as the MagneRide suspension tuned for the track, enhanced electric steering, performance braking system, and specific driver tunable software settings, including a setting specifically marked for Track Use Only. There are also "Track Apps" and a heads-up tachometer display.

218. Mr. Gondan also recalls reviewing the Ford website for the 2016 Shelby in detail. Mr. Gondan also spoke with Ford salespeople at Landers Ford about his intent to use the Technology Model 2016 Shelby for occasional track use and was not informed that he would be unable to do so. Ford also produced and distributed uniform materials to dealerships with the expectation that this information would be passed onto the consumer through dealer interactions.

219. None of the information reviewed by Mr. Gondan contained any disclosure relating to any defects in the Track-Ready powertrain system or disclosed that not all models of the Shelby were capable of safe driving on public roadways or occasional track use. Nor did the sales people at Landers Ford disclose this information. If Ford had disclosed to Mr. Gondan that his Shelby suffered from defects that would prevent the full use of his Shelby and pose safety risks, then he would not have purchased his Shelby or would have paid less for it.

220. Mr. Gondan took delivery of his Shelby in April 2016. He first experienced Limp Mode when he took his car to the NOLA race track in Louisiana. In his third session, he unexpectedly went into Limp Mode on the track. He decided to end his track day to prevent any damage to his vehicle. He has not taken it to the track since.

221. Mr. Gondan also conducted research relating to the defects in his Shelby when reading about other 2016 Shelby owners on various internet forums who experienced Limp Mode in a matter of minutes while on the track.

222. Mr. Gondan called Landers Ford to raise his concerns and seek relief. The service representative at Landers Ford said they would install the transmission cooler and differential cooler at a cost \$695 for the transmission and \$2,295 for the differential cooler, plus labor costs and an additional external pump (valued between \$500 and \$600). The Transmission with internal pump was \$4,800. The dealership did not indicate whether these repairs would violate

Ford's express warranties associated with Mr. Gondan's Shelby. As such, Ford failed to provide any resolution to address his concerns or provide satisfactory relief.

223. To date, Mr. Gondan has not received any notification from Ford about any potential repair or aftermarket modification that would render his Shelby safe to drive on public roadways, or during occasional track use, that would also be compliant with Ford's express warranties.

224. While Mr. Gondan was aware at the time of purchase that his Shelby came with express warranties, he was not aware that executing any of the aftermarket repairs specifically recommended by Ford, such as a new transmission or cooler kit, can void the express warranties for the entire Shelby.

225. The Track-Ready powertrain defects can cause unexpected Limp Mode manifestations thereby significantly impairing the safety, reliability, and operability of the Shelbys to such an extent that they are rendered unfit for the ordinary purpose of driving on public roadways.

226. Mr. Gondan has installed a transmission cooler to his Shelby. However, the transmission cooler kit that Ford recommended did not come with the appropriate pump. As such an external pump had to be added, in addition to the transmission cooler kit. This additional part necessitated additional costs, as the plumbing had to be modified to accommodate different transmission connection points. The differential coolers have yet to be addressed.

227. Mr. Gondan paid the full MSRP, in addition to a \$5,000 premium, for his Shelby.

228. Due to Ford's failure to disclose the Track-Ready and track-capable defects , Mr. Gondan was denied the benefit- of- the- bargain at the time of sale and paid a premium for

the car that he otherwise would not have. Plaintiff has also suffered additional damage relating to the cost of repair needed to make the car operate as a reasonable consumer would have expected.

**10. Texas Plaintiffs**

**a. Herbert Alley**

229. Plaintiff Herbert Alley resides in Magnolia, Texas.

230. Plaintiff Alley first became interested in sports cars and tracking in 1984, when he purchased a used 1983 Mustang GT. In February 2016, Mr. Alley purchased a 2016 Shelby Mustang with the Technology Package from Spikes Ford, an authorized Ford dealer located in Mission, Texas. Mr. Alley was interested in purchasing a Shelby that was capable of occasional track use and conducted most of his Shelby research from his home in Texas. Mr. Alley also communicated with various dealers and was exposed to Ford's misrepresentation and/or omissions in that state and made his purchase decision there.

231. Mr. Alley purchased and still owns this Shelby. Unknown to Mr. Alley at the time he purchased the Shelby, the Shelby suffered from a defective Track-Ready powertrain system, which has caused him out-of-pocket loss, attempted and future attempted repairs, and diminished value of the Shelby. Ford knew about these defects at the time of Mr. Alley's purchase but did not disclose the defects to Mr. Alley. So Mr. Alley purchased his Shelby on the reasonable but mistaken belief that his Shelby would be safe and reliable on public roadways and that the Shelby was capable of occasional track use.

232. Mr. Alley selected and ultimately purchased his Shelby, in part, because the Shelby was represented to be Track-Ready and track-capable and was marketed as Ford's iconic high-performance vehicle within the Mustang family. During his Shelby research, Mr. Alley reviewed print and online advertisements similar to those included in this Second Amended Complaint. These advertisements contained images of the 2016 Shelby on race tracks and clearly

stated how various components in all 2016 Shelbys were Track-Ready, or track-capable, and that these Shelbys offered many track-specific features.

233. Some of the features included in the 2016 Shelby were items that a reasonable consumer would believe to be present in a Shelby equipped for occasional track use—including a Flat-Plane Crank engine, which is designed specifically for very high revolutions. Mr. Alley also noted other tracking features in the 2016 Shelby, such as the MagneRide suspension tuned for the track, enhanced electric steering, performance braking system, and specific driver tunable software settings, including a setting specifically marked for Track Use Only. There are also “Track Apps” and a heads-up tachometer display.

234. Mr. Alley recalls reviewing the Ford website for the 2016 Shelby in detail. Mr. Alley also spoke with Ford salespeople at Spikes Ford about his intent to use the Technology Model 2016 Shelby for occasional track use and was not informed that he would be unable to do so. He also spent an entire day at Spikes Ford at the time of purchase learning from Ford salespeople, based on information provided by Ford, on how to use the package options and track features that came with his Shelby. Ford also produced and distributed uniform materials to dealerships with the expectation that this information would be passed onto the consumer through dealer interactions.

235. None of the information reviewed by Mr. Alley contained any disclosure relating to any defects in the Track-Ready powertrain system or disclosed that not all models of the Shelby were capable of safe driving on public roadways or occasional track use. None of the salespeople at Spikes Ford disclosed this information either. If Ford had disclosed to Mr. Alley that his Shelby suffered from defects that would prevent the full use of his Shelby and pose safety risks, then he would not have purchased his Shelby or would have paid less for it.

236. Mr. Alley took delivery of his Shelby in February 2016. In mid-2016, Mr. Alley learned of the defects in his Shelby when reading about other 2016 Shelby owners on various internet forums who experienced Limp Mode in a matter of minutes while on the track. He also read on the forums and elsewhere that his Shelby could also experience Limp Mode while driving on public roadways. After learning about the safety implications inherent with a Shelby going into Limp Mode, Mr. Alley decided not to take his Shelby to the track.

237. In October 2016, Mr. Alley contacted Ford to raise his concerns and seek relief. Ford failed to provide any resolution to address his concerns or provide satisfactory relief.

238. To date, Mr. Alley has not received any notification from Ford about any potential repair or aftermarket modification that would render his Shelby safe to drive on public roadways, or during occasional track use, that would also be compliant with Ford's express warranties.

239. While Mr. Alley was aware at the time of purchase that his Shelby came with express warranties, he was not aware that executing any of the aftermarket repairs specifically recommended by Ford, such as a new transmission or cooler kit, can void the express warranties for the entire Shelby.

240. The Track-Ready powertrain defects can cause unexpected Limp Mode manifestations thereby significantly impairing the safety, reliability, and operability of the Shelbys to such an extent that they are rendered unfit for the ordinary purpose of driving on public roadways.

241. Mr. Alley has not yet completed any repairs relating to the defective Track-Ready powertrain system.

242. Mr. Alley paid the full MSRP, in addition to a \$5000 premium, for his Shelby GT350.

243. Due to Ford's failure to disclose the Track-Ready and track-capable defects, the Shelby vehicles were not only sold as not Track-Ready, but they could also be unsafe on the road. As such, Mr. Alley was denied the benefit-of-the-bargain at the time of sale and paid a premium for the car that he otherwise would not have. Plaintiff has also suffered additional damage relating to the cost of repair needed to make the car operate as a reasonable consumer would have expected.

**b. Eric Kamperman**

244. Plaintiff Eric Kamperman resides in Mesquite, Texas.

245. Mr. Kamperman is a performance car enthusiast. In November 2015, Mr. Kamperman began a search to purchase a Shelby Mustang. In December 2015, Mr. Kamperman purchased the Shelby with the Technology Package from Town East Ford, an authorized Ford dealer located in Mesquite, Texas. Mr. Kamperman was interested in purchasing a Shelby that was capable of occasional track use and conducted most of his Shelby research from his home in Texas. Mr. Kamperman also communicated with various dealers and was exposed to Ford's misrepresentations and/or omissions in that state and made his purchase decision there.

246. Mr. Kamperman purchased and still owns this Shelby. Unknown to Mr. Kamperman at the time he purchased the Shelby, the Shelby suffered from a defective Track-Ready powertrain system, which has caused him out-of-pocket loss, attempted and future attempted repairs, and diminished value of the Shelby. Ford knew about these defects at the time of Mr. Kamperman's purchase but did not disclose the defects to Mr. Kamperman. So, Mr. Kamperman purchased his Shelby on the reasonable but mistaken belief that his Shelby

would be safe and reliable on public roadways and that the Shelby was capable of occasional track use.

247. Mr. Kamperman selected and ultimately purchased his Shelby, in part, because the Shelby was represented to be Track-Ready and track-capable and was marketed as Ford's iconic race Shelby within the Mustang family. During his vehicle research, Mr. Kamperman reviewed print and online advertisements similar to those included in this Second Amended Complaint. These advertisements contained images of the 2016 Shelby on race tracks and clearly stated how various components in all 2016 Shelbys were Track-Ready, or track-capable, and that these Shelbys offered many track-specific features.

248. Some of the features included in the 2016 Shelby were items that a reasonable consumer would believe to be present in a Shelby equipped for occasional track use—including a Flat-Plane Crank engine, which is designed specifically for very high revolutions. Mr. Kamperman also noted other tracking features in the 2016 Shelby, such as the MagneRide suspension tuned for the track, enhanced electric steering, performance braking system, and specific driver tunable software settings, including a setting specifically marked for Track Use Only. There are also "Track Apps" and a heads-up tachometer display.

249. Mr. Kamperman also recalls reviewing the Ford website for the 2016 Shelby in detail. Mr. Kamperman also spoke with Ford salespeople at Town East Ford about his intent to use the Technology Model 2016 Shelby for occasional track use and was not informed that he would be unable to do so. Ford also produced and distributed uniform materials to dealerships with the expectation that this information would be passed onto the consumer through dealer interactions.



250. None of the information reviewed by Mr. Kamperman contained any disclosure relating to any defects in the Track-Ready powertrain system or disclosed that not all models of the Shelby were capable of safe driving on public roadways or occasional track use. Nor did the sales people at Town East Ford disclose this information. If Ford had disclosed to Mr. Kamperman that his Shelby suffered from defects that would prevent the full use of his Shelby and pose safety risks, then he would not have purchased his Shelby or would have paid less for it.

251. Mr. Kamperman took delivery of his Shelby in December 2015. Within two to three months of taking delivery, Mr. Kamperman learned of the defects in his Shelby when reading about other 2016 Shelby owners on various internet forums who experienced Limp Mode in a matter of minutes while on the track. He also read on the forums and elsewhere that his Shelby could also experience Limp Mode while driving on public roadways. After learning about the safety implications inherent with a Shelby going into Limp Mode, Mr. Kamperman cancelled his pre-existing reservation to participate in a track day and has no plans to take his Shelby to the track.

252. Approximately two months after purchase, Mr. Kamperman returned to the dealer to raise his concerns and seek relief. The salesmen and sales manager told him that they had not heard of any potential issues and failed to provide any resolution to address his concerns or provide satisfactory relief.

253. To date, Mr. Kamperman has not received any notification from Ford about any potential repair or aftermarket modification that would render his Shelby safe to drive on public roadways, or during occasional track use, that would also be compliant with Ford's express warranties.

254. The Track-Ready powertrain defects can cause unexpected Limp Mode manifestations thereby significantly impairing the safety, reliability, and operability of the Shelbys to such an extent that they are rendered unfit for the ordinary purpose of driving on public roadways.

255. Mr. Kamperman has not yet completed any repairs relating to the defective Track-Ready powertrain system.

256. While Mr. Kamperman was aware at the time of purchase that his Shelby came with express warranties, he was not aware that executing any of the aftermarket repairs specifically recommended by Ford, such as a new transmission or cooler kit, can void the express warranties for the entire Shelby.

257. Mr. Kamperman paid the full MSRP, in addition to a \$10,000 premium, for his Shelby.

258. Due to Ford's failure to disclose the Track-Ready and track-capable defects, the Shelby vehicles were not only sold as not Track-Ready, but they could also be unsafe on the road. As such, Mr. Kamperman was denied the benefit- of- the- bargain at the time of sale and paid a premium for the car that he otherwise would not have. Plaintiff has also suffered additional damage relating to the cost of repair needed to make the car operate as a reasonable consumer would have expected.

**c. Travis McRae**

259. Plaintiff Travis McRae resides in Kerrville, Texas.

260. Mr. McRae has wanted a Shelby since he was approximately 10 years old. He saved for years to be able to afford such a performance vehicle and was thrilled to learn that Ford was re-introducing the Mustang Shelby to consumers. In February 2016, Mr. McRae ordered a 2016 Shelby Mustang with the Technology Package from Ken Stopel Ford, an authorized Ford

dealer located in Kerrville, Texas. Mr. McRae was interested in purchasing a Shelby that was capable of occasional track use and conducted most of his Shelby research from his home in Texas. Mr. McRae also communicated with various dealers and was exposed to Ford's misrepresentations and/or omissions in that state and made his purchase decision there.

261. Mr. McRae purchased and still owns this Shelby. Unknown to Mr. McRae at the time he purchased the Shelby, the Shelby suffered from a defective Track-Ready powertrain system, which has caused him out-of-pocket loss, attempted and future attempted repairs, and diminished value of the Shelby. Ford knew about these defects at the time of Mr. McRae's purchase but did not disclose the defects to Mr. McRae. So, Mr. McRae purchased his Shelby on the reasonable but mistaken belief that his Shelby would be safe and reliable on public roadways and that the Shelby was capable of occasional track use.

262. Mr. McRae selected and ultimately purchased his Shelby, in part, because the Shelby was represented to be Track-Ready and track-capable and was marketed as Ford's iconic high-performance vehicle within the Mustang family. During his Shelby research, Mr. McRae reviewed print and online advertisements similar to those included in this Second Amended Complaint. These advertisements contained images of the 2016 Shelby on race tracks and clearly stated how various components in all 2016 Shelbys were Track-Ready, or track-capable, and that these Shelbys offered many track-specific features.

263. Some of the features included in the 2016 Shelby were items that a reasonable consumer would believe to be present in a Shelby equipped for occasional track use—including a Flat-Plane Crank engine, which is designed specifically for very high revolutions. Mr. McRae also noted other tracking features in the 2016 Shelby, such as the MagneRide suspension tuned for the track, enhanced electric steering, performance braking system, and specific driver tunable

software settings, including a setting specifically marked for Track Use Only. There are also “Track Apps” and a heads-up tachometer display.

264. Mr. McRae also recalls reviewing the Ford website for the 2016 Shelby in detail. Mr. McRae also spoke with Ford salespeople at Ken Stopel Ford about his intent to use the Technology Model 2016 Shelby for occasional track use and was not informed that he would be unable to do so. Ford also produced and distributed uniform materials to dealerships with the expectation that this information would be passed onto the consumer through dealer interactions.

265. None of the information reviewed by Mr. McRae contained any disclosure relating to any defects in the Track-Ready powertrain system or disclosed that not all models of the Shelby were capable of safe driving on public roadways or occasional track use. Nor did anyone from Ken Stopel Ford disclose this information. If Ford or a Ford dealership had disclosed to Mr. McRae that his Shelby suffered from defects that would prevent the full use of his Shelby and pose safety risks, then he would not have purchased his Shelby or would have paid less for it.

266. Mr. McRae took delivery of his Shelby in February 2016. He learned of the defects in his Shelby in June 2016 when he first experienced Limp Mode during his first track event. Mr. McRae was driving his Shelby on the track and a track instructor was riding with him as a passenger. He experienced Limp Mode during the first session and his Shelby never fully recovered. Mr. McRae has not brought his Shelby back to the track after that day. Mr. McRae has also experienced Limp Mode while on a public roadway.

267. In July 2016, Mr. McRae contacted Ken Stopel Ford to express his concerns and request relief. He was told, based on the same information Ford provided to all dealerships, that

his vehicle was not equipped with the appropriate equipment for track use and Ford refused to provide any resolution to address his concerns or provide satisfactory relief.

268. In July 2016, Mr. McRae started researching a repair that would resolve the defects associated with the Track-Ready powertrain issue. Some of the suggested repairs involved adding an external cooler, but this would entail moving other parts of the car around to make room for the cooler. Mr. McRae found this to be unsatisfactory as it was unclear whether this repair would violate Ford's express warranties.

269. To date, Mr. McRae has not received any notification from Ford about any potential repair or aftermarket modification that would render his Shelby safe to drive on public roadways, or during occasional track use, that would also be compliant with Ford's express warranties.

270. While Mr. McRae was aware at the time of purchase that his Shelby came with express warranties, he was not aware that executing any of the aftermarket repairs specifically recommended by Ford, such as a new transmission or cooler kit, can void the express warranties for the entire Shelby.

271. The Track-Ready powertrain defects can cause unexpected Limp Mode manifestations thereby significantly impairing the safety, reliability, and operability of the Shelbys to such an extent that they are rendered unfit for the ordinary purpose of driving on public roadways.

272. Mr. McRae installed a transmission cooler in August 2016 and differential cooler in February 2017.

273. Mr. McRae paid the full MSRP, in addition to a \$7,500 premium, for his Shelby.

274. Due to Ford's failure to disclose the Track-Ready and track-capable defects , Mr. McRae was denied the benefit- of- the- bargain at the time of sale and paid a premium for the car that he otherwise would not have. Plaintiff has also suffered additional damage relating to the cost of repair needed to make the car operate, as a reasonable consumer would have expected.

**d. Todd Newton**

275. Plaintiff Todd Newton resides in San Antonio, Texas.

276. Mr. Newton has been a "Mustang Nut" since he was 20-years old, and is the owner of several Mustang vehicles. In the spring of 2015, Mr. Newton ordered a 2016 Shelby Mustang with the Technology Package from Jordan Ford, an authorized Ford dealer located in San Antonio, Texas. Mr. Newton was interested in purchasing a Shelby that was capable of occasional track use and conducted most of his Shelby research from his home in Texas. Mr. Newton also communicated with various dealers and was exposed to Ford's misrepresentations and/or omissions in that state and made his purchase decision there.

277. Mr. Newton purchased and still owns this Shelby. Unknown to Mr. Newton at the time he purchased the Shelby, the Shelby suffered from a defective Track-Ready powertrain system, which has caused him out-of-pocket loss, attempted and future attempted repairs, and diminished value of the Shelby. Ford knew about these defects at the time of Mr. Newton's purchase but did not disclose the defects to Mr. Newton. So, Mr. Newton purchased his Shelby on the reasonable but mistaken belief that his Shelby would be safe and reliable on public roadways and that the Shelby was operational for occasional track use.

278. Mr. Newton selected and ultimately purchased his Shelby, in part, because the Shelby was represented to be Track-Ready and track-capable and was marketed as Ford's iconic high-performance vehicle within the Mustang family. During his Shelby research, Mr. Newton

reviewed print and online advertisements similar to those included in this Second Amended Complaint. These advertisements contained images of the 2016 Shelby on race tracks and clearly stated how various components in all 2016 Shelbys were Track-Ready, or track-capable, and that these Shelbys offered many track-specific features.

279. Some of the features included in the 2016 Shelby were items that a reasonable consumer would believe to be present in a Shelby equipped for occasional track use—including a Flat-Plane Crank engine, which is designed specifically for very high revolutions. Mr. Newton also noted other tracking features in the 2016 Shelby, such as the MagneRide suspension tuned for the track, enhanced electric steering, performance braking system, and specific driver tunable software settings, including a setting specifically marked for Track Use Only. There are also “Track Apps” and a heads-up tachometer display.

280. Mr. Newton also recalls reviewing the Ford website for the 2016 Shelby in detail and even “built” his dream model on that website. Prior to ordering his 2016 Shelby, Mr. Newton contacted Ford via phone and communicated his desire to buy a car that was capable of occasional track use and was not informed that he would be unable to do so. Ford also produced and distributed uniform materials to dealerships with the expectation that this information would be passed onto the consumer through dealer interactions.

281. As part of his research, Mr. Newton also communicated with Ford salespeople at Jordan Ford about his intent to use the Technology Package Shelby for occasional track use and was not informed he would be unable to do so. Ford also produced and distributed uniform materials to dealerships with the expectation that this information would be passed onto the consumer through dealer interactions.

282. None of the information reviewed by Mr. Newton contained any disclosure relating to any defects in the Track-Ready powertrain system or disclosed that not all models of the Shelby were capable of safe driving on public roadways or occasional track use. Nor did anyone from Ford or Jordan Ford disclose this information. If Ford or a Ford dealership had disclosed to Mr. Newton that his Shelby suffered from defects that would prevent the full use of his Shelby and pose safety risks, then he would not have purchased his Shelby or would have paid less for it.

283. Mr. Newton took delivery of his Shelby in December 2015. He learned of the defects in his Shelby in April 2016 when he first experienced Limp Mode twice during his first track event. Mr. Newton also experienced Limp Mode on multiple occasions while conducting a track day in the summer of 2017.

284. In April 2016, Mr. Newton contacted Ford to express his concerns and request relief. He was told that a fix was coming by the end of the summer. However, it was not until the fall of 2016 that Mr. Newton learned of two potential repair options. He could get a new transmission at a cost of \$5,900 (plus labor) and coolers for \$1,200 (plus labor). Another option was to install a cooler kit for \$2,900. However, when Mr. Newton spoke to Jordan Ford, the dealership informed him that they would be unable to perform the labor required for the installation as Ford was refusing to pay them for the labor costs.

285. In March 2017, the Jordan Ford dealership also offered Mr. Newton approximately \$46,000 to \$47,000 for his Shelby as a trade-in if he purchased a 2017 Shelby. The dealership noted the trade-in value was much lower than anticipated because of the engine oil cooler recall, the Track-Ready and track-capable defects, and the associated lawsuit. The



response from Ford in April 2016 as well as from the dealership in March 2017 failed to provide any resolution to address his concerns or provide satisfactory relief.

286. To date, Mr. Newton has not received any notification from Ford about any potential repair or aftermarket modification that would render his Shelby safe to drive on public roadways, or during occasional track use, that would also be compliant with Ford's express warranties.

287. While Mr. Newton was aware at the time of purchase that his Shelby came with express warranties, he was not aware that executing any of the aftermarket repairs specifically recommended by Ford, such as a new transmission or cooler kit, can void the express warranties for the entire Shelby.

288. The Track-Ready powertrain defects can cause unexpected Limp Mode manifestations thereby significantly impairing the safety, reliability, and operability of the Shelseys to such an extent that they are rendered unfit for the ordinary purpose of driving on public roadways.

289. Mr. Newton has not yet completed any repairs relating to the defective Track-Ready powertrain system.

290. Mr. Newton paid the full MSRP, in addition to a \$10,000 premium, for his Shelby.

291. Due to Ford's failure to disclose the Track-Ready and track-capable defects , Mr. Newton was denied the benefit- of- the- bargain at the time of sale and paid a premium for the car that he otherwise would not have. Plaintiff has also suffered additional damage relating to the cost of repair needed to make the car operate as a reasonable consumer would have expected.

**11. Washington Plaintiff**

**a. Eric Evans**

292. Plaintiff Eric Evans resides in Silverdale, Washington.

293. Mr. Evans has been fascinated with high-performance vehicles since he was a teenager. In June 2015, Mr. Evans ordered a 2016 Shelby Mustang with the Technology Package from West Hills Ford, an authorized Ford dealer located in Bremerton, Washington. Mr. Evans was interested in purchasing a Shelby that was capable of occasional track use and conducted most of his Shelby research from his home in Washington. Mr. Evans was therefore exposed to Ford's misrepresentations and/or omissions in that state and made his purchase decision there.

294. Mr. Evans purchased and still owns this Shelby. Unknown to Mr. Evans at the time he purchased the Shelby, the Shelby suffered from a defective Track-Ready powertrain system, which has caused him out-of-pocket loss, attempted and future attempted repairs, and diminished value of the Shelby. Ford knew about these defects at the time of Mr. Evans's purchase but did not disclose the defects to Mr. Evans. So, Mr. Evans purchased his Shelby on the reasonable but mistaken belief that his Shelby would be safe and reliable on public roadways and that the Shelby was capable of occasional track use.

295. Mr. Evans selected and ultimately purchased his Shelby, in part, because the Shelby was represented to be Track-Ready and track-capable and was marketed as Ford's iconic high-performance vehicle within the Mustang family. During his Shelby research, Mr. Evans reviewed print and online advertisements similar to those included in this Second Amended Complaint. These advertisements contained images of the 2016 Shelby on race tracks and clearly stated how various components in all 2016 Shelseys were Track-Ready, or track-capable, and that these Shelseys offered many track-specific features.

296. Some of the features included in the 2016 Shelby were items that a reasonable consumer would believe to be present in a Shelby equipped for occasional track use—including a Flat-Plane Crank engine, which is designed specifically for very high revolutions. Mr. Evans also noted other tracking features in the 2016 Shelby, such as the MagneRide suspension tuned for the track, enhanced electric steering, performance braking system, and specific driver tunable software settings, including a setting specifically marked for Track Use Only. There are also “Track Apps” and a heads-up tachometer display.

297. Mr. Evans also recalls reviewing the Ford website for the 2016 Shelby. Mr. Evans also spoke with Ford salespeople at West Hills Ford about his intent to use the Technology Model 2016 Shelby for occasional track use and was not informed that he would be unable to do so. Ford also produced and distributed uniform materials to dealerships with the expectation that this information would be passed onto the consumer through dealer interactions.

298. None of the information reviewed by Mr. Evans contained any disclosure relating to any defects in the Track-Ready powertrain system or disclosed that not all models of the Shelby were capable of safe driving on public roadways or occasional track use. Nor did the sales people at West Hills Ford disclose this information. If Ford had disclosed to Mr. Evans that his Shelby suffered from defects that would prevent the full use of his Shelby and pose safety risks, then he would not have purchased his Shelby or would have paid less for it.

299. Mr. Evans took delivery of his Shelby in February 2016. Shortly after taking delivery, Mr. Evans learned of the defects in his Shelby when reading about other 2016 Shelby owners on various internet forums who experienced Limp Mode in a matter of minutes while on the track. He also read on the forums and elsewhere that his Shelby could also experience Limp

Mode while driving on public roadways. After learning about the safety implications inherent with a Shelby going into Limp Mode, Mr. Evans decided not to take his Shelby to the track.

300. In August 2016, Mr. Evans spoke to a representative for Ford Performance Racing School to raise his concerns and seek relief. The representative indicated to Mr. Evans that they were aware of the Limp Mode defect and that “something was being worked on” but nothing ever materialized. As such, Ford failed to provide any resolution to address his concerns or provide satisfactory relief.

301. To date, Mr. Evans has not received any notification from Ford about any potential repair or aftermarket modification that would render his Shelby safe to drive on public roadways, or during occasional track use, that would also be compliant with Ford’s express warranties.

302. While Mr. Evans was aware at the time of purchase that his Shelby came with express warranties, he was not aware that executing any of the aftermarket repairs specifically recommended by Ford, such as a new transmission or cooler kit, can void the express warranties for the entire Shelby.

303. The Track-Ready powertrain defects can cause unexpected Limp Mode manifestations thereby significantly impairing the safety, reliability, and operability of the Shelbys to such an extent that they are rendered unfit for the ordinary purpose of driving on public roadways.

304. Mr. Evans has not yet completed any repairs relating to the defective Track-Ready powertrain system.

305. Mr. Evans paid the full MSRP, in addition to a \$1,995 premium, for his Shelby.

306. Due to Ford's failure to disclose the Track-Ready and track-capable defects , Mr. Evans was denied the benefit- of- the- bargain at the time of sale and paid a premium for the car that he otherwise would not have. Plaintiff has also suffered additional damage relating to the cost of repair needed to make the car operate as a reasonable consumer would have expected.

**B. Defendant**

307. Ford Motor Company is a corporation doing business in all 50 states and the District of Columbia, and is organized under the laws of the State of Delaware, with its principal place of business in Dearborn, Michigan. At all times relevant to this action, Ford manufactured, sold, and warranted the Shelbys at issue throughout the United States. Ford and/or its agents, divisions, or subsidiaries designed, manufactured, and installed the defective Track-Ready powertrain defects in the Shelbys. Ford also developed and disseminated the owner's manuals, supplements, and warranty booklets, advertisements, and other promotional materials relating to the Shelbys, and Ford provided these to its authorized dealers for the express purpose of having these dealers pass such materials onto potential purchasers. Ford also created, designed, and disseminated information about the Track-Ready quality of the Shelby to various agents of various publications for the express purpose of having that information reach potential consumers.

**V. FACTUAL ALLEGATIONS**

**A. Track Enthusiasts Share a Passion for Testing Their High-Performance Vehicles on Closed Tracks**

308. There is a segment of car purchasers who buy cars with the intention of using them in high-performance environments such as closed race tracks. Often called "Track Enthusiasts," these car purchasers are passionate about motorsports and relish a challenging driving experience. Track Enthusiasts often purchase their performance vehicle so that they can

drive on public roads as well as specialized race tracks during Track Days and HPDE events. The Shelby Mustang has been heavily advertised as Track-Ready. Ford aggressively markets its Shelby to Track Enthusiasts. In fact, Raj Nair (Ford group Vice President, Global Product Development) explained the ideal vehicle uses for Track Enthusiasts during the 2016 Shelby Mustang launch event: “When we started working on [the Shelby Mustang], we wanted to build the best possible Mustang for the places we most love to drive – challenging back roads with a variety of corners and elevation changes, and at the track on weekends.”<sup>3</sup> Many Track Enthusiasts agreed and came out in droves to purchase these new Track-Ready Shelbys, in most instances above the Manufacturers’ Suggested Retail Price.

**B. Specialized Race Tracks and Track Days Create Safe Conditions for Track Enthusiasts to Pursue Their Passion**

309. Track Enthusiasts purchase high-performance vehicles to drive on closed race tracks during what is colloquially known as a “Track Day.” During a Track Day, Track Enthusiasts are invited to bring their Track-Ready Shelbys and operate them at high-performance intervals on closed tracks sealed off from all other highways and roads. Typically, a Track Day consists of four limited time sessions, which must be paid for in advance. Track Days provide a safe and welcoming environment for participants to explore the capabilities and limits of their high-performance sports cars, while improving their driving skills. Track Days can also provide instruction and coaching for drivers of all skill levels during HPDE events. Track Days and HPDE events are **not** considered forms of racing. Cars on the track operate under strict rules meant to minimize the likelihood of dangerous encounters with other cars. For instance, passing among participants is permitted only within defined “passing zones,” and then only with clear

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<sup>3</sup> Ford, *Ford Shelby Mustang Raises the Bar for Handling* (May 6, 2015), <https://media.ford.com/content/fordmedia-mobile/fna/us/en/news/2015/05/06/ford-shelby-gt350-mustang-raises-the-bar-for-handling.html>.

hand signals and instructor confirmation. Any Time Trials require advance permission and are also conducted under strict rules which maximize safety.

310. The main priority for both Track Enthusiasts and track operators during Track Days and HPDE events, however, is always vehicle safety—both for track drivers and others who may be physically located near the race track. As such, speed and distance is closely monitored and specialized etiquette mores—or rules of the road—must be adhered to at all times. Many Track Enthusiasts, including several Plaintiffs, also incur out-of-pocket costs to travel to different race tracks to attend Track Days and HPDE events. Ford also hosts special “Track Attack” Track Day and HPDE events at their driving school in Utah.

**C. Track-Ready Vehicles Operate Under Extreme Conditions and Must Meet Certain Basic Safety Features to Operate on a Race Track**

311. The majority of Track Enthusiasts utilizes a performance vehicle during Track Days and HPDE events as they are supposed to withstand the additional stress of tracking and can satisfy certain elevated safety requirements.

**1. Transmission Systems in Track-Ready Vehicles**

312. In the context of motor vehicles, a transmission system takes the power generated by a vehicle’s engine and applies that power to calibrate the speed and torque of the wheels. This process is accomplished by the driver shifting through different gears. Slower, or lower, gears are used to slow down the output speed of the engine and increase torque. Higher gears increase the output speed and decrease torque. Further, track conditions often require drivers to change gears extremely quickly—usually in a tiny fraction of a second. As such, the transmission system for Track-Ready Shelbys must be able to cope with the high engine speeds and the fast, frequent gear shifts consistent with the rigors of track use. This type of driving behavior can cause transmission systems to overheat. If a transmission system overheats in one of the 2016 Shelbys,

the system will force the car to shut down or go into Limp Mode unexpectedly. As explained in more detail below, Limp Mode refers to a scenario where, to prevent damage, a Track-Ready Shelby regresses to a lower RPM (revolutions per minute) with a drastically slower speed, much to the surprise of the individual driver and those driving nearby. Not only does Limp Mode occur without any advance warning, but once in Limp Mode, the car's display does not provide any explanation or warning as to what has happened or that the transmission or differential is overheated. This creates additional confusion and puts the driver and those around him or her in additional danger.

313. Owners of Track-Ready Shelbys are expected to keep their transmissions fully operational by keeping the transmission system below a certain temperature while driving. If the transmission system goes above a certain temperature, on the track or during regular driving conditions, then Limp Mode will unexpectedly occur.

## **2. Differentials in Track-Ready Vehicles**

314. A rear differential is a component in all cars and is designed to compensate for the difference in distance the inner wheels and outer wheels travel as the car goes around a corner. For track drivers—who routinely turn corners while pressing on the gas in a powerful car—poor rear differentials that overheat can cause the inside wheel to start to over-spin, leading to less grip and traction. The driver then loses the ability to properly maneuver the outside wheel and can potentially lose control of the vehicle. This can result in erratic driving and an increased risk for collisions.

315. Owners of Track-Ready Shelbys therefore are expected to keep their rear differentials operational by keeping the differentials below a certain temperature. If the differential system goes above a certain temperature, then Limp Mode will unexpectedly occur.



**D. Ford Marketed the Shelby as a “Track Car,” as “Track Tuned,” and as “Track Oriented” Because It Knew “Track-Capability” Was Material to Prospective Consumers**

316. Ford heavily marketed the Shelby as being “Track-Ready” or a “Track Car,” and it did so because it knew such representations were material to those in the market it was attempting to attract—Track Enthusiasts. For example, the 2016 Ford Mustang brochure included the following:<sup>4</sup>

## **VENOMOUS 5.2L BEAST.**

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Every member of the Mustang family makes a powerful impression. Starting with the most potent of them all – the head-turning, heart-pounding, Shelby GT350®. This race-tuned monster is powered by a 5.2L Ti-VCT V8 with a flat-plane crank, engineered to propel you into the winner’s circle. A TREMEC® TR-3160 6-speed manual transmission gives you ultimate control over its 526 hp and 429 lb.-ft. of torque. The Shelby exclusive interior features an aluminum instrument panel and other unique touches including a steering wheel wrapped in both Alcantara® and leather. RECARO® sport seats trimmed in a unique mix of Carbon Weave cloth and Miko® sueded cloth help keep you in your place – turn after turn.

317. Ford also produced videos of the Shelby on a race track:<sup>5</sup>

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<sup>4</sup> 2016 Ford Mustang brochure, available at <http://www.ford.com/services/assets/Brochure?make=Ford&model=Mustang&year=2016&postalCode=11101> (last accessed Mar. 22, 2017), at p. 4.

<sup>5</sup> Deautos Agea, *GT350 Running HD mpr*, YouTube (Nov. 21, 2014), [https://www.youtube.com/watch?v=UrlIVK\\_OPeg](https://www.youtube.com/watch?v=UrlIVK_OPeg); Ford, *All New Shelby GT350 and GT350R Mustang* (June 2, 2015), <https://media.ford.com/content/fordmedia/fna/us/en/asset.html/content/dam/fordmedia/North%20America/US/2015/06/01/All-New-Shelby-GT350-and-GT350R-Mustang.mp4.html>.



318. Importantly, Ford never distinguished between trim levels when representing that all Shelby Mustangs were Track-Ready:<sup>6</sup>

**Shelby Mustang: The Legend Returns**

- **All-new Shelby® GT350 Mustang is a thoroughbred capable of tackling the world's most challenging roads and racetracks**
- GT350 is powered by a unique, high-revving flat-plane crankshaft 5.2-liter V8 engine, which produces 526 horsepower and 429 lb.-ft. of torque, the most powerful naturally aspirated Ford production engine ever

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<sup>6</sup> Ford, *Shelby Mustang: The Legend Returns* (Aug. 25, 2015), <https://media.ford.com/content/fordmedia/fna/us/en/products/cars/mustang/2016-gt350-350r-press-kit.html>.

- Advanced materials, MagneRide dampers, aggressive brakes and finely tuned aerodynamics push the performance of Mustang to previously unmatched levels

One of the most iconic performance Mustang nameplates of all time has returned, the all-new Shelby® GT350 Mustang.

The original Shelby introduced in 1965 established the Mustang's performance credentials. The all-new Shelby Mustang, featuring the most powerful naturally aspirated Ford production engine ever, is a world-class performance Shelby, designed to tackle the planet's most challenging roads – **an all-day track car that's also street legal.**

The new GT350 builds on Carroll Shelby's original idea – transforming a great every-day car into a dominant road racer – by taking advantage of a dramatically improved sixth-generation Mustang to create a truly special driving experience. Driving enthusiasts behind the wheel of a Shelby can expect to be treated to the most balanced, nimble and exhilarating production Mustang yet.

“When we started working on this car, we wanted to build the best possible Mustang for the places we most love to drive – challenging back roads with a variety of corners and elevation changes, and the track on weekends,” said Raj Nair, Ford group vice president, Global Product Development. “Every change we made to this car was driven by the functional requirements of a powerful, responsive powerplant – nimble, precise handling, and massive stopping power.”

### **Track-tuned driveline**

Early in the development of the GT350, it was decided that a high-revving, naturally aspirated V8 engine **would best suit a track-focused Mustang.** “The final product is essentially an all-new powerplant unique to GT350 – “and one that takes true advantage of the new chassis dynamics of the Mustang platform,” said Jamal Hameedi, chief engineer, Ford Global Performance Vehicles.

The new 5.2-liter V8 engine is the first-ever production V8 from Ford with a flat-plane crankshaft, an architecture typically found only in racing applications or exotic European sports cars. Unlike a traditional V8, where the connecting rods are attached to the crankshaft at 90-degree intervals, this design evenly spaces all crank pins at 180-degrees intervals.

The 180-degree, flat-plane layout permits a cylinder firing order that alternates between cylinder banks, reducing the overlap of exhaust pressure pulses. When combined with cylinder-head and valvetrain advancements, this permits better cylinder breathing, further extending the performance envelope of the V8.

The result is the most powerful naturally aspirated production Ford engine ever, at 526 horsepower, with a torque peak of 429 lb.-ft. **The track capability is enhanced by the output characteristics of the engine – the 5.2-liter V8 features an exceptionally broad torque curve.** Combined with its high-revving ability, the flat-plane 5.2-liter V8 gives drivers an enormous amount of performance and flexibility within each gear of the lightweight six-speed manual transmission. A standard Ford-tuned Torsen limited-slip differential optimizes cornering grip and straight-line traction. “Make no mistake, this is an American interpretation of a flat-plane crankshaft V8, and the 5.2-liter produces a distinctive, throaty howl from its four exhaust tips,” Hameedi said.

**1. Press Kits Were Created by Ford to Entice Track Enthusiasts to Purchase Shelby**

319. Ford also made available online different Press Kits outlining the unique features of the Shelby. These kits provided a substantial amount of detail on the Shelby as well as several specific misrepresentations that the Shelys were designed to be used on a race track. But no distinction was made regarding various trim levels or that the Base or Technology Package models could not be safely operated on a race track without the installation of aftermarket parts.

320. For example, one Ford Press Kit on “Innovative Engineering” advertised:<sup>7</sup>

**New Six-Speed Shelby Mustang Manual Transmission Channels Flat-Plane V8 Power via Lighter, Stouter Gearbox**

- Sole transmission offering in the all-new Shelby<sup>®</sup> Mustang is a unique Tremec six-speed manual designed to deliver precision shifts and positive shift engagement

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<sup>7</sup> Ford, *Innovative Engineering*, available at <https://media.ford.com/content/fordmedia/fna/us/en/products/cars/mustang/2016-gt350-350r-press-kit/innovative-engineering.pdf> (last accessed Mar. 22, 2017), at pp. 1-3, 9 (emphasis added).

- ***Transmission for Shelby Mustang developed with all-day track capability and high-rpm capability at the forefront***
- Extreme measures taken to ensure positive feel and durability include power-honed gears, air-to-oil transmission cooler and carbon-bronze triple-cone synchronizers

***In developing the all-new Shelby® and Shelby® GT350R – the most potent track-oriented production Mustangs ever – nothing was left on the table in terms of weight reduction and track-capable performance.*** This whole-Shelby philosophy extends to the sole transmission offering – a Tremec six-speed manual, with nearly every component receiving special attention to ensure durability and improved shifting performance.

Both cars were developed with the most powerful naturally aspirated production engine ever developed by Ford – ***a racing-inspired***, 5.2-liter flat-plane crankshaft V8 with 526 horsepower and 429 lb.-ft. of torque and an impressive 8,250-rpm redline. “Any transmission backing this engine requires a certain amount of high-power, high-rpm capability,” notes Jeff Albers, powertrain engineering supervisor with Ford.

#### **Harder, faster, better**

The high-revving 5.2-liter engine is paired with the much-lauded Tremec TR-3160 six-speed manual transmission. ***The unit has been heavily revised for Shelby to cope with high engine speeds and the rigors of track duty, and to provide the kind of precision engagement, smoothness, and reduction in weight and rotating inertia demanded by Ford Performance.***

\* \* \*

#### **Ford Shelby Gets Racing-Inspired Customizable Shift Light Indicator to Help Drivers Optimize Track Time**

- Shelby® Mustang features Performance Shift Light Indicator display with Track, Tach and Drag mode
- Performance Shift Light Indicator provides the benefits of a shift light while allowing drivers to ***keep their eyes on the track at all times***

- Heads-up shift light was developed by reimagining existing hardware and is standard on all-new Shelby and Shelby® GT350R

\* \* \*

### **Ford Shelby Mustang Raises the Bar for Handling [ . . . ]**

#### **Suspension tuned for *maximum performance on road and track***

Handling is the performance playground of Shelby, and the car's suspension is heavily ***revised to maximize cornering performance.*** [ . . . ]

#### **Most powerful brakes ever fitted to a Production Mustang**

Reducing unsprung mass is key to improving responsiveness, but a balance must be struck between taking mass out of a suspension and delivering truly capable braking performance. ***Shelby features the most track-credible brake system ever offered on a production Mustang***, consisting of two-piece cross-drilled iron rotors with aluminum hats – the largest rotors Ford has ever put on a production Mustang. Massive 394-millimeter front rotors and 380-millimeter rear rotors are a floating-type and are pin-driven to the aluminum hats to greatly reduce heat transfer to the bearings. These rotors are clamped by six-piston fixed Brembo calipers with integrated caliper bridges at the front and four-piston units at the rear. Dedicated ducting assists in cooling the brakes front and rear for maximum performance.

***“These cars can be driven by any driver on any track in the world – with virtually no fade,”*** remarks Brent Clark, suspension and Shelby dynamics technical specialist

#### **Wheels and tires *fit for the track***

Shelby makes use of extra-stiff 19.0-inch cast aluminum-alloy wheels – 10.5 inches wide in front, 11.0 inches in the rear – clad in Michelin Pilot Super Sport tires with GT350-specific sidewall construction, tread face and compound. ***The custom tires are designed to deliver maximum grip on the road or for weekend track days.***

321. The 2016 GT350/GT350R Press Kit advertised:<sup>8</sup>

[The] All-new Shelby® GT350 Mustang is a thoroughbred capable of **tackling the world's most challenging roads and racetracks**[.]

\* \* \*

The all-new Shelby Mustang, featuring the most powerful naturally aspirated Ford production engine ever, is a world-class performance Shelby, designed to tackle the planet's most challenging roads – **an all-day track car that's also street legal**.

322. Another Press Kit proclaimed the Shelby's ability to handle race tracks:

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<sup>8</sup> Ford, 2016 GT350/GT350R Press Kit, available at <https://media.ford.com/content/fordmedia/fna/us/en/products/cars/mustang/2016-gt350-350r-press-kit.pdf> (last accessed Mar. 22, 2017), at pp. 1-2 (emphasis added).



## 2016 GT350/GT350R Press Kit



### Overview And Multimedia

#### Shelby GT350 Mustang: The Legend Returns

- All-new Shelby® GT350 Mustang is a thoroughbred capable of tackling the world's most challenging roads and racetracks
- GT350 is powered by a unique, high-revving flat-plane crankshaft 5.2-liter V8 engine, which produces 526 horsepower and 429 lb.-ft. of torque, the most powerful naturally aspirated Ford production engine ever
- Advanced materials, MagneRide dampers, aggressive brakes and finely tuned aerodynamics push the performance of Mustang to previously unmatched levels

One of the most iconic performance Mustang nameplates of all time has returned, the all-new Shelby® GT350 Mustang.



323. And this Press Kit called the Shelby “Track tuned”:

#### **Track-Tuned Driveline**

Early in the development of the GT350, it was decided that a high-revving, naturally aspirated V8 engine would best suit a track-focused Mustang. “The final product is essentially an all-new powerplant unique to GT350 – “and one that takes true advantage of the new chassis dynamics of the Mustang platform,” said Jamal Hameedi, chief engineer, Ford Global Performance Vehicles.

The new 5.2-liter V8 engine is the first-ever production V8 from Ford with a flat-plane crankshaft, an architecture typically found only in racing applications or exotic European sports cars. Unlike a traditional V8, where the connecting rods are attached to the crankshaft at 90-degree intervals, this design evenly spaces all crank pins at 180-degrees intervals.

The 180-degree, flat-plane layout permits a cylinder firing order that alternates between cylinder banks, reducing the overlap of exhaust pressure pulses. When combined with cylinder-head and valvetrain advancements, this permits better cylinder breathing, further extending the performance envelope of the V8.

The result is the most powerful naturally aspirated production Ford engine ever, at 526 horsepower, with a torque peak of 429 lb.-ft. The track capability is enhanced by the output characteristics of the engine – the 5.2-liter V8 features an exceptionally broad torque curve. Combined with its high-revving ability, the flat-plane 5.2-liter V8 gives drivers an enormous amount of performance and flexibility within each gear of the lightweight six-speed manual transmission. A standard Ford-tuned Torsen limited-slip differential optimizes cornering grip and straight-line traction. “Make no mistake, this is an American interpretation of a flat-plane crankshaft V8, and the 5.2-liter produces a distinctive, throaty howl from its four exhaust tips,” Hameedi said.

324. And it proclaimed that prior to introduction the Shelby had been “tested endlessly”:

### **Focus-Driven Cockpit Changes**

Like everything else about GT350, the interior has been optimized for driving, beginning with the specially designed Recaro sport seats with a unique cloth. Hundreds of hours and many prototypes went into a seat that is both comfortable in daily driving and capable on the track. A flat-bottom steering wheel makes it easier for the driver to get in and out and more ergonomic on the racetrack. Gauges are upgraded to reflect the enormous performance capability of the car. Chrome and bright finishes have been reduced or eliminated to prevent any sun glare that may distract the driver.

The advanced technology inherent to Mustang has been deployed for duty in the Shelby. An all-new integrated driver control system allows selection of five unique modes that tailor ABS, stability control, traction control, steering effort, throttle mapping, MagneRide tuning and exhaust settings depending on driver preference to achieve maximum performance. Drivers are invited to test them all.

Drivers interested in comfort, convenience and entertainment upgrades may select the Technology Package, which includes power leather-trimmed seats, Shaker Audio, 8-inch SYNC® with MyFord Touch LCD touch screen, and dual zone electronic temperature control to name a few features.

“We took the best Ford Mustang yet and massaged every aspect of the car that affects the performance driving experience,” said Hameedi. **“We tested endlessly on the most challenging roads and tracks in the world, and we believe serious drivers will love the Shelby Mustang.”**

Shelby Mustang is the latest in an all-new line of Mustangs including Mustang EcoBoost, Mustang GT, and the specially designed 50th Anniversary Edition Mustang.

## **2. Ford Sponsored Track Events to Demonstrate the Track-Readiness of Shelby Mustangs**

325. Ford also sponsored several track events where the 2016 Shelby Mustang was prominently featured and marketed to Track Enthusiasts, including the North American GT350 Track Tour. The North American GT350 Track Tour visited several road courses throughout the United States and offered invitees the opportunity to experience a ride in a Shelby.

326. Track Enthusiasts were also offered exclusive invitations to participate in the GT350 Track Attack program, which provided “a complimentary one-day track/classroom experience” as a standard perk “included with the purchase of every 2015 or 2016 Shelby or GT350R.”<sup>9</sup> The two-day event featured “on-track instruction by the Ford Performance Racing School” to “learn braking and cornering techniques on track” as well as classroom activities “[f]or owners of the new 2015 & 2016 Shelby.”<sup>10</sup> Ford touted the program in a press release, saying “the program is designed to help drivers at all skill levels understand the nuances of *their* car’s performance and handling in a safe environment under professional supervision.”<sup>11</sup> According to Dan McKeever, President of Ford Performance Racing School: “Regardless of a person’s driving ability, this will be an unbelievable experience . . . . From the weekend track warrior to the car collector, this program provides the skills needed to really enjoy Shelby Mustang *in the environment for which it is designed.*”<sup>12</sup>

327. Ford distributes a questionnaire to all Track Attack participants, regardless of which trim level they purchased, to learn more about the participant’s personal experience with their Shelby. One of the questions asked by Ford to *all* participants, regardless of trim level, is “Do you take your Ford Performance vehicle to the track.” This is also evidence that Ford marketed all trim levels as capable of track use.

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<sup>9</sup> Ford, *GT350 North American Track Tour*, available at <https://web.archive.org/web/20160812055748/http://gt350trackattack.com/> (last accessed Mar. 22, 2017).

<sup>10</sup> *Id.*

<sup>11</sup> Ford, *Standard Equipment, Going Fast: Shelby Mustang Owners Get Complimentary Performance Driving School* (Mar. 9, 2016), <https://media.ford.com/content/fordmedia-mobile/fna/us/en/news/2016/03/09/shelby-gt350-mustang-owners.html> (emphasis added).

<sup>12</sup> *Id.* (emphasis added).

### 3. Ford Executives and Key Ford Employees Promoted Shelbys as Track-Ready

328. Ford executives also made detailed statements about how Ford had envisioned that all Shelbys would be able to perform under track conditions. None of these statements ever differentiated between the various trim levels or disclosed that some trim levels, such as the Base or Technology Package models, were unfit for race track use—despite the “race track” price.

Here are but a few examples:

- In a November 17, 2014 press release, Jamal Hameedi (Chief Engineer, Ford Global Performance Vehicles) boasted: “We took the best Ford Mustang yet and massaged every aspect of the car that affects the performance driving experience. . . . We tested endlessly on the most challenging roads and tracks in the world, and we believe serious drivers will love the Shelby Mustang.”<sup>13</sup>
- In a May 6, 2015 press release, Raj Nair (Ford group Vice President, Global Product Development) noted: “When we started working on [the Shelby 350GT], we wanted to build the best possible Mustang for the places we most love to drive – challenging back roads with a variety of corners and elevation changes, and at the track on weekends.”<sup>14</sup>
- In the same May 6, 2015 press release, Brent Clark (Vehicle Dynamics Supervisor) stated: “These cars can be driven by any driver on any track in the world – with virtually no fade.”<sup>15</sup>
- In a March 9, 2016 press release, Jim Owens (Ford Performance Market Manager) explained: “GT350 is a car

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<sup>13</sup> Ford, *Shelby Mustang: The Legend Returns* (Nov. 17, 2014), available at <https://media.ford.com/content/fordmedia/fna/us/en/news/2014/11/17/shelby-gt350-mustang-the-legend-returns.pdf>.

<sup>14</sup> Ford, *Ford Shelby Mustang Raises the Bar for Handling* (May 6, 2015), <https://media.ford.com/content/fordmedia-mobile/fna/us/en/news/2015/05/06/ford-shelby-gt350-mustang-raises-the-bar-for-handling.html>.

<sup>15</sup> *Id.*

that needs to be experienced on a closed road course . . . .”<sup>16</sup>

- On June 21, 2016, Mark Schaller, a Mustang Marketing Manager at Ford, stated to a consumer that: “The Track Package was set up for those customers that planned to take their Shelby to the racetrack often and participate in track days. The Technology Package was developed for those customers that would be driving their cars mainly on the streets *with an occasional track experience*” (emphasis added). Mr. Schaller also noted: “If you plan to use your GT350 with the Technology Package on the racetrack for *sustained lap sessions*, we would still recommend that you purchase coolers for the transmission and differential” (emphasis added).

#### 4. Ford Represented to All Shelby Owners That the Base Model and Technology Package Shelbys Can “Certainly” Be Used on Race Tracks

329. Ford distributed a pamphlet to all *existing* Shelby owners entitled “Shelby GT 350 Track Tips.” This pamphlet states the following: “[w]ith oil coolers for the engine, transmission and differential, the GT350 Track Package and the GT350 R models are best equipped for extended on-track lapping at speed. The standard GT350 and GT350 Electronic Package certainly can be used on racetracks, but longer runs should be avoided.” Nowhere in the pamphlet does Ford explain that the Base Model and Technology Package Shelbys would enter Limp Mode, without warning, within minutes of a particular track session, or that Limp Mode could also occur on public roadways.

330. While the pamphlet also states that Ford ***recommends*** to ***existing owners*** about adding aftermarket transmission and differential coolers, and that Shelbys are “equipped with electronic controls that, if required, reduces power and limits RPMs in order to control powertrain temperatures”, nowhere does Ford disclose that: (1) the addition of coolers is required

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<sup>16</sup> Ford, *Standard Equipment, Going Fast: Shelby Mustang Owners Get Complimentary Performance Driving School* (Mar. 9, 2016), <https://media.ford.com/content/fordmedia-mobile/fna/us/en/news/2016/03/09/shelby-gt350-mustang-owners.html>.

for the Shelbys to safely perform for any length of time on a race track; (2) without these coolers, Base Model and Technology Package Shelbys, as designed, will enter Limp Mode unexpectedly and without any warning thereby creating a serious safety hazard; (3) an explanation of what Limp Mode is or how it would manifest while driving; (4) due to the lack of a visible temperature gauge on the display reflecting transmission and differential temperatures, there is no way to foresee or estimate if one is close to entering Limp Mode foreclosing on any ability of the driver to mitigate the safety consequences of the Track-Ready powertrain defects ; (5) that drivers could experience Limp Mode while operating their 2016 Shelby on public roadways; and (6) any aftermarket modifications, even the modification recommended by Ford in the 2015 Owner's Supplement can void existing express warranties for the rest of the vehicle.

**E. Ford Knew That Less Than 30% of All Shelbys Produced Were Equipped with the Track Package, Yet It Promoted All Shelbys, Regardless of Trim Level, as Capable of Track Use**

331. The 2016 Shelby came in the following packages:<sup>17</sup>

| SHELBY<br>GT 350                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-----------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>900A</b><br>          | <b>GT 350 (Base)</b> <ul style="list-style-type: none"> <li>• 5.2L TI-VCT V8 with Flat Plane Crank</li> <li>- Over 500 Hp</li> <li>• Vented Disc Brakes with Brembo™ Calipers (6-piston, front &amp; 4-piston, rear)</li> <li>• Dual Exhaust with Quad Tips</li> <li>• 19" Black Painted Aluminum Wheels with Michelin Pilot Super Sport Tires</li> <li>• Front Recaro Cloth/Miko Suede Seats</li> <li>• Shelby Exclusive Aluminum Instrument Panel</li> </ul> <b>LIMITED DEMAND ANTICIPATED</b>                   |
| <b>900A w/ 60T</b><br>   | <b>GT 350 Track Package</b> <ul style="list-style-type: none"> <li>• MagneRide® Damping System</li> <li>• Performance Tuned Front Springs</li> <li>• Aluminum Tower to Tower Strut Brace</li> <li>• Engine Oil, Transmission and Differential Coolers</li> <li>• Raised Decklid Spoiler</li> </ul> <b>TRACK DAY SPECIALIST</b>                                                                                                                                                                                     |
| <b>900A w/ 67T</b><br>  | <b>GT 350 Technology Package</b> <ul style="list-style-type: none"> <li>• MagneRide® Damping System</li> <li>• Performance Tuned Front Springs</li> <li>• SYNC® 3 Communications and Entertainment System, with 8" Touch Screen and 7 Speaker Audio System</li> <li>• Voice Activated Navigation</li> <li>• 6-way Power Adjustable Leather-Trimmed Comfort Front Seats</li> <li>• Dual Zone Climate Control with Heated and Cooled Front Seats</li> </ul> <b>SMART, SOPHISTICATED PERFORMER</b>                    |
| <b>920A</b><br>        | <b>GT 350R</b> <ul style="list-style-type: none"> <li>• All Track Package Content</li> <li>• 19" Carbon Fiber Wheels with Michelin Pilot Sport Cup 2 Tires</li> <li>• Carbon Fiber Rear Wing</li> <li>• Aggressive Chin Splitter</li> <li>• Unique Chassis Tuning</li> <li>• Featuring Weight-Saving Deletions</li> <li>- Rear Seat</li> <li>- A/C</li> <li>- SYNC® Audio/Entertainment System</li> <li>- Tire Mobility Kit</li> <li>- Auxiliary Gauges</li> <li>- Floor Mats</li> </ul> <b>HARDCORE TRACK USE</b> |
| <b>920A w/ 67S</b><br> | <b>GT 350R w/ Electronics Package</b> <ul style="list-style-type: none"> <li>• All "R" Content</li> <li>• SYNC® 3 Communications and Entertainment System, with 8" Touch Screen and 7 Speaker Audio System</li> <li>• Voice Activated Navigation</li> <li>• Dual Zone Climate Control including A/C</li> <li>• Rear View Camera</li> </ul> <b>ULTIMATE STREET AND TRACK</b>                                                                                                                                        |

<sup>17</sup> Ford Shelby model overview, available at <http://horsepowerkings.com/ford-will-price-2016-gt350-47870-gt350r-at-61370/> (last accessed Mar. 22, 2017).



332. Ford sold the 2016 Shelby with three trim levels: Base, Track Package, and Technology Package.<sup>18</sup> The Technology Package has special suspension, steering, brakes, dashboard controls, and software settings, such as the Track App and a special heads-up display that are designed to be used exclusively on race tracks. This package also provided special settings for tires and fluid for track conditions. The Technology Package was also the most expensive trim level and Ford added a significant premium of \$7,500 for the upgrade, on top of the already high MSRP.

333. The Shelybs are equipped with dozens of features that would suggest to a reasonable person that the vehicles were built with the intention of occasional track use. Some of these features included the following: a Flat-Plane Crank engine, which is designed specifically for very high revolutions; and the MagneRide suspension, which does not wear out like traditional suspensions systems and is designed for a highly adaptive ride. The Shelybs also come with a “track mode,” which adjusts the throttle, suspension, and software settings for track use, and other specific software settings designed for track use, including a lap timer, the Track App, a linelock and a heads-up tachometer display. Even the leather seats were outlined with fabric to mitigate against passengers from slipping and sliding in their seats while taking corners at high speeds.

334. The final reported sales numbers for the Shelby Mustang demonstrate the extent to which Ford manipulated Track Enthusiasts with false assurances of the Shelby’s suitability for track use. Of the 5,643 Base, Technology Package, or Track Package Shelby Mustangs built by

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<sup>18</sup> Consumers could also upgrade to a 2016 Shelby “R” model and add an additional Electronic Package. Of the 6,169 GT350 Mustangs made, only 526 Shelybs were made with the “R” package. The 2016 GT350 “R” models are not included in the proposed class. See 2016 *GT350/R Final Production Numbers*, Mustang6G.com (Feb. 8, 2017), <http://www.mustang6g.com/?p=10779>.



Ford, 3,991 (70.7%) were the Base or Technology Package models. In contrast, only 1,652 (29.3%) were equipped with the Track Package.<sup>19</sup> Ford was thus not only aware that the Technology Package was being purchased by the vast majority of Track Enthusiasts—who wanted a Track-Ready car with added comforts such as navigation and voice recognition—but also that only a small minority of the Shelbys being sold as Track-Ready could realistically be operated safely on a race track. The price of a Technology Package Shelby was approximately \$57,000.

335. These sales numbers are consistent with the experiences of most Plaintiffs. Most Plaintiffs were not given a meaningful choice between Technology and Track Package vehicles as the dealerships they were working with would often only have the Technology Package Shelbys available for purchase, as the Technology Package represented 70% of all Shelbys produced. It was also made clear by Ford to Plaintiffs that they could not equip their vehicles with both the Technology and Track Packages.

**F. The Shelby Cannot Be Safely Driven on the Track Due to Design and Manufacturing Defects**

**1. The Nature of the Defects and Their Safety Consequences**

336. To Track Enthusiasts, the performance of a car on the track, and the ability for a vehicle to successfully complete a Track Day or HPDE event, is a material factor in the decision to purchase a given model.

337. The Shelbys cannot complete Track Days or HPDE event due to design defects that affect the Track-Ready powertrain system. The Track-Ready powertrain system is designed defectively in that it will overheat prematurely and enter Limp Mode without providing any warning or communication to the driver. There is also no way for the driver to monitor the

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

temperature of the transmission or differential systems to mitigate against an unexpected Limp Mode manifestation. In a track environment, Shelbys entering Limp Mode go from well over 100 mph to a substantially lower speed and lose power in a matter of seconds. As a result, the driver can become disoriented and lose control of the Shelby, increasing the risk of an accident. This scenario is also extremely dangerous for other drivers operating at high speeds nearby who do not expect the car in front of them to essentially freeze on the track, thereby putting them at risk for accidents as well.

338. Unlike the Track Package Shelbys, the GT350R models, or the 2017 Shelby models, the 2016 Base and Technology Package Shelbys do not come equipped with differential or transmission coolers that can resolve the overheating issue referenced above. Also unlike the Track Package Shelbys, the GT350R models, or the 2017 Shelby models, the 2016 Base and Technology Package Shelbys at issue also do not come equipped with a temperature sensor visible on the dashboard. The safety consequence of these design decisions is that the car will overheat at unexpected times and there is no way for owners of the Base Model and Technology Package-equipped Shelby to monitor or adjust the temperatures of the transmission and differentials. As such, these owners have no notice of when their Shelbys' defective Track-Ready powertrain system will overheat and enter into Limp Mode. These defects significantly impair the safety, reliability, and operability of the Shelbys to such an extent that they are rendered unfit for the ordinary purpose of driving on public roadways.

339. The Shelbys also cannot complete Track Days or HPDE events due to manufacturing defects that affect the Track-Ready powertrain system.<sup>20</sup> The extreme, prolonged transmission and differential temperatures that the Shelbys experience both on a race track and

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<sup>20</sup> Defects associated with the defective Track-Ready powertrain system will also be referred to in this Second Amended Complaint as Track-Ready and track-capable defects.

on public roads can cause other parts of the vehicle to degrade prematurely. These defects can, over time, damage other essential operations of the vehicle, such as the transmission, clutch, rear end, and others. These defects significantly impair the safety, reliability, and operability of the Shelbys to such an extent that they are rendered unfit for the ordinary purpose of driving on public roadways.

340. Frighteningly, the same Limp Mode can also unexpectedly occur on public roadways. If Limp Mode occurs on a public highway, for example, it presents an additional issue due to material differences in speed, vehicle type, and the skill set of drivers on public roadways as compared to drivers on closed race tracks. Nevertheless, one thing is clear: even with the inherent differences of highway driving, a Shelby rapidly decelerating on a highway is dangerous and can result in a high-speed collision. This defect is unacceptable for customers who own this Shelby.

341. The presence of Limp Mode on public roadways is not an esoteric, obscure safety issue. Not only have some Plaintiffs herein alleged that they have experienced Limp Mode while on public roadways, established publications have also reported the manifestation. For instance, on March 24, 2017, Motor Authority published an article regarding the overheating issue affecting 2016 Mustang Shelbys and noted that this lawsuit was filed in the Southern District of Florida. In a “note to readers,” Motor Authority disclosed the following:<sup>21</sup>

Motor Authority actually ran across this issue and it appeared to be related to the transmission. During our 2016 Best Car To Buy testing, I exercised the GT350 on a twisty southern California road. After about 15 minutes of switchbacks that required few gear shifts and had me running mostly in second gear, the car went into Limp

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<sup>21</sup> Kirk Bell, *2016 Mustang Shelby GT350 Owners Suing Ford, Say ‘Track-Ready’ Cars Overheat Too Quickly*, Motor Authority (Mar. 24, 2017), [http://www.motorauthority.com/news/1109557\\_2016-mustang-shelby-gt350-owners-suing-ford-say-track-ready-cars-overheat-too-quickly](http://www.motorauthority.com/news/1109557_2016-mustang-shelby-gt350-owners-suing-ford-say-track-ready-cars-overheat-too-quickly).

Mode and the transmission temperature was sky high. After I limped back to base and let it cool down, it was fine. It wasn't the deciding factor that gave the win to the 2016 Chevrolet Camaro SS because we didn't know if it was an isolated incident or a real problem, but it didn't help.

342. Thus, Track Enthusiasts are faced with an impossible choice: (1) allow for overheating events to occur at unexpected times, thereby causing increased safety risks as well as damage to the transmission, differential, and other parts of the Shelby; or (2) take a gamble by modifying their car with expensive aftermarket repairs that were not initially envisioned by Ford engineers and cross their fingers that such modifications will not affect the performance or long-term reliability of their Shelby, let alone the future enforcement of their express warranties. Under either of these scenarios, Track Enthusiasts are not getting what they bargained for.

## **2. The Economic Consequences Associated with the Defects**

343. In addition to the increased safety risks associated with the defects contained in the Shelbys, Plaintiffs have also suffered economic harm as a result of Ford's fraudulent conduct.

344. Plaintiffs estimate that a repair to adequately correct the defects associated with the transmission would cost approximately \$7,000. Appropriate aftermarket transmission modifications that would resolve the Track-Ready powertrain defects are not of the straightforward "plug in and play" variety that Ford insinuates in its Owners Supplement. Rather, due to the integrated and highly sophisticated nature of these high-performance vehicles, owners seeking satisfactory relief would be required to replace the transmission, adding a cooler which could result in moving other parts, and reprogramming the engine's control model. These are very expensive and complicated modifications that can implicate different systems within the Shelby vehicle.

345. No cost has yet been determined for the second modification that would address the defects associated with the rear differential system. This is because Ford has admitted to

Plaintiffs as late as April 2017 that it is unable to repair this defect as it has not yet been able to provide a solution that can be properly integrated with the engine's control module and would therefore not be able to properly communicate temperature findings to the driver.

346. In addition, these types of modifications recommended by Ford may also violate the terms of Ford's express warranties, even if Plaintiffs and Class members used Ford-certified components and labor. Thus, Plaintiffs and Class members have not received the benefit of their bargain.

347. Plaintiffs have also suffered a diminution of value due to the fact that prospective owners are now aware that if they want to actually drive safely—and conform to the rules and safety habits mandated by virtually all race track organizations—they would need to pay thousands of dollars to get the same mandatory safety features that are now standard on 2017 Shelby GT 350 Mustangs. This additional repair, or the inability to use this Track-Ready Shelby on a race track, will factor into the purchase price and decision of prospective buyers. As a result, owners of the Shelbys will receive less for their vehicles on the secondary market.

348. Plaintiffs have also suffered out-of-pocket damages, including, but not limited to, pre-paid track sessions that went unused due to the Track-Ready powertrain defects and time spent at the dealership seeking relief and product costs associated with different repair options.

349. Finally, most Plaintiffs have also paid considerable sums of money above the MSRP for a 2016 Shelby. These premiums ranged from \$1,000 to more than \$20,000 on top of the list price and represent further economic loss experienced by Plaintiffs and Class members.

**3. Consumer Complaints Document the Scope of the Defects inherent in the Track-Ready powertrain defects in Shelybys**

350. Ford Mustang forums are replete with the frustrations of owners over the Track-Ready powertrain system defects—a widespread problem affecting more than two-thirds of all 2016 Shelby owners. Consumers are also rightly critical of the lack of a fix and the harm the defects are doing to values. For example, users of the Ford Shelby 350 forum posted the following:<sup>22</sup>

**Apndx:**

Posted: 16 July 2016 - 08:23 AM

Good morning all, I have received information from 3 reliable sources that a kit has been developed and we the owners will get a letter within the month telling us about it, I am also told it will be available for purchase and installation about the same time we get the letter. I could not get any more details other than what Ford Customer Service, Shelby, and local service manager told me, and this is after months of being told that it was being evaluated but nothing beyond that. This latest info is very different than what we all heard before. So watch your mail! This is also very different then being told might need to change out the tranny.

Posted 22 January 2017 - 07:55 AM

The track is a hard core track car, the tech was to be track able but isn't and can't be modified easily or cost effectively and no one really knew how critical the coolers were even for short track runs, and Ford for 2017 fixed that, leaving no viable fixes for the 2016, this diminishes the value of the car and it's utility, that's the issue

Posted 22 January 2017 - 06:09 PM

You are clearly not the only one disappointed that this car does not live up to its hype and can be out performed by a standard Mustang GT. Limp mode stinks. This is a great car but it is not the most track capable Mustang ever. At least after 15 minutes its not.

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<sup>22</sup> KenPShelbyGT350, *Aftermarket or OEM Transmission, Oil, and Differential Coolers*, FORDSHELBYGT350FORUM.COM (Mar. 14, 2016), <http://fordshelbygt350forum.com/topic/2716-aftermarket-or-oem-transmission-oil-and-differential-coolers/>.

**2016VooDoo:**

Posted 04 May 2016 - 09:26 AM

I had this issue at a track event last weekend after about 15 minutes on the track. Ford says this is "normal" as the Technology Package cars were not intended for Track use. I think this is a BS answer. If this were the case, why does the car have 530 horsepower, huge 6 piston front brakes, spoilers, strut tower brace, Track Apps in the menu system including lap timers, etc. This car was marketed as the most capable track cars Ford has ever built.

Ford knows they made a mistake here and they are correcting it for MY17. If anyone from Ford is reading this forum I have a request... When you do come out with a cooler kit for the trans and differential, please offer it to those of us who spent money on the MY15 and MY16 cars without huge Ford + Dealer markup. Current owners are your best ambassadors for the car and for the brand and it would be a shame to have Ford put the burden of fixing these cars on the owners.

Had I known my car wouldn't be able to finish a lapping session, I wouldn't have bought it.

You can all imagine the conversations around the track when the brand new GT350 couldn't finish 25 minutes on the track. Embarrassing.

On the positive side, before the car went into limp mode, it was a BEAST!

**Copyless:**

Posted 04 May 2016 - 12:10 PM

I agree 100 percent with everything you stated and if Ford stands behind the "not meant for track use" BS, then I think that they should really take a dive in sales and profits for the '17 year, and I really hate to say something like that because I have been a Ford person forever and I love Ford, but right is right and this should have been addressed before the first gt350 was put together as a production car.

I hope they have the cooler kits available soon and would like it even more (but it probably won't happen) if they would actually take the time to pull the names of every base and Teck Pckg car sold and send them letters a week or so before the kit is available and let us know that it is coming out and give us our special price

for the kit. They could do this easily if they wanted to, and this would show that they really cared for their customers, and this would show that, more than anything else that they normally do and then say this is their appreciation. I mean they send out the supplement packages, so they already have every owners name and address and the options on the car, so it would not be that hard to contact them and make this kit available to them before hand and at a reduced price, this move would produce a marketing effect that even their high paid marketers could not add, as it would hit forums and I would not be surprised if it even made it into an article or two.

Anyway, I can dream if I want to, it's up to you, FORD, to make my dream a reality.

Again 2016voodoo, I hope Ford is reading this, because I want my dream, which I believe may also be a dream of yours, to become real, because I believe this is the dream of many owners and because I still believe in Ford.

**Springer:**

Posted 20 May 2016 - 10:57 PM

It is only a matter of time before legal action is filed against Ford regarding the non functionality of the Tech cars when tracked and not performing as advertised and marketed as the most capable track car ever. This is so "slam dunk" that I'm surprised a class action suit hasn't already been made against Ford.

**2016VooDoo:**

Posted 12 July 2016 - 10:59 AM

Has anyone heard any more on this from Ford SVT? I was at Road America again this weekend as a spectator at a track day and every GT350 without Track Package went into Limp Mode. Owners were PISSED OFF.

I hope Ford is listening and will consider a reasonable fix to a condition that should never be occurring on a car with Track Apps and Lap Timers built into the electronics!



**jsderikson:**

Posted 12 July 2016 - 11:24 PM

I had the same problem. Did a track day at Thunder Hill 5 mile. First session no problem because I didn't yet know the track. Second session 70 degree ambient and went into limp mode after about 12 minutes in. Took it to dealer, had them read the codes and they confirmed transmission overheat. Got same story ... need a Track Package. By-the-way, I was never told this when I bought the car and they certainly didn't give me the manual until after the sale. I reported to Ford Customer Service (Spoke with regional Customer Service Manager for San Francisco Region) and they acted as if they hadn't heard about it. I sent them a link to this post and some others and they claim that it wasn't being reported to them and that they couldn't respond to blog posts. I recommend that everyone who has experienced this shout really loud to Ford or they are not going to respond. I am sure they know about it but it might not be a priority for such a low volume car. I Couldn't get a confirmation out of them that they were working on anything but I think they probably are.

The final outcome was she recommended that I continue working with my local dealer so that they can assist once a fix does come out. Will continue to wait for a while.

**Maag:**

10-09-2016, 04:15 PM

### **Ford Call To Action - Fix Limp Mode!**

Anyone who owns a 2015 or 2016 GT350 (non track option) should read this thread and contact Ford!

I own a 2016 Technology Package. I specifically asked the salesman before I bought the car if it had the Track Package and I was told that the Technology Package included the Track Package options. As you can expect, I'm not very happy to find out that my car doesn't have the diff and trans coolers it needs to even last a 20 min track session without going into limp mode. I'm at 4500+ above sea level and planned on tracking the car often. I am very disappointed that Ford marketed this car as a track car, but I can't even use it as such. I've submitted a claim to Ford and received the following unacceptable response. FRUSTRATED!! I would expect Ford to rectify this situation and stand by the GT350 marketing as it being a track car.

Response from Ford:

Subject: Ford Motor Company CAS-10612011-Y3R2F7  
CRM:09632000001005

Hello Clifford,

My name is Sharonica, I am from Ford's Customer Relationship Center (CRC). I have reviewed your email inquiring about your 2016 Ford Mustang.

I can see why this would concern you. Please be assured that any time a customer writes to us, it is appreciated. Every customer is of the highest value to Ford, and we make every effort to assist anyone who writes, e-mails, or calls us regarding any situation. After reviewing my resources, there are no recalls or customer satisfaction program that would indicate a problem with your Shelby. The 2016 Shelby Mustang is a thoroughbred capable of tackling the world's most challenging roads and racetracks. The new GT350 draws its credentials from its legendary racing roots at Shelby and the Ford Performance Team, building on Carroll Shelby's idea of transforming a great everyday car into a dominant road racer. If your Shelby experiences any issues, we recommend that your Shelby be inspected by a Ford dealership to determine the cause of any symptoms your Shelby may be experiencing. Your local Ford dealership has factory-trained technicians and the most current Ford service information, and the specialized equipment required to resolve your Shelby concerns.

We understand the circumstances which caused you to write and hope that you will continue to enjoy our products. We have documented your feedback and will share it with the appropriate department.

Thank you for contacting Ford Motor Company. ...

**G. Ford Was Aware of the Defects inherent in the 2016 Shelby Mustangs While Promoting Them as Track-Ready**

**1. Ford Concealed That the "Technology Package" Shelbys Were Not Track-Ready**

351. In the first half of 2015, Ford continued to make repeated false statements that 2016 Shelby Mustangs were Track-Ready and "the most track-capable car" ever produced while knowing that the Base or Technology Package GT350s were unsafe for race track use. Further, it

is not possible that Ford suddenly learned of this defect as manufacturers spend a year or more testing new models. Ford had been testing Shelbys on the track prior to introduction to the market and during this testing discovered the defects. For example, in an August 25, 2015 press release, Ford proclaimed that it had extensively tested the Shelby prior to introduction, for “hundreds of hours.” Indeed, Ford’s testing was so frequent that Auto Evolution reported in 2014 that “the supped up Mustang has become one of the Nurburgrings (a race track) favorite children lately, running lap after lap of testing.” Testing was also conducted pre-launch at the Grattan Raceway. Ford refused to disclose to the public the Track-Ready powertrain system defects and that the Base or Technology Package GT350s were unsafe for race track use during this time, or that the Shelbys would enter the dangerous Limp Mode if taken onto a race track and operated at high speeds.

## **2. Tellingly, Newer Model Years of the Shelby Have Corrected the Defects**

352. In April 2016, Ford announced that one of the biggest changes for the 2017 Shelby was that the 2016 Track Package would now come standard on every new Shelby. As such, all 2017 Shelby models, regardless of trim level, now include both the rear differential cooler and a transmission cooler, and all of the associated engineering and parts needed to make these coolers integrate with the rest of the design. This is another admission by Ford that the 2016 Shelbys were not track-worthy as sold. The 2017 Shelby, complete with the appropriate coolers and fixes, is being sold for approximately \$3,000 more than the cost of the 2016 Shelbys.

## **H. Despite Express Warranties, Ford Has Not Fixed the Problems with the Track-Ready Powertrain System**

### **1. Ford Provided Multiple Express Warranties Associated with the Shelbys That Promised to Fix Both Design and Manufacturing Defects**

353. In connection with the sale of each one of its new Shelbys, Ford provides express limited warranties on each Shelby, such as the New Vehicle Limited Warranty and the

Powertrain Warranty. In those warranties, Ford promises to repair any defect or malfunction that arises in the Shelby during a defined period of time. These warranties are provided by Ford to the Shelby owner in writing and regardless of what state the customer purchased his or her Shelby in. Ford specifically states that “the GT350 carries the same warranty as other Ford Mustang models.”<sup>23</sup>

354. Each Plaintiff was provided a warranty and it was the basis of their purchase of a Shelby.

355. In its New Vehicle Limited Warranty and in advertisements, brochures, press kits, and other statements in the media, Ford expressly warranted that it would repair or replace defects in material or workmanship free of charge if they became apparent during the warranty period. Ford also expressly warranted that it would remedy any defects in the design and manufacturing processes that result in vehicle part malfunction or failure during the warranty period. The following uniform language appears in all 2016 Ford Mustang Warranty Guides:<sup>24</sup>

Your NEW VEHICLE LIMITED WARRANTY gives you specific legal rights. You may have other rights that vary from state to state. Under your New Vehicle Limited Warranty if . . . your Ford Shelby is properly operated and maintained, and . . . was taken to a Ford dealership for a warranted repair during the warranty period, then authorized Ford Motor Company dealers will, without charge, repair, replace, or adjust all parts on your Shelby that malfunction or fail during normal use during the applicable coverage period due to a manufacturing defect in factory-supplied materials or factory workmanship.

This warranty does not mean that each Ford vehicle is defect free.  
***Defects may be unintentionally introduced into vehicles during***

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<sup>23</sup> Ford, *Shelby Mustang Supplement* (July 2015), available at [http://www.fordservicecontent.com/Ford\\_Content/Catalog/owner\\_information/2015-2016-Mustang-Shelby-GT350-Supplement-version-1\\_su\\_EN-US\\_07\\_2015.pdf](http://www.fordservicecontent.com/Ford_Content/Catalog/owner_information/2015-2016-Mustang-Shelby-GT350-Supplement-version-1_su_EN-US_07_2015.pdf), at p. 46.

<sup>24</sup> Ford, *2016 Model Year Ford Warranty Guide* (Oct. 2015), available at [http://www.fordservicecontent.com/Ford\\_Content/Catalog/owner\\_information/2016-Car-Lt-Truck-Warranty-version-3\\_frdwa\\_EN-US\\_10\\_2015.pdf](http://www.fordservicecontent.com/Ford_Content/Catalog/owner_information/2016-Car-Lt-Truck-Warranty-version-3_frdwa_EN-US_10_2015.pdf), at p. 14 (emphasis added).

***the design and manufacturing processes and such defects could result in the need for repairs.*** For this reason, Ford provides the New Vehicle Limited Warranty in order to remedy any such defects that result in vehicle part malfunction or failure during the warranty period.

356. With regard to Ford Shelbys, the duration of the NVLW for bumper-to-bumper protection is three years or 36,000 miles, whichever comes first. The powertrain warranty is five years or 56,000 miles, whichever comes first. The Warranty Start Date is “the day you take delivery of your new Shelby or the day it was first put into service (for example, as a dealer demonstrator), whichever occurs first.”<sup>25</sup> These terms were identical for all Shelbys.

357. All Plaintiffs and members of the Class experienced defects in their Track-Ready powertrain defects within the warranty period. However, despite the existence of the express warranties provided to Plaintiffs and Class members, Ford has failed to honor the terms of the warranties by failing to “without charge, repair, replace, or adjust all parts on [the] Shelby that malfunction or fail during normal use during the applicable coverage period.”<sup>26</sup>

358. Most Plaintiffs have contacted Ford, a Ford-authorized dealership, or a subsidiary providing notice of their concerns and requesting follow-up to resolve the defects. Originally, Ford indicated that a fix would be made available in March 2016; instead, Ford announced in April 2016 that the 2017 Shelby vehicles would have the transmission and differential coolers as standard features. Ford or its agents continued to promise that a fix would be made available sometime in 2016 that would resolve the Track-Ready powertrain system and honor the New Vehicle Limited Warranty, but to date no such fix has been made available. Other Plaintiffs

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<sup>25</sup> *Id.* at p. 7.

<sup>26</sup> *Id.* at p. 9.

believed such correspondence was futile as Ford made it clear that aftermarket repairs could threaten their express warranties.

**2. Post-Purchase Distribution by Ford of an Owner's Supplement Unilaterally and Unexpectedly Shifted the Cost of Repair onto Owners**

359. Only in July 2015, through a subsequent Owner's Supplement, did Ford provide the following notification to *existing* owners of the Shelby Mustang: "Your Shelby is capable of sustained high speeds and track day driving if equipped with powertrain coolers (Track, R model)."<sup>27</sup> For those with the Base or Technology Package models, Ford "recommend[ed] that transmission and differential coolers [be] added" for "sustained high speeds or track day use."<sup>28</sup> This is an admission by Ford that these Shelseys were not track-worthy as sold.

360. This supplement was not provided to Plaintiffs or Class members prior to or during the time of purchase. At no point in 2015 or 2016 did Ford change its messaging to *prospective buyers* to clarify that Shelby Mustangs were not capable for track use<sup>29</sup> or require dealerships or other Ford agents to disclose this information to prospective buyers.

361. The recommendation in the 2015 Owner's Supplement was also ignored in later press releases and promotional literature that Ford released, which again proclaimed that the Shelby is "Track Tuned" and capable of safely performing on race tracks.

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<sup>27</sup> Ford, *Shelby Mustang Supplement* (July 2015), available at [http://www.fordservicecontent.com/Ford\\_Content/Catalog/owner\\_information/2015-2016-Mustang-Shelby-GT350-Supplement-version-1\\_su\\_EN-US\\_07\\_2015.pdf](http://www.fordservicecontent.com/Ford_Content/Catalog/owner_information/2015-2016-Mustang-Shelby-GT350-Supplement-version-1_su_EN-US_07_2015.pdf), at p. 25.

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

<sup>29</sup> See, e.g., Ford, *Standard Equipment, Going Fast: Shelby Mustang Owners Get Complimentary Performance Driving School* (Mar. 9, 2016), <https://media.ford.com/content/fordmedia-mobile/fna/us/en/news/2016/03/09/shelby-gt350-mustang-owners.html>; Ford, *2016 GT350/GT350R Press Kit*, available at <https://media.ford.com/content/fordmedia/fna/us/en/products/cars/mustang/2016-gt350-350r-press-kit.pdf> (last accessed Mar. 22, 2017).

## **OVERVIEW AND MULTIMEDIA**

### **SHELBY MUSTANG: THE LEGEND RETURNS**

All-new Shelby® GT350 Mustang is a thoroughbred capable of tackling the world's most challenging roads *and racetracks*.

#### **Track-tuned driveline**

Early in the development of the GT350, it was decided that a high-revving, naturally aspirated V8 engine would best suit a track-focused Mustang. "The final product is essentially an all-new powerplant unique to GT350 – "and one that takes true advantage of the new chassis dynamics of the Mustang platform," said Jamal Hameedi, chief engineer, Ford Global Performance Vehicles.

The new 5.2-liter V8 engine is the first-ever production V8 from Ford with a flat-plane crankshaft, an architecture typically found only in racing applications or exotic European sports cars. Unlike a traditional V8, where the connecting rods are attached to the crankshaft at 90-degree intervals, this design evenly spaces all crank pins at 180-degrees intervals.

The 180-degree, flat-plane layout permits a cylinder firing order that alternates between cylinder banks, reducing the overlap of exhaust pressure pulses. When combined with cylinder-head and valvetrain advancements, this permits better cylinder breathing, further extending the performance envelope of the V8.

The result is the most powerful naturally aspirated production Ford engine ever, at 526 horsepower, with a torque peak of 429 lb.-ft. The track capability is enhanced by the output characteristics of the engine – the 5.2-liter V8 features an exceptionally broad torque curve. Combined with its high-revving ability, the flat-plane 5.2-liter V8 gives drivers an enormous amount of performance and flexibility within each gear of the lightweight six-speed manual transmission. A standard Ford-tuned Torsen limited-slip differential optimizes cornering grip and straight-line traction. "Make no mistake, this is an American interpretation of a flat-plane crankshaft V8, and the 5.2-liter produces a distinctive, throaty howl from its four exhaust tips," Hameedi said.

#### **Obsession to detail**

"Everything we changed on GT350 is purely functional-driven design, with the goal of improving the overall performance of the car," said Chris Svensson, Ford design director, The Americas. "We optimized the aero shape of the car, and then fine-tuned what

was left to increase downforce and cooling airflow.” All bodywork from the windshield forward is unique to this high-performance model, and up to two inches lower than Mustang GT.

The new aluminum hood has been lowered and sloped, compared to the base Mustang, tightly wrapped around the engine for the smallest possible aerodynamic signature. Front and rear aero elements have been balanced to work together on the track. The fascia has been resculpted to provide the aggressive lower front splitter with maximum pressure and a ducted belly pan delivers significant downforce. The hood outlet acts as a heat extractor while also reducing underhood lift at high speed. At the rear, much of the engineering was focused on creating an aggressive functional diffuser doing double duty to increase downforce and provide cooling air to the optional differential cooler, and a subtle lip spoiler across the trailing edge of the decklid increases downforce without adding excess drag.

#### **Focus-driven cockpit changes**

Like everything else about GT350, the interior has been optimized for driving, beginning with the specially designed Recaro sport seats with a unique cloth. Hundreds of hours and many prototypes went into a seat that is both comfortable in daily driving and capable on the track. A flat-bottom steering wheel makes it easier for the driver to get in and out and more ergonomic on the racetrack. Gauges are upgraded to reflect the enormous performance capability of the car. Chrome and bright finishes have been reduced or eliminated to prevent any sun glare that may distract the driver.

(Emphasis added.)

362. Indeed, the August 25, 2015 release brags about “Staying Cool,” recognizing that overheating was a possible material issue:

#### **Staying cool**

Every aspect of Shelby is built for track capability, and the transmission is no exception. Managing temperatures and ensuring sufficient lubrication is key to real-world track durability. The GT350 Track Package and GT350R have a unique oil-to-air transmission cooler that is fed by a gerotor pump integrated into the housing of the transmission. This arrangement ensures the transmission stays cool and properly lubricated, but it also brings the added benefit of keeping transmission heat out of the coolant



circuit. The result is an engine radiator dedicated to engine cooling, and a smaller, lighter design.

The air-to-oil transmission cooler is mounted directly behind the front fascia with its own dedicated ducting. Significant aerodynamic work was done to perfect the cooler angle and duct shape to ensure airflow is distributed over the entire face of the cooler for maximum efficiency. Finally, a sensor is included in the transmission to warn the driver via the gauge cluster of an overheat condition, in the very unlikely event a driver might overwhelm the cooling capacity of the transmission.

(Emphasis added.)

363. At no point after the publication of the Owners Supplement did Ford ever revise its language or require its dealerships and other agents to explain the following to prospective buyers or existing owners: (1) the addition of coolers is required for the Shelbys to safely perform for any length of time on a race track; (2) without these coolers, Base Model and Technology Package Shelbys, as designed, will enter Limp Mode unexpectedly and without any warning thereby creating a serious safety hazard; (3) an explanation of what Limp Mode is or how it would manifest while driving; (4) due to the lack of a visible temperature gauge on the display reflecting transmission and differential temperatures, there is no way to foresee or estimate if one is close to entering Limp Mode, foreclosing on any ability of the driver to mitigate the safety consequences of the Track-Ready powertrain defects ; (5) that drivers could experience Limp Mode while operating their 2016 Shelby on public roadways; and (6) any aftermarket modifications, even the modification recommended by Ford in the 2015 Owner's Supplement can void existing express warranties for the rest of the vehicle.

**3. The Expensive Aftermarket Modifications Recommended by Ford Do Not Resolve All the Defects and Execution of these Modifications Can Violate the Terms of Ford's Express Warranties**

364. As discussed above, Ford began to recommend to *existing* owners of the Base and Technology Package that they install transmission and differential coolers if they wanted to take

their vehicles on a track. However Ford does not indicate how expensive and complex these aftermarket modifications are to execute.

365. For example, there are two modifications available to address the defects associated with transmission overheating. The first modification requires changing the entire transmission system and adding a cooling unit. But appropriate aftermarket transmission modifications that would resolve these defects are not of the straightforward “plug in and play” variety that Ford insinuates in its Owners Supplement. Rather, due to the integrated and highly sophisticated nature of these high-performance vehicles, owners seeking satisfactory relief would be required to replace the transmission, adding a cooler which could result in moving other parts, and reprogram the engine’s control model. These are very expensive and complicated modifications that can implicate different systems within the Shelby vehicle. As such, the cost of this estimated repair is over \$7,000.

366. The second modification is to add a cooling unit to the transmission system in addition to a third-party pump and other items at a cost of approximately \$3,000. The pumps are not manufactured by Ford. So this repair is also not a “plug in and play” solution. Installation of this hardware also requires extensive work and additional costs associated with ensuring proper plumbing. These modifications can impair the performance of the vehicle. This is unsatisfactory.

367. Importantly, neither of these modifications address the fact that it is impossible for a driver of a 2016 Shelby to monitor the temperature of the transmission as there is no temperature gauge in the cockpit display area—a stark contrast to the Track Package Shelbys, the GT350R, and the 2017 Shelby models. As such, even after these aftermarket modifications, 2016 Shelby drivers will continue to be unable to foresee or estimate a Limp Mode situation

before it occurs and take mitigating action to protect the safety of the driver and those around him or her.

368. In spite of Ford's recommendation that owners add an aftermarket differential cooler, Ford fails to disclose that this modification is unavailable to 2016 Shelby owners. Ford has admitted as recently as April 2017 that no differential cooler exists that can be read by the computer that operates the features included in the Technology Package. As a result, the differentials will inevitably continue to overheat, resulting in premature failure of the rear end. Nor does Ford provide any ability for the 2016 Shelby drivers to monitor differential temperature via a gauge on the cockpit display so that they can foresee a potential Limp Mode manifestation.

369. Finally, owners attempting to execute any of Ford's recommended aftermarket modifications may be violating the terms of Ford's express warranties.

370. Per Ford's 2016 Model Year Ford Warranty Guide: "Aftermarket parts or components, sometimes installed by Ford Motor Company or an authorized Ford dealership, may not be covered by the New Vehicle Limited Warranty. Any damage caused to Ford components due to the failure of aftermarket parts (other than a certified emissions part) is not covered."<sup>30</sup>

371. Per Ford's Shelby Mustang Supplement: "We do not recommend modifying or racing (for competition or time) Ford Performance Shelbys, as they are designed and built to be driven as delivered from the factory."<sup>31</sup> As such, these Ford-recommended aftermarket modifications fail to adequately repair or replace the Track-Ready powertrain system defects and Ford is in ongoing breach of the express warranties.

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<sup>30</sup> *Id.* at 15.

<sup>31</sup> Ford, *Shelby Mustang Supplement* (July 2015), available at [http://www.fordservicecontent.com/Ford\\_Content/Catalog/owner\\_information/2015-2016-Mustang-Shelby-GT350-Supplement-version-1\\_su\\_EN-US\\_07\\_2015.pdf](http://www.fordservicecontent.com/Ford_Content/Catalog/owner_information/2015-2016-Mustang-Shelby-GT350-Supplement-version-1_su_EN-US_07_2015.pdf), at p. 46.

372. This is consistent with correspondence sent to Plaintiff Aubrey, where Plaintiff Aubrey asks Ford for permission to install a built-in cooler, or aftermarket cooler—as per the specific recommendations outlined in the 2015 Owners Supplement.<sup>32</sup> In denying Plaintiff Aubrey’s request, Ford admits the following: “Ford Motor Company does not recommend changes to our products. Only changes that have been thoroughly tested and approved by Ford Engineering should be considered. In this case, Ford part numbers will be issued and parts made available for purchase through our dealers.” Unfortunately, to this day, neither Plaintiff Aubrey nor any other Class member has yet to be notified of any Ford part number or parts available for purchase through the dealership network that would fix the defects and honor the NVLW.

373. Thus, it is impossible for owners to seek relief, even at their own expense, and still maintain the validity of their express warranties. As such, Ford has failed to adequately repair or replace the differential cooling defects within the Track-Ready powertrain system and Ford is in ongoing breach of the express warranties; therefore, Plaintiffs and Class members have not received the benefit of their bargain.

## **VI. CLASS ALLEGATIONS**

374. Plaintiffs bring this action on behalf of themselves and as a class action pursuant to the provisions of Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure on behalf of the following classes:<sup>33</sup>

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<sup>32</sup> The 2015 Owner’s Supplement states: “Your Shelby is capable of sustained high speeds and track day driving if equipped with powertrain coolers (Track, R model).” For those with the Base or Technology Package models, Ford “recommend[ed] that transmission and differential coolers [be] added” for “sustained high speeds or track day use.” This is an admission by Ford that the Shelybs were not track-worthy as sold.

<sup>33</sup> Collectively, the “Class,” unless otherwise noted.

**Nationwide Class**

All residents of the United States who are current or former owners of a Ford 2016 Shelby Mustang with a Base or Technology Package (the “Nationwide Class”).

**Florida Class**

All residents of the State of Florida who purchased a Ford 2016 Shelby Mustang with a Base or Technology Package (the “Florida Class”).

**California Class**

All residents of the State of California who purchased a Ford 2016 Shelby Mustang with a Base or Technology Package (the “California Class”).

**Illinois Class**

All residents of the State of Illinois who purchased a Ford 2016 Shelby Mustang with a Base or Technology Package (the “Illinois Class”).

**Missouri Class**

All residents of the State of Missouri who purchased a Ford 2016 Shelby Mustang with a Base or Technology Package (the “Missouri Class”).

**New Jersey Class**

All residents of the State of New Jersey who purchased a Ford 2016 Shelby Mustang with a Base or Technology Package (the “New Jersey Class”).

**New York Class**

All residents of the State of New York who purchased a Ford 2016 Shelby Mustang with a Base or Technology Package (the “New York Class”).

**Oregon Class**

All residents of the State of Oregon who purchased a Ford 2016 Shelby Mustang with a Base or Technology Package (the “Oregon Class”).

**Pennsylvania Class**

All residents of the State of Pennsylvania who purchased a Ford 2016 Shelby Mustang with a Base or Technology Package (the “Pennsylvania Class”).

**Tennessee Class**

All residents of the State of Tennessee who purchased a Ford 2016 Shelby Mustang with a Base or Technology Package (the “Tennessee Class”).

**Texas Class**

All residents of the State of Texas who purchased a Ford 2016 Shelby Mustang with a Base or Technology Package (the “Texas Class”).

**Washington Class**

All residents of the State of Washington who purchased a Ford 2016 Shelby Mustang with a Base or Technology Package (the “Washington Class”).

375. Excluded from the Class are individuals who have personal injury claims resulting from the operation of a Ford 2016 Shelby Mustang. Also excluded from the Class are Ford and its subsidiaries and affiliates; all persons who make a timely election to be excluded from the Class; governmental entities; and the judge to whom this case is assigned and his/her immediate family. Plaintiffs reserve the right to revise the Class definition based upon information learned through discovery.

376. Certification of Plaintiffs’ claims for classwide treatment is appropriate because Plaintiffs can prove the elements of their claims on a classwide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

377. This action has been brought and may be properly maintained on behalf of each of the Classes proposed herein under Federal Rule of Civil Procedure 23.

378. Numerosity. Federal Rule of Civil Procedure 23(a)(1): The members of the Class are so numerous and geographically dispersed that individual joinder of all Class members is impracticable. While Plaintiffs are informed and believe that there are over four thousand members of the Class, the precise number of Class members is unknown to Plaintiffs, but may be ascertained from Ford’s books and records. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. Mail, email, Internet postings, and/or published notice.

379. Commonality and Predominance. Federal Rule of Civil Procedure 23(a)(2) and 23(b)(3): This action involves common questions of law and fact, which predominate over any questions affecting individual Class members, including, without limitation:

- a) Whether Ford engaged in the conduct alleged herein;
- b) Whether Ford designed, advertised, marketed, distributed, sold, or otherwise placed Shelbys into the stream of commerce in the United States;
- c) Whether the Ford 2016 Shelby Mustang contains defects ;
- d) Whether such defects cause the Shelbys to malfunction;
- e) Whether Ford knew about the defects and, if so, how long Ford has known of the defects;
- f) Whether Ford designed, manufactured, marketed, and distributed Shelbys with a defective Track-Ready powertrain system;
- g) Whether Ford's conduct violates consumer protection statutes, warranty laws, and other laws as asserted herein;
- h) Whether Ford knew or should have known that the defects existed with regard to the Shelbys;
- i) Whether Ford knew or reasonably should have known of the defects in the Shelbys before it sold them to Class members;
- j) Whether Plaintiffs and the other Class members overpaid for their Shelbys as a result of the defects alleged herein;
- k) Whether Plaintiffs and the other Class members are entitled to equitable relief; and
- l) Whether Plaintiffs and the other Class members are entitled to damages and other monetary relief and, if so, in what amount.

380. Typicality. Federal Rule of Civil Procedure 23(a)(3): Plaintiffs' claims are typical of the other Class members' claims because, among other things, all Class members were comparably injured through Ford's wrongful conduct as described above.

381. Adequacy. Federal Rule of Civil Procedure 23(a)(4): Plaintiffs are adequate Class representatives because their interests do not conflict with the interests of the other members of the Classes each respectively seeks to represent; Plaintiffs have retained counsel competent and experienced in complex class action litigation; and Plaintiffs intend to prosecute this action vigorously. The Classes' interests will be fairly and adequately protected by Plaintiffs and their counsel.

382. Declaratory and Injunctive Relief. Federal Rule of Civil Procedure 23(b)(2): Ford has acted or refused to act on grounds generally applicable to Plaintiffs and the other members of the Classes, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to the Class as a whole.

383. Superiority. Federal Rule of Civil Procedure 23(b)(3): A class action is superior to any other available means for the fair and efficient adjudication of this controversy and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiffs and the other Class members are relatively small compared to the burden and expense that would be required to individually litigate their claims against Ford, so it would be impracticable for Class members to individually seek redress for Ford's wrongful conduct. Even if Class members could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.



**VII. CLAIMS FOR RELIEF**

**A. CLAIMS BROUGHT ON BEHALF OF THE NATIONWIDE CLASS**

**COUNT ONE**

**VIOLATION OF MAGNUSON-MOSS WARRANTY ACT  
(15 U.S.C. § 2301, *ET SEQ.*)**

384. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

385. Plaintiffs bring this Count individually and on behalf of the Nationwide Class.

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

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

388. The Shelbys are “consumer products” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

389. 15 U.S.C. § 2301(d)(1) provides a cause of action for any consumer who is damaged by the failure of a warrantor to comply with a written or implied warranty.

390. Ford’s express warranties are written warranties within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(6).

391. 15 U.S.C. § 2301(d)(1) provides a cause of action for any consumer who is damaged by the failure of a warrantor to comply with a written or implied warranty.391. Ford breached these warranties as described in more detail above. Without limitation, the Shelbys are equipped with a defective Track-Ready powertrain system. The Shelbys share a common design defect in that the system fails to operate as represented by Ford.

392. Plaintiffs and the other Nationwide Class members have had sufficient direct dealings with either Ford or its agents to establish privity of contract between Ford on one hand and Plaintiffs and each of the other Class members on the other hand. Ford-authorized dealerships, divisions, and technical support organizations operating under contract to Ford are agents of Ford. Nonetheless, privity is not required here because Plaintiffs and each of the other Nationwide Class members are intended third-party beneficiaries of contracts between Ford and its dealers. The dealers were not intended to be the ultimate consumers of the Shelbys and have no rights under the warranty agreements provided with the Shelbys; the warranty agreements were designed for and intended to benefit the consumers only.

393. Affording Ford a reasonable opportunity to cure its breach of written warranties would be unnecessary and futile here. Indeed, Plaintiffs have already done so and Ford has failed to cure the defects within a reasonable amount of time. As explained above, any solution offered by Ford must be exclusively paid for by Plaintiffs and Nationwide Class members, which is a violation of Ford's promise to repair and replace without charge. All solutions offered by Ford are also aftermarket alterations and therefore undertaking these repairs may represent a new violation of the express warranties on the part of Plaintiffs and Nationwide Class members. At the time of sale of each Shelby, Ford knew, should have known, or was reckless in not knowing, of its omissions and/or misrepresentations concerning the Shelby's inability to perform as warranted, but nonetheless failed to rectify the situation and/or disclose the defective design. Under the circumstances, the remedies available under any informal settlement procedure would be inadequate and any requirement that Plaintiffs resort to an informal dispute resolution procedure and/or afford Ford a reasonable opportunity to cure its breach of warranties is excused and thereby deemed satisfied.

394. Plaintiffs and the other Nationwide Class members would suffer economic hardship if they returned their Shelbys but did not receive the return of all payments made by them. Because Ford is refusing to acknowledge any revocation of acceptance and return immediately any payments made, Plaintiffs and the other Nationwide Class members have not re-accepted their Shelbys by retaining them.

395. 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, exclusive of interest and costs, computed on the basis of all claims to be determined in this lawsuit.

396. Plaintiffs, individually and on behalf of the other Nationwide Class members, seek all damages permitted by law, including diminution in value of the Shelbys and/or loss of the benefit-of-the-bargain, in an amount to be proven at trial, including but not limited to, benefit-of-the-bargain damages, restitution and/or diminution of value.

**B. CLAIMS BROUGHT ON BEHALF OF THE FLORIDA CLASS**

**COUNT TWO**

**VIOLATION OF FLORIDA'S UNFAIR &  
DECEPTIVE TRADE PRACTICES ACT  
(FLA. STAT. § 501.201, *ET SEQ.*)**

397. Plaintiffs George and Diana Tershakovec, John Aubrey, Byron Harper, and Richard Kowalchik ("Plaintiffs" for purposes of all Florida Class Counts) incorporate by reference all preceding allegations as though fully set forth herein.

398. Plaintiffs bring this Count on behalf of the Florida Class.

399. The Florida Unfair and Deceptive Trade Practices Act ("FUDTPA") prohibits "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce." Fla. Stat. § 501.204(1).

400. Plaintiffs and Florida Class members are “consumers” within the meaning of Fla. Stat. § 501.203(7).

401. Ford engaged in “trade or commerce” within the meaning of Fla. Stat. § 501.203(8).

402. In the course of business, Ford willfully failed to disclose and actively concealed the Track-Ready powertrain system defects discussed herein and otherwise engaged in activities with a tendency or capacity to deceive. Ford also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, 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 of Shelbys.

403. By failing to disclose that the defective Track-Ready powertrain system, by marketing Ford Shelbys as safe, reliable, and of high quality, and by presenting Ford as a reputable manufacturer that valued safety and stood behind their Shelbys after they were sold, Ford engaged in deceptive business practices in violation of the FUDTPA.

404. Ford’s unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs and the other Florida Class members, about the true performance of the Shelbys, the devaluing of safety and performance at Ford, and the true value of the Shelbys.

405. Ford intentionally and knowingly misrepresented material facts regarding the Shelbys with intent to mislead Plaintiffs and the Florida Class.

406. Ford knew or should have known that their conduct violated the FUDTPA.

407. As alleged above, Ford made material statements about the safety and performance of the Shelbys and the Ford brand that were either false or misleading.

408. Ford owed Plaintiffs a duty to disclose the true safety, performance, and reliability of the Shelbys, because Ford:

- a. Possessed exclusive knowledge that they were selling and distributing Shelbys throughout the United States that did not perform as advertised;
- b. Intentionally concealed the foregoing from Plaintiffs and the Florida Class; and/or
- c. Made incomplete representations about the safety and performance of the Shelbys generally, and the Base and Technology Package models in particular, while purposefully withholding material facts from Plaintiffs and the Florida Class that contradicted these representations.

409. Because Ford fraudulently concealed the defective Track-Ready powertrain system and the Shelby's inability to be used safely on a race track, Plaintiffs were deprived of the benefit- of- the- bargain and the value of the Shelbys has greatly diminished. In light of the stigma attached to those Shelbys by Ford's conduct, they are now worth significantly less than they otherwise would be.

410. Ford's omissions and/or misrepresentations about the track performance and safety concerns of the Shelbys are material to Plaintiffs and the Florida Class.

411. Plaintiffs and Florida Class members suffered ascertainable loss caused by Ford's misrepresentations and their concealment of and failure to disclose material information. Plaintiffs and Florida Class members who purchased Shelbys either would have paid less for their Shelbys or would not have purchased them at all but for Ford's violations of the FUDTPA.

412. Ford had an ongoing duty to all Ford customers to refrain from unfair and deceptive practices under the FUDTPA. All owners of Shelbys suffered ascertainable loss in the form of diminished value of their Shelbys as a result of Ford's deceptive and unfair acts and practices made in the course of Ford's business.

413. Ford's violations present a continuing risk to Plaintiffs as well as to the general public. Ford's unlawful acts and practices complained of herein affect the public interest.

414. As a direct and proximate result of Ford's violations of the FUDTPA, Plaintiffs and the Florida Class have suffered injury-in-fact and/or actual damage.

415. Plaintiffs and Florida Class members are entitled to recover their actual damages under Fla. Stat. § 501.211(2) and attorneys' fees under Fla. Stat. § 501.2105(1).

416. Plaintiffs also seek an order enjoining Ford's unfair and/or deceptive acts or practices, punitive damages, and attorneys' fees, and any other just and proper relief available under the FUDTPA.

### **COUNT THREE**

#### **FRAUDULENT CONCEALMENT (BASED ON FLORIDA LAW)**

417. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

418. Plaintiffs bring this Count on behalf of the Florida Class.

419. Ford intentionally concealed the defects contained in the Track-Ready powertrain defects that render Shelbys unfit for track use, in that the transmissions of these Shelbys would overheat when placed under Track conditions and unexpectedly go into Limp Mode after approximately 15 minutes, creating a dangerous hazard not only to the drivers but also to nearby vehicles. Ford concealed the fact that for the Shelbys to become Track-Ready as advertised is for Ford owners to buy rear differential and transmission coolers for their 2016 model year cars—at their own expense and potentially in violation of their express warranties.

420. Ford further affirmatively misrepresented to Plaintiffs in advertising and other forms of communication, including standard and uniform material provided with each car and on

its website, that the Shelbys it was selling had no significant defects and that all Shelbys were Track-Ready.

421. Ford knew that these representations were false when made.

422. The Shelbys purchased by Plaintiffs and the other Florida Class members contained a defective Track-Ready powertrain system.

423. Ford had a duty to disclose that the Track-Ready powertrain system contained defects as alleged herein and that these defects created a safety hazard. Plaintiffs and the other Florida Class members relied on Ford's material representations.

424. As alleged herein, at all relevant times, Ford has held out the Shelbys to be free from defects such as the defects related to the Track-Ready powertrain system. Ford touted and continues to tout the many benefits and advantages of the Track-Ready powertrain system, but nonetheless failed to disclose important facts related to the defects and that Florida Class members would be required to make additional aftermarket modifications to adequately achieve Track-Ready performance, and that these modifications may violate their express warranties. This made Ford's other disclosures about the Track-Ready powertrain system deceptive.

425. The truth about the defective Track-Ready powertrain system was known only to Ford; Plaintiffs and the other Florida Class members did not know of these facts and Ford actively concealed these facts from Plaintiffs and the other Florida Class members.

426. Plaintiffs and the other Florida Class members reasonably relied upon Ford's deception. They had no way of knowing that Ford's representations were false, misleading, or incomplete. As consumers, Plaintiffs and the other Florida Class members did not, and could not, unravel Ford's deception on their own. Rather, Ford intended to deceive Plaintiffs and the other

Florida Class members by concealing the true facts about the Shelby's Track-Ready powertrain systems.

427. Ford's false representations and omissions and/or misrepresentations were material to consumers because they concerned qualities of the Shelbys that played a significant role in the value of the Shelbys and forced Florida Class members to make additional expenditures to ensure proper safety at the race track.

428. Ford had a duty to disclose the defects inherent in the Track-Ready powertrain system and violations with respect to the Shelbys because details of the true facts were known and/or accessible only to Ford, because Ford had exclusive and/or superior knowledge as to such facts, and because Ford knew these facts were not known or reasonably discoverable by Plaintiffs or Florida Class members.

429. Ford also had a duty to disclose because it made general affirmative representations about the technological and safety innovations included with the Shelbys, without telling consumers that the defective Track-Ready powertrain system would affect the safety, quality, and performance of the Shelby.

430. Ford's disclosures were misleading, deceptive, and incomplete because they failed to inform consumers of the additional facts regarding the defects in the Track-Ready powertrain system as set forth herein. These omitted and concealed facts were material because they directly impact the value of the Shelbys purchased by Plaintiffs and the other Florida Class members.

431. Ford has still not made full and adequate disclosures and continues to defraud Plaintiffs and the other Florida Class members by concealing material information regarding the defects in the Track-Ready powertrain system.



432. Plaintiffs and the other Florida Class members were unaware of the omitted material facts referenced herein and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased or paid as much for cars with faulty powertrain systems and/or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and the other Florida Class members' actions were justified. Ford was in exclusive and/or superior control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Florida Class members.

433. Because of the concealment and/or suppression of facts, Plaintiffs and the other Florida Class members sustained damage because they own(ed) Shelbys that are diminished in value as a result of Ford's concealment of the true quality of those Shelby's Track-Ready powertrain systems. Had Plaintiffs and the other Florida Class members been aware of the defects in the Track-Ready powertrain defects installed in the Shelbys, and the company's disregard for the truth, Plaintiffs and the other Florida Class members who purchased a Shelby would have paid less for their Shelbys or would not have purchased them at all.

434. Plaintiffs have been deprived of the benefit- of- the- bargain and the value of Plaintiffs' and the other Florida Class members' Shelbys has diminished as a result of Ford's fraudulent concealment of the defective Track-Ready powertrain system of the Shelbys, which has made any reasonable consumer reluctant to purchase any of the Shelbys, let alone pay what otherwise would have been fair market value for the Shelbys.

435. Accordingly, Ford is liable to Plaintiffs and the other Florida Class members for damages in an amount to be proven at trial, including but not limited to, benefit-of-the-bargain damages, restitution and/or diminution of value.

436. Ford's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the other Florida Class members' rights and the representations that Ford made to them, in order to enrich Ford. Ford's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

#### **COUNT FOUR**

##### **BREACH OF EXPRESS WARRANTY (FLA. STAT. § 672.313)**

437. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

438. Plaintiffs bring this Count on behalf of the Florida Class.

439. Plaintiffs were each at all relevant times a "buyer" as defined by Fla. Stat. § 672.103.

440. Ford was at all relevant times a "merchant" as defined by Fla. Stat. § 672.104.

441. The Shelbys are and were at all relevant times "goods" as defined by Fla. Stat. § 672.105.

442. As an express warrantor and manufacturer and merchant, Ford had certain obligations under Fla. Stat. § 672.313 to conform the Shelbys to the express warranties.

443. When Plaintiffs and the other Florida Class members purchased their Shelbys, Ford expressly warranted in writing that the Shelbys were covered by a Limited Warranty and that the NVLW formed the basis of the bargain. As set forth herein, Ford expressly warranted that it would (1) repair or replace defects in material or workmanship free of charge if they became apparent during the warranty period, and (2) remedy any defects in the design and manufacturing processes that result in vehicle part malfunction or failure during the warranty

period. Also, as set forth herein, Ford breached its warranty obligations by selling inherently defective Shelbys and refusing to repair the defects or replace the defective parts.

444. The defects at issue in this litigation were present at the time of sale to Plaintiffs and members of the Florida Class.

445. Ford breached the NVLW to repair and adjust to correct defects that were introduced during the design and manufacturing processes of any part supplied by Ford as Ford has been unable to repair or adjust the Shelby's materials and workmanship defects.

446. Furthermore, the Limited Warranty of repair and/or adjustments to defective parts fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and the other Florida Class members whole and because Ford has failed and/or refused to adequately provide the promised remedies within a reasonable time.

447. Pursuant to the express warranties, Ford was obligated to pay for or reimburse Plaintiffs and the other Florida Class members for costs incurred in purchasing aftermarket coolers for the transmission and differential systems and other costs associated with bringing their Shelbys to the dealership for futile repair efforts. Ford was also obligated to repair the defects.

448. Accordingly, recovery by Plaintiffs and the other Florida Class members is not limited to the Limited Warranty of repair or adjustments to parts defective in materials or workmanship, or in design, and Plaintiffs and the other Florida Class members seek all remedies as allowed by law.

449. Also, as alleged in more detail herein, at the time that Ford warranted and sold the Shelbys, and while knowing that the Shelbys did not conform to Ford's Limited Warranty and were inherently defective, Ford wrongfully and fraudulently concealed material facts regarding

the Shelbys. Plaintiffs and the other Florida Class members were therefore induced to purchase the Shelbys under false and/or fraudulent pretenses. As such, Ford's warranty limitation regarding presentment is unenforceable because it knowingly sold or leased a defective product without informing consumers about the defect. A gross disparity in bargaining power existed between Ford and other Florida Class members, and Ford knew of the Shelby defects at the time of sale.

450. Ford and its agent dealers have failed and refused to conform the Shelbys to the express warranties and Ford's conduct and has voided any attempt on its part to disclaim liability for its actions.

451. Moreover, many of the damages flowing from the Shelbys cannot be resolved through the limited remedy of "replacement or adjustments" as those incidental and consequential damages have already been suffered due to Ford's fraudulent conduct as alleged herein, and due to its failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs' and the other Florida Class members' remedies would be insufficient to make Plaintiffs and the other Florida Class members whole.

452. Ford received timely notice regarding the problems at issue in this litigation (indeed Ford knew of the defects prior to offering the Shelbys for sale or lease). Ford was also provided notice of these issues through the receipt of numerous complaints regarding the Limp Mode manifestations. Ford has received, on information and belief, many complaints from Florida Class members advising them of the defects at issue in this litigation.

453. Plaintiffs have performed each and every duty required 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 unconscionable conduct.

454. Plaintiffs have had sufficient dealings with either Ford or its agents (dealerships, Ford Performance, or other divisions or subsidiaries) to establish privity of contract. Privity is not required in this case because Plaintiffs and the other Florida Class members are intended third-party beneficiaries of contracts between Ford and its dealers; specifically, they are the intended beneficiaries of Ford's express warranties and these warranties were advertised to Plaintiffs and the other Florida Class members as the ultimate consumers. The dealers were not intended to be the ultimate consumers of the Shelbys and have no rights under the warranty agreements provided with the Shelbys; the warranty agreements were designed for and intended to benefit the ultimate consumers only.

455. As a direct and proximate result of Ford's breach of express warranty, Plaintiffs and the other Florida Class members have been damaged in an amount to be determined at trial, including, but not limited to, diminution of value and benefit-of-the-bargain damages.

#### **COUNT FIVE**

##### **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY (FLA. STAT. § 672.314)**

456. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

457. Plaintiffs bring this Count on behalf of the Florida Class.

458. Ford was at all relevant times a "merchant" as defined by Fla. Stat. § 672.104.

459. A warranty that the Shelbys were in merchantable condition for the purpose of driving on public roadways is implied by law in the instant transactions.

460. These Shelbys, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Shelbys are inherently defective in that the defects in the Shelbys' Track-Ready powertrain

system leads to overheating of the powertrain system and causes vehicles to go unexpectedly into Limp Mode while driving on public roadways. The Limp Mode manifestation substantially impairs the safety, reliability, and operability of the Shelbys to the extent it renders them unfit for their ordinary purpose of driving on public roadways.

461. Ford knew about the Shelby Track-Ready powertrain defects at the time of purchase, allowing it to cure their breach of warranty if it chose.

462. Ford was provided notice of these issues by numerous complaints filed against it, including this initial Complaint, by the notice letter sent by Plaintiffs' counsel as referenced elsewhere in the Second Amended Complaint, and by numerous individual letters and communications sent by Plaintiffs and other Florida Class members before or within a reasonable amount of time.

463. Ford's attempt to disclaim or limit the implied warranty of merchantability vis-à-vis consumers is unconscionable and unenforceable here. Specifically, Ford's warranty limitation regarding presentment is unenforceable because it knowingly sold or leased a defective product without informing consumers about the defect. A gross disparity in bargaining power existed between Ford and other Florida Class members, and Ford knew of the Shelby defects at the time of sale.

464. Plaintiffs and the other Florida Class members have complied with all obligations under the warranty, or otherwise have been excused from performance of said obligations as a result of Ford's conduct described herein. Affording Ford a reasonable opportunity to cure the breach of written warranties therefore would be unnecessary and futile.

465. As a direct and proximate result of Ford's breach of the warranty of merchantability, Plaintiffs and the other Florida Class members have been damaged in an amount

to be proven at trial, including but not limited to, benefit-of-the-bargain damages, restitution and/or diminution of value.

**COUNT SIX**

**UNJUST ENRICHMENT  
(BASED ON FLORIDA LAW)**

466. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

467. Should Plaintiffs' breach of express warranty claim be dismissed, Plaintiffs bring this Count in the alternative and on behalf of the Florida Class.

468. Ford has benefitted from and been enriched by the conduct alleged herein. Ford has generated substantial revenue from the unlawful conduct described herein. Ford has knowledge and appreciation of this benefit, which was conferred upon it by and at the expense of Plaintiffs and the other Florida Class members.

469. Ford has voluntarily accepted and retained this benefit.

470. The circumstances, as described herein, are such that it would be inequitable for Ford to retain the ill-gotten benefit without paying the value thereof to Plaintiffs and the other Florida Class members.

471. Plaintiffs and the other Florida Class members are entitled to the amount of Ford's ill-gotten gains, including interest, resulting from its unlawful, unjust, unfair, and inequitable conduct as alleged herein.

**C. CLAIMS BROUGHT ON BEHALF OF THE CALIFORNIA CLASS**

**COUNT SEVEN**

**VIOLATION OF THE CALIFORNIA CONSUMERS LEGAL REMEDIES ACT  
(CAL. CIV. CODE § 1750, *ET SEQ.*)**

472. Plaintiffs Jacques Rimokh, Ernesto Larios, and Shaunti Yanik-Larios (“Plaintiffs” for purposes of all California Class Counts) incorporate by reference all preceding allegations as though fully set forth herein.

473. Plaintiffs bring this Count on behalf of the California Class.

474. California’s Consumers Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1750, *et seq.*, proscribes “unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer.”

475. The Shelbys are “goods” as defined in Cal. Civ. Code § 1761(a).

476. Plaintiffs and the other California Class members are “consumers” as defined in Cal. Civ. Code § 1761(d), and Plaintiffs, the other California Class members, and Ford are “persons” as defined in Cal. Civ. Code § 1761(c).

477. In purchasing or leasing the Shelbys, Plaintiffs and the other California Class members were deceived by Ford’s failure to disclose that the Shelby’s Track-Ready powertrain defects are defective as they are not equipped with a transmission cooler or differential cooler, which in the 2016 Shelbys leads to overheating of the powertrain system and causes vehicles to go unexpectedly into Limp Mode thereby creating a safety hazard on race tracks and public roadways.



478. Ford's conduct, as described hereinabove, was and is in violation of the CLRA. Ford's conduct violates at least Cal. Civ. Code § 1770(a)(16) (representing that goods have been supplied in accordance with a previous representation when they have not).

479. Plaintiffs and the other California Class members have suffered injury in fact and actual damages resulting from Ford's material omissions and/or misrepresentations because they paid an inflated purchase or lease price for the Shelbys.

480. Ford knew, should have known, or was reckless in not knowing of the defective design and/or manufacture of the Shelbys and that the Shelbys were not suitable for their intended use.

481. The facts concealed and omitted by Ford to Plaintiffs and the other California Class members are material in that a reasonable consumer would have considered them to be important in deciding whether to purchase or lease the Shelbys or pay a lower price. Had Plaintiffs and the other California Class members known about the defective nature of the Shelbys and their inability to operate these Shelbys safely on a race track, they would not have purchased the Shelbys or would not have paid the prices they did.

482. Plaintiffs have provided Ford with notice of its violations of the CLRA pursuant to Cal. Civ. Code § 1782(a). The notice was sent to Ford on March 21, 2017.

483. Plaintiffs' and the other California Class members' injuries were proximately caused by Ford's fraudulent and deceptive business practices.

484. Therefore, Plaintiffs and the other California Class members are entitled to equitable relief and will amend this action and seek monetary relief under the CLRA.

**COUNT EIGHT**

**VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW  
(CAL. BUS. & PROF. CODE § 17200, *ET SEQ.*)**

485. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

486. Plaintiffs bring this Count on behalf of the California Class.

487. California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200, *et seq.*, proscribes acts of unfair competition, including "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising."

488. Ford's conduct, as described herein, was and is in violation of the UCL. Ford's conduct violates the UCL in at least the following ways:

- i. By knowingly and intentionally concealing from Plaintiffs and the other California Class members that the Shelbys suffer from defects while obtaining money from Plaintiffs and California Class members;
- ii. By marketing Shelbys as being useable on a track;
- iii. By failing to disclose that the Shelby's Track-Ready powertrain system is defective as it is not equipped with a transmission cooler and rear differential cooler, that in the 2016 Shelbys leads to overheating of the powertrain system and causes vehicles to go unexpectedly into Limp Mode thereby creating a safety hazard on race tracks and public roadways;
- iv. By refusing or otherwise failing to repair and/or replace defective Shelbys;
- v. By violating federal laws, including the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301; and
- vi. By violating other California laws, including Cal. Civ. Code §§ 1709, 1710, and 1750, *et seq.*, and Cal. Com. Code § 2313.

489. Ford's omissions and/or misrepresentations alleged herein caused Plaintiffs and the other California Class members to make their purchases or leases of their Shelbys. Absent those omissions and/or misrepresentations, Plaintiffs and the other California Class members

would not have purchased these Shelbys, would not have purchased these Shelbys at the prices they paid, and/or would have purchased less expensive alternative Shelbys that clearly indicated that they were not for track use.

490. Accordingly, Plaintiffs and the other California Class members have suffered injury in fact, including lost money or property, as a result of Ford's misrepresentations and omissions.

491. Plaintiffs seek to enjoin further unlawful, unfair, and/or fraudulent acts or practices by Ford under Cal. Bus. & Prof. Code § 17200.

492. Plaintiffs 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 Plaintiffs and members of the California Class any money it 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.

#### **COUNT NINE**

##### **VIOLATION OF THE CALIFORNIA FALSE ADVERTISING LAW (CAL. BUS. & PROF. CODE § 17500, *ET SEQ.*)**

493. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

494. Plaintiffs bring this Count on behalf of the California Class.

495. Cal. Bus. & Prof. Code § 17500 states: "It is unlawful for any ... corporation ... with intent directly or indirectly to dispose of real or personal property ... to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated ... from this state before the public in any state, in any newspaper or other publication, or any advertising device, ... or in any other manner or means whatever, including

over the Internet, any statement ... which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.”

496. Ford has violated Cal. Bus. & Prof. Code § 17500 because the omissions and/or misrepresentations regarding the safety, reliability, and functionality of its Shelbys as set forth in this complaint were material and likely to deceive a reasonable consumer.

497. Plaintiffs and the other California Class members 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. In purchasing or leasing their Shelbys, Plaintiffs and the other California Class members relied on the omissions and/or misrepresentations of Ford with respect to the safety and reliability of the Shelbys. Ford’s representations turned out not to be true because the Shelbys have Track-Ready powertrain defects that are defective as they are not equipped with a transmission cooler and rear differential cooler, which in the 2016 Shelbys leads to overheating of the powertrain system and causes vehicles to go unexpectedly into Limp Mode thereby creating a safety hazard on race tracks and public roadways. Had Plaintiffs and the other California Class members known this, they would not have purchased their Shelbys and/or paid as much for them. Accordingly, Plaintiffs and the other California Class members overpaid for their Shelbys and did not receive the benefit of their bargain.

498. 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, both in the State of California and nationwide.

499. Plaintiff, individually and on behalf of the other California Class members, requests 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 Plaintiffs and the

other California Class members any money Ford acquired by unfair competition, including restitution and/or restitutionary disgorgement, and for such other relief set forth below.

**COUNT TEN**

**FRAUDULENT CONCEALMENT  
(BASED ON CALIFORNIA LAW)**

500. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

501. Plaintiffs bring this Count on behalf of the California Class.

502. Ford intentionally concealed that the defects contained in the Track-Ready powertrain system render Shelbys unfit for track use in that the transmissions of these vehicles would overheat when placed under track conditions and unexpectedly go into Limp Mode after less than 15 minutes, creating a dangerous hazard not only to the drivers but also to nearby vehicles. Ford concealed these facts to consumers.

503. Ford further affirmatively misrepresented to Plaintiffs in advertising and other forms of communication, including standard and uniform material provided with each car and on its website, that the Shelby it was selling had no significant defects and that all Shelbys were Track-Ready.

504. Ford knew that these representations were false when made.

505. The Shelbys purchased by Plaintiffs and the other California Class members contained a defective Track-Ready powertrain system.

506. Ford had a duty to disclose that the Track-Ready powertrain system contained defects as alleged herein and that these defects created a safety hazard. Plaintiffs and the other California Class members relied on Ford's material representations.

507. As alleged herein, at all relevant times, Ford has held out the Shelbys to be free from defects such as the defect related to the Track-Ready powertrain system. Ford touted and continues to tout the many benefits and advantages of the Track-Ready powertrain system, but nonetheless failed to disclose important facts related to the defect and that Plaintiffs and other California Class members would be required to make additional aftermarket modifications to adequately achieve Track-Ready performance, and that these modifications may violate their express warranties. This made Ford's other disclosures about the Track-Ready powertrain system deceptive.

508. The truth about the defective Track-Ready powertrain system was known only to Ford; Plaintiffs and the other California Class members did not know of these facts and Ford actively concealed these facts from Plaintiffs and the other California Class members.

509. Plaintiffs and the other California Class members reasonably relied upon Ford's deception. They had no way of knowing that Ford's representations were false, misleading, or incomplete. As consumers, Plaintiffs and the other California Class members did not, and could not, unravel Ford's deception on their own. Rather, Ford intended to deceive Plaintiffs and the other California Class members by concealing the true facts about the Shelby's Track-Ready powertrain systems.

510. Ford's false representations and omissions and/or misrepresentations were material to consumers because they concerned qualities of the Shelbys that played a significant role in the value of the vehicles and forced Plaintiffs and the other California Class members to make additional expenditures to ensure proper safety at the race track.

511. Ford had a duty to disclose the defects inherent in the Track-Ready powertrain system and violations with respect to the Shelbys because details of the true facts were known

and/or accessible only to Ford, because Ford had exclusive and/or superior knowledge as to such facts, and because Ford knew these facts were not known or reasonably discoverable by Plaintiffs or the other California Class members.

512. Ford also had a duty to disclose because it made general affirmative representations about the technological and safety innovations included with the Shelbys, without telling consumers that the defective Track-Ready powertrain system would affect the safety, quality, and performance of the vehicle.

513. Ford's disclosures were misleading, deceptive, and incomplete because they failed to inform consumers of the additional facts regarding the defects in the Track-Ready powertrain system as set forth herein. These omitted and concealed facts were material because they directly impact the value of the Shelbys purchased by Plaintiffs and the other California Class members.

514. Ford has still not made full and adequate disclosures and continues to defraud Plaintiffs and the other California Class members by concealing material information regarding the defects in the Track-Ready powertrain system.

515. Plaintiffs and the other California Class members were unaware of the omitted material facts referenced herein and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased or paid as much for cars with faulty powertrain systems and/or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and the other California Class members' actions were justified. Ford was in exclusive and/or superior control of the material facts, and such facts were not generally known to the public, Plaintiffs, or other California Class members.

516. Because of the concealment and/or suppression of facts, Plaintiffs and the other California Class members sustained damage because they own(ed) vehicles that are diminished in value as a result of Ford's concealment of the true quality of those vehicles' Track-Ready powertrain systems. Had Plaintiffs and the other California Class members been aware of the defects in the Track-Ready powertrain defects installed in the Shelbys, and the company's disregard for the truth, Plaintiffs and the other California Class members who purchased a Shelby would have paid less for their vehicles or would not have purchased them at all.

517. The value of Plaintiffs' and the other California Class members' vehicles has diminished as a result of Ford's fraudulent concealment of the defective Track-Ready powertrain system of the Shelbys, which has made any reasonable consumer reluctant to purchase any of the Shelbys, let alone pay what otherwise would have been fair market value for the vehicles.

518. Accordingly, Ford is liable to Plaintiffs and the other California Class members for damages in an amount to be proven at trial, including but not limited to, benefit-of-the-bargain damages, restitution and/or diminution of value.

519. Ford's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and other California Class members' rights and the representations that Ford made to them, in order to enrich Ford. Ford's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

#### **COUNT ELEVEN**

##### **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY (CAL. COM. CODE § 2314)**

520. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.



521. Plaintiffs bring this Count on behalf of the California Class.

522. Ford was at all relevant times a “merchant” as defined by Cal. Com. Code § 2314.

523. A warranty that the Shelbys were in merchantable condition for the purpose of driving on public roadways is implied by law in the instant transactions.

524. These Shelbys, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Shelbys are inherently defective in that the defects in the Shelbys’ Track-Ready powertrain system lead to overheating of the powertrain system and causes vehicles to go unexpectedly into Limp Mode while driving on public roadways. The Limp Mode manifestation substantially impairs the safety, reliability, and operability of the Shelbys to the extent it renders them unfit for their ordinary purpose of driving on public roadways.

525. Ford knew about the Shelby Track-Ready powertrain defects at the time of purchase, allowing it to cure their breach of warranty if it chose.

526. Ford was provided notice of these issues by numerous complaints filed against it, including this initial Complaint, by the notice letter sent by Plaintiffs’ counsel as referenced elsewhere in the Second Amended Complaint, and by numerous individual letters and communications sent by Plaintiffs and other California Class members before or within a reasonable amount of time.

527. Ford’s attempt to disclaim or limit the implied warranty of merchantability vis-à-vis consumers is unconscionable and unenforceable here. Specifically, Ford’s warranty limitation regarding presentment is unenforceable because it knowingly sold or leased a defective product without informing consumers about the defect. A gross disparity in bargaining power existed

between Ford and other California Class members, and Ford knew of the Shelby defects at the time of sale.

528. Plaintiffs and the other California Class members have complied with all obligations under the warranty, or otherwise have been excused from performance of said obligations as a result of Ford's conduct described herein. Affording Ford a reasonable opportunity to cure the breach of written warranties therefore would be unnecessary and futile.

529. As a direct and proximate result of Ford's breach of the warranty of merchantability, Plaintiffs and the other California Class members have been damaged in an amount to be proven at trial, including but not limited to, benefit-of-the-bargain damages, restitution and/or diminution of value.

## **COUNT TWELVE**

### **VIOLATION OF SONG-BEVERLY CONSUMER WARRANTY ACT FOR BREACH OF EXPRESS WARRANTIES (CAL. CIV. CODE §§ 1791.2 & 1793.2(D))**

530. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

531. Plaintiffs bring this Count on behalf of the California Class.

532. Plaintiffs and the other California Class members who purchased the Shelbys in California are "buyers" within the meaning of Cal. Civ. Code § 1791(b).

533. The Shelbys are "consumer goods" within the meaning of Cal. Civ. Code § 1791(a).

534. Ford is a "manufacturer" of the Shelbys within the meaning of Cal. Civ. Code § 1791(j).

535. Plaintiffs and the other California Class members bought new motor vehicles manufactured by Ford.

536. Ford made express warranties to Plaintiffs and the other California Class members within the meaning of Cal. Civ. Code §§ 1791.2 and 1793.2, as described above.

537. In its Limited Warranty, Ford expressly warranted that it would repair or replace defects introduced into vehicles during the design and manufacturing processes. The uniform language below appears in all 2016 Ford Mustang Warranty Guides:<sup>34</sup>

Your NEW VEHICLE LIMITED WARRANTY gives you specific legal rights. You may have other rights that vary from state to state. Under your New Vehicle Limited Warranty if . . . your Ford Shelby is properly operated and maintained, and . . . was taken to a Ford dealership for a warranted repair during the warranty period, then authorized Ford Motor Company dealers will, without charge, repair, replace, or adjust all parts on your Shelby that malfunction or fail during normal use during the applicable coverage period due to a manufacturing defect in factory-supplied materials or factory workmanship.

This warranty does not mean that each Ford vehicle is defect free. ***Defects may be unintentionally introduced into vehicles during the design and manufacturing processes and such defects could result in the need for repairs.*** For this reason, Ford provides the New Vehicle Limited Warranty in order to remedy any such defects that result in vehicle part malfunction or failure during the warranty period.

538. As set forth above in detail, Ford breached its warranties by selling Shelbys that are inherently defective and not repairing or replacing those defects. The defects in the Shelbys' Track-Ready powertrain system leads to overheating of the powertrain system and causes vehicles to go unexpectedly into Limp Mode thereby creating a safety hazard on race tracks and public roadways. These defects were and continue to be covered by Ford's express warranties, and these defects substantially impair the use, value, and safety of Ford's Shelbys to reasonable consumers like Plaintiffs and the other California Class members.

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<sup>34</sup> Ford, 2016 Model Year Ford Warranty Guide (Oct. 2015), available at [http://www.fordservicecontent.com/Ford\\_Content/Catalog/owner\\_information/2016-Car-Lt-Truck-Warranty-version-3\\_frdwa\\_EN-US\\_10\\_2015.pdf](http://www.fordservicecontent.com/Ford_Content/Catalog/owner_information/2016-Car-Lt-Truck-Warranty-version-3_frdwa_EN-US_10_2015.pdf), at p. 14 (emphasis added).

539. Plaintiffs notified Ford and/or its agents of the need for repairs prior to starting this lawsuit.

540. Ford did not promptly replace or buy back the Shelbys of Plaintiffs and the other California Class members.

541. As a result of Ford's breach of its express warranties, Plaintiffs and the other California Class members received goods whose dangerous condition substantially impairs their value to Plaintiffs and the other California Class members. Plaintiffs and the other California Class members have been damaged as a result of the diminished value of Ford's products, the products' malfunctioning, and the nonuse of their Shelbys.

542. Pursuant to Cal. Civ. Code §§ 1793.2 & 1794, Plaintiffs and the other California Class members are entitled to damages and other legal and equitable relief including, at their election, the purchase price of their Shelbys or the overpayment or diminution in value of their Shelbys.

543. Pursuant to Cal. Civ. Code § 1794, Plaintiffs and the other California Class members are entitled to costs and attorneys' fees.

### **COUNT THIRTEEN**

#### **VIOLATION OF SONG-BEVERLY CONSUMER WARRANTY ACT FOR BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY (CAL. CIV. CODE §§ 1791.1 & 1792)**

544. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

545. Plaintiffs bring this Count on behalf of the California Class.

546. Plaintiffs and the other California Class members who purchased or leased the Shelbys in California are "buyers" within the meaning of Cal. Civ. Code § 1791(b).

547. The Shelbyys are “consumer goods” within the meaning of Cal. Civ. Code § 1791(a).

548. Ford is a “manufacturer” of the Shelbyys within the meaning of Cal. Civ. Code § 1791(j).

549. Ford impliedly warranted to Plaintiffs and the other California Class members that its Shelbyys were “merchantable” within the meaning of Cal. Civ. Code §§ 1791.1(a) & 1792, however, the Shelbyys do not have the quality that a buyer would reasonably expect.

550. Cal. Civ. Code § 1791.1(a) states:

“Implied warranty of merchantability” or “implied warranty that goods are merchantable” means that the consumer goods meet each of the following:

- (1) Pass without objection in the trade under the contract description.
- (2) Are fit for the ordinary purposes for which such goods are used.
- (3) Are adequately contained, packaged, and labeled.
- (4) Conform to the promises or affirmations of fact made on the container or label.

551. The Shelbyys would not pass without objection in the automotive trade because the Shelbyys are inherently defective in that the defects in the Shelbyys’ Track-Ready powertrain system leads to overheating of the powertrain system and causes vehicles to go unexpectedly into Limp Mode while driving on public roadways. The Limp Mode manifestation substantially impairs the safety, reliability, and operability of the Shelbyys to the extent it renders them unfit for their ordinary purpose of driving on public roadways.

552. The Shelbys are not adequately labeled because the labeling fails to disclose the Track-Ready powertrain defects and that the Shelbys can unexpectedly go into Limp Mode while driving on public roadways.

553. Ford breached the implied warranty of merchantability by manufacturing and selling Shelbys containing the Track-Ready powertrain defects. Furthermore, these defects have caused Plaintiffs and the other California Class members to not receive the benefit of their bargain and have caused Shelbys to depreciate in value.

554. As a direct and proximate result of Ford's breach of the implied warranty of merchantability, Plaintiffs and the other California Class members received goods whose dangerous and dysfunctional condition substantially impairs their value to Plaintiffs and the other California Class members. Plaintiffs and the other California Class members have been damaged as a result of the diminished value of Ford's products, the products' malfunctioning, and the nonuse of their Shelbys.

555. Pursuant to Cal. Civ. Code §§ 1791.1(d) & 1794, Plaintiffs and the other California Class members are entitled to damages and other legal and equitable relief including, at their election, the purchase price of their Shelbys, or the overpayment or diminution in value of their Shelbys.

556. Pursuant to Cal. Civ. Code § 1794, Plaintiffs and the other California Class members are entitled to costs and attorneys' fees.

#### **COUNT FOURTEEN**

#### **UNJUST ENRICHMENT (BASED ON CALIFORNIA LAW)**

557. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

558. Should Plaintiffs' breach of express warranty claim be dismissed, Plaintiffs bring this Count in the alternative and on behalf of the California Class.

559. Ford has benefitted from and been enriched by the conduct alleged herein. Ford has generated substantial revenue from the unlawful conduct described herein. Ford has knowledge and appreciation of this benefit, which was conferred upon it by and at the expense of Plaintiffs and the other California Class members.

560. Ford has voluntarily accepted and retained this benefit.

561. The circumstances, as described herein, are such that it would be inequitable for Ford to retain the ill-gotten benefit without paying the value thereof to Plaintiffs and the other California Class members.

562. Plaintiffs and the other California Class members are entitled to the amount of Ford's ill-gotten gains, including interest, resulting from its unlawful, unjust, unfair, and inequitable conduct as alleged herein.

**D. CLAIMS BROUGHT ON BEHALF OF THE ILLINOIS CLASS**

**COUNT FIFTEEN**

**VIOLATION OF THE ILLINOIS CONSUMER FRAUD  
AND DECEPTIVE BUSINESS PRACTICES ACT  
(815 ILCS 505/1, *ET SEQ.* AND 720 ILCS 295/1A)**

563. Plaintiffs Mark Hochsprung and Frank Porter ("Plaintiffs" for purposes of all Illinois Class Counts) incorporate by reference all preceding allegations as though fully set forth herein.

564. Plaintiffs bring this Count on behalf of the Illinois Class.

565. The Illinois Consumer Fraud and Deceptive Business Practices Act ("Illinois CFA") prohibits "unfair or deceptive acts or practices, including, but not limited to, the use of employment of any deception, fraud, false pretense, tales 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 . . . in the conduct of trade or commerce . . . whether any person has in fact been misled, deceived, or damaged thereby.” 815 ILCS 505/2.

566. Ford is a “person” as that term is defined in 815 ILCS 505/1(c).

567. Plaintiffs and Illinois Class members are “consumers” as that term is defined in 815 ILCS 505/1(e).

568. Pursuant to 815 ILCS 505/10a(a), Plaintiffs seek monetary relief against Ford in the amount of actual damages as well as punitive damages because Ford acted with fraud and/or malice and/or was grossly negligent.

569. Plaintiffs also seek an order enjoining Ford’s unfair and/or deceptive acts or practices, attorneys’ fees, and any other just and proper relief available under 815 ILCS 505/1, *et seq.*

## **COUNT SIXTEEN**

### **FRAUD BY CONCEALMENT (BASED ON ILLINOIS LAW)**

570. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

571. Plaintiffs bring this Count on behalf of the Illinois Class.

572. Ford intentionally concealed that the defects contained in the Track-Ready powertrain system render Shelbys unfit for track use in that the transmissions of these vehicles would overheat when placed under track conditions and unexpectedly go into Limp Mode after less than 15 minutes, creating a dangerous hazard not only to the drivers but also to nearby vehicles. Ford concealed these facts to consumers.



573. Ford further affirmatively misrepresented to Plaintiffs in advertising and other forms of communication, including standard and uniform material provided with each car and on its website, that the Shelby it was selling had no significant defects and that all Shelbys were Track-Ready.

574. Ford knew that these representations were false when made.

575. The Shelbys purchased by Plaintiffs and the other Illinois Class members contained a defective Track-Ready powertrain system.

576. Ford had a duty to disclose that the Track-Ready powertrain system contained defects as alleged herein and that these defects created a safety hazard. Plaintiffs and the other Illinois Class members relied on Ford's material representations.

577. As alleged herein, at all relevant times, Ford has held out the Shelbys to be free from defects such as the defect related to the Track-Ready powertrain system. Ford touted and continues to tout the many benefits and advantages of the Track-Ready powertrain system, but nonetheless failed to disclose important facts related to the defect and that Plaintiffs and other Illinois Class members would be required to make additional aftermarket modifications to adequately achieve Track-Ready performance, and that these modifications may violate their express warranties. This made Ford's other disclosures about the Track-Ready powertrain system deceptive.

578. The truth about the defective Track-Ready powertrain system was known only to Ford; Plaintiffs and the other Illinois Class members did not know of these facts and Ford actively concealed these facts from Plaintiffs and the other Illinois Class members.

579. Plaintiffs and the other Illinois Class members reasonably relied upon Ford's deception. They had no way of knowing that Ford's representations were false, misleading, or

incomplete. As consumers, Plaintiffs and the other Illinois Class members did not, and could not, unravel Ford's deception on their own. Rather, Ford intended to deceive Plaintiffs and the other Illinois Class members by concealing the true facts about the Shelby's Track-Ready powertrain systems.

580. Ford's false representations and omissions and/or misrepresentations were material to consumers because they concerned qualities of the Shelbys that played a significant role in the value of the vehicles and forced Plaintiffs and the other Illinois Class members to make additional expenditures to ensure proper safety at the race track.

581. Ford had a duty to disclose the defects inherent in the Track-Ready powertrain system and violations with respect to the Shelbys because details of the true facts were known and/or accessible only to Ford, because Ford had exclusive and/or superior knowledge as to such facts, and because Ford knew these facts were not known or reasonably discoverable by Plaintiffs or the other Illinois Class members.

582. Ford also had a duty to disclose because it made general affirmative representations about the technological and safety innovations included with the Shelbys, without telling consumers that the defective Track-Ready powertrain system would affect the safety, quality, and performance of the vehicle.

583. Ford's disclosures were misleading, deceptive, and incomplete because they failed to inform consumers of the additional facts regarding the defects in the Track-Ready powertrain system as set forth herein. These omitted and concealed facts were material because they directly impact the value of the Shelbys purchased by Plaintiffs and the other Illinois Class members.

584. Ford has still not made full and adequate disclosures and continues to defraud Plaintiffs and the other Illinois Class members by concealing material information regarding the defects in the Track-Ready powertrain system.

585. Plaintiffs and the other Illinois Class members were unaware of the omitted material facts referenced herein and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased or paid as much for cars with faulty powertrain systems and/or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and the other Illinois Class members' actions were justified. Ford was in exclusive and/or superior control of the material facts, and such facts were not generally known to the public, Plaintiffs, or other Illinois Class members.

586. Because of the concealment and/or suppression of facts, Plaintiffs and the other Illinois Class members sustained damage because they own(ed) vehicles that are diminished in value as a result of Ford's concealment of the true quality of those vehicles' Track-Ready powertrain systems. Had Plaintiffs and the other Illinois Class members been aware of the defects in the Track-Ready powertrain system installed in the Shelbys, and the company's disregard for the truth, Plaintiffs and the other Illinois Class members who purchased a Shelby would have paid less for their vehicles or would not have purchased them at all.

587. The value of Plaintiffs' and the other Illinois Class members' vehicles has diminished as a result of Ford's fraudulent concealment of the defective Track-Ready powertrain system of the Shelbys, which has made any reasonable consumer reluctant to purchase any of the Shelbys, let alone pay what otherwise would have been fair market value for the vehicles.

588. Accordingly, Ford is liable to Plaintiffs and the other Illinois Class members for damages in an amount to be proven at trial, including but not limited to, benefit-of-the-bargain damages, restitution and/or diminution of value.

589. Ford's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and other Illinois Class members' rights and the representations that Ford made to them, in order to enrich Ford. Ford's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

#### **COUNT SEVENTEEN**

##### **BREACH OF EXPRESS WARRANTY (810 ILCS 5/2-313)**

590. Plaintiffs incorporates by reference all preceding allegations as though fully set forth herein.

591. Plaintiffs bring this Count on behalf of the Illinois Class.

592. Plaintiffs were at all relevant times a "buyer" as defined by 810 ILCS 5/1-201(9).

593. Ford was at all relevant times a "merchant" as defined by 810 ILCS 5/2-104.

594. The Shelby's are and were at all relevant times "goods" as defined by 810 ILCS 5/2-105.

595. As an express warrantor and manufacturer and merchant, Ford had certain obligations under 810 ILCS 5/2-313 to conform the Shelby's to the express warranties.

596. When Plaintiffs and the other Illinois Class members purchased their Shelby's, Ford expressly warranted in writing that the Shelby's were covered by a Limited Warranty and that the Limited Warranty formed the basis of the bargain. As set forth herein, Ford expressly warranted that it would (1) repair or replace defects in material or workmanship free of charge if

they became apparent during the warranty period, and (2) remedy any defects in the design and manufacturing processes that result in vehicle part malfunction or failure during the warranty period. Also, as set forth herein, Ford breached its warranty obligations by selling inherently defective Shelbys and refusing to repair the defects or replace the defective parts.

597. The defects at issue in this litigation were present at the time of sale to Plaintiffs and members of the Illinois Class.

598. Ford breached the Limited Warranty to repair and adjust to correct that were introduced during the design and manufacturing processes of any part supplied by Ford as Ford has been unable to repair or adjust the Shelby's materials and workmanship defects.

599. Furthermore, the Limited Warranty of repair and/or adjustments to defective parts fails in its essential purpose because the contractual remedy is insufficient to make the Plaintiffs and the other Illinois Class members whole and because Ford has failed and/or refused to adequately provide the promised remedies within a reasonable time.

600. Pursuant to the express warranties, Ford was obligated to pay for or reimburse Plaintiffs and the other Illinois Class members for costs incurred in purchasing aftermarket coolers for the transmission and differential systems and other costs associated with bringing their Shelbys to the dealership for futile repair efforts. Ford was also obligated to repair the defects.

601. Accordingly, recovery by the Plaintiffs and the other Illinois Class members is not limited to the Limited Warranty of repair or adjustments to parts defective in materials or workmanship, or in design, and Plaintiffs and the other Illinois Class members seek all remedies as allowed by law.

602. Also, as alleged in more detail herein, at the time that Ford warranted and sold the Shelbys, and while knowing that the Shelbys did not conform to Ford's Limited Warranty and were inherently defective, Ford wrongfully and fraudulently concealed material facts regarding the Shelbys. Plaintiffs and the other Illinois Class members were therefore induced to purchase the Shelbys under false and/or fraudulent pretenses. As such, Ford's warranty limitation regarding presentment is unenforceable because it knowingly sold or leased a defective product without informing consumers about the defect. A gross disparity in bargaining power existed between Ford and other Illinois Class members, and Ford knew of the Shelby defects at the time of sale

603. Ford and its agent dealers have failed and refused to conform the Shelbys to the express warranties and Ford's conduct and has voided any attempt on its part to disclaim liability for its actions.

604. Moreover, many of the damages flowing from the Shelbys cannot be resolved through the limited remedy of "replacement or adjustments" as those incidental and consequential damages have already been suffered due to Ford's fraudulent conduct as alleged herein, and due to its failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs' and the other Illinois Class members' remedies would be insufficient to make Plaintiffs and the other Illinois Class members whole.

605. Ford received timely notice regarding the problems at issue in this litigation (indeed Ford knew of the defects prior to offering the Shelbys for sale or lease). Ford was also provided notice of these issues through the receipt of numerous complaints regarding the Limp Mode manifestations. Ford has received, on information and belief, many complaints from Illinois Class members advising them of the defects at issue in this litigation.

606. Plaintiffs have performed each and every duty required 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 unconscionable conduct.

607. Plaintiffs have had sufficient dealings with either Ford or its agents (dealerships and/or Ford Performance) to establish privity of contract. Privity is not required in this case because Plaintiffs and the other Illinois Class members are intended third-party beneficiaries of contracts between Ford and its dealers; specifically, they are the intended beneficiaries of Ford's express warranties and these warranties were advertised to Plaintiffs and the other Illinois Class members as the ultimate consumers. The dealers were not intended to be the ultimate consumers of the Shelbys and have no rights under the warranty agreements provided with the Shelbys; the warranty agreements were designed for and intended to benefit the ultimate consumers only.

608. As a direct and proximate result of Ford's breach of express warranty, Plaintiffs and the other Illinois Class members have been damaged in an amount to be determined at trial, including, but not limited to, diminution of value and benefit-of-the-bargain damages.

#### **COUNT EIGHTEEN**

##### **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY (810 ILCS. 5/2-314)**

609. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

610. Plaintiffs bring this Count on behalf of the Illinois Class.

611. Ford was at all relevant times a "merchant" as defined by 810 ILCS 5/2-104.

612. A warranty that the Shelbys were in merchantable condition for the purpose of driving on public roadways is implied by law in the instant transactions.

613. These Shelbys, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Shelbys are inherently defective in that the defects in the Shelbys' Track-Ready powertrain system leads to overheating of the powertrain system and causes vehicles to go unexpectedly into Limp Mode while driving on public roadways. The Limp Mode manifestation substantially impairs the safety, reliability, and operability of the Shelbys to the extent it renders them unfit for their ordinary purpose of driving on public roadways.

614. Ford knew about the Shelby Track-Ready powertrain defects at the time of purchase, allowing it to cure their breach of warranty if it chose.

615. Ford was provided notice of these issues by numerous complaints filed against it, including this initial Complaint, by the notice letter sent by Plaintiffs' counsel as referenced elsewhere in the Second Amended Complaint, and by numerous individual letters and communications sent by Plaintiffs and other Illinois Class members before or within a reasonable amount of time.

616. Ford's attempt to disclaim or limit the implied warranty of merchantability vis-à-vis consumers is unconscionable and unenforceable here. Specifically, Ford's warranty limitation regarding presentment is unenforceable because it knowingly sold or leased a defective product without informing consumers about the defect. A gross disparity in bargaining power existed between Ford and other Illinois Class members, and Ford knew of the Shelby defects at the time of sale.

617. Plaintiffs and the other Illinois Class members have complied with all obligations under the warranty, or otherwise have been excused from performance of said obligations as a



result of Ford's conduct described herein. Affording Ford a reasonable opportunity to cure the breach of written warranties therefore would be unnecessary and futile.

618. As a direct and proximate result of Ford's breach of the warranty of merchantability, Plaintiffs and the other Illinois Class members have been damaged in an amount to be proven at trial, including but not limited to, benefit-of-the-bargain damages, restitution and/or diminution of value.

#### **COUNT NINETEEN**

##### **UNJUST ENRICHMENT (BASED ON ILLINOIS LAW)**

619. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

620. Should Plaintiffs' breach of express warranty claim be dismissed, Plaintiffs bring this Count in the alternative and on behalf of the Illinois Class.

621. Ford has benefitted from and been enriched by the conduct alleged herein. Ford has generated substantial revenue from the unlawful conduct described herein. Ford has knowledge and appreciation of this benefit, which was conferred upon it by and at the expense of Plaintiffs and the other Illinois Class members.

622. Ford has voluntarily accepted and retained this benefit.

623. The circumstances, as described herein, are such that it would be inequitable for Ford to retain the ill-gotten benefit without paying the value thereof to Plaintiffs and the other Illinois Class members.

624. Plaintiffs and the other Illinois Class members are entitled to the amount of Ford's ill-gotten gains, including interest, resulting from its unlawful, unjust, unfair, and inequitable conduct as alleged herein.

**E. CLAIMS BROUGHT ON BEHALF OF THE MISSOURI CLASS**

**COUNT TWENTY**

**VIOLATION OF THE MISSOURI MERCHANDISING PRACTICES ACT  
(MO. REV. STAT. § 407.010, *ET SEQ.*)**

625. Plaintiff Greg Roberts (“Plaintiff” for purposes of all Missouri Class Counts) incorporates by reference all preceding allegations as though fully set forth herein.

626. Plaintiff brings this Count on behalf of the Missouri Class.

627. The Missouri Merchandising Practices Act (“Missouri MPA”) makes unlawful the “act, use or employment by any person of any deception, fraud, false pretense, misrepresentation, unfair practice, or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise.” Mo. Rev. Stat. § 407.020.

628. Ford, Plaintiff, and Missouri Class members are “persons” within the meaning of Mo. Rev. Stat. § 407.010(5).

629. Ford engaged in “trade” or “commerce” in the State of Missouri within the meaning of Mo. Rev. Stat. § 407.010(7).

630. Ford is liable to Plaintiff for damages in amounts to be proven at trial, including attorneys’ fees, costs, and punitive damages, as well as injunctive relief enjoining Ford’s unfair and deceptive practices, and any other just and proper relief under Mo. Rev. Stat. § 407.025.

**COUNT TWENTY-ONE**

**FRAUDULENT CONCEALMENT  
(BASED ON MISSOURI LAW)**

631. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

632. Plaintiff brings this Count on behalf of the Missouri Class.

633. Ford intentionally concealed that the defects contained in the Track-Ready powertrain system render Shelbys unfit for track use in that the transmissions of these vehicles would overheat when placed under track conditions and unexpectedly go into Limp Mode after less than 15 minutes, creating a dangerous hazard not only to the drivers but also to nearby vehicles. Ford concealed these facts to consumers.

634. Ford further affirmatively misrepresented to Plaintiff in advertising and other forms of communication, including standard and uniform material provided with each car and on its website, that the Shelby it was selling had no significant defects and that all Shelbys were Track-Ready.

635. Ford knew that these representations were false when made.

636. The Shelbys purchased by Plaintiff and the other Missouri Class members contained a defective Track-Ready powertrain system.

637. Ford had a duty to disclose that the Track-Ready powertrain system contained defects as alleged herein and that these defects created a safety hazard. Plaintiff and the other Missouri Class members relied on Ford's material representations.

638. As alleged herein, at all relevant times, Ford has held out the Shelbys to be free from defects such as the defect related to the Track-Ready powertrain system. Ford touted and continues to tout the many benefits and advantages of the Track-Ready powertrain system, but nonetheless failed to disclose important facts related to the defect and that Plaintiff and other Missouri Class members would be required to make additional aftermarket modifications to adequately achieve Track-Ready performance, and that these modifications may violate their express warranties. This made Ford's other disclosures about the Track-Ready powertrain system deceptive.

639. The truth about the defective Track-Ready powertrain system was known only to Ford; Plaintiff and the other Missouri Class members did not know of these facts and Ford actively concealed these facts from Plaintiff and the other Missouri Class members.

640. Plaintiff and the other Missouri Class members reasonably relied upon Ford's deception. They had no way of knowing that Ford's representations were false, misleading, or incomplete. As consumers, Plaintiff and the other Missouri Class members did not, and could not, unravel Ford's deception on their own. Rather, Ford intended to deceive Plaintiff and the other Missouri Class members by concealing the true facts about the Shelby's Track-Ready powertrain systems.

641. Ford's false representations and omissions and/or misrepresentations were material to consumers because they concerned qualities of the Shelbys that played a significant role in the value of the vehicles and forced Plaintiff and the other Missouri Class members to make additional expenditures to ensure proper safety at the race track.

642. Ford had a duty to disclose the defects inherent in the Track-Ready powertrain system and violations with respect to the Shelbys because details of the true facts were known and/or accessible only to Ford, because Ford had exclusive and/or superior knowledge as to such facts, and because Ford knew these facts were not known or reasonably discoverable by Plaintiff or the other Missouri Class members.

643. Ford also had a duty to disclose because it made general affirmative representations about the technological and safety innovations included with the Shelbys, without telling consumers that the defective Track-Ready powertrain system would affect the safety, quality, and performance of the vehicle.

644. Ford's disclosures were misleading, deceptive, and incomplete because they failed to inform consumers of the additional facts regarding the defects in the Track-Ready powertrain system as set forth herein. These omitted and concealed facts were material because they directly impact the value of the Shelbys purchased by Plaintiff and the other Missouri Class members.

645. Ford has still not made full and adequate disclosures and continues to defraud Plaintiff and the other Missouri Class members by concealing material information regarding the defects in the Track-Ready powertrain system.

646. Plaintiff and the other Missouri Class members were unaware of the omitted material facts referenced herein and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased or paid as much for cars with faulty powertrain systems and/or would have taken other affirmative steps in light of the information concealed from them. Plaintiff's and the other Missouri Class members' actions were justified. Ford was in exclusive and/or superior control of the material facts, and such facts were not generally known to the public, Plaintiffs, or other Missouri Class members.

647. Because of the concealment and/or suppression of facts, Plaintiff and the other Missouri Class members sustained damage because they own(ed) vehicles that are diminished in value as a result of Ford's concealment of the true quality of those vehicles' Track-Ready powertrain systems. Had Plaintiff and the other Missouri Class members been aware of the defects in the Track-Ready powertrain defects installed in the Shelbys, and the company's disregard for the truth, Plaintiff and the other Missouri Class members who purchased a Shelby would have paid less for their vehicles or would not have purchased them at all.

648. The value of Plaintiff's and the other Missouri Class members' vehicles has diminished as a result of Ford's fraudulent concealment of the defective Track-Ready powertrain system of the Shelbys, which has made any reasonable consumer reluctant to purchase any of the Shelbys, let alone pay what otherwise would have been fair market value for the vehicles.

649. Accordingly, Ford is liable to Plaintiff and the other Missouri Class members for damages in an amount to be proven at trial, including but not limited to, benefit-of-the-bargain damages, restitution and/or diminution of value.

650. Ford's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and other Missouri Class members' rights and the representations that Ford made to them, in order to enrich Ford. Ford's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

## **COUNT TWENTY-TWO**

### **BREACH OF EXPRESS WARRANTY (MO. REV. STAT. § 400.2-313.1)**

651. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

652. Plaintiff brings this Count on behalf of the Missouri Class.

653. Plaintiff was each at all relevant times a "buyer" as defined by Mo. Rev. Stat. § 400.201(9).

654. Ford was at all relevant times a "merchant" as defined by Mo. Rev. Stat. § 400.2-104.

655. The Shelbys are and were at all relevant times "goods" as defined by Mo. Rev. Stat. § 400.2-105.

656. As an express warrantor and manufacturer and merchant, Ford had certain obligations under Mo. Rev. Stat. § 400.2-313.1 to conform the Shelbys to the express warranties.

657. When Plaintiff and the other Missouri Class members purchased their Shelbys, Ford expressly warranted in writing that the Shelbys were covered by a Limited Warranty and that the Limited Warranty formed the basis of the bargain. As set forth herein, Ford expressly warranted that it would (1) repair or replace defects in material or workmanship free of charge if they became apparent during the warranty period, and (2) remedy any defects in the design and manufacturing processes that result in vehicle part malfunction or failure during the warranty period. Also, as set forth herein, Ford breached its warranty obligations by selling inherently defective Shelbys and refusing to repair the defects or replace the defective parts.

658. The defects at issue in this litigation were present at the time of sale to Plaintiff and members of the Missouri Class.

659. Ford breached the Limited Warranty to repair and adjust to correct defects that were introduced during the design and manufacturing processes of any part supplied by Ford as Ford has been unable to repair or adjust the Shelby's materials and workmanship defects.

660. Furthermore, the Limited Warranty of repair and/or adjustments to defective parts fails in its essential purpose because the contractual remedy is insufficient to make Plaintiff and the other Missouri Class members whole and because Ford has failed and/or refused to adequately provide the promised remedies within a reasonable time.

661. Pursuant to the express warranties, Ford was obligated to pay for or reimburse Plaintiff and the other Missouri Class members for costs incurred in purchasing aftermarket coolers for the transmission and differential systems and other costs associated with bringing

their Shelbys to the dealership for futile repair efforts. Ford was also obligated to repair the defects.

662. Accordingly, recovery by the Plaintiff and the other Missouri Class members is not limited to the Limited Warranty of repair or adjustments to parts defective in materials or workmanship, or in design, and Plaintiff and the other Missouri Class members seek all remedies as allowed by law.

663. Also, as alleged in more detail herein, at the time that Ford warranted and sold the Shelbys, and while knowing that the Shelbys did not conform to Ford's Limited Warranty and were inherently defective, Ford wrongfully and fraudulently concealed material facts regarding the Shelbys. Plaintiff and the other Missouri Class members were therefore induced to purchase the Shelbys under false and/or fraudulent pretenses. As such, Ford's warranty limitation regarding presentment is unenforceable because it knowingly sold or leased a defective product without informing consumers about the defect. A gross disparity in bargaining power existed between Ford and other Missouri Class members, and Ford knew of the Shelby defects at the time of sale

664. Ford and its agent dealers have failed and refused to conform the Shelbys to the express warranties and Ford's conduct and has voided any attempt on its part to disclaim liability for its actions.

665. Moreover, many of the damages flowing from the Shelbys cannot be resolved through the limited remedy of "replacement or adjustments" as those incidental and consequential damages have already been suffered due to Ford's fraudulent conduct as alleged herein, and due to its failure and/or continued failure to provide such limited remedy within a



reasonable time, and any limitation on Plaintiff's and the other Missouri Class members' remedies would be insufficient to make Plaintiff and the other Missouri Class members whole.

666. Ford received timely notice regarding the problems at issue in this litigation (indeed Ford knew of the defects prior to offering the Shelbys for sale or lease). Ford was also provided notice of these issues through the receipt of numerous complaints regarding the Limp Mode manifestations. Ford has received, on information and belief, many complaints from Missouri Class members advising them of the defects at issue in this litigation.

667. Plaintiff has performed each and every duty required 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 unconscionable conduct.

668. Plaintiff has had sufficient dealings with either Ford or its agents (dealerships and/or Ford Performance) to establish privity of contract. Privity is not required in this case because Plaintiff and the other Missouri Class members are intended third-party beneficiaries of contracts between Ford and its dealers; specifically, they are the intended beneficiaries of Ford's express warranties and these warranties were advertised to Plaintiff and the other Missouri Class members as the ultimate consumers. The dealers were not intended to be the ultimate consumers of the Shelbys and have no rights under the warranty agreements provided with the Shelbys; the warranty agreements were designed for and intended to benefit the ultimate consumers only.

669. As a direct and proximate result of Ford's breach of express warranty, Plaintiff and the other Missouri Class members have been damaged in an amount to be determined at trial, including, but not limited to, diminution of value and benefit- of- the- bargain damages.

**COUNT TWENTY-THREE**

**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY  
(MO. REV. STAT. § 400.2-314)**

670. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

671. Plaintiff brings this Count on behalf of the Missouri Class.

672. Ford was at all relevant times a “merchant” as defined by Mo. Rev. Stat. § 400.2-104.

673. A warranty that the Shelbys were in merchantable condition for the purpose of driving on public roadways is implied by law in the instant transactions.

674. These Shelbys, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Shelbys are inherently defective in that the defects in the Shelbys’ Track-Ready powertrain system leads to overheating of the powertrain system and causes vehicles to go unexpectedly into Limp Mode while driving on public roadways. The Limp Mode manifestation substantially impairs the safety, reliability, and operability of the Shelbys to the extent it renders them unfit for their ordinary purpose of driving on public roadways.

675. Ford knew about the Shelby Track-Ready powertrain defects at the time of purchase, allowing it to cure their breach of warranty if it chose.

676. Ford was provided notice of these issues by numerous complaints filed against it, including this initial Complaint, by the notice letter sent by Plaintiff’s counsel as referenced elsewhere in the Second Amended Complaint, and by numerous individual letters and communications sent by Plaintiff and other Missouri Class members before or within a reasonable amount of time.

677. Ford's attempt to disclaim or limit the implied warranty of merchantability vis-à-vis consumers is unconscionable and unenforceable here. Specifically, Ford's warranty limitation regarding presentment is unenforceable because it knowingly sold or leased a defective product without informing consumers about the defect. A gross disparity in bargaining power existed between Ford and other Missouri Class members, and Ford knew of the Shelby defects at the time of sale.

678. Plaintiff and the other Missouri Class members have complied with all obligations under the warranty, or otherwise have been excused from performance of said obligations as a result of Ford's conduct described herein. Affording Ford a reasonable opportunity to cure the breach of written warranties therefore would be unnecessary and futile.

679. As a direct and proximate result of Ford's breach of the warranty of merchantability, Plaintiff and the other Missouri Class members have been damaged in an amount to be proven at trial, including but not limited to, benefit-of-the-bargain damages, restitution and/or diminution of value.

#### **COUNT TWENTY-FOUR**

##### **UNJUST ENRICHMENT (BASED ON MISSOURI LAW)**

680. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

681. Should Plaintiff's breach of express warranty claim be dismissed, Plaintiff brings this Count in the alternative and on behalf of the Missouri Class.

682. Ford has benefitted from and been enriched by the conduct alleged herein. Ford has generated substantial revenue from the unlawful conduct described herein. Ford has

knowledge and appreciation of this benefit, which was conferred upon it by and at the expense of Plaintiff and the other Missouri Class members.

683. Ford has voluntarily accepted and retained this benefit.

684. The circumstances, as described herein, are such that it would be inequitable for Ford to retain the ill-gotten benefit without paying the value thereof to Plaintiff and the other Missouri Class members.

685. Plaintiff and the other Missouri Class members are entitled to the amount of Ford's ill-gotten gains, including interest, resulting from its unlawful, unjust, unfair, and inequitable conduct as alleged herein.

**F. CLAIMS BROUGHT ON BEHALF OF THE NEW JERSEY CLASS**

**COUNT TWENTY-FIVE**

**VIOLATION OF THE NEW JERSEY CONSUMER FRAUD ACT  
(N.J. STAT. ANN. § 56:8-1, *ET SEQ.*)**

686. Plaintiff Wayne Linn ("Plaintiff" for purposes of all New Jersey Class Counts) incorporates by reference all preceding allegations as though fully set forth herein.

687. Plaintiff brings this Count on behalf of the New Jersey Class.

688. The New Jersey Consumer Fraud Act makes unlawful "[t]he 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 the 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 . . . ." N.J. Stat. Ann. § 56:8-2.

689. Ford, Plaintiff, and Class members are “persons” within the meaning of N.J. Stat. Ann. § 56:8-1(d).

690. Ford engaged in “sales” of “merchandise” within the meaning of N.J. Stat. Ann. § 56:8-1(c), (d).

691. Plaintiff is entitled to recover legal and/or equitable relief, including an order enjoining Ford’s unlawful conduct, treble damages, costs, and reasonable attorneys’ fees pursuant to N.J. Stat. Ann. § 56:8-19, and any other just and appropriate relief.

#### **COUNT TWENTY-SIX**

##### **FRAUDULENT CONCEALMENT (BASED ON NEW JERSEY LAW)**

692. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

693. Plaintiff brings this Count on behalf of the New Jersey Class.

694. Ford intentionally concealed that the defects contained in the Track-Ready powertrain system render Shelbys unfit for track use in that the transmissions of these vehicles would overheat when placed under track conditions and unexpectedly go into Limp Mode after less than 15 minutes, creating a dangerous hazard not only to the drivers but also to nearby vehicles. Ford concealed these facts to consumers.

695. Ford further affirmatively misrepresented to Plaintiff in advertising and other forms of communication, including standard and uniform material provided with each car and on its website, that the Shelby it was selling had no significant defects and that all Shelbys were Track-Ready.

696. Ford knew that these representations were false when made.

697. The Shelbys purchased by Plaintiff and the other New Jersey Class members contained a defective Track-Ready powertrain system.

698. Ford had a duty to disclose that the Track-Ready powertrain system contained defects as alleged herein and that these defects created a safety hazard. Plaintiff and the other New Jersey Class members relied on Ford's material representations.

699. As alleged herein, at all relevant times, Ford has held out the Shelbys to be free from defects such as the defect related to the Track-Ready powertrain system. Ford touted and continues to tout the many benefits and advantages of the Track-Ready powertrain system, but nonetheless failed to disclose important facts related to the defect and that Plaintiff and other New Jersey Class members would be required to make additional aftermarket modifications to adequately achieve Track-Ready performance, and that these modifications may violate their express warranties. This made Ford's other disclosures about the Track-Ready powertrain system deceptive.

700. The truth about the defective Track-Ready powertrain system was known only to Ford; Plaintiff and the other New Jersey Class members did not know of these facts and Ford actively concealed these facts from Plaintiff and the other New Jersey Class members.

701. Plaintiff and the other New Jersey Class members reasonably relied upon Ford's deception. They had no way of knowing that Ford's representations were false, misleading, or incomplete. As consumers, Plaintiff and the other New Jersey Class members did not, and could not, unravel Ford's deception on their own. Rather, Ford intended to deceive Plaintiff and the other New Jersey Class members by concealing the true facts about the Shelby's Track-Ready powertrain systems.

702. Ford's false representations and omissions and/or misrepresentations were material to consumers because they concerned qualities of the Shelbys that played a significant role in the value of the vehicles and forced Plaintiff and the other New Jersey Class members to make additional expenditures to ensure proper safety at the race track.

703. Ford had a duty to disclose the defects inherent in the Track-Ready powertrain system and violations with respect to the Shelbys because details of the true facts were known and/or accessible only to Ford, because Ford had exclusive and/or superior knowledge as to such facts, and because Ford knew these facts were not known or reasonably discoverable by Plaintiff or the other New Jersey Class members.

704. Ford also had a duty to disclose because it made general affirmative representations about the technological and safety innovations included with the Shelbys, without telling consumers that the defective Track-Ready powertrain system would affect the safety, quality, and performance of the vehicle.

705. Ford's disclosures were misleading, deceptive, and incomplete because they failed to inform consumers of the additional facts regarding the defects in the Track-Ready powertrain system as set forth herein. These omitted and concealed facts were material because they directly impact the value of the Shelbys purchased by Plaintiff and the other New Jersey Class members.

706. Ford has still not made full and adequate disclosures and continues to defraud Plaintiff and the other New Jersey Class members by concealing material information regarding the defects in the Track-Ready powertrain system.

707. Plaintiff and the other New Jersey Class members were unaware of the omitted material facts referenced herein and they would not have acted as they did if they had known of

the concealed and/or suppressed facts, in that they would not have purchased or paid as much for cars with faulty powertrain systems and/or would have taken other affirmative steps in light of the information concealed from them. Plaintiff's and the other New Jersey Class members' actions were justified. Ford was in exclusive and/or superior control of the material facts, and such facts were not generally known to the public, Plaintiff, or other New Jersey Class members.

708. Because of the concealment and/or suppression of facts, Plaintiff and the other New Jersey Class members sustained damage because they own(ed) vehicles that are diminished in value as a result of Ford's concealment of the true quality of those vehicles' Track-Ready powertrain systems. Had Plaintiff and the other New Jersey Class members been aware of the defects in the Track-Ready powertrain defects installed in the Shelbys, and the company's disregard for the truth, Plaintiff and the other New Jersey Class members who purchased a Shelby would have paid less for their vehicles or would not have purchased them at all.

709. The value of Plaintiff's and the other New Jersey Class members' vehicles has diminished as a result of Ford's fraudulent concealment of the defective Track-Ready powertrain system of the Shelbys, which has made any reasonable consumer reluctant to purchase any of the Shelbys, let alone pay what otherwise would have been fair market value for the vehicles.

710. Accordingly, Ford is liable to Plaintiff and the other New Jersey Class members for damages in an amount to be proven at trial, including but not limited to, benefit-of-the-bargain damages, restitution and/or diminution of value.

711. Ford's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and other New Jersey Class members' rights and the representations that Ford made to them, in order to enrich Ford. Ford's conduct



warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

**COUNT TWENTY-SEVEN**

**BREACH OF EXPRESS WARRANTY  
(N.J. STAT. ANN. § 12A:2-313)**

712. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

713. Plaintiff brings this Count on behalf of the New Jersey Class.

714. Ford was at all relevant times a “merchant” as defined by N.J. Stat. Ann. § 12A:2-104.

715. As an express warrantor and manufacturer and merchant, Ford had certain obligations under N.J. Stat. Ann. § 12A:2-313 to conform the Shelbys to the express warranties.

716. When Plaintiff and the other New Jersey Class members purchased their Shelbys, Ford expressly warranted in writing that the Shelbys were covered by a Limited Warranty and that the Limited Warranty formed the basis of the bargain. As set forth herein, Ford expressly warranted that it would (1) repair or replace defects in material or workmanship free of charge if they became apparent during the warranty period, and (2) remedy any defects in the design and manufacturing processes that result in vehicle part malfunction or failure during the warranty period. Also, as set forth herein, Ford breached its warranty obligations by selling inherently defective Shelbys and refusing to repair the defects or replace the defective parts.

717. The defects at issue in this litigation were present at the time of sale to Plaintiff and members of the New Jersey Class.

718. Ford breached the Limited Warranty to repair and adjust to correct defects that were introduced during the design and manufacturing processes of any part supplied by Ford as Ford has been unable to repair or adjust the Shelby's materials and workmanship defects.

719. Furthermore, the Limited Warranty of repair and/or adjustments to defective parts fails in its essential purpose because the contractual remedy is insufficient to make the Plaintiff and the other New Jersey Class members whole and because Ford has failed and/or refused to adequately provide the promised remedies within a reasonable time.

720. Pursuant to the express warranties, Ford was obligated to pay for or reimburse Plaintiff and the other New Jersey Class members for costs incurred in purchasing aftermarket coolers for the transmission and differential systems and other costs associated with bringing their Shelbys to the dealership for futile repair efforts. Ford was also obligated to repair the defects.

721. Accordingly, recovery by the Plaintiff and the other New Jersey Class members is not limited to the Limited Warranty of repair or adjustments to parts defective in materials or workmanship, or in design, and Plaintiff and the other New Jersey Class members seek all remedies as allowed by law.

722. Also, as alleged in more detail herein, at the time that Ford warranted and sold the Shelbys, and while knowing that the Shelbys did not conform to Ford's Limited Warranty and were inherently defective, Ford wrongfully and fraudulently concealed material facts regarding the Shelbys. Plaintiff and the other New Jersey Class members were therefore induced to purchase the Shelbys under false and/or fraudulent pretenses. As such, Ford's warranty limitation regarding presentment is unenforceable because it knowingly sold or leased a defective product without informing consumers about the defect. A gross disparity in bargaining power existed

between Ford and other New Jersey Class members, and Ford knew of the Shelby defects at the time of sale

723. Ford and its agent dealers have failed and refused to conform the Shelbys to the express warranties and Ford's conduct and has voided any attempt on its part to disclaim liability for its actions.

724. Moreover, many of the damages flowing from the Shelbys cannot be resolved through the limited remedy of "replacement or adjustments" as those incidental and consequential damages have already been suffered due to Ford's fraudulent conduct as alleged herein, and due to its failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiff's and the other New Jersey Class members' remedies would be insufficient to make Plaintiff and the other New Jersey Class members whole.

725. Ford received timely notice regarding the problems at issue in this litigation (indeed Ford knew of the defects prior to offering the Shelbys for sale or lease). Ford was also provided notice of these issues through the receipt of numerous complaints regarding the Limp Mode manifestations. Ford has received, on information and belief, many complaints from New Jersey Class members advising them of the defects at issue in this litigation.

726. Plaintiff has performed each and every duty required 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 unconscionable conduct.

727. Plaintiff has had sufficient dealings with either Ford or its agents (dealerships and/or Ford Performance) to establish privity of contract. Privity is not required in this case because Plaintiff and the other New Jersey Class members are intended third-party beneficiaries of contracts between Ford and its dealers; specifically, they are the intended beneficiaries of

Ford's express warranties and these warranties were advertised to Plaintiff and the other New Jersey Class members as the ultimate consumers. The dealers were not intended to be the ultimate consumers of the Shelbys and have no rights under the warranty agreements provided with the Shelbys; the warranty agreements were designed for and intended to benefit the ultimate consumers only.

728. As a direct and proximate result of Ford's breach of express warranty, Plaintiff and the other New Jersey Class members have been damaged in an amount to be determined at trial, including, but not limited to, diminution of value and benefit-of-the-bargain damages.

729. Finally, due to Ford's breach of warranty as set forth herein, Plaintiff and the other New Jersey Class members assert as an additional and/or alternative remedy, as set forth in N.J. Stat. Ann. § 12A:2-608 the revocation of acceptance of the goods, and the return to Plaintiff and the New Jersey Class members of the purchase price of all Shelbys currently owned for such other incidental and consequential damages as allowed under N.J. Stat. Ann. §§ 12A:2-711 and 12A:2-608.

#### **COUNT TWENTY-EIGHT**

##### **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY (N.J. STAT. ANN. § 12A:2-314)**

730. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

731. Plaintiff brings this Count on behalf of the New Jersey Class.

732. Ford was at all relevant times a "merchant" as defined by N.J. Stat. Ann. § 12A:2-104.

733. A warranty that the Shelbys were in merchantable condition for the purpose of driving on public roadways is implied by law in the instant transactions.

734. These Shelbys, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Shelbys are inherently defective in that the defects in the Shelbys' Track-Ready powertrain system leads to overheating of the powertrain system and causes vehicles to go unexpectedly into Limp Mode while driving on public roadways. The Limp Mode manifestation substantially impairs the safety, reliability, and operability of the Shelbys to the extent it renders them unfit for their ordinary purpose of driving on public roadways.

735. Ford knew about the Shelby Track-Ready powertrain defects at the time of purchase, allowing it to cure their breach of warranty if it chose.

736. Ford was provided notice of these issues by numerous complaints filed against it, including this initial Complaint, by the notice letter sent by Plaintiff's counsel as referenced elsewhere in the Second Amended Complaint, and by numerous individual letters and communications sent by Plaintiff and other New Jersey Class members before or within a reasonable amount of time.

737. Ford's attempt to disclaim or limit the implied warranty of merchantability vis-à-vis consumers is unconscionable and unenforceable here. Specifically, Ford's warranty limitation regarding presentment is unenforceable because it knowingly sold or leased a defective product without informing consumers about the defect. A gross disparity in bargaining power existed between Ford and other New Jersey Class members, and Ford knew of the Shelby defects at the time of sale.

738. Plaintiff and the other New Jersey Class members have complied with all obligations under the warranty, or otherwise have been excused from performance of said

obligations as a result of Ford's conduct described herein. Affording Ford a reasonable opportunity to cure the breach of written warranties therefore would be unnecessary and futile.

739. As a direct and proximate result of Ford's breach of the warranty of merchantability, Plaintiff and the other New Jersey Class members have been damaged in an amount to be proven at trial, including but not limited to, benefit-of-the-bargain damages, restitution and/or diminution of value.

**COUNT TWENTY-NINE**

**UNJUST ENRICHMENT  
(BASED ON NEW JERSEY LAW)**

740. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

741. Should Plaintiff's breach of express warranty claim be dismissed, Plaintiff brings this Count in the alternative and on behalf of the New Jersey Class.

742. Ford has benefitted from and been enriched by the conduct alleged herein. Ford has generated substantial revenue from the unlawful conduct described herein. Ford has knowledge and appreciation of this benefit, which was conferred upon it by and at the expense of Plaintiff and the other New Jersey Class members.

743. Ford has voluntarily accepted and retained this benefit.

744. The circumstances, as described herein, are such that it would be inequitable for Ford to retain the ill-gotten benefit without paying the value thereof to Plaintiff and the other New Jersey Class members.

745. Plaintiff and the other New Jersey Class members are entitled to the amount of Ford's ill-gotten gains, including interest, resulting from its unlawful, unjust, unfair, and inequitable conduct as alleged herein.

**G. CLAIMS BROUGHT ON BEHALF OF THE NEW YORK CLASS**

**COUNT THIRTY**

**VIOLATION OF THE NEW YORK GENERAL BUSINESS LAW §§ 349-350  
(N.Y. GEN. BUS. LAW §§ 349-350)**

746. Plaintiffs Stephen and Jill Kelly (“Plaintiffs” for purposes of all New York Class Counts) incorporate by reference all preceding allegations as though fully set forth herein.

747. Plaintiffs bring this Count on behalf of the New York Class.

748. The New York General Business Law makes unlawful “[d]eceptive acts or practices in the conduct of any business, trade or commerce.” N.Y. Gen. Bus. Law § 349.

749. Plaintiffs and the New York Class members are “persons” within the meaning of N.Y. Gen. Bus. Law § 349(h).

750. Ford is a “person,” “firm,” “corporation,” or “association” within the meaning of N.Y. Gen. Bus. Law § 349.

751. Ford’s deceptive acts and practices, which were intended to mislead consumers who purchased Shelbys, was conduct directed at consumers.

752. Because Ford’s willful and knowing conduct caused injury to Plaintiffs, Plaintiffs seek recovery of actual damages or \$50, whichever is greater; discretionary treble damages up to \$1,000; punitive damages; reasonable attorneys’ fees and costs; an order enjoining Ford’s deceptive conduct; and any other just and proper relief available under N.Y. Gen. Bus. Law § 349.

**COUNT THIRTY-ONE**

**FRAUDULENT CONCEALMENT  
(BASED ON NEW YORK LAW)**

753. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

754. Plaintiffs bring this Count on behalf of the New York Class.

755. Ford intentionally concealed that the defects contained in the Track-Ready powertrain system render Shelbys unfit for track use in that the transmissions and differentials of these vehicles would overheat when placed under track conditions and unexpectedly go into Limp Mode after less than 15 minutes, creating a dangerous hazard not only to the drivers but also to nearby vehicles. Ford concealed these facts to consumers.

756. Ford further affirmatively misrepresented to Plaintiffs in advertising and other forms of communication, including standard and uniform material provided with each car and on its website, that the Shelby it was selling had no significant defects and that all Shelbys were Track-Ready.

757. Ford knew that these representations were false when made.

758. The Shelbys purchased by Plaintiffs and the other New York Class members contained a defective Track-Ready powertrain system.

759. Ford had a duty to disclose that the Track-Ready powertrain system contained defects as alleged herein and that these defects created a safety hazard. Plaintiffs and the other New York Class members relied on Ford's material representations.

760. As alleged herein, at all relevant times, Ford has held out the Shelbys to be free from defects such as the defect related to the Track-Ready powertrain system. Ford touted and continues to tout the many benefits and advantages of the Track-Ready powertrain system, but nonetheless failed to disclose important facts related to the defect and that Plaintiffs and other New York Class members would be required to make additional aftermarket modifications to adequately achieve Track-Ready performance, and that these modifications may violate their



express warranties. This made Ford's other disclosures about the Track-Ready powertrain system deceptive.

761. The truth about the defective Track-Ready powertrain system was known only to Ford; Plaintiffs and the other New York Class members did not know of these facts and Ford actively concealed these facts from Plaintiffs and the other New York Class members.

762. Plaintiffs and the other New York Class members reasonably relied upon Ford's deception. They had no way of knowing that Ford's representations were false, misleading, or incomplete. As consumers, Plaintiffs and the other New York Class members did not, and could not, unravel Ford's deception on their own. Rather, Ford intended to deceive Plaintiffs and the other New York Class members by concealing the true facts about the Shelby's Track-Ready powertrain systems.

763. Ford's false representations and omissions and/or misrepresentations were material to consumers because they concerned qualities of the Shelbys that played a significant role in the value of the vehicles and forced Plaintiffs and the other New York Class members to make additional expenditures to ensure proper safety at the race track.

764. Ford had a duty to disclose the defects inherent in the Track-Ready powertrain system and violations with respect to the Shelbys because details of the true facts were known and/or accessible only to Ford, because Ford had exclusive and/or superior knowledge as to such facts, and because Ford knew these facts were not known or reasonably discoverable by Plaintiffs or the other New York Class members.

765. Ford also had a duty to disclose because it made general affirmative representations about the technological and safety innovations included with the Shelbys,

without telling consumers that the defective Track-Ready powertrain system would affect the safety, quality, and performance of the vehicle.

766. Ford's disclosures were misleading, deceptive, and incomplete because they failed to inform consumers of the additional facts regarding the defects in the Track-Ready powertrain system as set forth herein. These omitted and concealed facts were material because they directly impact the value of the Shelbys purchased by Plaintiffs and the other New York Class members.

767. Ford has still not made full and adequate disclosures and continues to defraud Plaintiffs and the other New York Class members by concealing material information regarding the defects in the Track-Ready powertrain system.

768. Plaintiffs and the other New York Class members were unaware of the omitted material facts referenced herein and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased or paid as much for cars with faulty powertrain systems and/or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and the other New York Class members' actions were justified. Ford was in exclusive and/or superior control of the material facts, and such facts were not generally known to the public, Plaintiffs, or other New York Class members.

769. Because of the concealment and/or suppression of facts, Plaintiffs and the other New York Class members sustained damage because they own(ed) vehicles that are diminished in value as a result of Ford's concealment of the true quality of those vehicles' Track-Ready powertrain systems. Had Plaintiffs and the other New York Class members been aware of the defects in the Track-Ready powertrain defects installed in the Shelbys, and the company's

disregard for the truth, Plaintiffs and the other New York Class members who purchased a Shelby would have paid less for their vehicles or would not have purchased them at all.

770. The value of Plaintiffs' and the other New York Class members' vehicles has diminished as a result of Ford's fraudulent concealment of the defective Track-Ready powertrain system of the Shelbys, which has made any reasonable consumer reluctant to purchase any of the Shelbys, let alone pay what otherwise would have been fair market value for the vehicles.

771. Accordingly, Ford is liable to Plaintiffs and the other New York Class members for damages in an amount to be proven at trial, including but not limited to, benefit-of-the-bargain damages, restitution and/or diminution of value.

772. Ford's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and other New York Class members' rights and the representations that Ford made to them, in order to enrich Ford. Ford's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

### **COUNT THIRTY-TWO**

#### **BREACH OF EXPRESS WARRANTY (N.Y. U.C.C. § 2-313)**

773. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

774. Plaintiffs bring this Count on behalf of the New York Class.

775. Ford was at all relevant times a "merchant" as defined by N.Y. U.C.C. § 2-104.

776. The Shelbys are and were at all relevant times "goods" as defined by N.Y. U.C.C. § 2-105.

777. As an express warrantor and manufacturer and merchant, Ford had certain obligations under N.Y. U.C.C. § 2-313 to conform the Shelbys to the express warranties.

778. When Plaintiffs and the other New York Class members purchased their Shelbys, Ford expressly warranted in writing that the Shelbys were covered by the NVLW and that the NVLW formed the basis of the bargain. As set forth herein, Ford expressly warranted that it would (1) repair or replace defects in material or workmanship free of charge if they became apparent during the warranty period, and (2) remedy any defects in the design and manufacturing processes that result in vehicle part malfunction or failure during the warranty period. Also, as set forth herein, Ford breached its warranty obligations by selling inherently defective Shelbys and refusing to repair the defects or replace the defective parts.

779. The defects at issue in this litigation were present at the time of sale to Plaintiffs and members of the New York Class.

780. Ford breached the Limited Warranty to repair and adjust to correct defects that were introduced during the design and manufacturing processes of any part supplied by Ford as Ford has been unable to repair or adjust the Shelby's materials and workmanship defects.

781. Furthermore, the Limited Warranty of repair and/or adjustments to defective parts fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and the other New York Class members whole and because Ford has failed and/or refused to adequately provide the promised remedies within a reasonable time.

782. Pursuant to the express warranties, Ford was obligated to pay for or reimburse Plaintiffs and the other New York Class members for costs incurred in purchasing aftermarket coolers for the transmission and differential systems and other costs associated with bringing

their Shelbys to the dealership for futile repair efforts. Ford was also obligated to repair the defects.

783. Accordingly, recovery by Plaintiffs and the other New York Class members is not limited to the Limited Warranty of repair or adjustments to parts defective in materials or workmanship, or in design, and Plaintiffs and the other New York Class members seek all remedies as allowed by law.

784. Also, as alleged in more detail herein, at the time that Ford warranted and sold the Shelbys, and while knowing that the Shelbys did not conform to Ford's Limited Warranty and were inherently defective, Ford wrongfully and fraudulently concealed material facts regarding the Shelbys. Plaintiffs and the other New York Class members were therefore induced to purchase the Shelbys under false and/or fraudulent pretenses. As such, Ford's warranty limitation regarding presentment is unenforceable because it knowingly sold or leased a defective product without informing consumers about the defect. A gross disparity in bargaining power existed between Ford and other New York Class members, and Ford knew of the Shelby defects at the time of sale

785. Ford and its agent dealers have failed and refused to conform the Shelbys to the express warranties and Ford's conduct and has voided any attempt on its part to disclaim liability for its actions.

786. Moreover, many of the damages flowing from the Shelbys cannot be resolved through the limited remedy of "replacement or adjustments" as those incidental and consequential damages have already been suffered due to Ford's fraudulent conduct as alleged herein, and due to its failure and/or continued failure to provide such limited remedy within a

reasonable time, and any limitation on Plaintiffs' and the other New York Class members' remedies would be insufficient to make Plaintiffs and the other New York Class members whole.

787. Ford received timely notice regarding the problems at issue in this litigation (indeed Ford knew of the defects prior to offering the Shelbys for sale or lease). Ford was also provided notice of these issues through the receipt of numerous complaints regarding the Limp Mode manifestations. Ford has received, on information and belief, many complaints from New York Class members advising them of the defects at issue in this litigation.

788. Plaintiffs have performed each and every duty required 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 unconscionable conduct.

789. Plaintiffs have had sufficient dealings with either Ford or its agents (dealerships and/or Ford Performance) to establish privity of contract. Privity is not required in this case because Plaintiffs and the other New York Class members are intended third-party beneficiaries of contracts between Ford and its dealers; specifically, they are the intended beneficiaries of Ford's express warranties and these warranties were advertised to Plaintiffs and the other New York Class members as the ultimate consumers. The dealers were not intended to be the ultimate consumers of the Shelbys and have no rights under the warranty agreements provided with the Shelbys; the warranty agreements were designed for and intended to benefit the ultimate consumers only.

790. As a direct and proximate result of Ford's breach of express warranty, Plaintiffs and the other New York Class members have been damaged in an amount to be determined at trial, including, but not limited to, diminution of value and benefit-of-the-bargain damages

791. Finally, due to Ford's breach of warranties as set forth herein, Plaintiffs and the other New York Class members assert as an additional and/or alternative remedy, as set forth in N.Y. U.C.C. § 2-608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the other New York Class members of the purchase price of all Shelbys currently owned for such other incidental and consequential damages as allowed under N.Y. U.C.C. §§ 2-711 and 2-608.

**COUNT THIRTY-THREE**

**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY  
(N.Y. U.C.C. LAW § 2-315)**

792. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

793. Plaintiffs bring this Count on behalf of the New York Class.

794. Ford is and was at all relevant times a merchant with respect to motor vehicles as defined by N.Y. U.C.C. Law § 2-104.

795. A warranty that the Shelbys were in merchantable condition for the purpose of driving on public roadways is implied by law in the instant transactions.

796. These Shelbys, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Shelbys are inherently defective in that the defects in the Shelbys' Track-Ready powertrain system leads to overheating of the powertrain system and causes vehicles to go unexpectedly into Limp Mode while driving on public roadways. The Limp Mode manifestation substantially impairs the safety, reliability, and operability of the Shelbys to the extent it renders them unfit for their ordinary purpose of driving on public roadways.

797. Ford knew about the Shelby Track-Ready powertrain defects at the time of purchase, allowing it to cure their breach of warranty if it chose.

798. Ford was provided notice of these issues by numerous complaints filed against it, including this initial Complaint, by the notice letter sent by Plaintiffs' counsel as referenced elsewhere in the Second Amended Complaint, and by numerous individual letters and communications sent by Plaintiffs and other New York Class members before or within a reasonable amount of time.

799. Ford's attempt to disclaim or limit the implied warranty of merchantability vis-à-vis consumers is unconscionable and unenforceable here. Specifically, Ford's warranty limitation regarding presentment is unenforceable because it knowingly sold or leased a defective product without informing consumers about the defect. A gross disparity in bargaining power existed between Ford and other New York Class members, and Ford knew of the Shelby defects at the time of sale.

800. Plaintiff and the other New York Class members have complied with all obligations under the warranty, or otherwise have been excused from performance of said obligations as a result of Ford's conduct described herein. Affording Ford a reasonable opportunity to cure the breach of written warranties therefore would be unnecessary and futile.

801. As a direct and proximate result of Ford's breach of the warranty of merchantability, Plaintiffs and the other New York Class members have been damaged in an amount to be proven at trial, including but not limited to, benefit-of-the-bargain damages, restitution and/or diminution of value.



**COUNT THIRTY-FOUR**

**UNJUST ENRICHMENT  
(BASED ON NEW YORK LAW)**

802. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

803. Should Plaintiffs' breach of express warranty claim be dismissed, Plaintiffs bring this Count in the alternative and on behalf of the New York Class.

804. Ford has benefitted from and been enriched by the conduct alleged herein. Ford has generated substantial revenue from the unlawful conduct described herein. Ford has knowledge and appreciation of this benefit, which was conferred upon it by and at the expense of Plaintiffs and the other New York Class members.

805. Ford has voluntarily accepted and retained this benefit.

806. The circumstances, as described herein, are such that it would be inequitable for Ford to retain the ill-gotten benefit without paying the value thereof to Plaintiffs and the other New York Class members.

807. Plaintiffs and the other New York Class members are entitled to the amount of Ford's ill-gotten gains, including interest, resulting from its unlawful, unjust, unfair, and inequitable conduct as alleged herein.

**H. CLAIMS BROUGHT ON BEHALF OF THE OREGON CLASS**

**COUNT THIRTY-FIVE**

**VIOLATION OF THE OREGON UNLAWFUL TRADE PRACTICES ACT  
(OR. REV. STAT. § 646.605, *ET SEQ.*)**

808. Plaintiff Josh Long ("Plaintiff" for purposes of all Oregon Class Counts) incorporates by reference all preceding allegations as though fully set forth herein.

809. Plaintiff brings this Count on behalf of the Oregon Class.

810. The Oregon Unfair Trade Practices Act prohibits a person from, in the course of the person's business, doing any of the following: "[m]ak[ing] false or misleading representations of fact concerning the reasons for, existence of, or amounts of price reductions"; "[m]ak[ing] false or misleading representations of fact concerning the offering price or, or the person's cost for . . . goods"; or "[e]ngag[ing] in any other unfair or deceptive conduct in trade or commerce." Or. Rev. Stat. § 646.608(1).

811. Ford is a person within the meaning of Or. Rev. Stat. § 646.605(4).

812. The Shelbys at issue are "goods" obtained primarily for personal family or household purposes within the meaning of Or. Rev. Stat. § 646.605(6).

813. Plaintiff is entitled to recover the greater of actual damages or \$200 pursuant to Or. Rev. Stat. § 646.638(1). Plaintiff is also entitled to punitive damages because Ford engaged in conduct amounting to a particularly aggravated, deliberate disregard of the rights of others.

### **COUNT THIRTY-SIX**

#### **FRAUDULENT CONCEALMENT (BASED ON OREGON LAW)**

814. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

815. Plaintiff brings this Count on behalf of the Oregon Class.

816. Ford intentionally concealed that the defects contained in the Track-Ready powertrain system render Shelbys unfit for track use in that the transmissions of these vehicles would overheat when placed under track conditions and unexpectedly go into Limp Mode after less than 15 minutes, creating a dangerous hazard not only to the drivers but also to nearby vehicles. Ford concealed these facts to consumers.

817. Ford further affirmatively misrepresented to Plaintiff in advertising and other forms of communication, including standard and uniform material provided with each car and on its website, that the Shelby it was selling had no significant defects and that all Shelbys were Track-Ready.

818. Ford knew that these representations were false when made.

819. The Shelbys purchased by Plaintiff and the other Oregon Class members contained a defective Track-Ready powertrain system.

820. Ford had a duty to disclose that the Track-Ready powertrain system contained defects as alleged herein and that these defects created a safety hazard. Plaintiff and the other Oregon Class members relied on Ford's material representations.

821. As alleged herein, at all relevant times, Ford has held out the Shelbys to be free from defects such as the defect related to the Track-Ready powertrain system. Ford touted and continues to tout the many benefits and advantages of the Track-Ready powertrain system, but nonetheless failed to disclose important facts related to the defect and that Plaintiff and other Oregon Class members would be required to make additional aftermarket modifications to adequately achieve Track-Ready performance, and that these modifications may violate their express warranties. This made Ford's other disclosures about the Track-Ready powertrain system deceptive.

822. The truth about the defective Track-Ready powertrain system was known only to Ford; Plaintiff and the other Oregon Class members did not know of these facts and Ford actively concealed these facts from Plaintiff and the other Oregon Class members.

823. Plaintiff and the other Oregon Class members reasonably relied upon Ford's deception. They had no way of knowing that Ford's representations were false, misleading, or

incomplete. As consumers, Plaintiff and the other Oregon Class members did not, and could not, unravel Ford's deception on their own. Rather, Ford intended to deceive Plaintiff and the other Oregon Class members by concealing the true facts about the Shelby's Track-Ready powertrain systems.

824. Ford's false representations and omissions and/or misrepresentations were material to consumers because they concerned qualities of the Shelbys that played a significant role in the value of the vehicles and forced Plaintiff and the other Oregon Class members to make additional expenditures to ensure proper safety at the race track.

825. Ford had a duty to disclose the defects inherent in the Track-Ready powertrain system and violations with respect to the Shelbys because details of the true facts were known and/or accessible only to Ford, because Ford had exclusive and/or superior knowledge as to such facts, and because Ford knew these facts were not known or reasonably discoverable by Plaintiff or the other Oregon Class members.

826. Ford also had a duty to disclose because it made general affirmative representations about the technological and safety innovations included with the Shelbys, without telling consumers that the defective Track-Ready powertrain system would affect the safety, quality, and performance of the vehicle.

827. Ford's disclosures were misleading, deceptive, and incomplete because they failed to inform consumers of the additional facts regarding the defects in the Track-Ready powertrain system as set forth herein. These omitted and concealed facts were material because they directly impact the value of the Shelbys purchased by Plaintiff and the other Oregon Class members.

828. Ford has still not made full and adequate disclosures and continues to defraud Plaintiff and the other Oregon Class members by concealing material information regarding the defects in the Track-Ready powertrain system.

829. Plaintiff and the other Oregon Class members were unaware of the omitted material facts referenced herein and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased or paid as much for cars with faulty powertrain systems and/or would have taken other affirmative steps in light of the information concealed from them. Plaintiff's and the other Oregon Class members' actions were justified. Ford was in exclusive and/or superior control of the material facts, and such facts were not generally known to the public, Plaintiff, or other Oregon Class members.

830. Because of the concealment and/or suppression of facts, Plaintiff and the other Oregon Class members sustained damage because they own(ed) vehicles that are diminished in value as a result of Ford's concealment of the true quality of those vehicles' Track-Ready powertrain systems. Had Plaintiff and the other Oregon Class members been aware of the defects in the Track-Ready powertrain defects installed in the Shelbys, and the company's disregard for the truth, Plaintiff and the other Oregon Class members who purchased a Shelby would have paid less for their vehicles or would not have purchased them at all.

831. The value of Plaintiff's and the other Oregon Class members' vehicles has diminished as a result of Ford's fraudulent concealment of the defective Track-Ready powertrain system of the Shelbys, which has made any reasonable consumer reluctant to purchase any of the Shelbys, let alone pay what otherwise would have been fair market value for the vehicles.

832. Accordingly, Ford is liable to Plaintiff and the other Oregon Class members for damages in an amount to be proven at trial, including but not limited to, benefit-of-the-bargain damages, restitution and/or diminution of value.

833. Ford's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and other Oregon Class members' rights and the representations that Ford made to them, in order to enrich Ford. Ford's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

### **COUNT THIRTY-SEVEN**

#### **BREACH OF EXPRESS WARRANTY (OR. REV. STAT. §§ 72.3130 AND § 72A.2100)**

834. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

835. Plaintiff bring this Count on behalf of the Oregon Class.

836. Ford was at all relevant times a "merchant" as defined by OR. REV. STAT. § 72.1040(1) and OR. REV. STAT. § 72A.1030(2)(o).

837. The Shelbys are and were at all relevant times "goods" as defined by OR. REV. STAT. § 72.1050(1) and OR. REV. STAT. § 72A.1030(1)(h).

838. As an express warrantor and manufacturer and merchant, Ford had certain obligations under OR. REV. STAT. §§ 72.3130 and § 72A.2100 to conform the Shelbys to the express warranties.

839. When Plaintiff and the other Oregon Class members purchased their Shelbys, Ford expressly warranted in writing that the Shelbys were covered by the NVLW and that the NVLW formed the basis of the bargain. As set forth herein, Ford expressly warranted that it

would (1) repair or replace defects in material or workmanship free of charge if they became apparent during the warranty period, and (2) remedy any defects in the design and manufacturing processes that result in vehicle part malfunction or failure during the warranty period. Also, as set forth herein, Ford breached its warranty obligations by selling inherently defective Shelbys and refusing to repair the defects or replace the defective parts.

840. The defects at issue in this litigation were present at the time of sale to Plaintiff and members of the Oregon Class.

841. Ford breached the Limited Warranty to repair and adjust to correct defects that were introduced during the design and manufacturing processes of any part supplied by Ford as Ford has been unable to repair or adjust the Shelby's materials and workmanship defects.

842. Furthermore, the Limited Warranty of repair and/or adjustments to defective parts fails in its essential purpose because the contractual remedy is insufficient to make Plaintiff and the other Oregon Class members whole and because Ford has failed and/or refused to adequately provide the promised remedies within a reasonable time.

843. Pursuant to the express warranties, Ford was obligated to pay for or reimburse Plaintiff and the other Oregon Class members for costs incurred in purchasing aftermarket coolers for the transmission and differential systems and other costs associated with bringing their Shelbys to the dealership for futile repair efforts. Ford was also obligated to repair the defects.

844. Accordingly, recovery by Plaintiff and the other Oregon Class members is not limited to the Limited Warranty of repair or adjustments to parts defective in materials or workmanship, or in design, and Plaintiff and the other Oregon Class members seek all remedies as allowed by law.

845. Also, as alleged in more detail herein, at the time that Ford warranted and sold the Shelbys, and while knowing that the Shelbys did not conform to Ford's Limited Warranty and were inherently defective, Ford wrongfully and fraudulently concealed material facts regarding the Shelbys. Plaintiff and the other Oregon Class members were therefore induced to purchase the Shelbys under false and/or fraudulent pretenses.

846. Ford and its agent dealers have failed and refused to conform the Shelbys to the express warranties and Ford's conduct and has voided any attempt on its part to disclaim liability for its actions.

847. Moreover, many of the damages flowing from the Shelbys cannot be resolved through the limited remedy of "replacement or adjustments" as those incidental and consequential damages have already been suffered due to Ford's fraudulent conduct as alleged herein, and due to its failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiff's and the other Oregon Class members' remedies would be insufficient to make Plaintiff and the other Oregon Class members whole. As such, Ford's warranty limitation regarding presentment is unenforceable because it knowingly sold or leased a defective product without informing consumers about the defect. A gross disparity in bargaining power existed between Ford and other Oregon Class members, and Ford knew of the Shelby defects at the time of sale

848. Ford received timely notice regarding the problems at issue in this litigation (indeed Ford knew of the defects prior to offering the Shelbys for sale or lease). Ford was also provided notice of these issues through the receipt of numerous complaints regarding the Limp Mode manifestations. Ford has received, on information and belief, many complaints from Oregon Class members advising them of the defects at issue in this litigation.



849. Plaintiff had performed each and every duty required 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 unconscionable conduct.

850. Plaintiff has had sufficient dealings with either Ford or its agents (dealerships and/or Ford Performance) to establish privity of contract. Privity is not required in this case because Plaintiff and the other Oregon Class members are intended third-party beneficiaries of contracts between Ford and its dealers; specifically, they are the intended beneficiaries of Ford's express warranties and these warranties were advertised to Plaintiff and the other Oregon Class members as the ultimate consumers. The dealers were not intended to be the ultimate consumers of the Shelbys and have no rights under the warranty agreements provided with the Shelbys; the warranty agreements were designed for and intended to benefit the ultimate consumers only.

851. As a direct and proximate result of Ford's breach of express warranty, Plaintiff and the other Oregon Class members have been damaged in an amount to be determined at trial, including, but not limited to, diminution of value and benefit-of-the-bargain damages.

### **COUNT THIRTY-EIGHT**

#### **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY (OR. REV. STAT. §§ 72.3140)**

852. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

853. Plaintiff brings this Count on behalf of the Oregon Class.

854. Ford was at all relevant times a "merchant" as defined by OR. REV. STAT. § 72.1040(1) OR. REV. STAT. § 72A.1030(2)(o).

855. A warranty that the Shelbys were in merchantable condition for the purpose of driving on public roadways is implied by law in the instant transactions.

856. These Shelbys, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Shelbys are inherently defective in that the defects in the Shelbys' Track-Ready powertrain system leads to overheating of the powertrain system and causes vehicles to go unexpectedly into Limp Mode while driving on public roadways. The Limp Mode manifestation substantially impairs the safety, reliability, and operability of the Shelbys to the extent it renders them unfit for their ordinary purpose of driving on public roadways.

857. Ford knew about the Shelby Track-Ready powertrain defects at the time of purchase, allowing it to cure their breach of warranty if it chose.

858. Ford was provided notice of these issues by numerous complaints filed against it, including this initial Complaint, by the notice letter sent by Plaintiffs' counsel as referenced elsewhere in the Second Amended Complaint, and by numerous individual letters and communications sent by Plaintiff and other Oregon Class members before or within a reasonable amount of time.

859. Ford's attempt to disclaim or limit the implied warranty of merchantability vis-à-vis consumers is unconscionable and unenforceable here. Specifically, Ford's warranty limitation regarding presentment is unenforceable because it knowingly sold or leased a defective product without informing consumers about the defect. A gross disparity in bargaining power existed between Ford and other Oregon Class members, and Ford knew of the Shelby defects at the time of sale.

860. Plaintiff and the other Oregon Class members have complied with all obligations under the warranty, or otherwise have been excused from performance of said obligations as a

result of Ford's conduct described herein. Affording Ford a reasonable opportunity to cure the breach of written warranties therefore would be unnecessary and futile.

861. As a direct and proximate result of Ford's breach of the warranty of merchantability, Plaintiff and the other Oregon Class members have been damaged in an amount to be proven at trial, including but not limited to, benefit-of-the-bargain damages, restitution and/or diminution of value.

### **COUNT THIRTY-NINE**

#### **UNJUST ENRICHMENT (BASED ON OREGON LAW)**

862. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

863. Should Plaintiff's breach of express warranty claim be dismissed, Plaintiff bring this Count in the alternative and on behalf of the Oregon Class.

864. Ford has benefitted from and been enriched by the conduct alleged herein. Ford has generated substantial revenue from the unlawful conduct described herein. Ford has knowledge and appreciation of this benefit, which was conferred upon it by and at the expense of Plaintiff and the other Oregon Class members.

865. Ford has voluntarily accepted and retained this benefit.

866. The circumstances, as described herein, are such that it would be inequitable for Ford to retain the ill-gotten benefit without paying the value thereof to Plaintiff and the other Oregon Class members.

867. Plaintiff and the other Oregon Class members are entitled to the amount of Ford's ill-gotten gains, including interest, resulting from its unlawful, unjust, unfair, and inequitable conduct as alleged herein.

**I. CLAIMS BROUGHT ON BEHALF OF THE PENNSYLVANIA CLASS**

**COUNT FORTY**

**VIOLATION OF THE PENNSYLVANIA UNFAIR TRADE PRACTICES  
AND CONSUMER PROTECTION LAW  
(73 P.S. § 201-1, *ET SEQ.*)**

868. Plaintiff Jose Cruz (“Plaintiff” for purposes of all Pennsylvania Class Counts) incorporates by reference all preceding allegations as though fully set forth herein.

869. Plaintiff brings this Count on behalf of the Pennsylvania Class.

870. The Pennsylvania Unfair Trade Practices and Consumer Protection Law (Pennsylvania CPL) prohibits unfair or deceptive acts or practices, including: “[m]aking false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions”; and “[e]ngaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.” 73 P.S. § 201-2(4).

871. Ford, Plaintiff, and Pennsylvania Class members are “persons” within the meaning of 73 P.S. § 201-2(2).

872. Plaintiff purchased a Shelby primarily for personal, family, or household purposes within the meaning of 73 P.S. § 201-9.2.

873. All of the acts complained of herein were perpetrated by Ford in the course of trade or commerce within the meaning of 73 P.S. § 201-2(3).

874. Ford is liable to Plaintiff for treble his actual damages or \$100, whichever is greater, and attorneys’ fees and costs. 73 P.S. § 201-9.2(a). Plaintiff is also entitled to an award of punitive damages given that Ford’s conduct was malicious, wanton, willful, oppressive, or exhibited a reckless indifference to the rights of others.

**COUNT FORTY-ONE**

**FRAUDULENT CONCEALMENT  
(BASED ON PENNSYLVANIA LAW)**

875. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

876. Plaintiff brings this Count on behalf of the Pennsylvania Class.

877. Ford intentionally concealed that the defects contained in the Track-Ready powertrain system render Shelbys unfit for track use in that the transmissions of these vehicles would overheat when placed under track conditions and unexpectedly go into Limp Mode after less than 15 minutes, creating a dangerous hazard not only to the drivers but also to nearby vehicles. Ford concealed these facts to consumers.

878. Ford further affirmatively misrepresented to Plaintiff in advertising and other forms of communication, including standard and uniform material provided with each car and on its website, that the Shelby it was selling had no significant defects and that all Shelbys were Track-Ready.

879. Ford knew that these representations were false when made.

880. The Shelbys purchased by Plaintiff and the other Pennsylvania Class members contained a defective Track-Ready powertrain system.

881. Ford had a duty to disclose that the Track-Ready powertrain system contained defects as alleged herein and that these defects created a safety hazard. Plaintiff and the other Pennsylvania Class members relied on Ford's material representations.

882. As alleged herein, at all relevant times, Ford has held out the Shelbys to be free from defects such as the defect related to the Track-Ready powertrain system. Ford touted and continues to tout the many benefits and advantages of the Track-Ready powertrain system, but

nonetheless failed to disclose important facts related to the defect and that Plaintiff and other Pennsylvania Class members would be required to make additional aftermarket modifications to adequately achieve Track-Ready performance, and that these modifications may violate their express warranties. This made Ford's other disclosures about the Track-Ready powertrain system deceptive.

883. The truth about the defective Track-Ready powertrain system was known only to Ford; Plaintiff and the other Pennsylvania Class members did not know of these facts and Ford actively concealed these facts from Plaintiff and the other Pennsylvania Class members.

884. Plaintiff and the other Pennsylvania Class members reasonably relied upon Ford's deception. They had no way of knowing that Ford's representations were false, misleading, or incomplete. As consumers, Plaintiff and the other Pennsylvania Class members did not, and could not, unravel Ford's deception on their own. Rather, Ford intended to deceive Plaintiff and the other Pennsylvania Class members by concealing the true facts about the Shelby's Track-Ready powertrain systems.

885. Ford's false representations and omissions and/or misrepresentations were material to consumers because they concerned qualities of the Shelbys that played a significant role in the value of the vehicles and forced Plaintiff and the other Pennsylvania Class members to make additional expenditures to ensure proper safety at the race track.

886. Ford had a duty to disclose the defects inherent in the Track-Ready powertrain system and violations with respect to the Shelbys because details of the true facts were known and/or accessible only to Ford, because Ford had exclusive and/or superior knowledge as to such facts, and because Ford knew these facts were not known or reasonably discoverable by Plaintiff or the other Pennsylvania Class members.

887. Ford also had a duty to disclose because it made general affirmative representations about the technological and safety innovations included with the Shelbys, without telling consumers that the defective Track-Ready powertrain system would affect the safety, quality, and performance of the vehicle.

888. Ford's disclosures were misleading, deceptive, and incomplete because they failed to inform consumers of the additional facts regarding the defects in the Track-Ready powertrain system as set forth herein. These omitted and concealed facts were material because they directly impact the value of the Shelbys purchased by Plaintiff and the other Pennsylvania Class members.

889. Ford has still not made full and adequate disclosures and continues to defraud Plaintiff and the other Pennsylvania Class members by concealing material information regarding the defects in the Track-Ready powertrain system.

890. Plaintiff and the other Pennsylvania Class members were unaware of the omitted material facts referenced herein and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased or paid as much for cars with faulty powertrain systems and/or would have taken other affirmative steps in light of the information concealed from them. Plaintiff's and the other Pennsylvania Class members' actions were justified. Ford was in exclusive and/or superior control of the material facts, and such facts were not generally known to the public, Plaintiff, or other Pennsylvania Class members.

891. Because of the concealment and/or suppression of facts, Plaintiff and the other Pennsylvania Class members sustained damage because they own(ed) vehicles that are diminished in value as a result of Ford's concealment of the true quality of those vehicles' Track-

Ready powertrain systems. Had Plaintiff and the other Pennsylvania Class members been aware of the defects in the Track-Ready powertrain defects installed in the Shelbys, and the company's disregard for the truth, Plaintiff and the other Pennsylvania Class members who purchased a Shelby would have paid less for their vehicles or would not have purchased them at all.

892. The value of Plaintiff's and the other Pennsylvania Class members' vehicles has diminished as a result of Ford's fraudulent concealment of the defective Track-Ready powertrain system of the Shelbys, which has made any reasonable consumer reluctant to purchase any of the Shelbys, let alone pay what otherwise would have been fair market value for the vehicles.

893. Accordingly, Ford is liable to Plaintiff and the other Pennsylvania Class members for damages in an amount to be proven at trial, including but not limited to, benefit-of-the-bargain damages, restitution and/or diminution of value.

894. Ford's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and other Pennsylvania Class members' rights and the representations that Ford made to them, in order to enrich Ford. Ford's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

#### **COUNT FORTY-TWO**

##### **BREACH OF EXPRESS WARRANTY (13 PA. CONS. STAT. ANN. § 2103 )**

895. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

896. Plaintiff brings this Count on behalf of the Pennsylvania Class.

897. Plaintiff was at all relevant times a "buyer" as defined by 13 Pa. Cons. Stat. Ann. § 2103(a).



898. Ford was at all relevant times a “merchant” as defined by 13 Pa. Cons. Stat. Ann. § 2104.

899. The Shelbys are and were at all relevant times “goods” as defined by 13 Pa. Cons. Stat. Ann. § 2105.

900. As an express warrantor and manufacturer and merchant, Ford had certain obligations under 13 Pa. Cons. Stat. Ann. § 2313 to conform the Shelbys to the express warranties.

901. When Plaintiff and the other Pennsylvania Class members purchased their Shelbys, Ford expressly warranted in writing that the Shelbys were covered by a Limited Warranty and that the Limited Warranty formed the basis of the bargain. As set forth herein, Ford expressly warranted that it would (1) repair or replace defects in material or workmanship free of charge if they became apparent during the warranty period, and (2) remedy any defects in the design and manufacturing processes that result in vehicle part malfunction or failure during the warranty period. Also, as set forth herein, Ford breached its warranty obligations by selling inherently defective Shelbys and refusing to repair the defects or replace the defective parts.

902. The defects at issue in this litigation were present at the time of sale to Plaintiff and members of the Pennsylvania Class.

903. Ford breached the Limited Warranty to repair and adjust to correct defects that were introduced during the design and manufacturing processes of any part supplied by Ford as Ford has been unable to repair or adjust the Shelby’s materials and workmanship defects.

904. Furthermore, the Limited Warranty of repair and/or adjustments to defective parts fails in its essential purpose because the contractual remedy is insufficient to make the Plaintiff

and the other Pennsylvania Class members whole and because Ford has failed and/or refused to adequately provide the promised remedies within a reasonable time.

905. Pursuant to the express warranties, Ford was obligated to pay for or reimburse Plaintiff and the other Pennsylvania Class members for costs incurred in purchasing aftermarket coolers for the transmission and differential systems and other costs associated with bringing their Shelbys to the dealership for futile repair efforts. Ford was also obligated to repair the defects.

906. Accordingly, recovery by the Plaintiff and the other Pennsylvania Class members is not limited to the Limited Warranty of repair or adjustments to parts defective in materials or workmanship, or in design, and Plaintiff and the other Pennsylvania Class members seek all remedies as allowed by law.

907. Also, as alleged in more detail herein, at the time that Ford warranted and sold the Shelbys, and while knowing that the Shelbys did not conform to Ford's Limited Warranty and were inherently defective, Ford wrongfully and fraudulently concealed material facts regarding the Shelbys. Plaintiff and the other Pennsylvania Class members were therefore induced to purchase the Shelbys under false and/or fraudulent pretenses. As such, Ford's warranty limitation regarding presentment is unenforceable because it knowingly sold or leased a defective product without informing consumers about the defect. A gross disparity in bargaining power existed between Ford and other Pennsylvania Class members, and Ford knew of the Shelby defects at the time of sale

908. Ford and its agent dealers have failed and refused to conform the Shelbys to the express warranties and Ford's conduct and has voided any attempt on its part to disclaim liability for its actions.

909. Moreover, many of the damages flowing from the Shelbys cannot be resolved through the limited remedy of “replacement or adjustments” as those incidental and consequential damages have already been suffered due to Ford’s fraudulent conduct as alleged herein, and due to its failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiff’s and the other Pennsylvania Class members’ remedies would be insufficient to make Plaintiff and the other Pennsylvania Class members whole.

910. Ford received timely notice regarding the problems at issue in this litigation (indeed Ford knew of the defects prior to offering the Shelbys for sale or lease). Ford was also provided notice of these issues through the receipt of numerous complaints regarding the Limp Mode manifestations. Ford has received, on information and belief, many complaints from Pennsylvania Class members advising them of the defects at issue in this litigation.

911. Plaintiff has performed each and every duty required 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 unconscionable conduct.

912. Plaintiff has had sufficient dealings with either Ford or its agents (dealerships and/or Ford Performance) to establish privity of contract. Privity is not required in this case because Plaintiff and the other Pennsylvania Class members are intended third-party beneficiaries of contracts between Ford and its dealers; specifically, they are the intended beneficiaries of Ford’s express warranties and these warranties were advertised to Plaintiff and the other Pennsylvania Class members as the ultimate consumers. The dealers were not intended to be the ultimate consumers of the Shelbys and have no rights under the warranty agreements

provided with the Shelby's; the warranty agreements were designed for and intended to benefit the ultimate consumers only.

913. As a direct and proximate result of Ford's breach of express warranty, Plaintiff and the other Pennsylvania Class members have been damaged in an amount to be determined at trial, including, but not limited to, diminution of value and benefit-of-the-bargain damages.

**COUNT FORTY-THREE**

**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY  
(13 PA. CONS. STAT. § 2314)**

914. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

915. Plaintiff brings this Count on behalf of the Pennsylvania Class.

916. Ford was at all relevant times a "merchant" as defined by 13 Pa. Cons. Stat. Ann. § 2104.

917. A warranty that the Shelby's were in merchantable condition for the purpose of driving on public roadways is implied by law in the instant transactions.

918. These Shelby's, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Shelby's are inherently defective in that the defects in the Shelby's' Track-Ready powertrain system leads to overheating of the powertrain system and causes vehicles to go unexpectedly into Limp Mode while driving on public roadways. The Limp Mode manifestation substantially impairs the safety, reliability, and operability of the Shelby's to the extent it renders them unfit for their ordinary purpose of driving on public roadways.

919. Ford knew about the Shelby Track-Ready powertrain defects at the time of purchase, allowing it to cure their breach of warranty if it chose.

920. Ford was provided notice of these issues by numerous complaints filed against it, including this initial Complaint, by the notice letter sent by Plaintiffs' counsel as referenced elsewhere in the Second Amended Complaint, and by numerous individual letters and communications sent by Plaintiffs and other Pennsylvania Class members before or within a reasonable amount of time.

921. Ford's attempt to disclaim or limit the implied warranty of merchantability vis-à-vis consumers is unconscionable and unenforceable here. Specifically, Ford's warranty limitation regarding presentment is unenforceable because it knowingly sold or leased a defective product without informing consumers about the defect. A gross disparity in bargaining power existed between Ford and other Pennsylvania Class members, and Ford knew of the Shelby defects at the time of sale.

922. Plaintiff and the other Pennsylvania Class members have complied with all obligations under the warranty, or otherwise have been excused from performance of said obligations as a result of Ford's conduct described herein. Affording Ford a reasonable opportunity to cure the breach of written warranties therefore would be unnecessary and futile.

923. As a direct and proximate result of Ford's breach of the warranty of merchantability, Plaintiff and the other Pennsylvania Class members have been damaged in an amount to be proven at trial, including but not limited to, benefit-of-the-bargain damages, restitution and/or diminution of value.

**COUNT FORTY-FOUR**  
**UNJUST ENRICHMENT**  
**(BASED ON PENNSYLVANIA LAW)**

924. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

925. Should Plaintiff's breach of express warranty claim be dismissed, Plaintiff brings this Count in the alternative and on behalf of the Pennsylvania Class.

926. Ford has benefitted from and been enriched by the conduct alleged herein. Ford has generated substantial revenue from the unlawful conduct described herein. Ford has knowledge and appreciation of this benefit, which was conferred upon it by and at the expense of Plaintiff and the other Pennsylvania Class members.

927. Ford has voluntarily accepted and retained this benefit.

928. The circumstances, as described herein, are such that it would be inequitable for Ford to retain the ill-gotten benefit without paying the value thereof to Plaintiff and the other Pennsylvania Class members.

929. Plaintiff and the other Pennsylvania Class members are entitled to the amount of Ford's ill-gotten gains, including interest, resulting from its unlawful, unjust, unfair, and inequitable conduct as alleged herein.

**J. CLAIMS BROUGHT ON BEHALF OF THE TENNESSEE CLASS**

**COUNT FORTY-FIVE**

**VIOLATION OF THE TENNESSEE CONSUMER PROTECTION ACT  
(TENN. CODE ANN. § 47-18-101, *ET SEQ.*)**

930. Plaintiff Attila Gondan ("Plaintiff" for purposes of all Tennessee Class Counts) incorporates by reference all preceding allegations as though fully set forth herein.

931. Plaintiff brings this Count on behalf of the Tennessee Class.

932. The Tennessee Consumer Protection Act ("Tennessee CPA") prohibits "[u]nfair or deceptive acts or practices affecting the conduct of any trade or commerce," including, but not limited to, "[m]aking false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions." Tenn. Code Ann. § 47-18-104.

933. Plaintiff and Tennessee Class members are “natural persons” and “consumers” within the meaning of Tenn. Code Ann. § 47-18-103(2).

934. Ford is a “person” within the meaning of Tenn. Code Ann. § 47-18-103(2).

935. Ford’s conduct complained of herein affected “trade,” “commerce,” or “consumer transactions” within the meaning of Tenn. Code Ann. § 47-18-103(19).

936. Pursuant to Tenn. Code Ann. § 47-18-109(a), Plaintiff seeks monetary relief against Ford measured as actual damages in an amount to be determined at trial, treble damages as a result of Ford’s willful or knowing violations, and any other just and proper relief available under the Tennessee CPA.

#### **COUNT FORTY-SIX**

##### **FRAUD BY CONCEALMENT (BASED ON TENNESSEE LAW)**

937. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

938. Plaintiff brings this Count on behalf of the Tennessee Class.

939. Ford intentionally concealed that the defects contained in the Track-Ready powertrain system render Shelbys unfit for track use in that the transmissions of these vehicles would overheat when placed under track conditions and unexpectedly go into Limp Mode after less than 15 minutes, creating a dangerous hazard not only to the drivers but also to nearby vehicles. Ford concealed these facts to consumers.

940. Ford further affirmatively misrepresented to Plaintiff in advertising and other forms of communication, including standard and uniform material provided with each car and on its website, that the Shelby it was selling had no significant defects and that all Shelbys were Track-Ready.

941. Ford knew that these representations were false when made.

942. The Shelbys purchased by Plaintiff and the other Tennessee Class members contained a defective Track-Ready powertrain system.

943. Ford had a duty to disclose that the Track-Ready powertrain system contained defects as alleged herein and that these defects created a safety hazard. Plaintiff and the other Tennessee Class members relied on Ford's material representations.

944. As alleged herein, at all relevant times, Ford has held out the Shelbys to be free from defects such as the defect related to the Track-Ready powertrain system. Ford touted and continues to tout the many benefits and advantages of the Track-Ready powertrain system, but nonetheless failed to disclose important facts related to the defect and that Plaintiff and other Tennessee Class members would be required to make additional aftermarket modifications to adequately achieve Track-Ready performance, and that these modifications may violate their express warranties. This made Ford's other disclosures about the Track-Ready powertrain system deceptive.

945. The truth about the defective Track-Ready powertrain system was known only to Ford; Plaintiff and the other Tennessee Class members did not know of these facts and Ford actively concealed these facts from Plaintiff and the other Tennessee Class members.

946. Plaintiff and the other Tennessee Class members reasonably relied upon Ford's deception. They had no way of knowing that Ford's representations were false, misleading, or incomplete. As consumers, Plaintiff and the other Tennessee Class members did not, and could not, unravel Ford's deception on their own. Rather, Ford intended to deceive Plaintiff and the other Tennessee Class members by concealing the true facts about the Shelby's Track-Ready powertrain systems.



947. Ford's false representations and omissions and/or misrepresentations were material to consumers because they concerned qualities of the Shelbys that played a significant role in the value of the vehicles and forced Plaintiff and the other Tennessee Class members to make additional expenditures to ensure proper safety at the race track.

948. Ford had a duty to disclose the defects inherent in the Track-Ready powertrain system and violations with respect to the Shelbys because details of the true facts were known and/or accessible only to Ford, because Ford had exclusive and/or superior knowledge as to such facts, and because Ford knew these facts were not known or reasonably discoverable by Plaintiff or the other Tennessee Class members.

949. Ford also had a duty to disclose because it made general affirmative representations about the technological and safety innovations included with the Shelbys, without telling consumers that the defective Track-Ready powertrain system would affect the safety, quality, and performance of the vehicle.

950. Ford's disclosures were misleading, deceptive, and incomplete because they failed to inform consumers of the additional facts regarding the defects in the Track-Ready powertrain system as set forth herein. These omitted and concealed facts were material because they directly impact the value of the Shelbys purchased by Plaintiff and the other Tennessee Class members.

951. Ford has still not made full and adequate disclosures and continues to defraud Plaintiff and the other Tennessee Class members by concealing material information regarding the defects in the Track-Ready powertrain system.

952. Plaintiff and the other Tennessee Class members were unaware of the omitted material facts referenced herein and they would not have acted as they did if they had known of

the concealed and/or suppressed facts, in that they would not have purchased or paid as much for cars with faulty powertrain systems and/or would have taken other affirmative steps in light of the information concealed from them. Plaintiff's and the other Tennessee Class members' actions were justified. Ford was in exclusive and/or superior control of the material facts, and such facts were not generally known to the public, Plaintiff, or other Tennessee Class members.

953. Because of the concealment and/or suppression of facts, Plaintiff and the other Tennessee Class members sustained damage because they own(ed) vehicles that are diminished in value as a result of Ford's concealment of the true quality of those vehicles' Track-Ready powertrain systems. Had Plaintiff and the other Tennessee Class members been aware of the defects in the Track-Ready powertrain defects installed in the Shelbys, and the company's disregard for the truth, Plaintiff and the other Tennessee Class members who purchased a Shelby would have paid less for their vehicles or would not have purchased them at all.

954. The value of Plaintiff's and the other Tennessee Class members' vehicles has diminished as a result of Ford's fraudulent concealment of the defective Track-Ready powertrain system of the Shelbys, which has made any reasonable consumer reluctant to purchase any of the Shelbys, let alone pay what otherwise would have been fair market value for the vehicles.

955. Accordingly, Ford is liable to Plaintiff and the other Tennessee Class members for damages in an amount to be proven at trial, including but not limited to, benefit-of-the-bargain damages, restitution and/or diminution of value.

956. Ford's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and other Tennessee Class members' rights and the representations that Ford made to them, in order to enrich Ford. Ford's conduct

warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

**COUNT FORTY-SEVEN**

**BREACH OF EXPRESS WARRANTY  
(TENN. CODE ANN. § 47-2-313)**

957. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

958. Plaintiff brings this Count on behalf of the Tennessee Class.

959. Plaintiff was at all relevant times a “buyer” as defined by Tenn. Code Ann. § 47-1-201(9).

960. Ford was at all relevant times a “merchant” as defined by Tenn. Code Ann. § 47-2-104.

961. The Shelbys are and were at all relevant times “goods” as defined by Tenn. Code Ann. § 47-2-105.

962. As an express warrantor and manufacturer and merchant, Ford had certain obligations under Tenn. Code Ann. § 47-2-313 to conform the Shelbys to the express warranties.

963. When Plaintiff and the other Tennessee Class members purchased their Shelbys, Ford expressly warranted in writing that the Shelbys were covered by a Limited Warranty and that the Limited Warranty formed the basis of the bargain. As set forth herein, Ford expressly warranted that it would (1) repair or replace defects in material or workmanship free of charge if they became apparent during the warranty period, and (2) remedy any defects in the design and manufacturing processes that result in vehicle part malfunction or failure during the warranty period. Also, as set forth herein, Ford breached its warranty obligations by selling inherently defective Shelbys and refusing to repair the defects or replace the defective parts.

964. The defects at issue in this litigation were present at the time of sale to Plaintiff and members of the Tennessee Class.

965. Ford breached the Limited Warranty to repair and adjust to correct defects that were introduced during the design and manufacturing processes of any part supplied by Ford as Ford has been unable to repair or adjust the Shelby's materials and workmanship defects.

966. Furthermore, the Limited Warranty of repair and/or adjustments to defective parts fails in its essential purpose because the contractual remedy is insufficient to make the Plaintiff and the other Tennessee Class members whole and because Ford has failed and/or refused to adequately provide the promised remedies within a reasonable time.

967. Pursuant to the express warranties, Ford was obligated to pay for or reimburse Plaintiff and the other Tennessee Class members for costs incurred in purchasing aftermarket coolers for the transmission and differential systems and other costs associated with bringing their Shelbys to the dealership for futile repair efforts. Ford was also obligated to repair the defects.

968. Accordingly, recovery by the Plaintiff and the other Tennessee Class members is not limited to the Limited Warranty of repair or adjustments to parts defective in materials or workmanship, or in design, and Plaintiff and the other Tennessee Class members seek all remedies as allowed by law.

969. Also, as alleged in more detail herein, at the time that Ford warranted and sold the Shelbys, and while knowing that the Shelbys did not conform to Ford's Limited Warranty and were inherently defective, Ford wrongfully and fraudulently concealed material facts regarding the Shelbys. Plaintiff and the other Tennessee Class members were therefore induced to purchase the Shelbys under false and/or fraudulent pretenses. As such, Ford's warranty limitation

regarding presentment is unenforceable because it knowingly sold or leased a defective product without informing consumers about the defect. A gross disparity in bargaining power existed between Ford and other Tennessee Class members, and Ford knew of the Shelby defects at the time of sale

970. Ford and its agent dealers have failed and refused to conform the Shelbys to the express warranties and Ford's conduct and has voided any attempt on its part to disclaim liability for its actions.

971. Moreover, many of the damages flowing from the Shelbys cannot be resolved through the limited remedy of "replacement or adjustments" as those incidental and consequential damages have already been suffered due to Ford's fraudulent conduct as alleged herein, and due to its failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiff's and the other Tennessee Class members' remedies would be insufficient to make Plaintiff and the other Tennessee Class members whole.

972. Ford received timely notice regarding the problems at issue in this litigation (indeed Ford knew of the defects prior to offering the Shelbys for sale or lease). Ford was also provided notice of these issues through the receipt of numerous complaints regarding the Limp Mode manifestations. Ford has received, on information and belief, many complaints from Tennessee Class members advising them of the defects at issue in this litigation.

973. Plaintiff has performed each and every duty required 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 unconscionable conduct.

974. Plaintiff has had sufficient dealings with either Ford or its agents (dealerships and/or Ford Performance) to establish privity of contract. Privity is not required in this case

because Plaintiff and the other Tennessee Class members are intended third-party beneficiaries of contracts between Ford and its dealers; specifically, they are the intended beneficiaries of Ford's express warranties and these warranties were advertised to Plaintiff and the other Tennessee Class members as the ultimate consumers. The dealers were not intended to be the ultimate consumers of the Shelbys and have no rights under the warranty agreements provided with the Shelbys; the warranty agreements were designed for and intended to benefit the ultimate consumers only.

975. As a direct and proximate result of Ford's breach of express warranty, Plaintiff and the other Tennessee Class members have been damaged in an amount to be determined at trial, including, but not limited to, diminution of value and benefit-of-the-bargain damages.

#### **COUNT FORTY-EIGHT**

##### **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY (TENN. CODE. ANN. § 47-2-314)**

976. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

977. Plaintiff brings this Count on behalf of the Tennessee Class.

978. Ford was at all relevant times a "merchant" as defined by Tenn. Code Ann. § 47-2-104.

979. A warranty that the Shelbys were in merchantable condition for the purpose of driving on public roadways is implied by law in the instant transactions.

980. These Shelbys, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Shelbys are inherently defective in that the defects in the Shelbys' Track-Ready powertrain system leads to overheating of the powertrain system and causes vehicles to go unexpectedly into

Limp Mode while driving on public roadways. The Limp Mode manifestation substantially impairs the safety, reliability, and operability of the Shelbys to the extent it renders them unfit for their ordinary purpose of driving on public roadways.

981. Ford knew about the Shelby Track-Ready powertrain defects at the time of purchase, allowing it to cure their breach of warranty if it chose.

982. Ford was provided notice of these issues by numerous complaints filed against it, including this initial Complaint, by the notice letter sent by Plaintiff's counsel as referenced elsewhere in the Second Amended Complaint, and by numerous individual letters and communications sent by Plaintiff and other Tennessee Class members before or within a reasonable amount of time.

983. Ford's attempt to disclaim or limit the implied warranty of merchantability vis-à-vis consumers is unconscionable and unenforceable here. Specifically, Ford's warranty limitation regarding presentment is unenforceable because it knowingly sold or leased a defective product without informing consumers about the defect. A gross disparity in bargaining power existed between Ford and the other Tennessee Class members, and Ford knew of the Shelby defects at the time of sale.

984. Plaintiff and the other Tennessee Class members have complied with all obligations under the warranty, or otherwise have been excused from performance of said obligations as a result of Ford's conduct described herein. Affording Ford a reasonable opportunity to cure the breach of written warranties therefore would be unnecessary and futile.

985. As a direct and proximate result of Ford's breach of the warranty of merchantability, Plaintiff and the other Tennessee Class members have been damaged in an

amount to be proven at trial, including but not limited to, benefit-of-the-bargain damages, restitution and/or diminution of value.

**COUNT FORTY-NINE**  
**UNJUST ENRICHMENT**  
**(BASED ON TENNESSEE LAW)**

986. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

987. Should Plaintiff's breach of express warranty claim be dismissed, Plaintiff brings this Count in the alternative and on behalf of the Tennessee Class.

988. Ford has benefitted from and been enriched by the conduct alleged herein. Ford has generated substantial revenue from the unlawful conduct described herein. Ford has knowledge and appreciation of this benefit, which was conferred upon it by and at the expense of Plaintiff and the other Tennessee Class members.

989. Ford has voluntarily accepted and retained this benefit.

990. The circumstances, as described herein, are such that it would be inequitable for Ford to retain the ill-gotten benefit without paying the value thereof to Plaintiff and the other Tennessee Class members.

991. Plaintiff and the other Tennessee Class members are entitled to the amount of Ford's ill-gotten gains, including interest, resulting from its unlawful, unjust, unfair, and inequitable conduct as alleged herein.



**K. CLAIMS BROUGHT ON BEHALF OF THE TEXAS CLASS**

**COUNT FIFTY**

**VIOLATIONS OF THE TEXAS DECEPTIVE TRADE  
PRACTICES AND CONSUMER PROTECTION ACT  
(TEX. BUS. & COM. CODE § 17.4, *ET SEQ.*)**

992. Plaintiffs Herbert Alley, Eric Kamperman, Travis McRae, and Todd Newton (“Plaintiffs” for purposes of all Texas Class Counts) incorporate by reference all preceding allegations as though fully set forth herein.

993. Plaintiffs bring this Count on behalf of the Texas Class.

994. Plaintiffs and members of the Texas Class are individuals with assets of less than \$25 million (or are controlled by corporations or entities with less than \$25 million in assets).  
*See* Tex. Bus. & Com. Code § 17.41.

995. The Texas Deceptive Trade Practices-Consumer Protection Act (“Texas DTPA”) provides a private right of action to a consumer where the consumer suffers economic damage as the result of either (i) the use of false, misleading, or deceptive act or practice specifically enumerated in Tex. Bus. & Com. Code § 17.46(b); or (ii) “an unconscionable action or course of action by any person.” Tex. Bus. & Com. Code § 17.50(a)(2) & (3). The Texas DTPA declares several specific actions to be unlawful, including: “(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have,” “(7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another,” and “(9) advertising goods or services with intent not to sell them as advertised.” An “unconscionable action or course of action” means “an act or practice which, to a consumer’s detriment, takes advantage of the lack of knowledge, ability, experience, or capacity of the consumer to a grossly unfair degree.” Tex.

Bus. & Com. Code § 17.45(5). As detailed herein, Ford has engaged in an unconscionable action or course of action and thereby caused economic damages to the Texas Class.

996. In the course of business, Ford willfully failed to disclose and actively concealed the Track-Ready powertrain system defects discussed herein and otherwise engaged in activities with a tendency or capacity to deceive. Ford also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, 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 of Shelby's.

997. By failing to disclose that the defective Track-Ready powertrain system, by marketing Ford Shelby's as safe, reliable, and of high quality, and by presenting Ford as a reputable manufacturer that valued safety and stood behind their Shelby's after they were sold, Ford engaged in deceptive business practices in violation of the Texas DTPA.

998. Ford's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs and the other Texas Class members, about the true performance of the Shelby's, the devaluing of safety and performance at Ford, and the true value of the Shelby's.

999. Ford intentionally and knowingly misrepresented material facts regarding the Shelby's with intent to mislead Plaintiffs and the Texas Class.

1000. Ford knew or should have known that their conduct violated the Texas DTPA.

1001. As alleged above, Ford made material statements about the safety and performance of the Shelby's and the Ford brand that were either false or misleading.

1002. Ford owed Plaintiffs and Texas Class members a duty to disclose the true safety, performance, and reliability of the Shelby's, because Ford:

- a. Possessed exclusive knowledge that they were selling and distributing Shelbys throughout the United States that did not perform as advertised;
- b. Intentionally concealed the foregoing from Plaintiffs and the Texas Class; and/or
- c. Made incomplete representations about the safety and performance of the Shelbys generally, and the Base and Technology Package models in particular, while purposefully withholding material facts from Plaintiffs and the Texas Class that contradicted these representations.

1003. Because Ford fraudulently concealed the defective Track-Ready powertrain system and the Shelby's inability to be used safely on a race track, the value of the Shelbys has greatly diminished. In light of the stigma attached to those Shelbys by Ford's conduct, they are now worth significantly less than they otherwise would be.

1004. Ford's omissions and/or misrepresentations about the track performance and safety concerns of the Shelbys were material to Plaintiffs and the Texas Class.

1005. Plaintiffs and members of the Texas Class suffered ascertainable loss caused by Ford's misrepresentations and their concealment of and failure to disclose material information. Texas Class members who purchased the Shelbys either would have paid less for their Shelbys or would not have purchased them at all but for Ford's violations of the Texas DTPA.

1006. Ford had an ongoing duty to all Ford customers to refrain from unfair and deceptive practices under the Texas DTPA. All owners of Shelbys suffered ascertainable loss in the form of diminished value of their Shelbys as a result of Ford's deceptive and unfair acts and practices made in the course of Ford's business.

1007. Ford's violations present a continuing risk to Plaintiffs as well as to the general public. Ford's unlawful acts and practices complained of herein affect the public interest.

1008. As a direct and proximate result of Ford's violations of the Texas DTPA, Plaintiffs and the Texas Class have suffered injury-in-fact and/or actual damage.

1009. Pursuant to Tex. Bus. & Com. Code § 17.50(a)(1) and (b), Plaintiffs seek monetary relief against Ford measured as actual damages in an amount to be determined at trial, treble damages for Ford's knowing violations of the Texas DTPA, and any other just and proper relief available under the Texas DTPA.

1010. Alternatively, or additionally, pursuant to Tex. Bus. & Com. Code § 17.50(b)(3) & (4), Plaintiffs are also entitled to disgorgement or to rescission or to any other relief necessary to restore any money or property that was acquired from them based on violations of the Texas DTPA or which the Court deems proper.

1011. Plaintiffs gave written notice prior to filing suit as required by Tex. Bus. & Com. Code § 17.505(a). The notice was sent to Ford on March 21, 2017.

#### **COUNT FIFTY-ONE**

#### **FRAUD BY CONCEALMENT (BASED ON TEXAS LAW)**

1012. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1013. Plaintiffs bring this Count on behalf of the Texas Class.

1014. Ford intentionally concealed that the defects contained in the Track-Ready powertrain system render Shelby's unfit for track use in that the transmissions and differentials of these vehicles would overheat when placed under track conditions and unexpectedly go into Limp Mode after less than 15 minutes, creating a dangerous hazard not only to the drivers but also to nearby vehicles. Ford concealed these facts to consumers.

1015. Ford further affirmatively misrepresented to Plaintiffs in advertising and other forms of communication, including standard and uniform material provided with each car and on its website, that the Shelby it was selling had no significant defects and that all Shelbys were Track-Ready.

1016. Ford knew that these representations were false when made.

1017. The Shelbys purchased by Plaintiffs and the other Texas Class members contained a defective Track-Ready powertrain system.

1018. Ford had a duty to disclose that the Track-Ready powertrain system contained defects as alleged herein and that these defects created a safety hazard. Plaintiffs and the other Texas Class members relied on Ford's material representations.

1019. As alleged herein, at all relevant times, Ford has held out the Shelbys to be free from defects such as the defect related to the Track-Ready powertrain system. Ford touted and continues to tout the many benefits and advantages of the Track-Ready powertrain system, but nonetheless failed to disclose important facts related to the defect and that Plaintiffs and other Texas Class members would be required to make additional aftermarket modifications to adequately achieve Track-Ready performance, and that these modifications may violate their express warranties. This made Ford's other disclosures about the Track-Ready powertrain system deceptive.

1020. The truth about the defective Track-Ready powertrain system was known only to Ford; Plaintiffs and the other Texas Class members did not know of these facts and Ford actively concealed these facts from Plaintiffs and the other Texas Class members.

1021. Plaintiffs and the other Texas Class members reasonably relied upon Ford's deception. They had no way of knowing that Ford's representations were false, misleading, or

incomplete. As consumers, Plaintiffs and the other Texas Class members did not, and could not, unravel Ford's deception on their own. Rather, Ford intended to deceive Plaintiffs and the other Texas Class members by concealing the true facts about the Shelby's Track-Ready powertrain systems.

1022. Ford's false representations and omissions and/or misrepresentations were material to consumers because they concerned qualities of the Shelbys that played a significant role in the value of the vehicles and forced Plaintiffs and the other Texas Class members to make additional expenditures to ensure proper safety at the race track.

1023. Ford had a duty to disclose the defects inherent in the Track-Ready powertrain system and violations with respect to the Shelbys because details of the true facts were known and/or accessible only to Ford, because Ford had exclusive and/or superior knowledge as to such facts, and because Ford knew these facts were not known or reasonably discoverable by Plaintiffs or the other Texas Class members.

1024. Ford also had a duty to disclose because it made general affirmative representations about the technological and safety innovations included with the Shelbys, without telling consumers that the defective Track-Ready powertrain system would affect the safety, quality, and performance of the vehicle.

1025. Ford's disclosures were misleading, deceptive, and incomplete because they failed to inform consumers of the additional facts regarding the defects in the Track-Ready powertrain system as set forth herein. These omitted and concealed facts were material because they directly impact the value of the Shelbys purchased by Plaintiffs and the other Texas Class members.

1026. Ford has still not made full and adequate disclosures and continues to defraud Plaintiffs and the other Texas Class members by concealing material information regarding the defects in the Track-Ready powertrain system.

1027. Plaintiffs and the other Texas Class members were unaware of the omitted material facts referenced herein and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased or paid as much for cars with faulty powertrain systems and/or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and the other Texas Class members' actions were justified. Ford was in exclusive and/or superior control of the material facts, and such facts were not generally known to the public, Plaintiffs, or other Texas Class members.

1028. Because of the concealment and/or suppression of facts, Plaintiffs and the other Texas Class members sustained damage because they own(ed) vehicles that are diminished in value as a result of Ford's concealment of the true quality of those vehicles' Track-Ready powertrain systems. Had Plaintiffs and the other Texas Class members been aware of the defects in the Track-Ready powertrain defects installed in the Shelbys, and the company's disregard for the truth, Plaintiffs and the other Texas Class members who purchased a Shelby would have paid less for their vehicles or would not have purchased them at all.

1029. The value of Plaintiffs' and the other Texas Class members' vehicles has diminished as a result of Ford's fraudulent concealment of the defective Track-Ready powertrain system of the Shelbys, which has made any reasonable consumer reluctant to purchase any of the Shelbys, let alone pay what otherwise would have been fair market value for the vehicles.

1030. Accordingly, Ford is liable to Plaintiffs and the other Texas Class members for damages in an amount to be proven at trial, including but not limited to, benefit-of-the-bargain damages, restitution and/or diminution of value.

1031. Ford's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and other Texas Class members' rights and the representations that Ford made to them, in order to enrich Ford. Ford's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

## **COUNT FIFTY-TWO**

### **BREACH OF EXPRESS WARRANTY (TEX. BUS & COM. CODE ANN. §2-313)**

1032. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1033. Plaintiffs bring this Count on behalf of the Texas Class.

1034. Plaintiffs were each at all relevant times a "buyer" as defined by Tex. Bus. & Com. Code Ann. § 1-201(9).

1035. Ford was at all relevant times a "merchant" as defined by Tex. Bus. & Com. Code Ann. § 2-104.

1036. The Shelbys are and were at all relevant times "goods" as defined by Tex. Bus. & Com. Code Ann. § 2105.

1037. As an express warrantor and manufacturer and merchant, Ford had certain obligations under Tex. Bus & Com. Code Ann. § 2-313 to conform the Shelbys to the express warranties.



1038. When Plaintiffs and the other Texas Class members purchased their Shelbys, Ford expressly warranted in writing that the Shelbys were covered by the NVLW and that the NVLW formed the basis of the bargain. As set forth herein, Ford expressly warranted that it would (1) repair or replace defects in material or workmanship free of charge if they became apparent during the warranty period, and (2) remedy any defects in the design and manufacturing processes that result in vehicle part malfunction or failure during the warranty period. Also, as set forth herein, Ford breached its warranty obligations by selling inherently defective Shelbys and refusing to repair the defects or replace the defective parts.

1039. The defects at issue in this litigation were present at the time of sale to Plaintiffs and members of the Texas Class.

1040. Ford breached the Limited Warranty to repair and adjust to correct defects that were introduced during the design and manufacturing processes of any part supplied by Ford as Ford has been unable to repair or adjust the Shelby's materials and workmanship defects.

1041. Furthermore, the Limited Warranty of repair and/or adjustments to defective parts fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and the other Texas Class members whole and because Ford has failed and/or refused to adequately provide the promised remedies within a reasonable time.

1042. Pursuant to the express warranties, Ford was obligated to pay for or reimburse Plaintiffs and the other Texas Class members for costs incurred in purchasing aftermarket coolers for the transmission and differential systems and other costs associated with bringing their Shelbys to the dealership for futile repair efforts. Ford was also obligated to repair the defects.

1043. Accordingly, recovery by Plaintiffs and the other Texas Class members is not limited to the Limited Warranty of repair or adjustments to parts defective in materials or workmanship, or in design, and Plaintiffs and the other Texas Class members seek all remedies as allowed by law.

1044. Also, as alleged in more detail herein, at the time that Ford warranted and sold the Shelbys, and while knowing that the Shelbys did not conform to Ford's Limited Warranty and were inherently defective, Ford wrongfully and fraudulently concealed material facts regarding the Shelbys. Plaintiffs and the other Texas Class members were therefore induced to purchase the Shelbys under false and/or fraudulent pretenses. As such, Ford's warranty limitation regarding presentment is unenforceable because it knowingly sold or leased a defective product without informing consumers about the defect. A gross disparity in bargaining power existed between Ford and other Texas Class members, and Ford knew of the Shelby defects at the time of sale

1045. Ford and its agent dealers have failed and refused to conform the Shelbys to the express warranties and Ford's conduct and has voided any attempt on its part to disclaim liability for its actions.

1046. Moreover, many of the damages flowing from the Shelbys cannot be resolved through the limited remedy of "replacement or adjustments" as those incidental and consequential damages have already been suffered due to Ford's fraudulent conduct as alleged herein, and due to its failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs' and the other Texas Class members' remedies would be insufficient to make Plaintiffs and the other Texas Class members whole.

1047. Ford received timely notice regarding the problems at issue in this litigation (indeed Ford knew of the defects prior to offering the Shelbys for sale or lease). Ford was also provided notice of these issues through the receipt of numerous complaints regarding the Limp Mode manifestations. Ford has received, on information and belief, many complaints from Texas Class members advising them of the defects at issue in this litigation.

1048. Plaintiffs have performed each and every duty required 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 unconscionable conduct.

1049. Plaintiffs have had sufficient dealings with either Ford or its agents (dealerships and/or Ford Performance) to establish privity of contract. Privity is not required in this case because Plaintiffs and the other Texas Class members are intended third-party beneficiaries of contracts between Ford and its dealers; specifically, they are the intended beneficiaries of Ford's express warranties and these warranties were advertised to Plaintiffs and the other Texas Class members as the ultimate consumers. The dealers were not intended to be the ultimate consumers of the Shelbys and have no rights under the warranty agreements provided with the Shelbys; the warranty agreements were designed for and intended to benefit the ultimate consumers only.

1050. As a direct and proximate result of Ford's breach of express warranty, Plaintiffs and the other Texas Class members have been damaged in an amount to be determined at trial, including, but not limited to, diminution of value and benefit-of-the-bargain damages.

### **COUNT FIFTY-THREE**

#### **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY (TEX. BUS & COM. CODE ANN. § 2-314)**

1051. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1052. Plaintiffs bring this Count on behalf of the Texas Class.

1053. Ford was at all relevant times a “merchant” as defined by Tex. Bus. & Com. Code Ann. § 2-104.

1054. A warranty that the Shelbys were in merchantable condition for the purpose of driving on public roadways is implied by law in the instant transactions.

1055. These Shelbys, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Shelbys are inherently defective in that the defects in the Shelbys’ Track-Ready powertrain system leads to overheating of the powertrain system and causes vehicles to go unexpectedly into Limp Mode while driving on public roadways. The Limp Mode manifestation substantially impairs the safety, reliability, and operability of the Shelbys to the extent it renders them unfit for their ordinary purpose of driving on public roadways.

1056. Ford knew about the Shelby Track-Ready powertrain defects at the time of purchase, allowing it to cure their breach of warranty if it chose.

1057. Ford was provided notice of these issues by numerous complaints filed against it, including this initial Complaint, by the notice letter sent by Plaintiffs’ counsel as referenced elsewhere in the Second Amended Complaint, and by numerous individual letters and communications sent by Plaintiffs and other Texas Class members before or within a reasonable amount of time.

1058. Ford’s attempt to disclaim or limit the implied warranty of merchantability vis-à-vis consumers is unconscionable and unenforceable here. Specifically, Ford’s warranty limitation regarding presentment is unenforceable because it knowingly sold or leased a defective product without informing consumers about the defect. A gross disparity in bargaining power existed

between Ford and other Texas Class members, and Ford knew of the Shelby defects at the time of sale.

1059. Plaintiffs and the other Texas Class members have complied with all obligations under the warranty, or otherwise have been excused from performance of said obligations as a result of Ford's conduct described herein. Affording Ford a reasonable opportunity to cure the breach of written warranties therefore would be unnecessary and futile.

1060. As a direct and proximate result of Ford's breach of the warranty of merchantability, Plaintiffs and the other Texas Class members have been damaged in an amount to be proven at trial, including but not limited to, benefit-of-the-bargain damages, restitution and/or diminution of value.

#### **COUNT FIFTY-FOUR**

#### **UNJUST ENRICHMENT (BASED ON TEXAS LAW)**

1061. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1062. Should Plaintiffs' breach of express warranty claim be dismissed, Plaintiffs bring this Count in the alternative and on behalf of the Texas Class.

1063. Ford has benefitted from and been enriched by the conduct alleged herein. Ford has generated substantial revenue from the unlawful conduct described herein. Ford has knowledge and appreciation of this benefit, which was conferred upon it by and at the expense of Plaintiffs and the other Texas Class members.

1064. Ford has voluntarily accepted and retained this benefit.

1065. The circumstances, as described herein, are such that it would be inequitable for Ford to retain the ill-gotten benefit without paying the value thereof to Plaintiffs and the other Texas Class members.

1066. Plaintiffs and the other Texas Class members are entitled to the amount of Ford's ill-gotten gains, including interest, resulting from its unlawful, unjust, unfair, and inequitable conduct as alleged herein.

**L. CLAIMS BROUGHT ON BEHALF OF THE WASHINGTON CLASS**

**COUNT FIFTY-FIVE**

**VIOLATION OF THE WASHINGTON CONSUMER PROTECTION ACT  
(WASH. REV. CODE ANN. § 19.86.010, *ET SEQ.*)**

1067. Plaintiff Eric Evans ("Plaintiff" for purposes of all Washington Class Counts) incorporates by reference all preceding allegations as though fully set forth herein.

1068. Plaintiff brings this Count on behalf of the Washington Class.

1069. The Washington Consumer Protection Act ("Washington CPA") broadly prohibits "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." Wash. Rev. Code Ann. § 19.96.010.

1070. Ford committed the acts complained of herein in the course of "trade" or "commerce" within the meaning of Wash. Rev. Code Ann. § 19.96.010.

1071. Ford is liable to Plaintiff for damages in amounts to be proven at trial, including attorneys' fees, costs, and treble damages, as well as any other remedies the Court may deem appropriate under Wash. Rev. Code Ann. § 19.86.090.

**COUNT FIFTY-SIX**

**FRAUDULENT CONCEALMENT  
(BASED ON WASHINGTON LAW)**

1072. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1073. Plaintiff brings this Count on behalf of the Washington Class.

1074. Ford intentionally concealed that the defects contained in the Track-Ready powertrain system render Shelbys unfit for track use in that the transmissions of these vehicles would overheat when placed under track conditions and unexpectedly go into Limp Mode after less than 15 minutes, creating a dangerous hazard not only to the drivers but also to nearby vehicles. Ford concealed these facts to consumers.

1075. Ford further affirmatively misrepresented to Plaintiff in advertising and other forms of communication, including standard and uniform material provided with each car and on its website, that the Shelby it was selling had no significant defects and that all Shelbys were Track-Ready.

1076. Ford knew that these representations were false when made.

1077. The Shelbys purchased by Plaintiff and the other Washington Class members contained a defective Track-Ready powertrain system.

1078. Ford had a duty to disclose that the Track-Ready powertrain system contained defects as alleged herein and that these defects created a safety hazard. Plaintiff and the other Washington Class members relied on Ford's material representations.

1079. As alleged herein, at all relevant times, Ford has held out the Shelbys to be free from defects such as the defect related to the Track-Ready powertrain system. Ford touted and continues to tout the many benefits and advantages of the Track-Ready powertrain system, but

nonetheless failed to disclose important facts related to the defect and that Plaintiff and other Washington Class members would be required to make additional aftermarket modifications to adequately achieve Track-Ready performance, and that these modifications may violate their express warranties. This made Ford's other disclosures about the Track-Ready powertrain system deceptive.

1080. The truth about the defective Track-Ready powertrain system was known only to Ford; Plaintiff and the other Washington Class members did not know of these facts and Ford actively concealed these facts from Plaintiff and the other Washington Class members.

1081. Plaintiff and the other Washington Class members reasonably relied upon Ford's deception. They had no way of knowing that Ford's representations were false, misleading, or incomplete. As consumers, Plaintiff and the other Washington Class members did not, and could not, unravel Ford's deception on their own. Rather, Ford intended to deceive Plaintiff and the other Washington Class members by concealing the true facts about the Shelby's Track-Ready powertrain systems.

1082. Ford's false representations and omissions and/or misrepresentations were material to consumers because they concerned qualities of the Shelbys that played a significant role in the value of the vehicles and forced Plaintiff and the other Washington Class members to make additional expenditures to ensure proper safety at the race track.

1083. Ford had a duty to disclose the defects inherent in the Track-Ready powertrain system and violations with respect to the Shelbys because details of the true facts were known and/or accessible only to Ford, because Ford had exclusive and/or superior knowledge as to such facts, and because Ford knew these facts were not known or reasonably discoverable by Plaintiff or the other Washington Class members.



1084. Ford also had a duty to disclose because it made general affirmative representations about the technological and safety innovations included with the Shelbys, without telling consumers that the defective Track-Ready powertrain system would affect the safety, quality, and performance of the vehicle.

1085. Ford's disclosures were misleading, deceptive, and incomplete because they failed to inform consumers of the additional facts regarding the defects in the Track-Ready powertrain system as set forth herein. These omitted and concealed facts were material because they directly impact the value of the Shelbys purchased by Plaintiff and the other Washington Class members.

1086. Ford has still not made full and adequate disclosures and continues to defraud Plaintiff and the other Washington Class members by concealing material information regarding the defects in the Track-Ready powertrain system.

1087. Plaintiff and the other Washington Class members were unaware of the omitted material facts referenced herein and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased or paid as much for cars with faulty powertrain systems and/or would have taken other affirmative steps in light of the information concealed from them. Plaintiff's and the other Washington Class members' actions were justified. Ford was in exclusive and/or superior control of the material facts, and such facts were not generally known to the public, Plaintiff, or other Washington Class members.

1088. Because of the concealment and/or suppression of facts, Plaintiff and the other Washington Class members sustained damage because they own(ed) vehicles that are diminished in value as a result of Ford's concealment of the true quality of those vehicles' Track-Ready powertrain systems. Had Plaintiff and the other Washington Class members been aware of the

defects in the Track-Ready powertrain defects installed in the Shelbys, and the company's disregard for the truth, Plaintiff and the other Washington Class members who purchased a Shelby would have paid less for their vehicles or would not have purchased them at all.

1089. The value of Plaintiff's and the other Washington Class members' vehicles has diminished as a result of Ford's fraudulent concealment of the defective Track-Ready powertrain system of the Shelbys, which has made any reasonable consumer reluctant to purchase any of the Shelbys, let alone pay what otherwise would have been fair market value for the vehicles.

1090. Accordingly, Ford is liable to Plaintiff and the other Washington Class members for damages in an amount to be proven at trial, including but not limited to, benefit-of-the-bargain damages, restitution and/or diminution of value.

1091. Ford's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and other Washington Class members' rights and the representations that Ford made to them, in order to enrich Ford. Ford's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

#### **COUNT FIFTY-SEVEN**

##### **BREACH OF EXPRESS WARRANTY (REV. CODE WASH. § 62A.2-313)**

1092. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1093. Plaintiff brings this Count on behalf of the Washington Class.

1094. Plaintiff was at all relevant times a "buyer" as defined by Rev. Code Wash. § 62A.1-201(9).

1095. Ford was at all relevant times a “merchant” as defined by Rev. Code Wash. § 62A.2-104.

1096. The Shelbys are and were at all relevant times “goods” as defined by Rev. Code Wash. § 62A.2-105.

1097. As an express warrantor and manufacturer and merchant, Ford had certain obligations under Rev. Code Wash. § 62A.2-313 to conform the Shelbys to the express warranties.

1098. When Plaintiff and the other Washington Class members purchased their Shelbys, Ford expressly warranted in writing that the Shelbys were covered by a Limited Warranty and that the Limited Warranty formed the basis of the bargain. As set forth herein, Ford expressly warranted that it would (1) repair or replace defects in material or workmanship free of charge if they became apparent during the warranty period, and (2) remedy any defects in the design and manufacturing processes that result in vehicle part malfunction or failure during the warranty period. Also, as set forth herein, Ford breached its warranty obligations by selling inherently defective Shelbys and refusing to repair the defects or replace the defective parts.

1099. The defects at issue in this litigation were present at the time of sale to Plaintiff and members of the Washington Class.

1100. Ford breached the Limited Warranty to repair and adjust to correct defects that were introduced during the design and manufacturing processes of any part supplied by Ford as Ford has been unable to repair or adjust the Shelby’s materials and workmanship defects.

1101. Furthermore, the Limited Warranty of repair and/or adjustments to defective parts fails in its essential purpose because the contractual remedy is insufficient to make the Plaintiff

and the other Washington Class members whole and because Ford has failed and/or refused to adequately provide the promised remedies within a reasonable time.

1102. Pursuant to the express warranties, Ford was obligated to pay for or reimburse Plaintiff and the other Washington Class members for costs incurred in purchasing aftermarket coolers for the transmission and differential systems and other costs associated with bringing their Shelbys to the dealership for futile repair efforts. Ford was also obligated to repair the defects.

1103. Accordingly, recovery by the Plaintiff and the other Washington Class members is not limited to the Limited Warranty of repair or adjustments to parts defective in materials or workmanship, or in design, and Plaintiff and the other Washington Class members seek all remedies as allowed by law.

1104. Also, as alleged in more detail herein, at the time that Ford warranted and sold the Shelbys, and while knowing that the Shelbys did not conform to Ford's Limited Warranty and were inherently defective, Ford wrongfully and fraudulently concealed material facts regarding the Shelbys. Plaintiff and the other Washington Class members were therefore induced to purchase the Shelbys under false and/or fraudulent pretenses. As such, Ford's warranty limitation regarding presentment is unenforceable because it knowingly sold or leased a defective product without informing consumers about the defect. A gross disparity in bargaining power existed between Ford and other Washington Class members, and Ford knew of the Shelby defects at the time of sale

1105. Ford and its agent dealers have failed and refused to conform the Shelbys to the express warranties and Ford's conduct has voided any attempt on its part to disclaim liability for its actions.

1106. Moreover, many of the damages flowing from the Shelbys cannot be resolved through the limited remedy of “replacement or adjustments” as those incidental and consequential damages have already been suffered due to Ford’s fraudulent conduct as alleged herein, and due to its failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiff’s and the other Washington Class members’ remedies would be insufficient to make Plaintiff and the other Washington Class members whole.

1107. Ford received timely notice regarding the problems at issue in this litigation (indeed Ford knew of the defects prior to offering the Shelbys for sale or lease). Ford was also provided notice of these issues through the receipt of numerous complaints regarding the Limp Mode manifestations. Ford has received, on information and belief, many complaints from Washington Class members advising them of the defects at issue in this litigation.

1108. Plaintiff has performed each and every duty required 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 unconscionable conduct.

1109. Plaintiff has had sufficient dealings with either Ford or its agents (dealerships and/or Ford Performance) to establish privity of contract. Privity is not required in this case because Plaintiff and the other Washington Class members are intended third-party beneficiaries of contracts between Ford and its dealers; specifically, they are the intended beneficiaries of Ford’s express warranties and these warranties were advertised to Plaintiff and the other Washington Class members as the ultimate consumers. The dealers were not intended to be the ultimate consumers of the Shelbys and have no rights under the warranty agreements provided

with the Shelbys; the warranty agreements were designed for and intended to benefit the ultimate consumers only.

1110. As a direct and proximate result of Ford's breach of express warranty, Plaintiff and the other Washington Class members have been damaged in an amount to be determined at trial, including, but not limited to, diminution of value and benefit-of-the-bargain damages.

### **COUNT FIFTY-EIGHT**

#### **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY (REV CODE WASH. § 62A-314)**

1111. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1112. Plaintiff brings this Count on behalf of the Washington Class.

1113. Ford was at all relevant times a "merchant" as defined by Rev. Code Wash. § 62A.2-104.

1114. A warranty that the Shelbys were in merchantable condition for the purpose of driving on public roadways is implied by law in the instant transactions.

1115. These Shelbys, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Shelbys are inherently defective in that the defects in the Shelbys' Track-Ready powertrain system leads to overheating of the powertrain system and causes vehicles to go unexpectedly into Limp Mode while driving on public roadways. The Limp Mode manifestation substantially impairs the safety, reliability, and operability of the Shelbys to the extent it renders them unfit for their ordinary purpose of driving on public roadways.

1116. Ford knew about the Shelby Track-Ready powertrain defects at the time of purchase, allowing it to cure their breach of warranty if it chose.

1117. Ford was provided notice of these issues by numerous complaints filed against it, including this initial Complaint, by the notice letter sent by Plaintiffs' counsel as referenced elsewhere in the Second Amended Complaint, and by numerous individual letters and communications sent by Plaintiffs and other Washington Class members before or within a reasonable amount of time.

1118. Ford's attempt to disclaim or limit the implied warranty of merchantability vis-à-vis consumers is unconscionable and unenforceable here. Specifically, Ford's warranty limitation regarding presentment is unenforceable because it knowingly sold or leased a defective product without informing consumers about the defect. A gross disparity in bargaining power existed between Ford and other Washington Class members, and Ford knew of the Shelby defects at the time of sale.

1119. Plaintiff and the other Washington Class members have complied with all obligations under the warranty, or otherwise have been excused from performance of said obligations as a result of Ford's conduct described herein. Affording Ford a reasonable opportunity to cure the breach of written warranties therefore would be unnecessary and futile.

1120. As a direct and proximate result of Ford's breach of the warranty of merchantability, Plaintiff and the other Washington Class members have been damaged in an amount to be proven at trial, including but not limited to, benefit-of-the-bargain damages, restitution and/or diminution of value.

#### **COUNT FIFTY-NINE**

#### **UNJUST ENRICHMENT (BASED ON WASHINGTON LAW)**

1121. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1122. Should Plaintiffs' breach of express warranty claim be dismissed, Plaintiff brings this Count in the alternative and on behalf of the Washington Class.

1123. Ford has benefitted from and been enriched by the conduct alleged herein. Ford has generated substantial revenue from the unlawful conduct described herein. Ford has knowledge and appreciation of this benefit, which was conferred upon it by and at the expense of Plaintiff and the other Washington Class members.

1124. Ford has voluntarily accepted and retained this benefit.

1125. The circumstances, as described herein, are such that it would be inequitable for Ford to retain the ill-gotten benefit without paying the value thereof to Plaintiff and the other Washington Class members.

1126. Plaintiff and the other Washington Class members are entitled to the amount of Ford's ill-gotten gains, including interest, resulting from its unlawful, unjust, unfair, and inequitable conduct as alleged herein.

#### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiffs, individually and on behalf of members of the Nationwide and State Classes, respectfully request that the Court enter judgment in their favor and against Ford, as follows:

- A. Certification of the proposed Nationwide Class and State Law Classes, including appointment of Plaintiffs' counsel as Class Counsel;
- B. An order temporarily and permanently enjoining Ford from continuing the unlawful, deceptive, fraudulent, and unfair business practices alleged in this Second Amended Complaint;
- C. Injunctive relief in the form of a recall or free replacement program;
- D. Injunctive relief in the form of a buy back;



E. Costs, restitution, damages, including punitive damages, and disgorgement in an amount to be determined at trial;

F. An order requiring Ford to pay both pre- and post-judgment interest on any amounts awarded;

G. An award of costs and attorneys' fees; and

H. Such other or further relief as may be appropriate.

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a jury trial for all claims so triable.

Dated: February 20, 2018

GROSSMAN ROTH YAFFA COHEN

By: /s/ Stuart Z. Grossman

Stuart Z. Grossman

Rachel Furst

2525 Ponce de Leon, Suite 1150

Coral Gables, FL 33134

Telephone: (888) 296-1681

Facsimile: (305) 285-1668

Email: szg@grossmanroth.com

Email: rwf@grossmanroth.com

Steve W. Berman (*pro hac vice*)

Catherine Y.N. Gannon (*pro hac vice*)

HAGENS BERMAN SOBOL SHAPIRO LLP

1918 Eighth Avenue, Suite 3300

Seattle, WA 98101

Telephone: (206) 623-7292

Facsimile: (206) 623-0594

Email: steve@hbsslaw.com

Email: catherineg@hbsslaw.com

*Attorneys for Plaintiffs and the Proposed Class*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served by the Court's CMECF system on February 20, 2018, on all counsel or parties of record identified on the attached Service List.

By: /s/ Stuart Z. Grossman  
Stuart Z. Grossman  
Fla. Bar No.: 156113

**SERVICE LIST**

Case No. 1:17-cv-21087-FAM

*Attorneys for Defendant, Ford Motor Company*

Henry Salas  
Fla. Bar No.: 815268  
Brian Dominguez  
Fla. Bar No.: 91019  
Cole, Scott & Kissane, P.A.  
Suite 1400  
9150 So. Dadeland Boulevard  
Miami, FL 33156  
Tel: (305) 350-5367  
Fax: (305) 373-2294  
Email: [henry.salas@csklegal.com](mailto:henry.salas@csklegal.com)  
[Jennifer.ruiz@csklegla.com](mailto:Jennifer.ruiz@csklegla.com)  
Email: [brian.dominguez@csklegal.com](mailto:brian.dominguez@csklegal.com)

David George (Admitted *pro hac vice*)  
Dykema Gossett PLLC  
2723 South State Street  
Suite 400  
Ann Arbor, MI 48104  
Tel: (734) 214-7673  
Email: [DGeorge@dykema.com](mailto:DGeorge@dykema.com)  
[chammond@dykema.com](mailto:chammond@dykema.com)  
[docket@dykema.com](mailto:docket@dykema.com)

John M. Thomas (Admitted *pro hac vice*)  
Dykema Gossett PLLC  
Dykema Gossett PLLC  
2723 South State Street  
Suite 400  
Ann Arbor, MI 48104  
Tel: (734) 214-7613  
Email: [JThomas@dykema.com](mailto:JThomas@dykema.com)