

1 Jeffrey A. Kaiser (SBN 160594)  
 Lawrence J. Gornick (SBN 136290)  
 2 Dennis J. Canty (SBN 207978)  
 Nicholas A. Deming (SBN 287917)  
**KAISER GORNICK LLP**  
 3 100 First Street, 25<sup>th</sup> Floor  
 San Francisco, CA 94105  
 4 Telephone: (415) 857-7400  
 Fax: (415) 857-7499  
 5 [jkaiser@kaisergornick.com](mailto:jkaiser@kaisergornick.com)  
[lgornick@kaisergornick.com](mailto:lgornick@kaisergornick.com)  
 6 [dcanty@kaisergornick.com](mailto:dcanty@kaisergornick.com)  
[ndeming@kaisergornick.com](mailto:ndeming@kaisergornick.com)  
 7

8 Fredric L. Ellis (*Pro Hac Vice* Admission Pending)  
 Edward D. Rapacki (*Pro Hac Vice* Admission Pending)  
 Joseph M. Makalusky (*Pro Hac Vice* Admission Pending)  
 9 **ELLIS & RAPACKI LLP**  
 85 Merrimac Street, Suite 500  
 10 Boston, MA 02114  
 Telephone: (617) 523-4800  
 11 Fax: (617) 523-6901  
[fellis@ellisrapacki.com](mailto:fellis@ellisrapacki.com)  
 12 [erapacki@ellisrapacki.com](mailto:erapacki@ellisrapacki.com)  
[jmakalusky@ellisrapacki.com](mailto:jmakalusky@ellisrapacki.com)  
 13

14 Attorneys for Plaintiffs

15 **UNITED STATES DISTRICT COURT**  
 16 **NORTHERN DISTRICT OF CALIFORNIA**

17 MICHAEL J. SANSOE, individually, and ERIC  
 18 FRAZER dba DE LANDSCAPING, individually,  
 and on behalf of a class of those similarly situated;

19 Plaintiffs,

20 vs.

21 FORD MOTOR COMPANY

22 Defendant.

Case No:

**CLASS ACTION**

**COMPLAINT**

- 1. **VIOLATION OF THE SONG-BEVERLY CONSUMER WARRANTY ACT;**
- 2. **UNFAIR COMPETITION;**
- 3. **VIOLATION OF CONSUMERS LEGAL REMEDIES ACT**
- 4. **DECLARATORY RELIEF**

**DEMAND FOR JURY TRIAL**

25 Plaintiffs Michael J. Sansoe, individually, and Erik Frazer dba DE Landscaping, individually,  
 26 (together, "Plaintiffs") and on behalf of a class of those similarly situated, hereby complain against  
 27 Defendant Ford Motor Company and on information and belief, allege as follows:  
 28

1 **PRELIMINARY STATEMENT**

2 1. Plaintiffs bring this class action to challenge the unlawful, unfair and deceptive  
3 practices of Ford Motor Company in reacquiring defective vehicles pursuant to the Song-Beverly  
4 Consumer Warranty Act, Civil Code §1793.2, commonly known as the “Lemon Law.” When  
5 reacquiring, pursuant to the Lemon Law, motor vehicles or motor homes previously purchased or  
6 leased and registered in CA (“Lemon Cars”), a car manufacturer may deduct for the owner or lessee’s  
7 reasonable use of the vehicle using a percentage formula that divides the number of miles on the car  
8 when the defect is first reported by 120,000. Civil Code §1793.2(d)(2)(c). However, in addition to  
9 this authorized deduction, Ford routinely takes a deduction for excessive damage and/or wear and tear  
10 (“Wear and Tear”), based on the condition of the Lemon Car when it is reacquired. Alternatively,  
11 Ford requires the Lemon Car owner to make certain improvements to the car at their own expense  
12 before it is reacquired. Plaintiffs seek appropriate relief for themselves and the Class Members, as  
13 well as attorney’s fees, costs, and expenses.

14 **PARTIES**

15 2. Plaintiff Eric Frazer is an individual over the age of 18 residing in California and doing  
16 business under the fictitious name DE Landscaping.

17 3. Plaintiff Michael J. Sansoe is an individual over the age of 18 residing in California.

18 4. Defendant Ford Motor Company (“Ford”) is a Delaware company having its principal  
19 place of business in Michigan. At all times relevant, Ford was licensed to do business and conducted  
20 business in San Francisco County and throughout California.

21 **JURISDICTION AND VENUE**

22 5. This court has diversity jurisdiction over this matter pursuant to 28 U.S.C. § 1332(d), in  
23 that the proposed class contains more than 1000 members, the aggregate amount in controversy  
24 exceeds \$5 million, and the Class Members are diverse from Defendant Ford.

25 6. Ford regularly conducts business in San Francisco, and venue is therefore proper  
26 pursuant to 28 U.S.C. § 1391 and Cal. Civ. Code § 1780.

1 **OPERATIVE FACTS**

2 7. In 1987, the Lemon Law was amended, specifying how a deduction for buyer's  
3 reasonable use must be calculated. Civil Code §1793.2(d)(2)(c) (the "Statutory Mileage Formula")  
4 states: "The amount directly attributable to use by the buyer shall be determined by multiplying the  
5 actual price of the new motor vehicle paid or payable by the buyer, including any charges for  
6 transportation and manufacturer-installed options, by a fraction having as its denominator 120,000 and  
7 having as its numerator the number of miles traveled by the new motor vehicle prior to the time the  
8 buyer first delivered the vehicle to the manufacturer or distributor, or its authorized service and repair  
9 facility for correction of the problem that gave rise to the nonconformity."

10 8. Under the Lemon Law as amended in 1987, car manufacturers in California are  
11 prohibited in a Lemon Car reacquisition transaction from charging the owner or lessee, or requiring the  
12 owner or lessee to pay third parties, any amount for use of the vehicle other than the Statutory Mileage  
13 Formula.

14 9. A car manufacturer violates the Lemon Law by charging an owner or lessee for Wear  
15 and Tear, in addition to the Statutory Mileage Formula, in a Lemon Car reacquisition transaction.  
16 Civil Code §1790.1 states that "Any waiver by the buyer of consumer goods of the provisions of this  
17 chapter, except as expressly provided in this chapter, shall be deemed contrary to public policy and  
18 shall be unenforceable and void."

19 10. Despite the clear language of the Lemon Law, Ford insisted, as a condition of  
20 reacquiring Lemon Cars pursuant to the Lemon Law, that Plaintiffs and the other Class Members pay  
21 to remedy what Ford claimed was Wear and Tear, or to accept a reduction in the repurchase price for  
22 said Wear and Tear, in addition to the Statutory Mileage Formula deduction.

23 11. In Frazer's situation, he purchased a new 2008 Ford F450 Super Duty truck in  
24 California on November 29, 2007. Within the first year, Frazer brought his truck to the dealer for  
25 repair on several occasions. On July 31, 2009, with 31,691 miles on his truck, he brought it to the  
26 dealer to repair various failures. The problems continued and Frazer brought the truck in for service  
27 multiple times over the next three plus years. Finally, in the spring of 2013, Ford agreed to repurchase  
28 the truck pursuant to the Lemon Law.



1 remedy the ongoing unlawful, unfair, and fraudulent business practices alleged herein, and to seek  
2 redress on behalf of all those persons who have been affected thereby.

3 21. Plaintiffs are unable to state the precise number of potential members of the proposed  
4 class because that information is in the possession of Ford. The class consists of at least a thousand  
5 members and is so numerous that joinder of all members would be impracticable. The exact size of  
6 the proposed class, and the identity of the members thereof, will be readily ascertainable from the  
7 business records of Ford.

8 22. The class on whose behalf this Complaint is brought is composed of all persons :

9 a. Who had a Lemon Car reacquired by Ford pursuant to the Lemon Law after  
10 October 29, 2009;

11 b. Who were informed by Ford or its agent that the Lemon Car had Wear and Tear  
12 for which the owner or lessee was responsible, in addition to the Statutory  
13 Mileage Formula deduction; and

14 c. Who accepted a repurchase price reduction or paid money in a reacquisition  
15 transaction with Ford to account for the claimed Wear and Tear, or who paid a  
16 third party to remedy the claimed Wear and Tear.

17 23. The Class Definition is subject to such further definition, limitations, and exclusions as  
18 may be ordered by the Court. Specifically excluded from the class are the undersigned counsel and the  
19 judge assigned to the case.

20 24. There is a community of interest among the members of the proposed class in that there  
21 are questions of law and fact common to the proposed class that predominate over questions affecting  
22 only individual members. Proof of a common set of facts will establish the liability of Ford, and the  
23 right of each Class Member to recover.

24 25. The common questions which predominate include, *inter alia*:

25 a. Whether, in repurchasing or replacing Lemon Cars, Ford's policies or business  
26 practices require California Lemon Car buyers to pay for or remedy alleged  
27 Wear and Tear, in addition to the Statutory Mileage Formula deduction;  
28

- b. Whether Ford's policies or business practices described above violate the Song-Beverly Consumer Warranty Act (Civil Code §1794, *et seq.*), the Consumers Legal Remedies Act (Civil Code §1770, *et seq.*), or the Unfair Competition Law (Cal. Bus. & Prof. Code §17200, *et seq.*);
- c. Whether Ford's conduct was willful within the meaning of Civil Code §1794(c);
- d. Whether Ford intentionally misrepresented or concealed material facts, and did so intending to harm California Lemon Car buyers, and is therefore liable for punitive damages;
- e. Whether Ford acted with willful and knowing disregard of the rights of California Lemon Car owners and lessees, and is therefore liable for punitive damages;
- f. Whether an injunction prohibiting the policies or business practices described above is warranted;
- g. What the terms of any injunction should be;
- h. Whether restitution to the Class Members is warranted.

26. Plaintiffs' claims are typical of those of the class which they represent, and they will fairly and adequately represent the interests of the class. Plaintiffs have no irreconcilable conflicts with the prosecution of this class action. Plaintiffs are represented by counsel competent and experienced in both consumer and class action litigation.

27. A class action is superior to other methods for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is impracticable, and no other group method of adjudication of all claims asserted herein is more efficient and manageable while at the same time providing all the remedies available to ensure the full purpose of California's laws are effectuated. Because the damages suffered by the individual Class Members may be relatively small compared to the expense and burden of litigation, it would be impracticable and economically unfeasible for Class Members to seek redress individually.

28. The typical damages amount of an individual Class Member is a few thousand dollars. The prosecution of separate actions by the individual Class Members, even if possible, would create a

1 risk of inconsistent or varying adjudications with respect to individual Class Members against Ford,  
2 and would establish incompatible standards of conduct. The conduct of this action as a class action  
3 presents fewer management difficulties, conserves the resources of the parties and the court system,  
4 and protects the rights of each Class Member as compared to other methods for the group wide  
5 adjudication of this controversy.

6 29. The claims asserted by Plaintiffs will be governed by the laws of the State of California  
7 and the damages resulting from Ford's conduct were incurred in California. Notice of the pendency of  
8 any resolution of this action can be provided to the Class Members by individual mailed notice based  
9 on contact information contained in Ford's files, and/or by publication, and such costs are properly  
10 imposed on the Ford.

11 **FIRST CAUSE OF ACTION**

12 Violations of THE SONG-BEVERLY CONSUMER WARRANTY ACT  
13 California Civil Code §1794

14 30. Plaintiffs incorporate by reference and reallege each paragraph set forth above.

15 31. For the Lemon Cars that it reacquired, Ford reduced the repurchase price or required  
16 owners to pay an amount to reflect the use of the vehicle by applying the Statutory Mileage Formula.

17 32. Ford knew or should have known that other deductions or charges, based on the  
18 Plaintiffs' and Class Members' use of the Lemon Cars or based on the condition of the Lemon Cars,  
19 were unlawful.

20 33. Regardless, for Plaintiffs and each Class Member, Ford inspected the Lemon Cars and  
21 required that the Plaintiffs and each Class Member pay to remedy claimed Wear and Tear as a  
22 condition of completing the reacquisition transaction. This condition violated the Lemon Law.

23 34. The amount of damages suffered by Plaintiffs and each Class Member is easily  
24 determined in one of three ways: 1) The amount that Ford deducted from the repurchase price of a  
25 Lemon Car to account for what it claimed was Wear and Tear to the Lemon Car; 2) The amount that  
26 Ford charged the Class Member in a replacement transaction to account for what Ford claimed was  
27 Wear and Tear to the Lemon Car; or 3) the amount the Class Member paid a third party to remedy  
28 what Ford claimed was Wear and Tear to the Lemon Car.

1 35. Ford's conduct was willful within the meaning of Civil Code §1794(c), and plaintiffs  
2 are therefore entitled to civil penalties.

3 36. Pursuant to Civil Code §1794, plaintiffs are entitled to their reasonable attorney's fees  
4 and costs.

5 WHEREFORE, Plaintiffs pray for relief as set forth below.

6 **SECOND CAUSE OF ACTION**

7 Violations of Business and Professions Code §17200, *et seq.*

8 37. Plaintiffs reallege and incorporate herein by reference the allegations of all paragraphs  
9 above.

10 38. Plaintiffs file this cause of action individually, and on behalf of the Class Members, to  
11 challenge and to remedy Ford's business practices. Business and Professions Code §17200, *et seq.*,  
12 often referred to as the "Unfair Competition Law," (hereinafter "the UCL") defines unfair competition  
13 to include any unlawful, unfair, or fraudulent business act or practice. The UCL provides that a court  
14 may order injunctive relief and restitution to affected persons as remedies for any violations of the  
15 UCL.

16 39. At all times relevant herein and during the four years preceding the filing of the  
17 complaint in this action, Ford has committed acts of unfair competition proscribed by the UCL,  
18 including the practices alleged herein. The acts of unfair competition include the following:

- 19 a. Conditioning reacquisition of Lemon Cars upon payment by California  
20 consumers to remedy alleged Wear and Tear, in addition to the Statutory  
21 Mileage Formula deduction;
- 22 b. Misrepresenting to Plaintiffs and the Class Members that reductions in  
23 repurchase price or repair services were necessary or required in connection  
24 with Lemon Car reacquisition transactions; and
- 25 c. Failing to inform Plaintiffs and the Class Members that, in connection with  
26 Lemon Law reacquisition transactions, it is unlawful for a car manufacturer to  
27 require consumers to pay for or remedy alleged Wear and Tear.
- 28



1           40.     The business acts and practices of Ford are unlawful in that they violate the provisions  
2 of the Consumers Legal Remedies Act (Civil Code §1770, *et seq.*) and the Song-Beverly Consumer  
3 Warranty Act (Civil Code §1794, *et seq.*). The business acts and practices of Ford, as hereinabove  
4 alleged, constitute unfair business practices in that said acts and practices offend public policy and are  
5 substantially injurious to consumers. Said acts and practices have no utility that outweighs their  
6 substantial harm to consumers.

7           41.     The business acts and practices of Ford, as hereinabove alleged, constitute fraudulent  
8 business practices in that said acts and practices were and are likely to deceive consumers as to their  
9 legal rights and obligations, and by use of such deception, may preclude consumers from exercising  
10 legal rights to which they are entitled.

11           42.     Ford's misrepresentations and omissions were material, from which it may be presumed  
12 or inferred that Plaintiffs and the Class Members relied on said misrepresentation and omissions. As a  
13 direct and proximate result of the acts and practices described herein, Plaintiffs and Class Members  
14 have suffered injury in fact and have lost money or property.

15           43.     The unlawful, unfair, and fraudulent business acts and practices of Ford described  
16 herein present a continuing threat to Plaintiffs and Class Members in that Ford are currently engaging  
17 in such acts and practices, and will persist and continue to do so unless and until an injunction is issued  
18 by this Court.

19           44.     Pursuant to Business and Professions Code §17203, Plaintiffs seek an order enjoining  
20 Ford from engaging in such acts and practices as hereinabove alleged, and providing appropriate  
21 restitution to Plaintiffs and Class Members.

22           45.     In addition, pursuant to Code of Civil Procedure §1021.5, Plaintiffs seek recovery of  
23 attorneys' fees, costs, and expenses incurred in the filing and prosecution of this action.

24           WHEREFORE, Plaintiffs pray for relief as set forth below.  
25  
26  
27  
28

**THIRD CAUSE OF ACTION**

Asserted by Sansoe and the Consumer Class Members  
Violations of Consumers Legal Remedies Act – Injunctive Relief  
California Civil Code §1750, et seq.

1  
2  
3 46. Plaintiffs reallege and incorporate herein by reference the allegations of all paragraphs  
4 above.

5 47. California Civil Code §§1750 *et seq.* prohibits unfair and deceptive acts and/or  
6 practices in transactions involving consumer goods and services.

7 48. Ford represented to Plaintiffs and the Class Members that reductions in the repurchase  
8 price or repair services were necessary or required in connection with reacquisition transactions. Ford  
9 knew or should have known that these representations were false. Ford knew or should have known  
10 that additional reductions in repurchase price or payment for repairs are prohibited by law, but Ford  
11 did not so inform Plaintiffs or the Class Members. Ford’s misrepresentations and/or omissions were  
12 material, from which it may be presumed or inferred that plaintiffs and the Class Members relied on  
13 said misrepresentation and omissions.

14 49. As described herein, Ford engaged and continues to engage in unlawful and prohibited  
15 acts and/or practices in violation of the CLRA, including (*inter alia*):

- 16 a. Making false and/or misleading statements of fact concerning reasons for,  
17 existence of, or amounts of price reductions in connection with Lemon Car  
18 reacquisition transactions (Civil Code §1770 (a)(13));
- 19 b. Representing that the Lemon Car reacquisition transactions described herein  
20 conferred or involved rights, remedies, or obligations which they did not, and  
21 which were in fact prohibited by law (Civil Code §1770 (a)(14)); and
- 22 c. Representing that repair services were needed in connection with Lemon Car  
23 reacquisition transactions, when they were not (Civil Code §1770 (a)(15)).

24 50. If Plaintiffs and the Class Members had known that it was not necessary or required  
25 that they remedy Wear and Tear in connection with reacquisition, or that it was unlawful for Ford to  
26 impose such charges, Plaintiffs and the Class Members would not have paid to remedy the Wear and  
27 Tear. As a direct result of Ford’ misrepresentations and/or omissions, Plaintiffs and the Class  
28

1 Members lost money or property, through unlawful reductions in repurchase price or through the  
2 payment for repair services.

3 51. Ford will continue these unlawful practices unless and until enjoined by this Court.

4 52. Plaintiffs and the Class Members are entitled to injunctive relief under the CLRA. Ford  
5 will be served with notice pursuant to Civil Code §1782 concurrently with this complaint. If Ford has  
6 not remedied the identified violations within 30 days, Plaintiffs will amend this Complaint to include a  
7 request for damages under the CLRA.

8 53. Plaintiffs are entitled to recover their attorneys' fees, costs, and expenses, any other  
9 relief this Court deems proper.

10 WHEREFORE, Plaintiffs pray for relief as set forth below.

11 **FOURTH CAUSE OF ACTION**  
12 **Declaratory Relief**

13 54. Plaintiffs reallege and incorporate herein by reference the allegations of each and every  
14 paragraph above.

15 55. An actual controversy has arisen between the parties as to their respective rights,  
16 remedies, obligations, and liabilities relating to Plaintiffs' and the Class Members' Lemon Car  
17 reacquisition transactions with Ford.

18 56. Accordingly, Plaintiffs and the Class Members request the Court issue a judicial  
19 determination and declaration of the rights and available remedies of the Class Members and the  
20 corresponding responsibilities of the Ford.

21 WHEREFORE, Plaintiffs pray for relief as set forth below.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiffs respectfully pray for relief as follows:

- 24 1. For an order certifying the case as a class action;
- 25 2. For an order finding and declaration that Ford's acts and practices as challenged herein  
26 are unlawful, unfair and fraudulent;
- 27 3. For an order permanently enjoining Ford from engaging in the practices challenged  
28 herein;

1 4. For an order of restitution in an amount to be determined at trial to restore to all Class  
2 Members all money acquired by Ford by means of their unlawful, unfair and fraudulent practices.

3 5. For compensatory and punitive damages;

4 6. For civil penalties pursuant to Civil Code §1794(c);

5 7. For prejudgment interest to the extent permitted by law;

6 8. For an award of attorneys’ fees, costs, and expenses;

7 9. For declaratory relief; and

8 10. For such other and further relief as the Court may deem just and proper.

9 **DEMAND FOR JURY TRIAL**

10 Plaintiffs and the Class Members demand trial by jury.

11 Dated: October 29, 2013

**KAISER GORNICK LLP**

12 */s/ Dennis Canty*  
13 Jeffrey A. Kaiser  
14 Lawrence J. Gornick  
15 Dennis J. Canty  
16 Nicholas A. Deming

17 Dated: October 29, 2013

**ELLIS & RAPACKI LLP**

18 */s/ Fredric Ellis*  
19 Fredric L. Ellis (*Pro Hac Vice* Admission Pending)  
20 Edward D. Rapacki (*Pro Hac Vice* Admission Pending)  
21 Joseph M. Makalusky (*Pro Hac Vice* Admission Pending)

22 Attorneys for Plaintiffs  
23  
24  
25  
26  
27  
28