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Attorneys for Plaintiffs,
MIKAYLAH TANNER and COREY NEESE

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF VENTURA**

**MIKAYLAH TANNER and
COREY NEESE,**

Plaintiffs,

vs.

**FORD MOTOR COMPANY, a Delaware
Corporation, and DOES 1 through 10,
inclusive,**

Defendants.

Case No.:

COMPLAINT

1. SONG-BEVERLY ACT
2. MAGNUSON-MOSS ACT

*Assigned for All Purposes to the
Honorable
Department*

Plaintiffs, MIKAYLAH TANNER and COREY NEESE, allege as follows against Defendants, FORD MOTOR COMPANY, and DOES 1 through 10 inclusive, on information and belief, formed after an inquiry reasonable under the circumstances:

GENERAL ALLEGATIONS

1. Plaintiffs are individuals residing in the City of Moorpark, County of Ventura, and State of California.

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1 2. Defendant FORD MOTOR COMPANY is and was a Delaware corporation registered
2 to do business in the State of California with its registered office in the City of Los Angeles,
3 County of Los Angeles, State of California.

4 3. This cause of action arises out of the sale of the vehicle in question from CarMax Auto
5 Superstores California, LLC in the City of Oxnard, County of Ventura, State of California.

6 4. Plaintiffs do not know the true names and capacities, whether corporate, partnership,
7 associate, individual or otherwise of Defendant issued herein as Does 1 through 10, inclusive,
8 under the provisions of section 474 of the California Code of Civil Procedure. Defendants Does
9 1 through 10, inclusive, are in some manner responsible for the acts, occurrences and
10 transactions set forth herein, and are legally liable to Plaintiffs. Plaintiffs will seek leave to
11 amend this Complaint to set forth the true names and capacities of the fictitiously named
12 Defendants together with appropriate charging allegations when ascertained.

13 5. All acts of corporate employees as alleged were authorized or ratified by an officer,
14 director or managing agent of the corporate employer.

15 6. Each Defendant whether actually or fictitiously named herein, was the principal, agent
16 (actual or ostensible) or employee of each other Defendant and in acting as such principal or
17 within the course and scope of such employment or agency, took some part in the acts and
18 omissions hereinafter set forth by reason of which each Defendant is liable to Plaintiffs for the
19 relief prayed for herein.

20 7. On March 19, 2019, Plaintiffs purchased a 2017 Ford Focus, VIN:
21 1FADP3H26HL272217, ("the vehicle").

22 8. Express warranties accompanied the sale of the vehicle to Plaintiffs by which FORD
23 MOTOR COMPANY undertook to preserve or maintain the utility or performance of Plaintiffs'
24 vehicle or provide compensation if there was a failure in such utility or performance.

25 9. The vehicle was delivered to Plaintiffs with serious defects and nonconformities to
26 warranty and developed other serious defects and nonconformities to warranty including, but not
27 limited to, various transmission defects.

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1 10. Prior to engaging counsel, Plaintiffs attempted to resolve the claim informally, through
2 Ford's customer service procedures.

3 **FIRST CAUSE OF ACTION**

4 (Violation of the Song-Beverly Consumer Warranty Act)

5 11. Plaintiff incorporates herein by reference each and every allegation contained in the
6 preceding and succeeding paragraphs as though herein fully restated and realleged.

7 12. Pursuant to the Song-Beverly Consumer Warranty Act (herein after the "Act") Civil
8 Code section 1790 *et seq.*, the vehicle constitutes "consumer goods" or a "new motor vehicle"
9 and Plaintiffs have used the vehicle primarily for those purposes.

10 13. Plaintiffs are "buyers" of consumer goods under the Act.

11 14. Defendant FORD MOTOR COMPANY is a "manufacturer" and/or "distributor" under
12 the Act.

13 15. The sale of the vehicle to Plaintiffs was accompanied by an implied warranty that the
14 vehicle was merchantable. The sale of the vehicle to Plaintiffs was also accompanied by
15 Defendants' implied warranty of fitness.

16 16. The foregoing defects and nonconformities to warranty manifested themselves within
17 the applicable express warranty period. The nonconformities substantially impair the use, value
18 and/or safety of the vehicle.

19 17. Plaintiffs delivered the vehicle to Ford Motor Company authorized repair facilities for
20 repair of the nonconformities on numerous occasions.

21 18. Defendants were unable to conform Plaintiffs' vehicle to the applicable express and
22 implied warranties after a reasonable number of attempts.

23 19. The defects and nonconformities rendered the vehicle unmerchantable.

24 20. Notwithstanding Plaintiff's entitlement, Defendant manufacturer has failed to either
25 promptly replace the new motor vehicle or promptly make restitution in accordance with the
26 Song-Beverly Consumer Warranty Act.

1 vehicle's implied warranties were not disclaimed using a Buyer's Guide displayed on the
2 vehicle; thus any purported disclaimers were ineffective pursuant to 15 U.S.C. § 2308(c).

3 32. Defendants violated the Mag-Moss Act when they breached the express warranty and
4 implied warranties by failing to repair the defects and nonconformities, or to replace or
5 repurchase the vehicle.

6 33. Plaintiffs performed all terms, conditions, covenants, promises and obligations required
7 to be performed on Plaintiffs' part under the terms of the sales agreement, and express warranty
8 and implied warranty except for those terms and conditions, covenants, promises and obligations
9 or payments for which performance and/or compliance has been excused by the acts and/or
10 conduct of the Defendants and/or by operation of law.

11 34. As a direct and proximate result of the acts and omissions of the Defendants, Plaintiffs
12 have been damaged in the form of general, special and actual damages in an amount within the
13 jurisdiction of this Court, according to proof at trial.

14 35. Under the Act, Plaintiffs are entitled to rescission of the contract, reimbursement of the
15 purchase price paid for the vehicle.

16 36. Plaintiffs are entitled to all incidental, consequential and general damages resulting
17 from Defendants' failure to comply with their obligations under the Mag-Moss Act.

18 37. Plaintiffs are entitled under the Mag-Moss Act to recover as part of the judgment a sum
19 equal to the aggregate amount of costs and expenses, including attorney's fees, reasonably
20 incurred in connection with the commencement and prosecution of this action pursuant to 15
21 U.S.C. § 2310(d)(2).

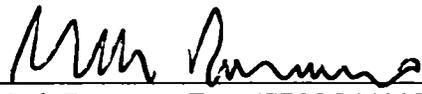
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23 WHEREFORE, Plaintiffs pray for judgment against Defendants, as follows:

- 24 1. For general, special and actual damages according to proof at trial;
- 25 2. For rescission of the purchase contract and restitution of all monies expended;
- 26 3. For diminution in value;
- 27 4. For incidental and consequential damages according to proof at trial;

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- 5. For civil penalty in the amount of two times Plaintiffs' actual damages;
- 6. For prejudgment interest at the legal rate;
- 7. For reasonable attorney's fees and costs of suit; and
- 8. For such other and further relief as the Court deems just and proper under the circumstances.

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Dated: 10/6/2020

EXHIBIT 1

**CALIFORNIA
RETAIL INSTALLMENT CONTRACT**

Meaning Of Some Words

Buyer - The person who signs this contract.
Seller - The person who sells the goods.
Lender - The person who lends the money.
Finance Company - The company that provides the financing.

1500 100th Street, Oakland, CA 94612

ANNUAL PERCENTAGE RATE	FINANCE CHARGE
14 %	\$ 710.00

Amount Financed
\$ 10,000.00

Total of Payments
\$ 24,707.68

Total Sale Price
\$ 24,207.68

No. of Payments	Amount of Payments	When Payments are Due
72	\$ 344.83	Month beginning May 01, 2010
		N/A

Security interest in the vehicle is held by the lender.
If you are late on a payment, the lender may charge you a late fee.
If you do not pay as agreed, the lender may repossess the vehicle.

See the contract for more information about nonpayment and late fees.

17 100th Street, Oakland, CA 94612

Optional GAP Waiver Agreement (GAP contract)
This contract provides coverage for the difference between the actual cash value of the vehicle and the amount of the loan balance in the event of a total loss.

YOUR PROMISE TO PAY
I agree to pay the amount of each payment on the date it is due.

SECURITY AGREEMENT
The vehicle is being financed and is the property of the lender.

STATEMENT OF INSURANCE
PROPERTY INSURANCE. YOU ARE REQUIRED TO OBTAIN AND MAINTAIN INSURANCE ON THE COLLATERAL ENDORSER TO PROTECT CREDITOR AS LOSS-PAYEE, BUT YOU MAY OBTAIN THE INSURANCE FROM ANY AGENT AND INSURANCE COMPANY YOU CHOOSE.

NOTICE No person is required as a condition precedent to financing the purchase of an automobile that any insurance be negotiated or purchased through a particular insurance agent or broker.

ITEMIZATION OF AMOUNT FINANCED	
A. CASH PRICE	
1. Cash Price of Vehicle	\$ 12,000.00
2. Cash Price of Accessories, Delivered Chargeable	\$ 0.00
3. Cash Price of Dealer Prep	\$ 0.00
4. Tax	\$ 0.00
5. Title	\$ 0.00
6. License	\$ 0.00
7. Dealer Fee	\$ 0.00
8. Sales Tax	\$ 941.00
9. License Fee	\$ 0.00
10. Dealer's Finance Charge (AVRS)	\$ 1,979.68
11. To N/A	\$ 0.00
12. Optional GAP Waiver Agreement	\$ 0.00
13. Vehicle Control Certificate or Exemption Fee	\$ 0.00
14. Total Cash Sale Price (Sum of A, through A 13)	\$ 14,940.68
B. AMOUNTS PAID TO PUBLIC OFFICIALS	
1. Sales Tax	\$ 941.00
2. License	\$ 0.00
3. Title	\$ 153.00
4. Dealer Fee	\$ 0.00
5. Other Fees	\$ 0.00
6. Total	\$ 1,094.00
C. POLLUTION CONTROL CERTIFICATE OR EXEMPTION FEE PAID TO STATE	\$ 0.00
D. SUBTOTAL (A(14) + B, C, + C)	\$ 17,034.68
E. DOWN PAYMENT	

PROGRESSIVE

021033024

01/19/2011

AGENT

N/A

EXPIRATION DATE

N/A

PHONE NUMBER

(1 800) 776-4777

YOU AGREE THAT YOU VOLUNTARILY SELECTED THE ABOVE INSURANCE AGENT, BROKER OR COMPANY AND THAT SUCH CHOICE WAS NOT MADE A CONDITION PRECEDENT TO THE EXTENSION OF CREDIT UNDER THIS CONTRACT.

UNLESS A CHARGE IS INCLUDED IN THIS AGREEMENT FOR PUBLIC LIABILITY OR PROPERTY DAMAGE INSURANCE, PAYMENT FOR SUCH COVERAGE IS NOT PROVIDED BY THIS AGREEMENT.

IF YOU PURCHASE A VEHICLE WITH FINANCING... YOU AGREE TO WAIVE YOUR RIGHTS UNDER CALIFORNIA VEHICLE CODE SECTION 10209.21 TO KEEP CONFIDENTIAL YOUR CURRENT ADDRESS... THE SELLER SHALL BE RESPONSIBLE FOR THE PROVISION OF TERMS AND CONDITIONS.

If you have a complaint concerning this sale, you should try to resolve it with the Seller. Complaints concerning unfair or deceptive practices or methods by the Seller may be referred to the city attorney, the district attorney, or an investigator for the Department of Motor Vehicles, or any combination thereof.

Buyer's Signature _____ Co-Buyer's Signature _____

NOTICE TO BUYER:

(1) Do not sign this agreement before you read it or if it contains any blank spaces to be filled in. (2) You are entitled to a completely filled-in copy of this agreement. (3) You can prepay the full amount due under this agreement at any time. (4) If you default in the performance of your obligations under this agreement, the vehicle may be repossessed and you may be subject to suit and liability for the unpaid indebtedness evidenced by this agreement.

YOU ACKNOWLEDGE RECEIPT OF A COMPLETELY FILLED-IN COPY OF THIS CONTRACT AND ANY OTHER DOCUMENTS THAT YOU SIGNED DURING CONTRACT NEGOTIATIONS AT THE TIME OF SIGNING.

Conflex Auto Superstores California, LLC

ASSIGNMENT

Seller hereby assigns to Assignee all rights, title, and interest of Seller in and to the property securing this Contract... the sale and assignment of the

Table with 2 columns: Description and Amount. Rows include: 1. Net Vehicle Price, 2. Net Vehicle Price (if 1(c) exceeds 1(a)), 3. Manufacturer's Rebate, 4. Cash Down Payment, 5. Other, 6. Total Down Payment, F. AMOUNT FINANCED (D E,5)

Seller Assisted Loan
If the Seller assisted you in obtaining a loan to pay for part of the downpayment or purchase price of the vehicle, you will be obligated to repay the loan, and the installment payments under this Contract.
Amount of Loan \$ N/A Finance Charge \$ N/A
Total \$ N/A repayable \$ N/A
You may be required to pledge security for this loan.

Waiver of Confidentiality
By signing below you agree to waive your right under California Vehicle Code Section 10209.21 to keep confidential your current address as recorded in the records of the California Department of Motor Vehicles. This waiver will apply only to a financial institution licensed by the state or federal government to do business in California that acquires an interest in this Contract.

Buyer's Signature _____ Co-Buyer's Signature _____

BROKER FEE DISCLOSURE
If this Contract is for the sale of a new Vehicle, then this Contract is not subject to an autobroker fee.
is subject to a fee received by the following autobroker:

THE PROVISIONS ON THE BACK ARE PART OF THIS CONTRACT
Agreement to Arbitrate
By signing below you represent that you have read and agree to the Arbitration Provisions on the back.
Buyer's Signature _____ Co-Buyer's Signature _____

THERE IS NO COOLING OFF PERIOD UNLESS YOU OBTAIN A CONTRACT CANCELLATION OPTION
California law does not provide for a "cooling-off" or other cancellation period for vehicle sales. Therefore, you cannot later cancel this contract simply because you change your mind; decide the vehicle costs too much, or wish you had acquired a different vehicle. After you sign below, you may only cancel this contract with the agreement of the seller or for legal cause, such as fraud.
However, California law does require a seller to offer a 2-day contract cancellation option on used vehicles with a purchase price of less than forty thousand dollars (\$40,000), subject to certain statutory conditions. This contract cancellation option requirement does not apply to the sale of a recreational vehicle, a motorcycle, or an off-highway motor vehicle subject to identification under California law. See the vehicle contract cancellation option agreement for details.

Buyer's Signature _____ Co-Buyer's Signature _____