

**ORIGINAL**

**FILED**  
Superior Court of California  
County of Los Angeles

**JUL 18 2018**

Sherri K. Carter, Executive Officer/Clerk  
By *Rita Nazarvan*, Deputy  
Rita Nazarvan

1 Daniel S. Rodman, Bar No. 156156  
Alina Mooradian, Bar No. 245470  
2 Sarah M. Ayad, Bar No. 315200  
SNELL & WILMER L.L.P.  
3 600 Anton Blvd., Suite 1400  
Costa Mesa, California 92626-7689  
4 Telephone: 714.427.7000  
Facsimile: 714.427.7799

5 Attorneys for Defendants  
6 FORD MOTOR COMPANY and  
SOUTH BAY FORD, INC., erroneously  
7 sued herein as SOUTH BAY LINCOLN  
FORD

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

11  
12 EDITH VALDEZ and ROBERT VALDEZ,

13 Plaintiffs,

14 v.

15 FORD MOTOR COMPANY; SOUTH BAY  
LINCOLN FORD; and DOES 1 through 20,  
16 inclusive,

17 Defendants.

Case No. BC710322

Judge: Hon. Marc D. Gross  
Dept: 3

**DEFENDANTS FORD MOTOR  
COMPANY AND SOUTH BAY FORD,  
INC.'S ANSWER TO PLAINTIFFS'  
UNVERIFIED COMPLAINT**

**DEMAND FOR JURY TRIAL**

Complaint Filed: June 15, 2018  
Trial Date: December 16, 2019

18  
19  
20  
21 Defendants FORD MOTOR COMPANY and SOUTH BAY FORD, INC. (collectively  
22 "Ford") hereby answer the unverified Complaint ("Complaint") of EDITH VALDEZ and  
23 ROBERT VALDEZ (collectively "Plaintiffs") as follows:

24 **GENERAL DENIAL**

25 Pursuant to Section 431.30(d) of the California Code of Civil Procedure, Ford denies each  
26 and every allegation, both specifically and generally, of each cause of action contained in  
27 Plaintiffs' Complaint and denies that Plaintiffs were injured or damaged in any sum or sums or at  
28 all.

SNELL & WILMER  
LAW OFFICES  
600 ANTON BLVD, SUITE 1400  
COSTA MESA, CALIFORNIA 92626-7689

07/14/2018

**FAXED**

CIT/CASE: BC710322  
LEA/DEF#:

RECEIPT #: CCH477461017  
DATE PAID: 07/19/18 12:54 PM  
PAYMENT: \$870.00 310

RECEIVED:  
CHECK: \$870.00  
CASH: \$0.00  
CHANGE: \$0.00  
CARD: \$0.00

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**FIRST AFFIRMATIVE DEFENSE**

1. The Complaint, and each separate cause of action alleged in it, fails to state facts sufficient to constitute a cause of action against Ford.

**SECOND AFFIRMATIVE DEFENSE**

2. Ford is informed and believes, and on that basis alleges, that any injuries or damages sustained by Plaintiffs were caused or contributed to by the negligence or other wrongful conduct of persons, firms, partnerships, corporations, municipalities, or entities other than Ford and that said negligence or other wrongful conduct comparatively reduces the percentage of negligence or other liability, if any, of Ford.

**THIRD AFFIRMATIVE DEFENSE**

3. Ford is informed and believes, and on that basis alleges, that the injuries and damages of Plaintiffs alleged in the Complaint were directly and proximately caused by the superseding, intervening acts and omissions of a third party or third parties for which Ford is neither responsible nor liable.

**FOURTH AFFIRMATIVE DEFENSE**

4. Ford is informed and believes, and on that basis alleges, that the damages and injuries of Plaintiffs alleged in the Complaint were legally and proximately caused or contributed to by the negligence, fault, negligence *per se*, assumption of risk, or other culpable conduct of Plaintiffs and that the amount of damages, if any, that Plaintiffs may recover against Ford must be diminished in the proportion that such conduct contributed to the alleged injuries, losses or damages of Plaintiffs.

**FIFTH AFFIRMATIVE DEFENSE**

5. Ford is informed and believes, and on that basis alleges, that the damages and injuries of Plaintiffs alleged in the Complaint were legally and proximately caused by, and arose out of, risks of which Plaintiffs had both knowledge and understanding and that Plaintiffs voluntarily assumed.

///  
///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**SIXTH AFFIRMATIVE DEFENSE**

6. Ford is informed and believes, and on that basis alleges, that the damages and injuries of Plaintiffs alleged in the Complaint were legally and proximately caused by, and arose out of, the Plaintiffs' primary assumption of risk.

**SEVENTH AFFIRMATIVE DEFENSE**

7. Ford is informed and believes, and on that basis alleges, that Plaintiffs have failed to mitigate their damages, if any, in the manner and to the extent required by law.

**EIGHTH AFFIRMATIVE DEFENSE**

8. Ford is informed and believes, and on that basis alleges, that if there is any comparative fault attributed to individuals or entities other than Ford, then that percentage of fault comparatively reduces the non-economic damages, if any, that Plaintiffs can recover from Ford pursuant to Sections 1431 *et seq.* of the California Civil Code.

**NINTH AFFIRMATIVE DEFENSE**

9. Ford is informed and believes, and on that basis alleges, that Plaintiffs' causes of action against Ford are barred by the applicable statute of limitations, including the statute of limitations set forth in Sections 335.1, 337, 338, 339 and 340 of the California Code of Civil Procedure and Section 2725 of the California Commercial Code.

**TENTH AFFIRMATIVE DEFENSE**

10. Ford is informed and believes, and on that basis alleges, that the claims contained in the Complaint are barred by a prior settlement or release of all claims.

**ELEVENTH AFFIRMATIVE DEFENSE**

11. Ford is informed and believes, and on that basis alleges, that Plaintiffs are precluded from proceeding against Ford by reason of Plaintiffs' or others' failure to preserve evidence relating to the accident that forms the subject matter of this action, including but not limited to the 2014 Ford Edge described in the Complaint (the "Vehicle").

**TWELFTH AFFIRMATIVE DEFENSE**

12. Ford is informed and believes, and on that basis alleges, that it will not be able to defend this action or, alternatively, its defense has been substantially interfered with because of

1 the loss, alteration, destruction, or failure to preserve evidence involved in this action, including,  
2 but not limited to, the Vehicle and its component parts.

3 **THIRTEENTH AFFIRMATIVE DEFENSE**

4 13. Ford is informed and believes, and on that basis alleges, that the damages and  
5 injuries alleged in the Complaint were legally and proximately caused by the alteration or  
6 modification of the Vehicle.

7 **FOURTEENTH AFFIRMATIVE DEFENSE**

8 14. Ford is informed and believes, and on that basis alleges, that the Vehicle was not  
9 in the same condition at the time of the event, injuries, and damages alleged in the Complaint, as  
10 it was when it left Ford's custody.

11 **FIFTEENTH AFFIRMATIVE DEFENSE**

12 15. Ford is informed and believes, and on that basis alleges, that the damages and  
13 injuries alleged in the Complaint were legally and proximately caused by the unforeseeable  
14 misuse of the Vehicle.

15 **SIXTEENTH AFFIRMATIVE DEFENSE**

16 16. Ford is informed and believes, and on that basis alleges, that the Vehicle was not  
17 used or maintained in a reasonable and foreseeable manner by Plaintiffs or other third parties, and  
18 that such misuse was the direct and legal cause of any alleged nonconformity and Plaintiffs'  
19 alleged injuries and damages.

20 **SEVENTEENTH AFFIRMATIVE DEFENSE**

21 17. The Vehicle, and its component parts, referred to in Plaintiffs' Complaint, were fit  
22 for their intended uses, did not contain any non-conformities or defects, and complied with all  
23 express limited written warranties.

24 **EIGHTEENTH AFFIRMATIVE DEFENSE**

25 18. Ford is informed and believes, and on that basis alleges, that it discharged its duty  
26 to warn of dangers embodied in the Vehicle, if any, by providing adequate warnings and  
27 instructions to persons in the chain of distribution of the Vehicle, including Plaintiffs.

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**NINETEENTH AFFIRMATIVE DEFENSE**

19. The Vehicle was not in a defective condition at any time when it left the possession, custody or control of Ford.

**TWENTIETH AFFIRMATIVE DEFENSE**

20. Ford is informed and believes, and on that basis alleges, that it was not in privity with Plaintiffs and therefore cannot be held liable to Plaintiffs for breach of any warranty, express or implied.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

21. Ford is informed and believes, and on that basis alleges, that it did not expressly or impliedly warrant to Plaintiffs the Vehicle, or warrant the Vehicle to Plaintiffs, for a particular purpose.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

22. Ford is informed and believes, and on that basis alleges, that a party other than Ford assumed the warranty responsibilities or voided any warranty applicable to the Vehicle when the third party altered, modified, changed or repaired the condition of the Vehicle in a manner not authorized by Ford, and that such alteration was the direct and legal cause of any alleged nonconformity.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

23. Ford is informed and believes, and on that basis alleges, that Plaintiffs cannot establish economic damages with reasonable certainty under any of the causes of action alleged in the Complaint, and that such damages are barred by the economic loss doctrine.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

24. Ford is informed and believes, and on that basis alleges, that Plaintiffs are not entitled to any equitable relief.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

25. Ford is informed and believes, and on that basis alleges, that Plaintiffs would be unjustly enriched if allowed to recover in this action.

///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

26. Ford is informed and believes, and on that basis alleges, that Plaintiffs' claims are barred by the equitable doctrines of laches, estoppel or waiver, issue preclusion, claim preclusion, or unclean hands.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

27. Plaintiffs' claim for punitive damages violates Ford's right to due process and equal protection as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 7, of the California Constitution, in that: (i) neither Civil Code Section 3294 nor any other provision of California law provides an adequate or meaningful standard for determining the nature of the conduct upon which an award of punitive damages may be based or for determining or reviewing the amount of a punitive damage award; and (ii) neither Civil Code Section 3294, nor any other provision of California Law, provides adequate procedural safeguards for the imposition of punitive damages, including, but not limited to,

- a) imposing such damages only upon the presentation of evidence beyond a reasonable doubt;
- b) protecting the defendant's privilege against self-incrimination;
- c) providing for a unanimous jury verdict as to the punitive damages portion of any adverse judgment.

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

28. The imposition of punitive damages in this case would violate Ford's rights to protection from "excessive fines" as provided in the Eighth Amendment to the United States Constitution, and Article 1, Section 17 of the Constitution of the State of California.

**TWENTY-NINTH AFFIRMATIVE DEFENSE**

29. The imposition of punitive damages in this case would violate the Commerce Clause of the United States Constitution.

**THIRTIETH AFFIRMATIVE DEFENSE**

30. The imposition of punitive damages in this case would violate the First Amendment to the United States Constitution.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**THIRTY-FIRST AFFIRMATIVE DEFENSE**

31. Plaintiffs' claims, including their claim for punitive damages, are preempted by federal law.

**THIRTY-SECOND AFFIRMATIVE DEFENSE**

32. Plaintiffs' Complaint fails to allege facts or a cause of action that would entitle Plaintiffs to punitive damages.

**THIRTY-THIRD AFFIRMATIVE DEFENSE**

33. Ford is informed and believes and on that basis alleges that this action should be removed to federal court based on diversity jurisdiction because Defendant SOUTH BAY LINCOLN FORD may be a sham defendant who was fraudulently joined to this action by Plaintiffs to deprive the federal court of jurisdiction over the action.

**THIRTY-FOURTH AFFIRMATIVE DEFENSE**

34. Pursuant to California Code of Civil Procedure section 397(c), this case should be transferred to the County of Riverside because Los Angeles County is an inconvenient venue for non-party witnesses.

Ford reserves the right to amend its answer to assert further affirmative defenses that are not presently known but may become known and available through further investigation and discovery.

**PRAYER**

WHEREFORE, Ford respectfully prays as follows:

1. For dismissal of the Complaint with prejudice;
2. For judgment in favor of Ford and against Plaintiffs;
3. For costs of suit incurred herein; and
4. For such other and further relief as the Court may deem just and proper.

///  
///  
///



DEMAND FOR JURY TRIAL

Ford hereby requests a trial by jury.

Dated: July 18, 2018

SNELL & WILMER L.L.P.

By: *Sarah Mooradian*

Daniel S. Rodman  
Alina Mooradian  
Sarah M. Ayad  
Attorneys for Defendants  
FORD MOTOR COMPANY and  
SOUTH BAY FORD, INC.

SNELL & WILMER  
L.L.P.  
LAW OFFICES  
600 ANTON BLVD, SUITE 1400  
COSTA MESA, CALIFORNIA 92626-7689

07/24/2018

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 **PROOF OF SERVICE**

2 I am employed in the County of Orange, State of California. I am over the age of 18 and  
3 not a party to the within action; my business address is 600 Anton Boulevard, Suite 1400, Costa  
4 Mesa, CA 92626-7689.

5 On July 18, 2018, I served, in the manner indicated below, the foregoing document  
6 described as **DEFENDANTS FORD MOTOR COMPANY AND SOUTH BAY FORD,  
7 INC.'S ANSWER TO PLAINTIFFS' UNVERIFIED COMPLAINT** on the interested parties  
8 in this action by placing true copies thereof, enclosed in sealed envelopes, at Costa Mesa,  
9 addressed as follows:

10 \*\*\*\*\*SEE ATTACHED SERVICE LIST\*\*\*\*\*

- 11  BY REGULAR MAIL: I caused such envelopes to be deposited in the United States  
12 mail at Costa Mesa, California, with postage thereon fully prepaid. I am readily  
13 familiar with the firm's practice of collection and processing correspondence for  
14 mailing. It is deposited with the United States Postal Service each day and that  
15 practice was followed in the ordinary course of business for the service herein attested  
16 to (C.C.P. § 1013(a)).
- 17  BY FACSIMILE: (C.C.P. § 1013(e)(f)).
- 18  BY FEDERAL EXPRESS/ OVERNITE EXPRESS: I caused such envelopes to be  
19 delivered by air courier, with next day service, to the offices of the addressees.  
20 (C.C.P. § 1013(c)(d)).
- 21  BY EMAIL: I caused such document to be delivered by electronic service as it has  
22 been authorized and agreed upon (C.C.P. § 1010.6 (a)(6))
- 23  BY PERSONAL SERVICE on: I caused such envelopes to be delivered by hand to  
24 the offices of the addressees. (C.C.P. § 1011(a)(b)).

25 \*\*\*\*\*

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

28 Executed on July 18, 2018, at Costa Mesa, California.

*Louise Mishler*

\_\_\_\_\_  
Louise Mishler

SNELL & WILMER  
L.L.P.  
LAW OFFICES  
600 ANTON BLVD, SUITE 1400  
COSTA MESA, CALIFORNIA 92626-7689

07/24/2018

**SNELL & WILMER**  
LLP  
LAW OFFICES  
600 ANTON BLVD, SUITE 1400  
COSTA MESA, CALIFORNIA 92626-7689

07/17/10

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**SERVICE LIST**

*Edith Valdez, et al. v. Ford Motor Company, et al.*  
*Los Angeles Superior Court Case No.: BC710322*

Brian D. Chase  
Scott A. Ritsema  
BISNAR | CHASE  
One Newport Place  
1301 Dove Street, Suite 120  
Newport Beach, CA 92660

**PLAINTIFFS COUNSEL**

Telephone: (949) 752-2999  
Fax: (949) 752-2777

Christopher A. Guldjian  
Frank R. Fasel  
GULDJIAN | FASEL  
600 Anton Blvd., Suite 1700  
Costa Mesa, CA 92626

**PLAINTIFFS COUNSEL**

Telephone: (714) 882-5800  
Fax: (714) 882-5810