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9 Ford Motor Company

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LIEFF, CABRASER, HEIMANN & BERNSTEIN

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SACRAMENTO

ROSE MARIE GRAY, on behalf of  
herself, the General Public, and all others  
in California similarly situated,

Plaintiff,

v.

FORD MOTOR COMPANY,

Defendants.

Case No. 03AS04782

CLASS ACTION

DEFENDANT FORD MOTOR  
COMPANY'S ANSWER  
TO COMPLAINT

Defendant Ford Motor Company ("Ford") answers the unverified complaint filed by plaintiff Rose Marie Gray on behalf of herself, the General Public, and all others in California similarly situated as follows:

Pursuant to section 431.30(d) of the California Code of Civil Procedure, Ford generally denies each and every material allegation of plaintiffs' complaint. Ford further denies that plaintiff, members of the public, members of the purported class, or anyone, have been damaged by reason of any act or omission of Ford.

While specifically denying any liability to plaintiff, the members of the General Public, the members of the purported class, or anyone, Ford asserts the following

1. affirmative defenses:<sup>1</sup>

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**FIRST AFFIRMATIVE DEFENSE**

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The complaint fails to state any claim against Ford upon which relief can be granted.

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**SECOND AFFIRMATIVE DEFENSE**

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The claims of the plaintiff, the General Public, and members of the purported class may be barred, in whole or in part, due to a lack of any cognizable injury or damages legally compensable at law.

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**THIRD AFFIRMATIVE DEFENSE**

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Plaintiff may not maintain this action as described in his complaint as a class action or as a private attorney general action on behalf of the General Public.

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**FOURTH AFFIRMATIVE DEFENSE**

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The complaint may be barred, in whole or in part, for lack of standing.

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**FIFTH AFFIRMATIVE DEFENSE**

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The complaint may be barred, in whole or in part, based on principles of equity.

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**SIXTH AFFIRMATIVE DEFENSE**

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The complaint may be barred, in whole or in part, based on principles of unclean hands.

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<sup>1</sup> Ford does not assume any legal or factual burden not otherwise assigned to it by virtue of listing these affirmative defenses.

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**SEVENTH AFFIRMATIVE DEFENSE**

The complaint may be barred, in whole or in part, based on principles of waiver and estoppel.

**EIGHTH AFFIRMATIVE DEFENSE**

The complaint may be barred, in whole or in part, based on the doctrine of laches.

**NINTH AFFIRMATIVE DEFENSE**

The complaint may be barred, in whole or in part, based on principles of claim preclusion or res judicata.

**TENTH AFFIRMATIVE DEFENSE**

The complaint may be barred, in whole or in part, based on principles of issue preclusion or collateral estoppel.

**ELEVENTH AFFIRMATIVE DEFENSE**

The complaint may be barred, in whole or in part, by release of the asserted claims.

**TWELFTH AFFIRMATIVE DEFENSE**

The complaint may be barred, in whole or in part, by plaintiff's failure to comply with the notice and demand procedures required under California Civil Code § 1750 et seq. (specifically including § 1782).

**THIRTEENTH AFFIRMATIVE DEFENSE**

The complaint may be barred, in whole or in part, pursuant to Civil Code § 1784 in that the alleged conduct of Ford was not intentional and constituted a bona fide

1 error notwithstanding Ford's adoption of reasonable procedures and in that Ford has made  
2 (or will make) an appropriate correction, repair or replacement in compliance with Civil  
3 Code § 1782.

4  
5 **FOURTEENTH AFFIRMATIVE DEFENSE**

6 Damages may not be awarded to plaintiffs and members of the purported  
7 class pursuant to California Civil Code §§ 1782(b), 1782(c) and 1784.

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9 **FIFTEENTH AFFIRMATIVE DEFENSE**

10 The complaint may be time-barred, in whole or in part, under applicable  
11 statutes of limitations or statutes of repose, including but not limited to, the applicable  
12 three-year and four-year statute of limitations under California Business and Professions  
13 Code §§ 17200 et seq. (specifically including § 17208) and 17500 et. seq., the three-year  
14 statute of limitations under California Civil Code § 1783, and California Code of Civil  
15 Procedure §§ 312 through 365, inclusive (specifically including § 337, 338, 339, 339.5,  
16 340 and 343).

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18 **SIXTEENTH AFFIRMATIVE DEFENSE**

19 The complaint may be barred, in whole or in part, due to spoliation of  
20 evidence.

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22 **SEVENTEENTH AFFIRMATIVE DEFENSE**

23 The complaint may be barred, in whole or in part, by the preemptive effect  
24 of federal law.

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26 **EIGHTEENTH AFFIRMATIVE DEFENSE**

27 The complaint may be barred, in whole or in part, because the alleged  
28 injuries or damage complained of by plaintiffs, if any there actually were, were caused by

1 the intervening and superceding events and/or actions of entities other than Ford.

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3 **NINETEENTH AFFIRMATIVE DEFENSE**

4 The complaint may be barred, in whole or part, due to failure to mitigate  
5 damages.

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7 **TWENTIETH AFFIRMATIVE DEFENSE**

8 The complaint should be stayed or dismissed in accordance with the  
9 doctrine of primary jurisdiction.

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11 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

12 To the extent that the complaint seeks punitive damages, without  
13 qualification or limitation, this claim violates Ford's right to due process under the United  
14 States and California Constitutions.

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16 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

17 The complaint may be barred, in whole or in part, because, in this or other  
18 courts, the same claimants have brought actions and have received judgments on parts of  
19 some or all claims asserted herein.

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21 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

22 The complaint may be barred, in whole or in part, on the ground that the  
23 claims asserted herein have been submitted to arbitration, and a binding decision has been  
24 rendered.

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26 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

27 The complaint may be barred, in whole or in part, by plaintiff's failure to  
28 join necessary or indispensable parties.

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**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

The complaint may be barred and the action may need to be abated, in whole or in part, because another action presenting similar issues and involving overlapping parties is currently pending.


WHEREFORE, Ford prays for judgment in its favor as follows:

1. that this suit cannot be maintained as a class action;
2. that the complaint be dismissed on the merits;
3. that plaintiff take nothing by her complaint;
4. that Ford be awarded its costs, disbursements, attorneys' fees, and expenses incurred herein; and
5. that Ford be awarded such other and further relief as the Court may deem proper.

Ford hereby requests a jury trial on all applicable claims.

Dated: September 25, 2003

Respectfully submitted,  
O'MELVENY & MYERS LLP

By   
Daniel L. Alexander  
Attorneys for Defendant Ford Motor Company

1 **PROOF OF SERVICE**

2 I, Teresa Rodriguez, declare:

3 I am a resident of the State of California and over the age of eighteen years, and  
4 not a party to the within action; my business address is 400 South Hope Street, Los Angeles,  
California 90071-2899. On September 25, 2003, I served the within documents:

5 **DEFENDANT FORD MOTOR COMPANY'S ANSWER TO**  
6 **COMPLAINT**

- 7  by transmitting via facsimile machine the document(s) listed above to the fax  
8 number(s) set forth below on this date at approximately 12:20 PM. The outgoing  
9 facsimile machine telephone number in this office is (213) 430-6407. The  
10 facsimile machines used in this office create a transmission report for each  
11 outgoing facsimile transmitted. A copy of the transmission report(s) for the  
12 service of this document, properly issued by the facsimile machine(s) that  
13 transmitted this document and showing that such transmission was (transmissions  
14 were) completed without error, is attached hereto.
- 15  by placing the document(s) listed above in a sealed envelope with postage thereon  
16 fully prepaid, in the United States mail at Los Angeles, California addressed as set  
17 forth below. I am readily familiar with the firm's practice of collecting and  
18 processing correspondence for mailing. Under that practice it would be deposited  
19 with the U.S. Postal Service on that same day with postage thereon fully prepaid in  
20 the ordinary course of business. I am aware that on motion of the party served,  
21 service is presumed invalid if the postal cancellation date or postage meter date is  
22 more than one day after date of deposit for mailing in affidavit.
- 23  by putting a true and correct copy thereof, together with an unsigned copy of this  
24 declaration, in a sealed envelope designated by the carrier, with delivery fees paid  
25 or provided for, for delivery the next business day to the person(s) listed above,  
26 and placing the envelope for collection today by the overnight courier in  
27 accordance with the firm's ordinary business practices. I am readily familiar with  
28 this firm's practice for collection and processing of overnight courier  
correspondence. In the ordinary course of business, such correspondence collected  
from me would be processed on the same day, with fees thereon fully prepaid, and  
deposited that day in a box or other facility regularly maintained by Time Machine  
Network, which is an express carrier.
- by putting a true and correct copy thereof, together with an unsigned copy of this  
declaration, in a sealed envelope, with Express Mail postage fully prepaid to the  
person(s) listed above, and placing the envelope for collection and mailing today  
with the United States Postal Service as an Express Mail item in accordance with  
the firm's ordinary business practices. I am readily familiar with this firm's  
practice for collection and processing of Express Mail correspondence for mailing  
with the United States Postal Service. In the ordinary course of business, Express  
Mail correspondence collected from me would be processed on the same day, with  
Express Mail postage thereon fully prepaid, and placed for deposit that day with  
the United States Postal Service by depositing it that same day in a post office,  
mailbox, subpost office, substation, mail chute, or other like facility regularly  
maintained by the United States Postal Service for receipt of Express Mail.

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 25, 2003, at Los Angeles, California.

  
Teresa Rodriguez