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FILED
 Superior Court Of California
 County Of Los Angeles

JUN 01 2015

Sherrill L. ... Executive Officer/Clerk
 By [Signature] Deputy

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 8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 FOR THE COUNTY OF LOS ANGELES

CAC

10 DAVE DELUCA, an individual, for himself)
 11 and for all other similarly situated California)
 12 residents,)

12 Plaintiff,

13 vs.

14 FORD MOTOR COMPANY and DOES 1-50,)
 15 Inclusive,)
 16 Defendants.)

CASE NO.:

BC 588606

CLASS ACTION COMPLAINT FOR

1. FALSE ADVERTISING IN
 VIOLATION OF THE UNFAIR
 COMPETITION LAW

DEMAND FOR JURY TRIAL

19 *CC#520872090*
 20 *\$1,000.00*

21 The following allegations are based on the plaintiff's personal knowledge, on investigation by
 22 their attorneys, and on information and belief.

SUMMARY OF THE CASE

24 1. Plaintiff Dave DeLuca bought a Ford Fusion Hybrid from Defendant Ford Motor
 25 Company believing that the car would perform as advertised by Ford.

THIS IS A REPRINT OF THE ORIGINAL

CIT/CASE: BC588606
 LEA/DEF#:
 RECEIPT #: CCH520872090
 DATE PAID: 06/01/15 01:27 PM
 PAYMENT: \$435.00 310
 RECEIVED:
 CHECK: \$435.00
 CASH: \$0.00
 CHANGE: \$0.00
 CRD: \$0.00

CIT/CASE: BC588606
 LEA/DEF#:
 RECEIPT #: CCH520872089
 DATE PAID: 06/01/15 01:27 PM
 PAYMENT: \$435.00 310
 RECEIVED:
 CHECK: \$435.00
 CASH: \$0.00
 CHANGE: \$0.00
 CRD: \$0.00

COMPLAINT

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1 8. As an alternative theory, Mr. DeLuca alleges that at all times mentioned herein, each of
2 the defendants was the agent or employee of the other defendants, was at all times acting within the
3 scope of such agency or employment, and actively participated in, or subsequently ratified and adopted,
4 each and all of the acts and omissions alleged in this complaint, with full knowledge of all the facts and
5 circumstances, including full knowledge of each and all of the violations of the plaintiffs' rights and the
6 rights of the members of the putative class.
7

8 **JURISDICTION & VENUE**
9

10 9. A California superior court may properly assert personal jurisdiction over these parties
11 under C.C.P. § 410.10. Mr. DeLuca resides in California, and at all times relevant to the complaint has
12 resided here. He also submits to this Court's jurisdiction.
13

14 10. A California superior court may properly assert subject-matter jurisdiction over this
15 action. It is a putative class action between Ford Motor Company and California consumers. Mr. DeLuca
16 and the putative class are alleging claims under California Unfair Competition Law.
17

18 11. Venue is proper in this court under C.C.P. §§ 395 and 395.5. Ford conducts business in
19 Los Angeles County. Furthermore, Ford has a dealership in Los Angeles County where Mr. DeLuca
20 routinely took his Fusion Hybrid for updates. Ford Motor Company breached its obligations to Mr.
21 DeLuca and other consumers in Los Angeles County.
22

23 **FACTS**

24 12. Mr. DeLuca purchased a Fusion Hybrid from Defendant Ford Motor Company. Mr.
25 DeLuca purchased the car mainly for the mileage that Ford advertised for the car.
26

27 13. Mr. DeLuca soon realized that the Fusion's performance did not match the performance
28 advertised by Ford. Mr. DeLuca tested the car while driving under what a Ford technician called optimal
conditions. Specifically, Mr. DeLuca tested the car with the windows up, the air conditioner and stereo

06/01/2015

1 turned off, and driving at 62 miles per hour or less. Mr. DeLuca found the results to fall below the
2 advertised performance.

3 14. Upon his discovery of the Fusion Hybrid's performance, Mr. DeLuca took the car to the
4 dealership where he purchased it to have a fuel economy test performed. The Ford technician tested the
5 car under optimal conditions and the results matched those previously recorded by Mr. DeLuca. Ford's
6 regional customer service representative told Mr. DeLuca there was nothing she could do to fix the car
7 because it was not broken.
8

9 15. Thereafter, Ford issued a software update for the Fusion Hybrid and claimed that the
10 update would increase performance and mileage. Mr. DeLuca drove his car to the Ford dealership and
11 the software update was installed.
12

13 16. After the software update had been installed, Mr. DeLuca decided to test the performance
14 of the Fusion Hybrid again. Mr. DeLuca tested the vehicle's performance on a trip to Las Vegas driving
15 under the same optimal conditions described above. On this trip, Mr. DeLuca discovered that the car's
16 monitor was displaying better mileage and less gas usage. However, when Mr. DeLuca filled his gas
17 tank at a gas station, he realized the vehicle's software relayed inaccurate mileage and use of gasoline.
18

19 17. Finally, Mr. DeLuca tested the Fusion Hybrid against a gas only version of the Fusion.
20 The gas only version of the Fusion is the same car minus the extra hybrid system. In testing the vehicles
21 side by side, Mr. DeLuca found the gas only Fusion to be perfectly accurate while the Fusion Hybrid
22 continued to display inaccurate numbers.
23

24 18. Mr. DeLuca's attempts to get information from Ford have been in vain. Ford's customer
25 service representative repeatedly told Mr. DeLuca that there is nothing that can be done since the car is
26 performing as it was designed to perform.
27
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1 **PLAINTIFFS' COMMON COMPLAINTS AGAINST FORD**

2 19. Mr. DeLuca and the members of the putative class allege the following common problems
3
4 with Ford Motor Company:

5 **The Ford Fusion Hybrid Does Not Perform According to its**
6 **Advertised Potential**

7 20. The Ford Fusion Hybrid does not perform as advertised. Furthermore, although Ford's
8 software update displays a higher mileage, the vehicle's mileage has not increased.

9
10 **CLASS ACTION ALLEGATIONS**

11 21. DeLuca seeks certification of a class under C.C.P. § 382. An ascertainable class exists,
12 and there is a well-defined community of interest among class members.

13
14 **An Ascertainable Class Exists**

15 22. Based on the information of which he and her counsel are currently aware, DeLuca
16 defines the classes as follows:
17

18 23. People who purchased a Ford Fusion Hybrid. The identity of the purchasers is readily
19 ascertainable from Ford's records.
20

21 24. The proposed classes are limited to purchasers of the Ford Fusion Hybrid who reside in
22 California or who resided in California when they purchased a Ford Fusion Hybrid.

23 **Common Questions of Fact & Law Predominate**

24 25. Common questions of fact and common questions of law predominate over individual
25 questions of fact and individual questions of law. These common questions of fact and law include the
26 following:
27
28

03/09/2015

1. Does do the Ford Fusion Hybrid perform below its advertised performance?
2. Does Ford's software update display inaccurate information?
3. Is the Ford Fusion Hybrid performing as it was designed to perform?
4. Did Ford falsely advertise the performance of the Ford Fusion Hybrid?
5. Did Ford violate the California Unfair Competition Law?
5. Are the plaintiffs entitled to attorneys' fees under C.C.P. § 1021.5?

Mr. DeLuca's Claims are Typical

26. Mr. DeLuca's claims are typical to those of the members of the class because pursuant to Ford's statements, the Fusion Hybrid is performing as it was designed to perform. Thus, all Fusion Hybrids are performing in a similar manner to that of Mr. Deluca.

Mr. DeLuca is an Adequate Representative

27. DeLuca will adequately represent the class. He has no interest that is in conflict with those of the class. In addition, he has retained attorneys who have experience prosecuting consumer class actions.

Superiority of Class Treatment

28. The class mechanism is superior to other procedures for resolving these claims. Upon information and belief: The class is far too large to make joinder practicable. The plaintiffs estimate that the class will include hundreds and perhaps thousands of Ford Fusion Hybrid purchasers. In addition, most if not all of the members of the class have claims that are limited in terms of their financial value. Because of Ford's lack of accurate information, many members of the class are unaware of the problems

1 with the Fusion Hybrid and are intimidated to prosecute their individual claims. They have little
2 incentive, if any, to prosecute their claims independently and would be unlikely to find counsel willing to
3 represent them. The only practical mechanism for them to vindicate their rights in this instance is
4 through class treatment of their claims.
5

6 **CAUSES OF ACTION**

7 **FIRST CAUSE OF ACTION:**

8 **CLASS-WIDE VIOLATIONS OF THE UNFAIR COMPETITION LAW**

9 **(Business and Professions Code § 17200 et seq., Against Each of the Defendants)**

10 29. Plaintiffs hereby incorporate by reference the allegations contained in all preceding
11 paragraphs of this complaint.

12 30. Mr. DeLuca has standing to prosecute his claims under Business and Professions Code §
13 17200 et seq. He has suffered injury-in-fact, and has lost money or property in which he has a vested
14 interest.
15

16 31. Ford Motor Company acted unlawfully under Business and Professions Code § 17200 et
17 seq. in the following ways:

- 19 • by falsely advertising the performance of the Ford Fusion Hybrid in violation of
20 California's Unfair Competition Law;
- 21 • by falsely representing that the software update would increase Ford Fusion Hybrid's
22 mileage.

23 32. Ford acted unfairly under Business and Professions Code § 17200 et seq., as described in
24 paragraphs 1 through 29.
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REQUESTED RELIEF

33. Mr. DeLuca and the plaintiff class respectfully request that this Court enter judgment for them and against Ford Motor Company, and that the judgment grant them the following relief:

- 1. certifying this case and these claims for class treatment, with the class defined as set forth in this complaint;
- 2. designating Mr. DeLuca as representative for the class;
- 3. designating Michael L. Cohen and Heather M. McKeon as counsel for the class;
- 4. for an award of compensatory damages in an amount according to proof at trial;
- 5. attorneys' fees under Code of Civil Procedure § 1021.5 and *Brandt v. Superior Court* (1985) 37 Cal.3d 813;
- 8. costs, as the law allows;
- 9. For punitive and exemplary damages;
- 10. pre- and post-judgment interest, as the law allows;
- 11. such further relief, at law or in equity, that the facts justify and that the law allows.

DATED: May 27, 2015

COHEN MCKEON LLP

By: Heather M. McKeon
 Michael L. Cohen
 Heather M. McKeon
 Attorneys for Plaintiffs


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DEMAND FOR JURY TRIAL

Mr. DeLuca and the putative plaintiff class respectfully request that all matters triable to a jury be tried by a jury.

DATED: May 27, 2015

COHEN MCKEON LLP

By: 
Michael L. Cohen
Heather M. McKeon
Attorneys for Plaintiffs

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