

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

BRANDON KOMMER, on behalf of
himself and all others similarly situated,

Plaintiff,

-against-

FORD MOTOR COMPANY,

Defendant.

Hon. Lawrence E. Kahn
Case No. 1:17-cv-296-LEK-DJS

**DEFENDANT FORD'S ANSWER TO
FIRST AMENDED CLASS ACTION
COMPLAINT; AFFIRMATIVE
AND OTHER DEFENSES**

JURY TRIAL DEMANDED

Ford Motor Company ("Ford"), through counsel, and for its Answer to the First Amended Class Action Complaint, states as follows:

ANSWER TO FIRST AMENDED CLASS ACTION COMPLAINT

No response to the unnumbered opening Paragraph of the First Amended Class Action Complaint is necessary, nor is a response required for any unnumbered section or subsection headings. To the extent a response is required, however, Ford denies any allegations contained therein.

Nature of the Case

1. In response to Paragraph 1, Ford admits that the F-series truck has been the best-selling pickup truck in the United States during the last forty years. At this time, Ford lacks knowledge of specifically how many pickup trucks were sold during January 2017. To the extent any further response is required, Ford denies the remaining allegations in Paragraph 1.
2. Ford denies the allegations in Paragraph 2.
3. To the extent Paragraph 3 references the contents of a website, Ford states that the website speaks for itself. Ford denies the remaining allegations in Paragraph 3.

4. In response to Paragraph 4, Ford admits that it has issued technical service bulletins (“TSBs”) related to the 2015F-150. Ford further admits that technical service bulletins are sent to dealership service departments. Ford at this time lacks sufficient information or knowledge to form a belief about how many times he visited a dealership. Ford denies the remaining allegations in Paragraph 4.

5. In response to Paragraph 5, Ford notes that Plaintiff’s allegations of door-latching problems in other vehicle models are immaterial and unrelated to Plaintiff’s claims. To the extent Paragraph 5 refers to the contents of a newspaper article, Ford states that the article speaks for itself. Ford denies any remaining allegations in Paragraph 5.

6. Ford denies the allegations in Paragraph 6.

The Parties

7. Ford admits that Brandon Kommer is a natural person who purchased a F-150 at New County Ford in Saratoga Springs in October 2015. Ford lacks sufficient information or knowledge to form a belief about the truth of the remaining allegations stated in Paragraph 7 and therefore denies same.

8. In response to Paragraph 8, Ford admits that it is a Delaware corporation and that its principle place of business is in Dearborn, Michigan. Ford denies the remaining allegations in Paragraph 8 in the form alleged except admits that it designs and manufactures, in part, and distributes motor vehicles, including the 2015 F-150. To the extent any further response is required, Ford denies the remaining allegations in Paragraph 8.

9. Paragraph 9 states legal conclusions to which no response is required. To the extent any response is required, Ford does not challenge the subject matter jurisdiction of the Court at this time.

10. Paragraph 10 states legal conclusions to which no response is required. To the extent any response is required, Ford does not challenge the subject matter jurisdiction of the Court at this time.

11. Paragraph 11 states legal conclusions to which no response is required. To the extent any response is required, Ford is not challenging personal jurisdiction in this action, but affirmatively states that while it transacts certain business in the State of New York, Ford denies it is “at home” in New York for the purpose of general jurisdiction.

12. Paragraph 12 states legal conclusions to which no response is required. To the extent any response is required, Ford denies the allegations in Paragraph 12.

Choice of Law

13. Paragraph 13 states legal conclusions to which no response is required. To the extent any response is required, Ford denies the allegations in Paragraph 13.

General Allegations

14. To the extent Paragraph 14 refers to the contents of a website, Ford states that the website speaks for itself.

15. Ford denies the allegations in Paragraph 15.

16. Ford lacks sufficient information or knowledge to form a belief about the truth of any allegations stated in Paragraph 16, and therefore, denies same.

17. Ford lacks sufficient information or knowledge to form a belief about the truth of any allegations stated in Paragraph 17, and therefore, denies same.

18. Ford lacks sufficient information or knowledge to form a belief about the truth of any allegations stated in Paragraph 18, and therefore, denies same.

19. Ford lacks sufficient information or knowledge to form a belief about the truth of any allegations stated in Paragraph 19, and therefore denies same.

20. Ford lacks sufficient information or knowledge to form a belief about the truth of any allegations stated in Paragraph 20, and therefore denies same.

21. In response to Paragraph 21, Ford admits that it advertises on television and in print in both newspapers and magazines. Ford denies the remaining allegations in Paragraph 21.

22. Ford lacks sufficient information or knowledge to form a belief about the truth of any allegations stated in Paragraph 22, and therefore denies same

23. Ford lacks sufficient information or knowledge to form a belief about the truth of any allegations stated in Paragraph 23, and therefore denies same.

24. In response to Paragraph 24, Ford admits that it is one of America's oldest car companies that was incorporated in 1903. Ford lacks sufficient information or knowledge to form a belief about the truth of any allegations related to what advertisements Plaintiff saw, the role any advertisements played in Plaintiff's decision to purchase a vehicle, and any assumptions he may have made at the time. To the extent any further response is required, Ford denies the allegations in Paragraph 24.

25. Ford lacks sufficient information or knowledge to form a belief about the truth of any allegations in Paragraph 25 related to where Plaintiff lives, the weather patterns of that locality, and what factors Plaintiff may have considered when deciding to purchase a vehicle. Ford denies the remaining allegations in Paragraph 25.

26. In response to Paragraph 26, Ford admits that a Technical Service Bulletin was issued on April 8, 2015, and that Plaintiff purchased an F-150 on October 14, 2015. Ford affirmatively states that Plaintiff returned to the dealership a week later to have his vehicle

serviced, but Ford lacks sufficient information or knowledge to form a belief about why Plaintiff's vehicle required service. Ford also lacks sufficient information or knowledge to form a belief about the truth of any allegations related to Plaintiff's interactions with the management or staff of any dealership. Ford denies the remaining allegations in Paragraph 26.

27. Ford lacks sufficient information or knowledge to form a belief about the truth of any allegations in Paragraph 27 related to Plaintiff's purchase of a motor vehicle or his personal experiences while operating that vehicle. Ford denies the remaining allegations in Paragraph 27.

28. At this time, Ford lacks sufficient information or knowledge to form a belief about the truth of any allegations in Paragraph 28 related to Plaintiff's personal experiences while operating any motor vehicle. To the extent any further response is required, Ford denies the allegations in Paragraph 28.

29. In response to Paragraph 29, Ford notes that Plaintiffs' allegations of door-latching problems in other vehicle models are immaterial and unrelated to Plaintiff's claims. Allegations related to the expectations or assumptions of any consumers, including Plaintiff, are legal conclusions to which a response is not required; however, to the extent any further response is required, Ford denies the allegations in Paragraph 29.

30. Ford denies the allegations in Paragraph 30.

31. To the extent Paragraph 31 refers to the contents of an exhibit, Ford states that the exhibit speaks for itself. To the extent any further response is required, Ford denies the allegations in Paragraph 31.

32. To the extent Paragraph 32 refers to the contents of an exhibit, Ford states that the exhibit speaks for itself. To the extent any further response is required, Ford denies the allegations in Paragraph 32.

33. To the extent Paragraph 33 refers to the contents of an exhibit, Ford states that the exhibit speaks for itself. To the extent any further response is required, Ford denies the allegations in Paragraph 33.

34. In response to Paragraph 34, Ford states it is aware that some F-150 drivers have encountered issues with their doors in limited circumstances; however, to the extent Paragraph 34 suggests that all or most or even a significant number of drivers have experienced issues with their doors, Ford denies such an allegation. To the extent any additional response is required, Ford denies the allegations in Paragraph 34.

35. Ford denies the allegations in Paragraph 35.

36. In response to Paragraph 36, Ford admits that a technical service bulletin was issued in April 2015 for 2015 F-150 SuperCab and SuperCrew Cab vehicles built on or before 3/25/2015. Ford lacks sufficient information or knowledge to form a belief about the truth of any allegations related to what information the dealer or its management may or may not have provided to Plaintiff during the sale of his vehicle. Ford denies the remaining allegations in Paragraph 36.

37. In response to Paragraph 37, Ford states that Plaintiff returned to the dealership a week after purchasing his vehicle to have it serviced, but Ford lacks sufficient information or knowledge to form a belief about why Plaintiff's vehicle required service. At this time, Ford also lacks sufficient information or knowledge to form a belief about the truth of any allegations in Paragraph 37 related to Plaintiff's interactions with any dealership or its employees. To the extent any further response is required, Ford denies the remaining allegations in Paragraph 37.

38. In response to Paragraph 38, Ford states that Plaintiff brought his vehicle to the dealership for service on January 14, 2016. Ford lacks sufficient information or knowledge to

form a belief about the truth of any allegations in Paragraph 38 related to any visit Plaintiff may have made to the dealership on February 2, 2016. At this time, Ford also lacks sufficient information or knowledge to form a belief about the truth of any allegations regarding Plaintiff's personal interactions with the dealership or its employees on either date. To the extent any further response is required, Ford denies the remaining allegations in Paragraph 38.

39. In response to Paragraph 39, Ford admits that it issued a technical service bulletin addressing the F-150s sold between 2015 and 2017. Ford denies the remaining allegations in Paragraph 39.

40. To the extent Paragraph 40 refers to the contents of an exhibit, Ford states that the exhibit speaks for itself. To the extent any further response is required, Ford denies the allegations in Paragraph 40.

41. Ford denies the allegations in Paragraph 41.

42. To the extent Paragraph 42 refers to the contents of an exhibit, Ford states that the exhibit speaks for itself.

43. To the extent Paragraph 43 refers to the contents of an exhibit, Ford states that the exhibit speaks for itself and all other allegations are denied.

44. To the extent Paragraph 44 refers to the contents of an exhibit, Ford states that the exhibit speaks for itself and all other allegations are denied.

45. To the extent Paragraph 45 refers to the contents of an exhibit, Ford states that the exhibit speaks for itself and all other allegations are denied.

46. Ford denies the allegations in Paragraph 46.

47. Ford denies the allegations in Paragraph 47.

48. Ford denies the allegations in Paragraph 48.

49. Ford lacks sufficient information or knowledge to form a belief about the truth of any allegations in Paragraph 49 related to Plaintiff's personal experiences while operating any motor vehicle or his interactions with a dealership or its employees on December 29, 2016. To the extent any further response is required, Ford denies the remaining allegations in Paragraph 49.

50. Ford lacks sufficient information or knowledge to form a belief about the truth of any allegations in Paragraph 50 related to Plaintiff's interactions with any dealership or its employees on December 29, 2016. To the extent any further response is required, Ford denies the remaining allegations in Paragraph 50.

51. In response to Paragraph 51, Ford admits that Plaintiff brought his vehicle to the dealership on February 14, 2017. Ford lacks sufficient information or knowledge to form a belief about the truth of any of the remaining allegations in Paragraph 51, and therefore denies same.

52. Ford lacks sufficient information or knowledge to form a belief about the truth of any allegations in Paragraph 52 related to Plaintiff's personal experiences while operating any motor vehicle. To the extent any further response is required, Ford denies the remaining allegations in Paragraph 52.

53. In response to Paragraph 53, Ford states that it is aware of occasions on which Plaintiff brought his vehicle to the dealership for service, including one occasion on October 21, 2015. Ford lacks sufficient information or knowledge to form a belief about the truth of any allegations related to the circumstances that precipitated that visit or Plaintiff's personal experiences while operating any motor vehicle or his interactions with any dealership or its

employees. To the extent any further response is required, Ford denies the remaining allegations in Paragraph 53.

54. In response to Paragraph 54, Ford states Plaintiff returned with his vehicle to the dealership on January 14, 2016. Ford lacks sufficient information or knowledge, however, to form a belief about the truth of any allegations related to the circumstances that precipitated that visit or Plaintiff's personal experiences while operating any motor vehicle or his interactions with any dealership or its employees. To the extent any further response is required, Ford denies the remaining allegations in Paragraph 54.

55. Ford lacks sufficient information or knowledge to form a belief about the truth of any allegations in Paragraph 55 related to Plaintiff's interactions with any dealership or its employees on February 3, 2016. To the extent any further response is required, Ford denies the remaining allegations in Paragraph 55.

56. Ford lacks sufficient information or knowledge to form a belief about the truth of any allegations in Paragraph 56 related to Plaintiff's interactions with any dealership or its employees on December 29, 2016. To the extent any further response is required, Ford denies the remaining allegations in Paragraph 56.

57. In response to Paragraph 57, Ford states Plaintiff brought his vehicle to the dealership on February 14, 2017. Ford denies the remaining allegations in Paragraph 57.

58. In response to Paragraph 58, Ford admits that it has issued technical service bulletins for the 2015 F-150. Ford also states it is aware that some F-150 drivers have encountered difficulty with their doors in limited circumstances; however, to the extent Paragraph 58 suggests that all or most or even a significant number of drivers have experienced

difficulty with their doors, Ford denies such an allegation. Ford denies the remaining allegations in Paragraph 58.

59. Ford lacks sufficient information or knowledge to form a belief about the truth of any allegations stated in Paragraph 59, and therefore, denies same.

60. Ford lacks sufficient information or knowledge to form a belief about the truth of any allegations stated in Paragraph 60, and therefore, denies same.

61. Ford lacks sufficient information or knowledge to form a belief about the truth of any allegations stated in Paragraph 61, and therefore denies same.

62. Ford denies the allegations in Paragraph 62.

Class Definition and Allegations

63. Paragraph 63 states legal conclusions to which no response is required. To the extent any response is required, Ford admits that Plaintiff seeks to bring an action on behalf of similarly situated consumers but denies that any class can be certified and denies any remaining allegations in Paragraph 63.

64. Paragraph 64 states legal conclusions to which no response is required. To the extent any response is required, Ford admits that Plaintiff seeks to bring an action on behalf of similarly situated consumers in the State of New York but denies that any class can be certified and denies any remaining allegations in Paragraph 64.

65. Paragraph 65 states legal conclusions to which no response is required. To the extent any response is required, Ford denies the allegations in Paragraph 65.

66. Paragraph 66 states legal conclusions to which no response is required. To the extent any response is required, Ford denies the allegations in Paragraph 66, including any allegations set forth in any of the nine subparagraphs set forth by bullet points.

67. Paragraph 67 states legal conclusions to which no response is required. To the extent any response is required, Ford denies the allegations in Paragraph 67.

68. Paragraph 68 states legal conclusions to which no response is required. To the extent any response is required, Ford denies the allegations in Paragraph 68.

69. Paragraph 69 states legal conclusions to which no response is required. To the extent any response is required, Ford denies the allegations in Paragraph 69.

70. Paragraph 70 states legal conclusions to which no response is required. To the extent any response is required, Ford admits that Plaintiff seeks monetary damages and equitable relief but denies that any legal or equitable basis exists for awarding such damages or relief, and denies any remaining allegations in Paragraph 70.

71. Paragraph 71 states legal conclusions to which no response is required. To the extent any response is required, Ford affirmatively states that no legal or equitable basis exists to support the requested injunction, and denies all allegations in Paragraph 71.

First Cause of Action

72. In response to Paragraph 72, Ford incorporates by reference its responses to Paragraphs 1 through 71 of the First Amended Class Action Complaint as if full set forth herein.

73. Ford denies the allegations set forth in Paragraph 73.

74. Ford denies the allegations set forth in Paragraph 74.

75. Ford denies the allegations in Paragraph 75.

76. Ford denies the allegations in Paragraph 76.

77. In response to Paragraph 77, Ford admits that Plaintiff seeks injunctive relief but denies that any legal or equitable basis exists to support such a remedy. To the extent any further response is required, Ford denies the remaining allegations in Paragraph 77.

Second Cause of Action

78. In response to Paragraph 78, Ford incorporates by reference its responses to Paragraphs 1 through 77 of the First Amended Class Action Complaint as if full set forth herein.

79. Paragraph 79 states legal conclusions to which no response is required. To the extent any response is required, and to the extent Paragraph 79 refers to the language of a statute, Ford states that the statute speaks for itself and otherwise denies any remaining allegations in this paragraph.

80. Paragraph 80 states legal conclusions to which no response is required. To the extent any response is required, and to the extent Paragraph 80 refers to the language of a statute, Ford states that the statute speaks for itself and otherwise denies any remaining allegations in this paragraph.

81. Ford denies the allegations in Paragraph 81.

82. Ford denies the allegations in Paragraph 82.

83. In response to Paragraph 83, Ford admits that Plaintiff seeks injunctive relief but denies that any legal or equitable basis exists to support such a remedy. To the extent any further response is required, Ford denies the remaining allegations in Paragraph 83.

Prayer for Relief

No response is required to Plaintiff's request for relief. To the extent any response is required, Ford denies that Plaintiffs are entitled to any relief. All other allegations in the Prayer for Relief, including all allegations in paragraphs A through F, are denied.

Demand for Trial by Jury

Ford also request a trial by jury with respect to all issues so triable.

AFFIRMATIVE AND OTHER DEFENSES

Pursuant to Federal Rule of Civil Procedure 8(c), Ford hereby identifies and states the following affirmative defenses and avoidances

1. Plaintiff are not entitle to pursue this action as a class action under Federal Rule of Civil Procedure 23.

2. Plaintiff did not rely on any misrepresentation or omission by Ford.

3. No action by Ford bore a causal relationship to any injury allegedly suffered by Plaintiff.

4. Plaintiff's alleged damages, if any, were caused or contributed to by the negligence or fault or other persons, firms, corporations, or entities over whom Ford has and had no control or right of control and for whom it is not responsible.

5. The products in question were manufactured in a reasonably safe manner in full compliance with all applicable laws, statutes, and regulations and, therefore, Plaintiffs is barred from recovery.

6. The products in question conformed to the existing state of the art and industry standard at the time they were designed and manufactured.

7. Plaintiff's recovery should be reduced to the extent he has failed to mitigate his damages, if any.

8. Because Ford has already issued a recall to correct door latching issues related to the F-150, neither Plaintiff nor any member of the class he purports to represent has suffered a compensable loss.

9. Plaintiff lacks standing to assert his claim for injunctive relief.

10. Plaintiff's demand for injunctive relief is moot.

Ford reserves the right to alter or amend this list of affirmative and other defenses and avoidances as permitted by the Federal Rules of Civil Procedure as discovery proceeds in the litigation.

Ford demands a trial by jury on all issues and causes so triable.

Dated: August 20, 2018

Respectfully submitted,

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