

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
Fort Myers Division

2014 NOV -7 PM 2:35

U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS, FLORIDA

KAREN JARVIS and MICHAEL JARVIS
on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

BMW OF NORTH AMERICA, LLC.

Defendant.

Civil Action No.

2:14-cv-654-FtM-JEC

**CLASS ACTION COMPLAINT, DEMAND FOR JURY TRIAL, INJUNCTIVE RELIEF
SOUGHT**

Plaintiffs Karen Jarvis and Michael Jarvis ("Plaintiffs"), by and through their attorneys, make the following allegations pursuant to the investigation of their counsel and based upon information and belief, except as to allegations specifically pertaining to themselves and their counsel, which are based on personal knowledge.

NATURE OF THE ACTION

1. This is a class action lawsuit against Defendant BMW of North America, LLC ("BMW") for misrepresenting the fuel economy of 2014 Mini Cooper and Mini Cooper S 3-door automobiles with both semi-automatic and manual transmission (the "Mini Coopers").

2. BMW overstated the fuel economy in miles per gallon ("MPG") of the Mini Coopers in its advertising and promotional materials, including BMW's website and its advertising brochures for the vehicles. In reality, the Mini Coopers get considerably less than the advertised MPG. Thus, Plaintiffs and other Mini Cooper purchasers were hit with a costly double-whammy: a higher up-front purchase price due to the substantial price premium that

more fuel-efficient vehicles command, followed by higher fuel costs over the life of the vehicles, since their actual fuel consumption is higher than what was promised.

3. On October 22, 2014, the United States Environmental Protection Agency (the “EPA”) concluded an investigation into the Mini Coopers’ fuel economy. The EPA found that BMW had overstated the Mini Coopers’ fuel economy in MPG. As a result, the EPA has ordered BMW to restate the fuel economy in MPG for the Mini Coopers. *See* Exhibit A (10/22/14 EPA Press Release). The specific misrepresentations and new requirements are summarized in the table below:

| Model | Transmission | Stated MPG Values | | | Actual MPG Values | | |
|-----------------|--------------|-------------------|------------|---------------|-------------------|------------|---------------|
| | | Combined (MPG) | City (MPG) | Highway (MPG) | Combined (MPG) | City (MPG) | Highway (MPG) |
| Cooper 3-door | MT | 34 | 30 | 42 | 33 | 29 | 40 |
| Cooper 3-door | Semi-Auto | 33 | 29 | 40 | 32 | 28 | 39 |
| Cooper S 3-door | MT | 29 | 25 | 38 | 28 | 24 | 34 |
| Cooper S 3-door | Semi-Auto | 31 | 27 | 38 | 30 | 26 | 35 |

4. This lesser fuel efficiency causes consumers to incur additional fuel costs than what was advertised over the life of the Mini Coopers. For example, in 2012 Hyundai similarly misrepresented the fuel economy of some of its vehicles and ultimately provided consumers

\$89.30 who drove 20,000 miles over the 2012 calendar year and whose vehicle received 1 MPG less fuel economy than stated.¹

BMW's FALSE MARKETING CAMPAIGN

5. BMW's Mini Cooper website prominently featured the Mini Coopers' fuel economy in MPG prior to the EPA order.²

The screenshot displays the BMW Mini Cooper website's 'TRIM LEVELS' section. It compares two models: the Cooper and the Cooper S. The Cooper is shown in a dark color, and the Cooper S is shown in a light color. Both cars are labeled 'MINI HARDTOP'. Below each car, the starting price is listed: \$20,450 for the Cooper and \$24,100 for the Cooper S. The Cooper's description mentions '3 driving modes' and 'TwinPower turbo engine'. The Cooper S' description mentions 'another turbocharged cylinder', 'the thrill of Performance Control', and 'standard 16" wheels'. Fuel economy (MPG) and top speed (MPH) are listed for both models. The Cooper has 42/30/34 MPG and 130 MPH top speed. The Cooper S has 38/25/29 MPG and 146 MPH top speed. A 'BUILD YOURS' button is visible at the bottom of each section.

| Model | Starting Price | MPG (City/Hwy/Comb) | Top Speed (MPH) |
|----------|----------------|---------------------|-----------------|
| COOPER | \$20,450* | 42/30/34 | 130 |
| COOPER S | \$24,100* | 38/25/29 | 146 |

6. These same overstatements were included in other marketing materials, including BMW's television commercials and advertising brochures for the Mini Coopers.

7. The overstatements regarding the Mini Coopers' fuel economy in MPG were made based on testing methods which the EPA found to be incorrect.

¹ <https://hyundaimpinfo.com/customerinfo/compensation-information> (last visited Nov. 6, 2014).

² <https://web.archive.org/web/20140708002736/http://www.miniusa.com/content/miniusa/en/model/hardtop.html> (last visited Nov. 6, 2014).

8. BMW conducted inadequate and inaccurate EPA fuel economy testing on various vehicle models resulting in vehicles whose fuel economy in MPG were less than that produced by the correct federal testing methods. The EPA has found BMW's testing methods were incorrect and produced artificially high fuel economy in MPG. These overstatements are material because the federal testing methods provide an important tool for standardizing vehicle comparison by consumers when evaluating vehicles to lease or purchase. BMW's fuel economy overstatements may also extend to other Mini Cooper models and model years.

9. BMW should have known, or consciously, or recklessly disregarded facts that indicated its fuel economy representations and advertising were erroneous and overstated. Standard internal testing, quality control checks, and investigation should have revealed the problem. BMW willfully and uniformly failed to identify its overstatements. BMW's overstatements in fuel economy in MPG constitute actionable misrepresentations, an unfair, unlawful, fraudulent, and deceptive business practice in violation of Florida's and New Jersey's consumer protection laws, a breach of the express warranty offered by BMW, a breach of the implied warranty of merchantability, unjustly enriched BMW, and constitute negligent misrepresentation and fraud.

10. This action seeks relief for the injuries sustained as the result of BMW's advertising and marketing campaign concerning the Mini Coopers' overstated fuel economy in MPG.

11. Plaintiffs and the Class and Subclass have been damaged by BMW's misrepresentations and false advertising because they were misled into purchasing the Mini Coopers which were of a lesser quality than promised, and are now paying higher fuel costs they would not otherwise have paid.

PARTIES

12. Plaintiffs Karen and Michael Jarvis are Florida residents who reside in Arcadia, Florida. In or about March 2014, Plaintiffs purchased a 2014 Mini Cooper 3-door with a semi-automatic transmission from a Mini Cooper dealer in Fort Myers, Florida for approximately \$27,000. Prior to purchasing their Mini Cooper, Plaintiffs saw BMW's overstated MPG for the model they purchased in Defendant's marketing materials, including on Defendant's website and in Defendant's brochure for the Mini Cooper. Specifically, Plaintiffs saw the representations that the Mini Cooper they bought would get 40 MPG Highway, 29 MPG City, and 33 MPG Combined. In reality, the Mini Cooper they bought gets 39 MPG Highway, 28 MPG City, and 32 MPG Combined. These representations were an important consideration in Plaintiffs' decision to purchase the Mini Cooper. Plaintiffs relied on these representations in deciding to purchase the Mini Cooper, and the representations were part of the basis of the bargain, in that Plaintiffs were misled into purchasing a Mini Cooper of a quality different than they were promised. They also understood that in making the sale, the Mini Cooper dealer was acting with the knowledge and approval of Defendant and/or as the agent of Defendant. They also understood that the purchase involved a direct transaction between themselves and Defendant, because their purchase came with Defendant's representations and warranties that the product did, in fact, receive the stated fuel economy in MPG. As a result of the inaccurate stated fuel economy in MPG and representations, Plaintiffs paid a higher purchase price for the Mini Cooper than they would have paid if accurate fuel economy in MPG had been revealed, and Plaintiffs are incurring higher fuel costs than they otherwise would have.

13. Defendant BMW of North America, LLC ("BMW") is a New Jersey limited liability company with its principal place of business in Woodcliff Lake, New Jersey. Defendant

promotes, markets, distributes, and sells Mini Coopers across the United States, including to thousands of consumers in Florida.

14. Plaintiffs reserve the right to amend this Complaint to add different or additional defendants, including without limitation any officer, director, employee, supplier, or distributor of Defendant who has knowingly and willfully aided, abetted, or conspired in the false and deceptive conduct alleged herein.

JURISDICTION AND VENUE

15. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) because there are more than 100 class members and the aggregate amount in controversy exceeds \$5,000,000.00, exclusive of interest, fees, and costs, and at least one Class member is a citizen of a state different from Defendant. This Court has supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1367.

16. Venue is proper in this District pursuant to 28 U.S.C. §1391 because Defendant does substantial business in this District, and a substantial part of the events giving rise to Plaintiffs' claims took place within this judicial district, including their purchase of a Mini Cooper.

17. All conditions precedent to the bringing of any and all causes of action herein have been satisfied including any notice and opportunity for corrective action requirements. Attached as Exhibit B is a true and correct copy of Plaintiffs' MMWA and Fla. Stat. § 672 notice letter.

CLASS REPRESENTATION ALLEGATIONS

18. Plaintiffs seek to represent a class defined as all persons in the United States who purchased or leased the Mini Coopers (the "Class") and a subclass of all Class members who

purchased or leased the Mini Coopers in Florida (the “Florida Subclass”). Excluded from the Class and the Florida Subclass is any entity in which Defendant has a controlling interest, and officers or directors of Defendant.

19. Members of the Class and Florida Subclass are so numerous that their individual joinder herein is impracticable. On information and belief, members of the Class and Florida Subclass number in the tens of thousands. The precise number of Class members and their identities are unknown to Plaintiffs at this time but may be determined through discovery. Class members may be notified of the pendency of this action by mail and/or publication through the distribution records of Defendant and third party retailers and vendors.

20. Common questions of law and fact exist as to all Class members and predominate over questions affecting only individual Class members. Common legal and factual questions include, but are not limited to, whether Defendant’s labeling, marketing, advertising, and promotion of the Mini Coopers’ fuel economy was false and misleading.

21. The claims of the named Plaintiffs are typical of the claims of the Class in that the named Plaintiffs were exposed to Defendant’s false and misleading marketing and promotional materials, purchased a Mini Cooper, and suffered a loss as a result of that purchase.

22. Plaintiffs are adequate representatives of the Class and Florida Subclass because their interests do not conflict with the interests of the Class members they seek to represent, they have retained competent counsel experienced in prosecuting class actions, and they intend to prosecute this action vigorously. The interests of Class members will be fairly and adequately protected by Plaintiffs and their counsel.

23. The class mechanism is superior to other available means for the fair and efficient adjudication of the claims of Class and Florida Subclass members. Each individual Class

member may lack the resources to undergo the burden and expense of individual prosecution of the complex and extensive litigation necessary to establish Defendant's liability. Individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system presented by the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court on the issue of Defendant's liability. Class treatment of the liability issues will ensure that all claims and claimants are before this Court for consistent adjudication of the liability issues.

COUNT I
(Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq.*)

24. Plaintiffs bring this Count I individually and on behalf of the members of the Class and Florida Subclass against Defendant.

25. The Mini Coopers are "consumer products" as defined in 15 U.S.C. § 2301(1).

26. Plaintiffs and Class members are "consumers" as defined in 15 U.S.C. § 2301(3).

27. Defendant is a "supplier and warrantor" as defined in 15 U.S.C. § 2301(4) and (5).

28. In connection with the sale of Mini Coopers, Defendant issued written warranties in various written marketing and promotional materials, as defined in 15 U.S.C. § 2301(6), by representing the Mini Coopers' overstated fuel economy in MPG.

29. In fact, the Mini Coopers do not conform to these written warranties because they operate with lesser fuel economy than represented.

30. On October 22, 2014, the EPA ordered Defendant to restate the fuel economy in MPG for the Mini Coopers.

31. Plaintiffs Karen and Michael Jarvis purchased a 2014 Mini Cooper 3-door with a semi-automatic transmission from a Mini Cooper dealer in Fort Myers, Florida for approximately \$27,000.

32. Prior to purchasing their Mini Cooper, Plaintiffs saw Defendant's overstated MPG in Defendant's marketing materials, including on Defendant's website and in Defendant's brochure for the Mini Cooper. Specifically, Plaintiffs saw the representations that the Mini Cooper they purchased would get 40 MPG Highway, 29 MPG City, and 33 MPG Combined. In reality, the Mini Cooper gets 39 MPG Highway, 28 MPG City, and 32 MPG Combined. These representations were an important consideration in Plaintiffs' decision to purchase the Mini Cooper.

33. Plaintiffs relied on these representations in deciding to purchase the Mini Cooper, and the representations were part of the basis of the bargain, in that they were misled into purchasing a Mini Cooper which was of a lesser quality than promised.

34. By reason of Defendant's breach of warranties, Defendant violated the statutory rights due Plaintiffs and Class members pursuant to the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq.*, thereby damaging Plaintiffs and Class members.

35. Plaintiffs and Class members were injured as a direct and proximate cause of BMW's breach of warranty. Plaintiffs and members of the Class have been harmed because (a) they would not have purchased the Mini Coopers on the same terms if the true facts concerning their fuel consumption had been known; (b) they paid a price premium due to the overstated MPG values; (c) they have paid and will continue to pay higher fuel costs for as long as they continue to use the Mini Coopers; (d) the resale value of the Mini-Coopers is diminished by the revelation of the actual MPG values.

36. WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, seek judgment against Defendant, as follows:

- A. For an order certifying the nationwide Class and Florida Subclass under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiffs as representatives of the Class and Florida Subclass and Plaintiffs' attorneys as Class Counsel to represent the Class and Subclass members;
- B. For an order declaring the Defendant's conduct violates the statutes referenced herein;
- C. For an order finding in favor of Plaintiffs, the nationwide Class, and the Florida Subclass on the Magnuson-Moss Warranty Count;
- D. For compensatory and punitive damages in amounts to be determined by the Court and/or jury;
- E. For prejudgment interest on all amounts awarded;
- F. For injunctive relief as pleaded or as the Court may deem proper; and
- G. For an order awarding Plaintiffs and the Class and Florida Subclass their reasonable attorneys' fees and expenses and costs of suit.

COUNT II
(Breach Of Express Warranty)

37. Plaintiffs bring this Count II individually and on behalf of the members of the Class and Florida Subclass against Defendant.

38. Defendant, as the designer, manufacturer, marketer, distributor, and/or seller of the Mini Coopers issued written warranties by representing the Mini Coopers' overstated fuel economy in MPG.

39. In fact, the Mini Coopers do not conform to these written warranties because they operate with lesser fuel economy than represented.

40. On October 22, 2014, the EPA ordered Defendant to restate the fuel economy in MPG for the Mini Coopers.

41. Plaintiffs Karen and Michael Jarvis purchased a 2014 Mini Cooper 3-door with a semi-automatic transmission from a Mini Cooper dealer in Fort Myers, Florida for approximately \$27,000.

42. Prior to purchasing their Mini Cooper, Plaintiffs saw Defendant's overstated MPG in Defendant's marketing materials, including on Defendant's website and in Defendant's brochure for the Mini Cooper. Specifically, Plaintiffs saw the representations that the Mini Cooper they purchased would get 40 MPG Highway, 29 MPG City, and 33 MPG Combined. In reality, the Mini Cooper gets 39 MPG Highway, 28 MPG City, and 32 MPG Combined. These representations were an important consideration in Plaintiffs' decision to purchase the Mini Cooper.

43. Plaintiffs relied on these representations in deciding to purchase the Mini Cooper, and the representations were part of the basis of the bargain, in that they were misled into purchasing a Mini Cooper which was of a lesser quality than promised.

44. Plaintiffs and Class members were injured as a direct and proximate cause of BMW's breach of warranty. Plaintiffs and members of the Class have been harmed because (a) they would not have purchased the Mini Coopers on the same terms if the true facts concerning their fuel consumption had been known; (b) they paid a price premium due to the overstated MPG values; (c) they have paid and will continue to pay higher fuel costs for as long as they continue to use the Mini Coopers; (d) the resale value of the Mini-Coopers is diminished by the revelation of the actual MPG values.

45. WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, seek judgment against Defendant, as follows:

- A. For an order certifying the nationwide Class and Florida Subclass under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiffs as

representatives of the Class and Florida Subclass and Plaintiffs' attorneys as Class Counsel to represent the Class and Subclass members;

- B. For an order finding in favor of Plaintiffs, the nationwide Class, and the Florida Subclass on the Breach of Express Warranty Count;
- C. For compensatory and punitive damages in amounts to be determined by the Court and/or jury;
- D. For prejudgment interest on all amounts awarded;
- E. For injunctive relief as pleaded or as the Court may deem proper; and
- F. For an order awarding Plaintiffs and the Class and Florida Subclass their reasonable attorneys' fees and expenses and costs of suit.

COUNT III

(Breach of Implied Warranty of Merchantability)

46. Plaintiffs bring this Count III individually and on behalf of members of the Class and Florida Subclass against Defendant.

47. Defendant, as the designer, manufacturer, marketer, distributor, and/or seller, impliedly warranted that the Mini Coopers received better fuel economy in MPG than they actually did.

48. Defendant breached the warranty implied in the contract for the sale of the Mini Coopers because they could not pass without objection in the trade under the contract description, the goods were not of fair average quality within the description, and the goods were unfit for their intended and ordinary purpose because the Mini Coopers do not receive the fuel economy represented by Defendant. As a result, Plaintiffs and Class members did not receive the goods as impliedly warranted by Defendant to be merchantable.

49. On October 22, 2014, the EPA ordered Defendant to restate the fuel economy in MPG for the Mini Coopers.

50. Plaintiffs Karen and Michael Jarvis purchased a 2014 Mini Cooper 3-door with a semi-automatic transmission from a Mini Cooper dealer in Fort Myers, Florida for approximately \$27,000.

51. Prior to purchasing their Mini Cooper, Plaintiffs saw Defendant's overstated MPG in Defendant's marketing materials, including on Defendant's website and in Defendant's brochure for the Mini Cooper. Specifically, Plaintiffs saw the representations that the Mini Cooper they purchased would get 40 MPG Highway, 29 MPG City, and 33 MPG Combined. In reality, the Mini Cooper gets 39 MPG Highway, 28 MPG City, and 32 MPG Combined. These representations were an important consideration in Plaintiffs' decision to purchase the Mini Cooper.

52. Plaintiffs relied on these representations in deciding to purchase the Mini Cooper, and the representations were part of the basis of the bargain, in that they were misled into purchasing a Mini Cooper which was of a lesser quality than promised.

53. Plaintiffs and Class members purchased the Mini Coopers in reliance upon Defendant's skill and judgment and the implied warranties of fitness for the purpose.

54. The Mini Coopers were not altered by Plaintiffs or Class members.

55. The Mini Coopers were defective when they left the exclusive control of Defendant.

56. Defendant knew that the Mini Coopers would be purchased and used without additional testing by Plaintiffs and Class members.

57. The Mini Coopers were defectively designed and unfair for their intended purpose, and Plaintiffs and Class members did not receive the goods as warranted.

58. Plaintiffs and Class members were injured as a direct and proximate cause of BMW's breach of warranty. Plaintiffs and members of the Class have been harmed because (a) they would not have purchased the Mini Coopers on the same terms if the true facts concerning their fuel consumption had been known; (b) they paid a price premium due to the overstated MPG values; (c) they have paid and will continue to pay higher fuel costs for as long as they continue to use the Mini Coopers; (d) the resale value of the Mini-Coopers is diminished by the revelation of the actual MPG values.

59. WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, seek judgment against Defendant, as follows:

- A. For an order certifying the nationwide Class and Florida Subclass under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiffs as representatives of the Class and Florida Subclass and Plaintiffs' attorneys as Class Counsel to represent the Class and Subclass members;
- B. For an order finding in favor of Plaintiffs, the nationwide Class, and the Florida Subclass on the Breach of Implied Warranty of Merchantability Count;
- C. For compensatory and punitive damages in amounts to be determined by the Court and/or jury;
- D. For prejudgment interest on all amounts awarded;
- E. For injunctive relief as pleaded or as the Court may deem proper; and
- F. For an order awarding Plaintiffs and the Class and Florida Subclass their reasonable attorneys' fees and expenses and costs of suit.

COUNT IV
(Unjust Enrichment)

60. Plaintiffs bring this Count IV individually and on behalf of the members of the Class and Florida Subclass against Defendant.

61. Plaintiffs and Class members conferred benefits on Defendant by purchasing the Mini Coopers.

62. Defendant has knowledge of such benefits.

63. Defendant has been unjustly enriched in retaining the revenues derived from Plaintiffs and Class members' purchases of the Mini Coopers. Retention of those monies under these circumstances is unjust and inequitable because Defendant misrepresented that the Mini Coopers received better fuel economy than they actually did, which caused injuries to Plaintiffs and Class members because they were misled into purchasing the Mini Cooper of a quality different than they were promised.

64. On October 22, 2014, the EPA ordered Defendant to restate the fuel economy in MPG for the Mini Coopers.

65. Plaintiffs Karen and Michael Jarvis purchased a 2014 Mini Cooper 3-door with a semi-automatic transmission from a Mini Cooper dealer in Fort Myers, Florida for approximately \$27,000.

66. Prior to purchasing their Mini Cooper, Plaintiffs saw Defendant's overstated MPG in Defendant's marketing materials, including on Defendant's website and in Defendant's brochure for the Mini Cooper. Specifically, Plaintiffs saw the representations that the Mini Cooper they purchased would get 40 MPG Highway, 29 MPG City, and 33 MPG Combined. In reality, the Mini Cooper gets 39 MPG Highway, 28 MPG City, and 32 MPG Combined. These representations were a major consideration in Plaintiffs' decision to purchase the Mini Cooper.

67. Plaintiffs relied on these representations in deciding to purchase the Mini Cooper, and the representations were part of the basis of the bargain, in that (a) they would not have purchased the Mini Coopers on the same terms if the true facts concerning their fuel

consumption had been known; (b) they paid a price premium due to the overstated MPG values; (c) they have paid and will continue to pay higher fuel costs for as long as they continue to use the Mini Coopers; (d) the resale value of the Mini-Coopers is diminished by the revelation of the actual MPG values.

68. Because Defendant's retention of the non-gratuitous benefits conferred on it by Plaintiffs and Class members is unjust and inequitable, Defendant must pay restitution to Plaintiffs and the Class members for their unjust enrichment, as ordered by the Court.

69. WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, seek judgment against Defendant, as follows:

- A. For an order certifying the nationwide Class and Florida Subclass under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiffs as representatives of the Class and Florida Subclass and Plaintiffs' attorneys as Class Counsel to represent the Class and Subclass members;
- B. For an order finding in favor of Plaintiffs, the nationwide Class, and the Florida Subclass on the Unjust Enrichment Count;
- C. For an order of restitution and all other forms of equitable monetary relief
- D. For prejudgment interest on all amounts awarded;
- E. For injunctive relief as pleaded or as the Court may deem proper; and
- F. For an order awarding Plaintiffs and the Class and Florida Subclass their reasonable attorneys' fees and expenses and costs of suit.

COUNT V

(Florida Deceptive And Unfair Trade Practices Act, Fla. Stat. §§ 501.201, *et seq.*)

70. Plaintiffs bring this Count V on behalf of the members of the Florida Subclass against Defendant.

71. This cause of action is brought pursuant to the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §§ 501.201, *et seq.* ("FDUTPA"). The express purpose of

FDUTPA is to “protect the consuming public...from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.” Fla. Stat. § 501.202(2).

72. Plaintiffs and Subclass members are “consumers” within the meaning of Fla. Stat. § 501.203(7).

73. Defendant was engaged in “trade or commerce” as defined by Fla. Stat. § 501.203(8).

74. The sale of the Mini Coopers constituted “consumer transactions” within the scope of the Fla. Stat. §§ 501.201 to 501.213.

75. Fla. Stat. § 501.204(1) declares unlawful “unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.”

76. Fla. Stat. § 501.204(2) states that “due consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to [section] 5(a)(1) of the Federal Trade Commission Act.” Defendant’s unfair and deceptive practices are likely to mislead – and have misled – the consumer acting reasonably in the circumstances, and violate Fla. Stat. § 501.204 and 21 U.S.C. § 352.

77. Defendant has violated the FDUTPA by engaging in the unfair and deceptive practices, which offend public policies and are immoral, unethical, unscrupulous, and substantially injurious to consumers, by advertising the Mini Coopers’ overstated fuel economy in MPG and by engaging in the trade or commerce of automobiles using these overstatements.

78. On October 22, 2014, the EPA ordered Defendant to restate the fuel economy in MPG for the Mini Coopers.

79. Plaintiffs Karen and Michael Jarvis purchased a 2014 Mini Cooper 3-door with a semi-automatic transmission from a Mini Cooper dealer in Fort Myers, Florida for approximately \$27,000.

80. Prior to purchasing their Mini Cooper, Plaintiffs saw Defendant's overstated MPG in Defendant's marketing materials, including on Defendant's website and in Defendant's brochure for the Mini Cooper. Specifically, Plaintiffs saw the representations that the Mini Cooper they purchased would get 40 MPG Highway, 29 MPG City, and 33 MPG Combined. In reality, the Mini Cooper gets 39 MPG Highway, 28 MPG City, and 32 MPG Combined. These representations were an important consideration in Plaintiffs' decision to purchase the Mini Cooper.

81. Plaintiffs relied on these representations in deciding to purchase the Mini Cooper, and the representations were part of the basis of the bargain, in that they were misled into purchasing a Mini Cooper which was of a lesser quality than promised.

82. Plaintiffs and Class members were injured as a direct and proximate cause of BMW's conduct. Plaintiffs and members of the Class have been harmed because (a) they would not have purchased the Mini Coopers on the same terms if the true facts concerning their fuel consumption had been known; (b) they paid a price premium due to the overstated MPG values; (c) they have paid and will continue to pay higher fuel costs for as long as they continue to use the Mini Coopers; (d) the resale value of the Mini-Coopers is diminished by the revelation of the actual MPG values.

83. The damages suffered by Plaintiffs and the Subclass were directly and proximately caused by the deceptive, misleading, and unfair practices of Defendant.

84. Pursuant to Fla. Stat. § 501.211(1), Plaintiffs and the Subclass seek a declaratory judgment and court order enjoining the above-described wrongful acts and practices of Defendant and for restitution and disgorgement.

85. Additionally, pursuant to Fla. Stat. §§ 501.211(2) and 501.2105, Plaintiffs and the Subclass make claims for damages and attorneys' fees and costs.

86. WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, seek judgment against Defendant, as follows:

- A. For an order certifying the Florida Subclass under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiffs as representatives of the Florida Subclass and Plaintiffs' attorneys as Class Counsel to represent the Subclass members;
- B. For an order declaring the Defendant's conduct violates the statutes referenced herein;
- C. For an order finding in favor of Plaintiffs and the Florida Subclass on the Florida Deceptive And Unfair Trade Practices Count;
- D. For compensatory and punitive damages in amounts to be determined by the Court and/or jury;
- E. For prejudgment interest on all amounts awarded;
- F. For injunctive relief as pleaded or as the Court may deem proper; and
- G. For an order awarding Plaintiffs and the Florida Subclass their reasonable attorneys' fees and expenses and costs of suit.

COUNT VI

(Violation Of The New Jersey Consumer Fraud Act, N.J.S.A. §§ 56:8-1, *et seq.*)

87. Plaintiffs bring this Count VI individually and on behalf of members of the Class.

88. Defendant made misrepresentations about the Mini Coopers to consumers, including but not limited to, the representation that the Mini Coopers received better fuel economy than they actually did.

89. Defendant engaged in an unconscionable commercial conduct because the Mini Coopers do not receive the fuel economy Defendant represented they did.

90. On October 22, 2014, the EPA ordered Defendant to restate the fuel economy in MPG for the Mini Coopers.

91. Plaintiffs Karen and Michael Jarvis purchased a 2014 Mini Cooper 3-door with a semi-automatic transmission from a Mini Cooper dealer in Fort Myers, Florida for approximately \$27,000.

92. Prior to purchasing their Mini Cooper, Plaintiffs saw Defendant's overstated MPG in Defendant's marketing materials, including on Defendant's website and in Defendant's brochure for the Mini Cooper. Specifically, Plaintiffs saw the representations that the Mini Cooper they purchased would get 40 MPG Highway, 29 MPG City, and 33 MPG Combined. In reality, the Mini Cooper gets 39 MPG Highway, 28 MPG City, and 32 MPG Combined. These representations were an important consideration in Plaintiffs' decision to purchase the Mini Cooper.

93. Plaintiffs relied on these representations in deciding to purchase the Mini Cooper, and the representations were part of the basis of the bargain, in that were misled into purchasing a Mini Cooper which was of a lesser quality than promised.

94. Plaintiffs and Class members were injured as a direct and proximate cause of BMW's conduct. Plaintiffs and members of the Class have been harmed because (a) they would not have purchased the Mini Coopers on the same terms if the true facts concerning their fuel consumption had been known; (b) they paid a price premium due to the overstated MPG values; (c) they have paid and will continue to pay higher fuel costs for as long as they continue to use

the Mini Coopers; (d) the resale value of the Mini-Coopers is diminished by the revelation of the actual MPG values.

95. Defendant's dissemination of these misrepresentations in order to sell more of its product were actuated by actual malice and/or accompanied by a wanton and willful disregard of harm to Plaintiffs and members of the Class.

96. WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, seek judgment against Defendant, as follows:

- A. For an order certifying the nationwide Class and Florida Subclass under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiffs as representatives of the Class and Florida Subclass and Plaintiffs' attorneys as Class Counsel to represent the Class and Subclass members;
- B. For an order declaring the Defendant's conduct violates the statutes referenced herein;
- C. For an order finding in favor of Plaintiffs, the nationwide Class, and the Florida Subclass on the New Jersey Consumer Fraud Act Count;
- D. For statutory, compensatory, and punitive damages in amounts to be determined by the Court and/or jury;
- E. For prejudgment interest on all amounts awarded;
- F. For injunctive relief as pleaded or as the Court may deem proper; and
- G. For an order awarding Plaintiffs and the Class and Florida Subclass their reasonable attorneys' fees and expenses and costs of suit.

COUNT VII
(Negligent Misrepresentation)

97. Plaintiffs bring this Count VII individually and on behalf of members of the Class and Florida Subclass against Defendant.

98. Defendant misrepresented that the Mini Coopers received better fuel economy than they actually did. Defendant had a duty to accurately disclose this information under federal law. *See* 40 C.F.R. § 600.301.

99. At the time Defendant made these representations, Defendant knew or should have known that these representations were false or made them without knowledge of their truth or veracity.

100. At an absolute minimum, Defendant negligently misrepresented and/or negligently omitted material facts about the Mini Coopers.

101. The negligent misrepresentations and omissions made by Defendant, upon which Plaintiffs and Class members reasonably and justifiably relied, were intended to induce and actually did induce Plaintiffs and Class members to purchase the Mini Coopers.

102. On October 22, 2014, the EPA ordered Defendant to restate the fuel economy in MPG for the Mini Coopers.

103. Plaintiffs Karen and Michael Jarvis purchased a 2014 Mini Cooper 3-door with a semi-automatic transmission from a Mini Cooper dealer in Fort Myers, Florida for approximately \$27,000.

104. Prior to purchasing their Mini Cooper, Plaintiffs saw Defendant's overstated MPG in Defendant's marketing materials, including on Defendant's website and in Defendant's brochure for the Mini Cooper. Specifically, Plaintiffs saw the representations that the Mini Cooper they purchased would get 40 MPG Highway, 29 MPG City, and 33 MPG Combined. In reality, the Mini Cooper gets 39 MPG Highway, 28 MPG City, and 32 MPG Combined. These representations were an important consideration in Plaintiffs' decision to purchase the Mini Cooper.

105. Plaintiffs relied on these representations in deciding to purchase the Mini Cooper, and the representations were part of the basis of the bargain, in that (a) they would not have purchased the Mini Coopers on the same terms if the true facts concerning their fuel consumption had been known; (b) they paid a price premium due to the overstated MPG values; (c) they have paid and will continue to pay higher fuel costs for as long as they continue to use the Mini Coopers; (d) the resale value of the Mini-Coopers is diminished by the revelation of the actual MPG values.

106. The negligent actions of Defendant caused damage to Plaintiffs and Class members, who are entitled to damages and other legal and equitable relief as a result.

107. WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, seek judgment against Defendant, as follows:

- A. For an order certifying the nationwide Class and Florida Subclass under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiffs as representatives of the Class and Florida Subclass and Plaintiffs' attorneys as Class Counsel to represent the Class and Subclass members;
- B. For an order finding in favor of Plaintiffs, the nationwide Class, and the Florida Subclass on the Negligent Misrepresentation Count;
- C. For compensatory and punitive damages in amounts to be determined by the Court and/or jury;
- D. For prejudgment interest on all amounts awarded;
- E. For injunctive relief as pleaded or as the Court may deem proper; and
- F. For an order awarding Plaintiffs and the Class and Florida Subclass their reasonable attorneys' fees and expenses and costs of suit.

COUNT VIII
(Fraud)

108. Plaintiffs bring this Count VIII individually and on behalf of members of the Class and Florida Subclass against Defendant.

109. Defendant provided Plaintiffs and Class members with false or misleading information and failed to disclose material facts about the Mini Coopers, including but not limited to the fact that it did not receive the fuel economy that was represented. These misrepresentations and omissions were made with knowledge of their falsehood.

110. The misrepresentations and omissions made by Defendant, upon which Plaintiffs and the Class reasonably and justifiably relied, were intended to induce and actually induced Plaintiffs and Class members to purchase the Mini Coopers.

111. On October 22, 2014, the EPA ordered Defendant to restate the fuel economy in MPG for the Mini Coopers for approximately \$27,000.

112. Plaintiffs Karen and Michael Jarvis purchased a 2014 Mini Cooper 3-door with a semi-automatic transmission from a Mini Cooper dealer in Fort Myers, Florida.

113. Prior to purchasing their Mini Cooper, Plaintiffs saw Defendant's overstated MPG in Defendant's marketing materials, including on Defendant's website and in Defendant's brochure for the Mini Cooper. Specifically, Plaintiffs saw the representations that the Mini Cooper they purchased would get 40 MPG Highway, 29 MPG City, and 33 MPG Combined. In reality, the Mini Cooper gets 39 MPG Highway, 28 MPG City, and 32 MPG Combined. These representations were an important consideration in Plaintiffs' decision to purchase the Mini Cooper.

114. Plaintiffs relied on these representations in deciding to purchase the Mini Cooper, and the representations were part of the basis of the bargain, in that (a) they would not have purchased the Mini Coopers on the same terms if the true facts concerning their fuel consumption had been known; (b) they paid a price premium due to the overstated MPG values; (c) they have paid and will continue to pay higher fuel costs for as long as they continue to use

the Mini Coopers; (d) the resale value of the Mini-Coopers is diminished by the revelation of the actual MPG values.

115. The fraudulent actions of Defendant caused damage to Plaintiffs and Class members who are entitled to damages and other legal and equitable relief as a result.

116. WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, seek judgment against Defendant, as follows:

- A. For an order certifying the nationwide Class and Florida Subclass under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiffs as representatives of the Class and Florida Subclass and Plaintiffs' attorneys as Class Counsel to represent the Class and Subclass members;
- B. For an order finding in favor of Plaintiffs, the nationwide Class, and the Florida Subclass on all counts asserted herein;
- C. For compensatory and punitive damages in amounts to be determined by the Court and/or jury;
- D. For prejudgment interest on all amounts awarded;
- E. For injunctive relief as pleaded or as the Court may deem proper; and
- F. For an order awarding Plaintiffs and the Class and Florida Subclass their reasonable attorneys' fees and expenses and costs of suit.

DEMAND FOR TRIAL BY JURY

Plaintiffs demand a trial by jury of all issues so triable.

Dated: November 7, 2014

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott A. Bursor", is written over a horizontal line.

Scott A. Bursor (State Bar No. 68362)

BURSOR & FISHER, P.A.

888 Seventh Avenue

New York, NY 10019

Telephone: (212) 989-9113

Email: scott@bursor.com

EXHIBIT A



Newsroom 2014 News Releases

EPA Requiring BMW to Correct Fuel Economy Labels for Four Mini Cooper Vehicles

Release Date: 10/22/2014

Contact Information: Christie St. Clair, stclair.christie@epa.gov, (202) 564-2880

FOR IMMEDIATE RELEASE

Oct. 22, 2014

EPA Requiring BMW to Correct Fuel Economy Labels for Four Mini Cooper Vehicles

Washington — The U.S. Environmental Protection Agency (EPA) is revising estimates for four 2014 BMW Mini Cooper vehicles to ensure consumers are given accurate fuel economy values.

The EPA performed a fuel economy audit on the BMW Mini Cooper and obtained values that differed from those BMW submitted to EPA for certification. With EPA oversight, BMW conducted new emissions and fuel economy testing, and EPA conducted its own testing at its National Vehicle and Fuel Emissions Laboratory in Ann Arbor, Michigan. As a result of this subsequent testing, EPA is requiring BMW to relabel four of its 2014 Mini Cooper models with lower fuel economy values.

The specific changes to fuel economy stickers are listed in the table below.

2014 BMW Mini Cooper Fuel Economy Value Updates

| Model | Transmission | Old Label Values | | | New Label Values | | |
|-----------------|--------------|------------------|------------|---------------|------------------|------------|---------------|
| | | Combined (mpg) | City (mpg) | Highway (mpg) | Combined (mpg) | City (mpg) | Highway (mpg) |
| Cooper 3-door | MT | 34 | 30 | 42 | 33 | 29 | 40 |
| Cooper 3-door | Semi-Auto | 33 | 29 | 40 | 32 | 28 | 39 |
| Cooper S 3-door | MT | 29 | 25 | 38 | 28 | 24 | 34 |
| Cooper S 3-door | Semi-Auto | 31 | 27 | 38 | 30 | 26 | 35 |

"Fuel economy values matter to consumers and automakers," said Christopher Grundler, director of EPA's Office of Transportation and Air Quality. "To provide consumers with the most accurate, reliable and repeatable fuel economy values, we are continuing to strengthen our oversight to ensure fair competition among automakers."

EPA's National Vehicle and Fuel Emissions Laboratory conducts fuel economy testing on vehicles each year to ensure that

their performance matches the mileage and emissions data automakers submit to EPA. These audits are part of the oversight program that helps ensure all carmakers are following the same procedures for calculating mileage estimates. The oversight program also helps the EPA verify that vehicles on the road meet national tailpipe emission standards to protect public health and the environment.

More information on today's update: www.epa.gov/fueleconomy/updates.htm

Updated fuel economy values are also available on the joint EPA and the Department of Energy website:
www.fueleconomy.gov.

Receive our News Releases Automatically by Email

Last updated on 11/7/2014

EXHIBIT B

BURSOR FISHER

P.A.

888 SEVENTH AVENUE
NEW YORK, NY 10019
www.bursor.com

SCOTT A. BURSOR
Tel: 212.989.9113
Fax: 212.989.9163
scott@bursor.com

October 31, 2014

Via Certified Mail – Return Receipt Requested

BMW of North America, LLC
300 Chestnut Ridge Road
Woodcliff Lake, NJ 07677

Re: Violation of Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, et seq.; Violation of Fla. Stat. § 672.607 et seq.; and all other applicable laws

To Whom It May Concern:

This letter serves as a preliminary notice and demand for corrective action by BMW North America, LLC (“BMW”), arising from breaches of warranty under the Magnuson-Moss Warranty Act on behalf of our clients, Karen and Michael Jarvis, and a class of all similarly situated purchasers of 2014 Mini Cooper and Mini Cooper S 3-doors (the “Mini Coopers”) in both manual and semi-automatic transmission (the “Class”). This letter also serves as notice pursuant to Fla. Stat. § 672.607(3)(a) concerning the breaches of express and implied warranties described herein.

You have participated in the manufacture, marketing, and sale of 2014 Mini Cooper and Mini Cooper S 3-doors in both manual and semi-automatic transmission. The Mini Coopers have been inaccurately marketed as receiving more miles per gallon (“mpg”) than is factually accurate.

In fact, the United States Environmental Protection Agency (“EPA”) recently performed a fuel economy audit on the Mini Coopers, and concluded the labeling claims made by BMW, with respect to mpg, were inaccurate. EPA has required BMW to restate the mileage estimates. The specific misrepresentations and new requirements are summarized in the table below:

| Model | Transmission | Old Label Values | | | New Label Values | | |
|-----------------|--------------|------------------|------------|---------------|------------------|------------|---------------|
| | | Combined (mpg) | City (mpg) | Highway (mpg) | Combined (mpg) | City (mpg) | Highway (mpg) |
| Cooper 3-door | MT | 34 | 30 | 42 | 33 | 29 | 40 |
| Cooper 3-door | Semi-Auto | 33 | 29 | 40 | 32 | 28 | 39 |
| Cooper S 3-door | MT | 29 | 25 | 38 | 28 | 24 | 34 |
| Cooper S 3-door | Semi-Auto | 31 | 27 | 38 | 30 | 26 | 35 |

Mr. and Mrs. Jarvis purchased a 2014 Mini Cooper 3-door with a semi-automatic transmission in Florida based on BMW's mpg representations. BMW expressly represented to Mr. and Mrs. Jarvis that the Mini Cooper model received 40 highway mpg, 29 city mpg, and 33 combined mpg. BMW breached that express warranty because the Mini Cooper model actually received 39 highway mpg, 28 city mpg, and 32 combined mpg. *See* Fla. Stat. § 672.607. Indeed, as discussed above, the EPA has demanded BMW restate the mileage estimates accordingly.

BMW's conduct is also a deceptive business practice under the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. § 2301 *et seq.* and the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 *et seq.*

Mr. and Mrs. Jarvis are acting on behalf of a class defined as all persons in the United States who purchased the Mini Cooper, and a subclass of class members who purchased the Mini Cooper in the state of Florida (the "Florida Subclass").

To cure these defects, we demand that you (1) cease and desist from further sales of mislabeled Mini Coopers; (2) issue an immediate recall of mislabeled Mini Coopers; and (3) make full restitution to all purchasers of Mini Coopers.

We further demand that you preserve all documents and other evidence which refer or relate to any of the above-described practices including, but not limited to, the following:

1. All documents concerning the design, development, supply, production, extraction, and/or testing of Mini Coopers;
2. All documents concerning the advertisement, marketing, or sale of Mini Coopers;
3. All documents concerning communications with any retailer involved in the marketing or sale of Mini Coopers;
4. All documents concerning communications with purchasers of Mini Coopers
5. All documents concerning internal and EPA mpg testing;
6. All documents concerning communications with EPA; and
7. All documents concerning the total revenue derived from sales of Mini Coopers in the United States, Florida, and New Jersey.

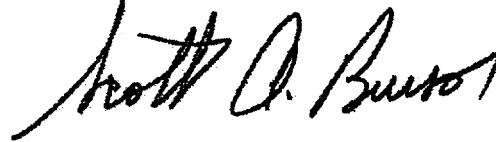
If you contend that any statement in this letter is inaccurate in any respect, please provide us with your contentions and supporting documents promptly.

Please contact me right away if you wish to discuss an appropriate way to remedy this matter. If I do not hear from you promptly, I will take that as an indication that you are not interested in doing so.

BURSOR & FISHER
P.A.

PAGE 3

Very truly yours,

A handwritten signature in black ink, appearing to read "Scott A. Bursor". The signature is fluid and cursive, with the first name "Scott" being more prominent.

Scott A. Bursor

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Karen Jarvis and Michael Jarvis, individually and on behalf of all others similarly situated,

(b) County of Residence of First Listed Plaintiff Lee County

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Bursor & Fisher, P.A., 888 Seventh Avenue, New York, NY 10019
212-989-9113

DEFENDANTS

BMW of North America, LLC,

County of Residence of First Listed Defendant Bergen County

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES | |
|---|--|---|--|---|--|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice | PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) | <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes |
| REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education | PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement | IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions | FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | |

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332(d)

Brief description of cause:
False and misleading advertising

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
5,000,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE
11/07/2014

SIGNATURE OF ATTORNEY OF RECORD

Scott A. Bursor

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____