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13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA

17 JASON GAINES,  
18 Plaintiff, and on behalf of all  
others similarly-situated,  
19 v.  
20 FIAT CHRYSLER AUTOMOBILES N.V. and  
21 FCA US LLC,  
22 Defendants.

Case No.  
CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

23 **I. INTRODUCTION**

24 Plaintiff Jason Gaines (“Plaintiff”), individually and on behalf of all others similarly situated  
25 (“Class members”), alleges the following against Fiat Chrysler Automobiles N.V. (“FCA NV.”) and  
26 FCA US LLC (“FCA US”) (collectively, “Defendants”), based where applicable on personal  
27 knowledge, information and belief, and the investigation of counsel.  
28

1 **II. NATURE OF THE ACTION**

2 1. This nationwide class action concerns the intentional installation of so-called defeat  
3 devices on an estimated 104,000 diesel Dodge and Jeep vehicles sold in the United States since 2014  
4 (“Defeat Device Vehicles”). Defendants marketed those vehicles as environmentally friendly vehicles  
5 that possessed better fuel efficiency, better performance, and lower emissions. Although Defendants  
6 successfully marketed these expensive cars as “clean,” their environmentally-friendly representations  
7 were a sham. Defendants did not actually make cars with those desirable and advertised attributes.

8 2. According to the U.S. Environmental Protection Agency (“EPA”), Defendants installed  
9 their “defeat device” in at least their 3.0-liter EcoDiesel-powered 2014-2016 Dodge RAM 1500 pickup  
10 trucks and 2014-2016 Jeep Grand Cherokee sport utility vehicles.

11 3. Instead of delivering on their promise of superior fuel economy coupled with low  
12 emissions, Defendants devised a way to make it appear that their cars did what they said they would  
13 when, in fact, they did not.

14 4. The defeat devices Defendants designed and installed work by switching on the full  
15 emissions control systems in Defendants’ cars only when the car is undergoing periodic emissions  
16 testing. The technology needed to control emissions from Defendants’ cars to meet state and federal  
17 emissions regulations, reduces their performance, limiting acceleration, torque, and fuel efficiency.

18 5. To hide this, the defeat device simply shuts off most of the emissions control systems in  
19 the car once the car has completed its emissions test. While that might have made the car more fun to  
20 drive, it resulted in Defendants’ cars sending excess NOx emissions into the environment than is  
21 allowed under the Clean Air Act and state regulations.

22 6. Those violations are explained in a Notice of Violation the EPA issued to Defendants.

23 **III. PARTIES**

24 Plaintiff Jason Gaines is an adult resident of Minneapolis, Minnesota, located in Hennepin  
25 County.

26 7. Fiat Chrysler Automobiles N.V., a Dutch corporation headquartered in London, United  
27 Kingdom, is an international automotive group engaged in designing, engineering, manufacturing,  
28 distributing, and selling vehicles, components, and production systems. FCA N.V. vehicles are

1 produced for mass market under the Abarth, Alfa Romeo, Chrysler, Dodge, Fiat, Fiat Professional,  
2 Jeep, Lancia, and RAM brands and the SRT performance vehicle designation.

3 8. FCA N.V. sells vehicles in the United States through its subsidiary FCA US LLC.

4 9. FCA US LLC is a corporation doing business in every U.S. state and the District of  
5 Columbia, and is organized under the laws of Delaware, with its principal place of business at 1000  
6 Chrysler Drive, Auburn Hills, Michigan 48326. FCA US is therefore a citizen of Delaware and  
7 Michigan. *See* 28 U.S.C. § 1332(d)(10).

8 10. At all relevant times, FCA US manufactured, distributed, sold, leased, and warranted the  
9 Defeat Device Vehicles under the Dodge and Jeep brand names throughout the United States. FCA US  
10 and/or its agents designed the EcoDiesel engines and engine control systems in the Defeat Device  
11 Vehicles, including the “defeat device.” FCA US also developed and disseminated the owners’ manuals  
12 and warranty booklets, advertisements, and other promotional materials relating to the Defeat Device  
13 Vehicles.

14 **IV. ANY OTHERWISE-APPLICABLE STATUTES OF LIMITATION ARE TOLLED**

15 11. The tolling doctrine was made for cases of concealment like this one. For the following  
16 reasons, any otherwise-applicable statutes of limitation have been tolled by the discovery rule with  
17 respect to all claims.

18 12. Through the exercise of reasonable diligence, and within any applicable statutes of  
19 limitation, Plaintiff and members of the proposed Class could not have discovered that Defendants were  
20 concealing and misrepresenting the true emissions levels of their vehicles, including but not limited to  
21 their use of defeat devices.

22 13. As reported on January 12, 2017, the U.S. Environmental Protection Agency determined  
23 that Defendants failed to disclose eight (8) Auxiliary Emission Control Devices (AECs) in  
24 approximately 103,828 vehicles. Due to the eight (8) undisclosed AECs, the vehicles did not conform  
25 to the vehicles’ specifications described in the applications for the respective vehicles’ certificates for  
26 conformity (COCs). Therefore, Defendants violated section 203(a)(1) of the Clean Air act, 42 U.S.C.  
27 §7522(a)(1).  
28

1           14.     The EPA determined that one or more of these eight AECDs resulted in excess NO<sub>x</sub>  
2 emissions than may reasonably be expected under normal vehicle operation. Despite being aware that  
3 the disclosure of these AECDs was required, Defendants did not disclose these AECDs to the EPA in  
4 their applications for COCs. Thus, Defendants' deception with respect to their EcoDiesel engines,  
5 engine control systems, and "defeat devices" was painstakingly concealed from consumers and  
6 regulators alike.

7           15.     Plaintiff and the other Class members could not reasonably discover, and did not know of  
8 facts that would have caused a reasonable person to suspect, that Defendants intentionally failed to  
9 report information within their knowledge to federal and state authorities, their dealerships, or  
10 consumers.

11           16.     Likewise, a reasonable and diligent investigation could not have disclosed that  
12 Defendants had information in their sole possession about the existence of their sophisticated emissions  
13 deception and that they concealed that information, which was discovered by Plaintiff immediately  
14 before this action was filed. Plaintiff and other Class members could not have previously learned that  
15 Defendants valued profits over compliance with applicable federal and state emissions and consumer  
16 law.

17           17.     Throughout the relevant time period, all applicable statutes of limitation have been tolled  
18 by Defendants' knowing and active fraudulent concealment and denial of the facts alleged in this  
19 Complaint.

20           18.     Instead of disclosing their emissions deception, or that the emissions from the Defeat  
21 Device Vehicles were far worse than represented, Defendants falsely represented that their vehicles  
22 complied with federal and state emissions standards, and that they were a reputable manufacturer  
23 whose representations could be trusted.

24           19.     Defendants were under a continuous duty to disclose to Plaintiff and the other Class  
25 members the facts that they knew about the emissions from Defeat Device Vehicles, and of those  
26 vehicles' failure to comply with federal and state laws.

27           20.     Although they had the duty throughout the relevant period to disclose to Plaintiff and  
28 Class members that they had engaged in the deception described in this Complaint, Defendants chose

1 to evade federal and state emissions and clean air standards with respect to the Defeat Device Vehicles,  
2 and they intentionally misrepresented their blatant and deceptive lack of compliance with state law  
3 regulating vehicle emissions and clean air.

4 21. Thus, Defendants are estopped from relying on any statutes of limitations in defense of  
5 this action.

## 6 **V. JURISDICTION AND VENUE**

7 22. This Court has jurisdiction over this action under the Class Action Fairness Act, 28  
8 U.S.C. § 1332(d). There are at least 100 members in the proposed class, the aggregated claims of the  
9 individual class members exceed the sum or value of \$5,000,000, exclusive of interests and costs, and  
10 this is a class action in which the Defendants are citizens of different jurisdictions from members of the  
11 proposed class, including Plaintiff.

12 23. This Court has personal jurisdiction over Defendants because they conduct business in  
13 California, and have sufficient minimum contacts with California.

14 24. Venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial part of  
15 the events or omissions giving rise to the claims occurred and/or emanated from this District, and  
16 because Defendants have caused harm to Class members residing in this District.

## 17 **VI. FACTS GIVING RISE TO CLAIMS FOR RELIEF**

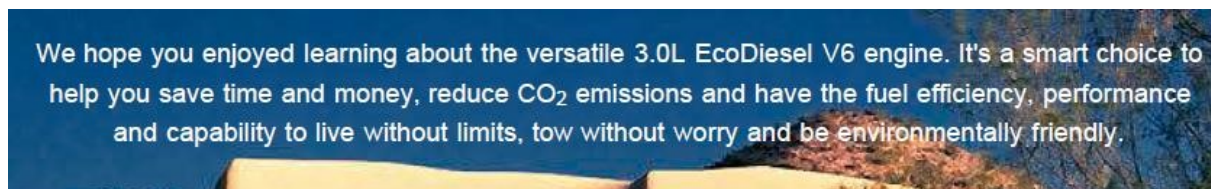
18 25. Defendants intentionally designed and sold cars that misled consumers and regulators  
19 about the amount of pollution those cars created and the fuel efficiency they produced. Despite touting  
20 themselves as an environmentally conscientious company that produced thoughtful cars for people who  
21 cared about the environment, Defendants sold expensive cars that produced pollution at orders of a  
22 magnitude above federal and state regulations, and then intentionally and knowingly hid the truth about  
23 those cars.

### 24 **A. Defendants Tout their Diesel Vehicles as Being Fuel Efficient and Good for the 25 Environment**

26 26. For years, Defendants advertised their diesel vehicles as low-emission, fuel-efficient  
27 vehicles. Indeed, this marketing message is at the core of their image in the United States.  
28



27. Defendants’ success is based in large part on promoting their diesel cars as “clean” and “environmentally friendly” vehicles. Indeed, being both highly efficient and “clean” are the centerpieces of Defendants’ diesel engine marketing campaign. “EcoDiesel” is in the very name of the vehicles about which Defendants lied.<sup>1</sup>



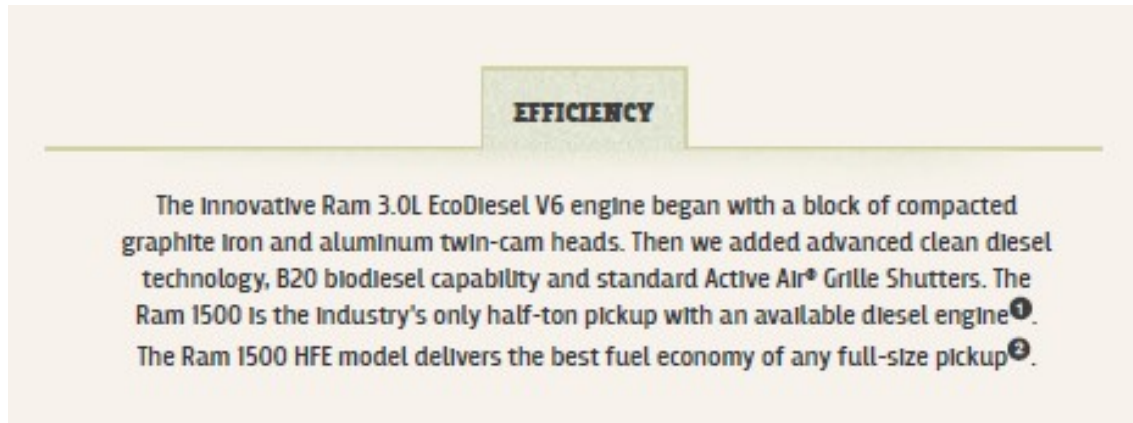
29. Defendants’ apparent concern for the environment is evident beyond just the model names and purported attributes of their vehicles. For example, on the “Savings” page of their website, Defendants state “Did we mention low CO<sub>2</sub> emissions? Could this be the perfect engine?”<sup>2</sup>



<sup>1</sup> <http://www.jeep.com/en/jeep-capabilities/eco-diesel-calculator/#introduction> (last accessed Feb. 15, 2017); <http://www.ramtrucks.com/en/ecodiesel/> (last accessed Feb. 15, 2017).

<sup>2</sup> <http://www.jeep.com/en/jeep-capabilities/eco-diesel-calculator/#savings> (last accessed Feb. 15, 2017).

1           30.       Unfortunately for consumers who bought Defendants' cars and for people who breathe  
2 the air into which Defendants' cars emit excessive amounts of pollutants, Defendants' engineering was  
3 far from "truthful." Defendants have designed and sold cars that emit pollutants, failing state and  
4 federal environmental regulations.



13           **B. Defendants Intentionally Hid the Excessive and Illegal Levels of Pollution Emitted**  
14           **from Their Cars.**

15           31.       Contrary to Defendants' self-promotion as a "clean" company, their diesel vehicles are  
16 unhealthy and unlawful.

17           32.       On January 12, 2017, the EPA issued a Notice of Violation ("NOV"). The NOV explains  
18 that Defendants have installed sophisticated software in the Jeep and Dodge diesel vehicles sold by  
19 Defendants in the United States that reduces the effectiveness of the vehicles' emission control system  
20 that exist to comply with the CAA emission standards. This software produced and used by Defendants  
21 may be a "defeat device" as defined by the Clean Air Act.

22           33.       According to the EPA, Defendants failed to disclose eight (8) Auxiliary Emission Control  
23 Devices ("AECs") in approximately 103,828 vehicles. Due the eight (8) undisclosed AECs, the  
24 vehicles did not conform to the vehicles specifications described in the applications for the respective  
25 vehicles' certificates for conformity (COCs). Therefore, Defendants violated section 203(a)(1) of the  
26 Clean Air act, 42 U.S.C. §7522(a)(1).

27           34.       The EPA determined that one or more of these eight AECs, alone or in combination,  
28 resulted in excess NOx emissions than may reasonably be expected under normal vehicle operation.

1 Despite being aware that the disclosure of these AECDs was required, Defendants did not disclose  
2 these AECDs to the EPA in their applications for COCs. Thus, Defendants' deception with respect to  
3 their EcoDiesel engines, engine control systems, and "defeat devices" was painstakingly concealed  
4 from consumers and regulators alike.

5 35. The EPA NOV states:

6 To date, despite having the opportunity to do so, [Defendants have] failed to  
7 demonstrate that [they] did not know, or should not have known, that a principal  
8 effect of one of more of these AECDs was to bypass, defeat, or render inoperative  
9 one or more elements of design installed to comply with emissions standards  
under the CAA.

10 36. Most modern engines, including Defendants' "EcoDiesel" engines, use computerized  
11 engine control systems to monitor sensors throughout a car's engine and exhaust systems and control  
12 operation of the car's systems to ensure optimal performance and efficiency.

13 37. These engine control computers also receive data from sensors in the car's exhaust  
14 system that measure the amounts of chemical substances included in the car's exhaust. That data  
15 provides a measure of the engine's operation and efficiency, and is thus used by the engine control  
16 computer in operating the car's systems to ensure the desired performance and efficiency.

17 38. Defendants programmed the engine control computers in the Defeat Device Vehicles  
18 with software that detects when the cars are undergoing emissions testing, and then operates the car's  
19 engine and exhaust systems to ensure that emissions comply with EPA pollutant standards. When the  
20 car is not being emissions tested—that is, under the vast majority of operating conditions—the engine  
21 control systems operate the vehicle in a manner that does not comply with EPA emissions requirements.

22 39. In short, this software allows Defendants' diesel vehicles to meet emissions standards in  
23 labs or state testing stations, while permitting the vehicles to emit nitrogen oxides (NO<sub>x</sub>) in excess of  
24 United States laws and regulations during the normal operation of the vehicles.

25 40. NO<sub>x</sub> pollution contributes to nitrogen dioxide, ground-level ozone, and fine particulate  
26 matter. Exposure to these pollutants has been linked with serious health dangers, including asthma  
27 attacks and other respiratory illness serious enough to send people to the hospital. Ozone and  
28 particulate matter exposure have been associated with premature death due to respiratory-related or



1 cardiovascular-related effects. Children, the elderly, and people with preexisting respiratory illness are  
2 at an acute risk of health effects from these pollutants.

3 41. The Clean Air Act has strict emissions standards for vehicles and it requires vehicle  
4 manufacturers to certify to the EPA that the vehicles sold in the United States meet applicable federal  
5 emissions standards to control air pollution. Every vehicle sold in the United States must be covered by  
6 an EPA-issued certificate of conformity. Under federal law, cars equipped with defeat devices, which  
7 reduce the effectiveness of emissions control systems during normal driving conditions, cannot be  
8 certified. By manufacturing and selling cars with defeat devices that allowed for higher levels of  
9 emissions than were certified to the EPA, FCA US violated the Clean Air Act, defrauded its customers,  
10 and engaged in unfair competition under state and federal laws.

11 **C. FCA US's Illegal Actions Have Caused Class Members Significant Harm.**

12 42. Purchasers of the Defeat Device Vehicles have and will continue to suffer significant  
13 harm. First, FCA US will not be able to make the Defeat Device Vehicles comply with emissions  
14 standards without substantially degrading their performance characteristics, including their horsepower  
15 and their efficiency. As a result, even if Defendants are able to make Class members' Defeat Device  
16 Vehicles EPA compliant, Class members will nonetheless suffer actual harm and damages because their  
17 vehicles will no longer perform as they did when purchased and as advertised.

18 43. Second, this will necessarily result in a diminution in value of every Defeat Device  
19 Vehicle. Not only did Class members pay too much for cars now worth substantially less, but they will  
20 end up paying more to fuel their less efficient cars over the years they own their vehicles.

21 44. As a result of FCA US's unfair, deceptive, and/or fraudulent business practices, and its  
22 failure to disclose that under normal operating conditions the Defeat Device Vehicles emit excess  
23 emissions levels, owners and/or lessees of the Defeat Device Vehicles have suffered losses in money  
24 and/or property.

25 45. Had Plaintiff and Class members known of the "defeat device" at the time they  
26 purchased or leased their Defeat Device Vehicles, they would not have purchased or leased those  
27 vehicles, or would have paid substantially less for the vehicles than they did. Moreover, when and if  
28 Defendants recall the Defeat Device Vehicles and degrade the EcoDiesel engine performance in order to

1 make the Defeat Device Vehicles compliant with EPA standards, Plaintiff and Class members will be  
2 required to spend more on fuel and will not benefit from the performance qualities of their vehicles as  
3 advertised. Moreover, Defeat Device Vehicles will necessarily be worth less in the used marketplace  
4 because of their decrease in performance and efficiency, which means that owners of Defeat Device  
5 Vehicles will not be able to recoup nearly as much value in the future.

6 46. Defendants' deliberate strategy to value profit over the truth, human health, and the  
7 environment, has caused serious harm to consumers nationwide.

## 8 VII. PLAINTIFF'S FACTS

9 47. Plaintiff Jason Gaines purchased a 2015 Jeep Grand Cherokee equipped with the  
10 EcoDiesel engine. The purchase was made at Park Chrysler Jeep in Burnsville, Minnesota. Plaintiff  
11 Jason Gaines would not have paid a premium for his Jeep Grand Cherokee if he had known the truth  
12 about its fuel efficiency and emissions, and he would not have purchased its Jeep Grand Cherokee if he  
13 knew it included an unlawful defeat device.

## 14 VIII. CLASS ACTION ALLEGATIONS

15 48. Plaintiff brings this action on behalf of himself and as a class action, pursuant to the  
16 provisions of Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure on behalf of the  
17 following Classes:

### 18 Nationwide Class:

19 All persons or entities in the United States who are current or former owners  
20 and/or lessees of, or that otherwise acquired, a "Defeat Device Vehicle."

21 Defeat Device Vehicles include, without limitation: 2014-2016 Jeep Grand  
22 Cherokee and 2014-2016 Dodge RAM 1500 or any other car that is powered by  
23 Defendants' 3.0-liter EcoDiesel engine.

### 24 Minnesota Class:

25 All persons or entities in the State of Minnesota who are current or former owners  
26 and/or lessees of, or that otherwise acquired, a "Defeat Device Vehicle."

26 Defeat Device Vehicles include, without limitation: 2014-2016 Jeep Grand  
27 Cherokee and 2014-2016 Dodge RAM 1500 or any other car that is powered by  
28 Defendants' 3.0-liter EcoDiesel engine.

1           49. Excluded from the Class are individuals who have personal injury claims resulting from  
2 the “defeat device” in the EcoDiesel system. Also excluded from the Class are FCA N.V. and its  
3 subsidiaries and affiliates; all persons who make a timely election to be excluded from the Class;  
4 governmental entities; and the judge to whom this case is assigned and his/her immediate family.  
5 Plaintiff reserves the right to revise the Class definition based upon information learned through  
6 discovery.

7           50. Certification of Plaintiff’s claims for class-wide treatment is appropriate because Plaintiff  
8 can prove the elements of his claims on a class-wide basis using the same evidence as would be used to  
9 prove those elements in individual actions alleging the same claim.

10           51. This action has been brought and may be properly maintained on behalf of the Class  
11 proposed herein under Federal Rule of Civil Procedure 23.

12           52. Numerosity: The members of the Class are so numerous and geographically dispersed  
13 that individual joinder of all Class members is impracticable. However, the precise number of Class  
14 members is unknown to Plaintiff, but may be ascertained from Defendants’ records. Class members may  
15 be notified of the pendency of this action by recognized, Court-approved notice dissemination methods,  
16 which may include U.S. mail, electronic mail, Internet postings, and/or published notice.

17           53. Existence and predominance of common questions: This action involves common  
18 questions of law and fact, which predominate over any questions affecting individual Class members,  
19 including, without limitation:

- 20           a. Whether Defendants engaged in the conduct alleged herein;
- 21           b. Whether Defendants designed, advertised, marketed, distributed, leased, sold, or  
22 otherwise placed Defeat Device Vehicles into the stream of commerce in the United States;
- 23           c. Whether the EcoDiesel engine system in the Defeat Device Vehicles contains a  
24 defect in that it does not comply with EPA requirements;
- 25           d. Whether the EcoDiesel engine systems in Defeat Device Vehicles can be made to  
26 comply with EPA standards without substantially degrading the performance and/or efficiency of the  
27 Defeat Device Vehicles;
- 28

1 e. Whether Defendants knew about the “defeat device” and, if so, how long  
2 Defendants had known;

3 f. Whether Defendants designed, manufactured, marketed, and distributed Defeat  
4 Device Vehicles with a “defeat device”;

5 g. Whether Defendants’ conduct violates the Magnuson-Moss Warranty Act;

6 h. Whether Defendants’ conduct violates the Minnesota statutes and laws as  
7 asserted herein;

8 i. Whether Plaintiff and the other Class members overpaid for their Defeat Device  
9 Vehicles;

10 j. Whether Plaintiff and the other Class members are entitled to equitable relief,  
11 including, but not limited to, restitution or injunctive relief; and

12 k. Whether Plaintiff and the other Class members are entitled to damages and other  
13 monetary relief and, if so, in what amount.

14 54. Typicality: Plaintiff’s claims are typical of the other Class members’ claims because,  
15 among other things, all Class members were comparably injured through Defendants’ wrongful conduct  
16 as described above.

17 55. Adequacy: Plaintiff is an adequate Class representative because his interests do not  
18 conflict with the interests of the other members of the Class he seeks to represent; Plaintiff has retained  
19 counsel competent and experienced in complex class action litigation; and Plaintiff intends to prosecute  
20 this action vigorously. The Class’s interests will be fairly and adequately protected by Plaintiff and his  
21 counsel.

22 56. Superiority: A class action is superior to any other available means for the fair and  
23 efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the  
24 management of this class action. The damages or other financial detriment suffered by Plaintiff and the  
25 other Class members are relatively small compared to the burden and expense that would be required to  
26 individually litigate their claims against Defendants, so it would be impracticable for members of the  
27 Class to individually seek redress for Defendants’ wrongful conduct.  
28

1 57. Even if Class members could afford individual litigation, the court system could not.  
2 Individualized litigation creates a potential for inconsistent or contradictory judgments, and increases  
3 the delay and expense to all parties and the court system. By contrast, the class action device presents  
4 far fewer management difficulties, and provides the benefits of single adjudication, economy of scale,  
5 and comprehensive supervision by a single court

6 58. Declaratory and Injunctive Relief: Defendants have acted or refused to act on grounds  
7 generally applicable to Plaintiff and the other members of the Class, thereby making appropriate final  
8 injunctive relief and declaratory relief, as described below, with respect to the Class as a whole.

9 **IX. CAUSES OF ACTION**

10 **FIRST CLAIM FOR RELIEF**

11 **(On Behalf of the U.S. Class)**

12 *(Violation of the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301 et seq.)*

13 59. Plaintiff incorporates by reference each and every prior and subsequent allegation of this  
14 Complaint as if fully restated here.

15 60. Plaintiff asserts this cause of action on behalf of himself and the other members of the  
16 Class.

17 61. This Court has jurisdiction to decide claims brought under 15 U.S.C. § 2301 by virtue of  
18 28 U.S.C. § 2301(3).

19 62. Defendants' Defeat Device Vehicles are a "consumer product," as that term is defined in  
20 15 U.S.C. § 2301(1).

21 63. Plaintiff and Class members are "consumers," as that term is defined in 15 U.S.C. §  
22 2301(3).

23 64. Defendants are a "warrantor" and "supplier" as those terms are defined in 15 U.S.C. §  
24 2301(4) and (5).

25 65. 15 U.S.C. § 2310(d)(1) provides a cause of action for any consumer who is damaged by  
26 the failure of a warrantor to comply with an implied warranty.

27 66. Defendants provided Plaintiff and Class members with "implied warranties," as that  
28 term is defined in 15 U.S.C. § 2301(7).

1 67. Defendants have breached these implied warranties as described in more detail above.  
2 Without limitation, Defendants' Defeat Device vehicles are defective, as described above, which  
3 resulted in the problems and failures also described above.

4 68. By Defendants' conduct as described herein, including Defendants' knowledge of the  
5 defects inherent in the vehicles and their action, and inaction, in the face of the knowledge, Defendants  
6 have failed to comply with their obligations under their written and implied promises, warranties, and  
7 representations.

8 69. In their capacity as a warrantor, and by the conduct described herein, any attempts by  
9 Defendants to limit the implied warranties in a manner that would exclude coverage of the defective  
10 software and systems is unconscionable and any such effort to disclaim, or otherwise limit, liability for  
11 the defective the software and supporting systems is null and void.

12 70. All jurisdictional prerequisites have been satisfied.

13 71. Plaintiff and members of the Class are in privity with Defendants in that they purchased  
14 the software from Defendants or Defendants' agents.

15 72. As a result of Defendants' breach of implied warranties, Plaintiff and the Nationwide  
16 Class members are entitled to revoke their acceptance of the vehicles, obtain damages and equitable  
17 relief, and obtain costs pursuant to 15 U.S.C. §2310.

18 **SECOND CLAIM FOR RELIEF**

19 **(On Behalf of the Minnesota Class)**

20 ***(Breach of Implied Warranty, Minn. Stat. § 336.2-314-336.2-315)***

21 73. Plaintiff and the Minnesota Class incorporate by reference each preceding and  
22 succeeding paragraph as though fully set forth at length herein.

23 74. Plaintiff brings this claim on behalf of himself and the Minnesota Class.

24 75. Defeat Device Vehicles are "goods" within the meaning of Minn. Stat. § 336.2-105.

25 76. Defendants are "merchant[s]" within the meaning of Minn. Stat. § 336.2-104.

26 77. Defendants impliedly warranted to Plaintiff and the Minnesota Class that the Defeat  
27 Device Vehicles were "merchantable" within the meaning of Minn. Stat. § 336.2-314.

28 78. Minn. Stat. § 336.2-314 states that, to be merchantable, goods must be at least such as:

- 1 a. pass without objection in the trade under the contract description; and  
2 b. in the case of fungible goods, are of fair average quality within the description;  
3 and  
4 c. are fit for the ordinary purposes for which such goods are used; and  
5 d. run, within the variations permitted by the agreement, of even kind, quality and  
6 quantity within each unit and among all units involved; and  
7 e. are adequately contained, packaged, and labeled as the agreement may require;  
8 and  
9 f. conform to the promises or affirmations of fact made on the container or label if  
10 any.

11 79. Defeat Device Vehicles would not pass without objection in the automotive trade because  
12 they do not conform in material aspects with federal emission standards, were sold with an illegal defeat  
13 device, as described above, and emit pollutants such as NO<sub>x</sub> in excess of EPA-compliant levels.

14 80. Defeat Device Vehicles are not fit for the ordinary purpose for which such goods are used  
15 because they do not conform in material aspects with federal emission standards, were sold with an  
16 illegal defeat device, as described above, and emit pollutants such as NO<sub>x</sub> in excess of EPA-compliant  
17 levels.

18 81. Defeat Device Vehicles are not adequately labeled because the labeling misrepresents  
19 that the vehicles are compliant with federal emissions standards or fails to disclose such noncompliance.

20 82. Defendants' conduct deprived Plaintiff and the proposed Minnesota Class of the benefit  
21 of their bargain and have caused Defeat Device Vehicles to be worth less than what Plaintiff and other  
22 proposed Minnesota Class members paid.

23 83. As a direct and proximate result of Defendants' breach of their duties, proposed  
24 Minnesota Class members received goods whose condition substantially impairs their value. Plaintiff  
25 and the proposed Minnesota Class have been damaged by the diminished value of the vehicles, the  
26 vehicles' malfunctioning, and actual and potential increased maintenance and repair costs.  
27  
28

1 84. Plaintiff and Class members have complied with all obligations under the warranty, or  
2 otherwise have been excused from performance of said obligations as a result of Defendants' conduct  
3 described herein.

4 **THIRD CLAIM FOR RELIEF:**

5 **(On Behalf of the Minnesota Class)**

6 *(Violations of the Minnesota Consumer Fraud Act, Minn. Stat. § 325F.69)*

7 85. Plaintiff and the Minnesota Class incorporate by reference each preceding and  
8 succeeding paragraph as though fully set forth at length herein.

9 86. Plaintiff brings this claim on behalf of himself and the Minnesota Class.

10 87. Minn. Stat. § 325F.69, subdivision 1 (2008) provides:

11 The act, use, or employment by any person of any fraud, false pretense, false promise,  
12 misrepresentation, misleading statement or deceptive practice, with the intent that  
13 others rely thereon in connection with the sale of any merchandise, whether or not any  
14 person has in fact been misled, deceived, or damaged thereby, is enjoined as provided  
in section 325F.70.

15 88. Defendants' business practices, in advertising, marketing and selling the Defeat Device  
16 Vehicles while intentionally concealing and suppressing the material fact that they had installed an  
17 illegal defeat device in those vehicles to either bypass or render inoperative elements of the vehicle  
18 design related to compliance with federal law, such that those vehicles emit NOx in excess of EPA-  
19 compliant levels, constitute the use of fraud, false promises, misrepresentations, misleading statements  
20 and deceptive practices and, thus, constitute multiple, separate violations of Minn. Stat. § 325F.69  
21 (2008).

22 89. Defendants' business practices, in advertising, marketing and selling Defeat Device  
23 Vehicles while concealing that the vehicles, if brought into compliance with federal emission standards,  
24 would exhibit diminished performance and fuel economy, as compared to the performance and fuel  
25 economy promised by Defendants through their advertising and marketing, constitute multiple,  
26 separate violations of Minn. Stat. § 325F.69 (2008).

27 90. In connection with the advertising, marketing and sale of the Defeat Device Vehicles,  
28 Defendants made the material misrepresentations and omissions set forth in this Complaint in their



1 advertising, including webpages, press releases, television commercials and other promotional materials  
2 disseminated by or on behalf of Defendants in Minnesota.

3 91. Defendants' misrepresentations and omissions set forth in this Complaint are material in  
4 that they relate to information that would naturally affect the purchasing decisions or conduct of  
5 consumers, including Plaintiff and members of the Class, regarding Defendants' products.

6 92. As a result of Defendants' unlawful conduct, Plaintiff and members of the Class were  
7 injured and suffered damages. Plaintiff and members of the Class are entitled to recover their actual  
8 damages, and costs and disbursements, including costs of investigation and reasonable attorneys' fees,  
9 as well as injunctive relief and other equitable relief, including restitution, as determined by the Court,  
10 pursuant to Minnesota law, including Minn. Stat. §§ 8.31, subd. 1 and 3a and 325F.69 (2008).

11 **FOURTH CLAIM FOR RELIEF:**

12 **(On Behalf of the Minnesota Class)**

13 ***(Violation of the Minnesota False Advertising Act, Minn. Stat. § 325F.67)***

14 93. Plaintiff and the Minnesota Class incorporate by reference each preceding and  
15 succeeding paragraph as though fully set forth at length herein.

16 94. Plaintiff brings this claim on behalf of himself and the Minnesota Class.

17 95. Minn. Stat. § 325F.67 (2008) provides, in part, as follows.

18 Any person, firm, corporation, or association who, with intent to sell or in  
19 anyway dispose of merchandise, securities, service, or anything offered  
20 by such person, firm, corporation, or association, directly or indirectly, to  
21 the public, for sale or distribution, or with intent to increase the  
22 consumption thereof, or to induce the public in any manner to enter into  
23 any obligation relating thereto, or to acquire title thereto, or any interest  
24 therein, makes, publishes, disseminates, circulates, or places before the  
25 public, or causes, directly or indirectly, to be made, published,  
26 disseminated, circulated, or placed before the public, in this state, in a  
27 newspaper or other publication, or in the form of a book, notice, handbill,  
28 poster, bill, label, price tag, circular, pamphlet, program, or letter, or over  
any radio or television station, or in any other way, an advertisement of  
any sort regarding merchandise, securities, service, or anything so offered  
to the public, for use, consumption, purchase, or sale, which  
advertisement contains any material assertion, representation, or  
statement of fact which is untrue, deceptive, or misleading, shall, whether  
or not pecuniary or other specific damage to any person occurs as a direct  
result thereof, be guilty of a misdemeanor, and any such act is declared to  
be a public nuisance and may be enjoined as such.



1 (5) represents that goods or services have sponsorship, approval, characteristics,  
2 ingredients, uses, benefits or quantities that they do not have. . . .;

3 (7) represents that goods...are of a particular standard, quality, or grade, or that  
4 goods are of a particular style or model, if they are of another; [. . . or]

5 (13) engages in any other conduct which similarly creates a likelihood of confusion or  
6 of misunderstanding.

7 103. Defendants' business practices, in advertising, marketing and selling Defeat Device  
8 Vehicles by misrepresenting that these were "clean" vehicles that complied with federal emission  
9 standards when, in fact, they do not conform in material aspects with federal emission standards, were  
10 sold with an illegal defeat device, as described above, and emit pollutants such as NOx in excess of EPA-  
11 compliant levels, constitute multiple, separate violations of Minn. Stat. § 325D.44, subd. 1(5), (7), and  
12 (13) (2008), including:

13 a. Falsely representing that Defendants' Defeat Device Vehicles have  
14 characteristics, uses, benefits or quantities of producing emissions in levels that are compliant with EPA  
15 standards, when, in fact, they do not;

16 b. Falsely representing that Defendants' Defeat Device Vehicles are of a particular  
17 standard, quality or grade in producing emissions in levels that are compliant with EPA standards,  
18 when, in fact, they are not and do not;

19 c. Creating the likelihood of confusion or of misunderstanding among consumers  
20 that Defendants' Defeat Device Vehicles produce emissions in levels that are compliant with EPA  
21 standards, when, in fact, they do not.

22 **X. REQUEST FOR RELIEF**

23 WHEREFORE, Plaintiff, individually and on behalf of members of the Class respectfully  
24 requests that the Court enter judgment in their favor and against Defendants, as follows:

25 A. Certification of the proposed Class, including appointment of Plaintiff's counsel as Class  
26 Counsel for the Class;

27 B. An order temporarily and permanently enjoining Defendants from continuing the  
28 unlawful, deceptive, fraudulent, and unfair business practices alleged in this Complaint;

- 1 C. Injunctive relief in the form of a recall or free replacement program;
- 2 D. Costs, restitution, damages, and disgorgement in an amount to be determined at trial;
- 3 E. Revocation of acceptance;
- 4 F. Damages under the Magnuson-Moss Warranty Act;
- 5 G. For treble and/or punitive damages as permitted by applicable laws;
- 6 H. An order requiring Defendants to pay both pre- and post-judgment interest on any
- 7 amounts awarded;
- 8 I. An award of costs and attorneys' fees; and
- 9 J. Such other or further relief as may be appropriate.

10 **XI. DEMAND FOR JURY TRIAL**

11 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury of all the  
12 claims asserted in this complaint so triable.

14 Dated: February 28, 2017

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*Attorneys for Plaintiff and the Proposed Class*

CIVIL COVER SHEET

The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
Jason Gaines, individually and on behalf of all others similarly situated.
(b) County of Residence of First Listed Plaintiff
(c) Attorneys (Firm Name, Address, and Telephone Number)
Please see Attachment A.

DEFENDANTS
Fiat Chrysler Automobiles N.V.; FCA US LLC
County of Residence of First Listed Defendant
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
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT: 110 Insurance, 120 Marine, 130 Miller Act, 140 Negotiable Instrument, 150 Recovery of Overpayment Of Veteran's Benefits, 151 Medicare Act, 152 Recovery of Defaulted Student Loans (Excludes Veterans), 153 Recovery of Overpayment of Veteran's Benefits, 160 Stockholders' Suits, 190 Other Contract, 195 Contract Product Liability, 196 Franchise.
PERSONAL INJURY: 310 Airplane, 315 Airplane Product Liability, 320 Assault, Libel & Slander, 330 Federal Employers' Liability, 340 Marine, 345 Marine Product Liability, 350 Motor Vehicle, 355 Motor Vehicle Product Liability, 360 Other Personal Injury, 362 Personal Injury - Medical Malpractice.
PERSONAL INJURY - PRODUCT LIABILITY: 365 Personal Injury - Product Liability, 367 Health Care/Pharmaceutical Personal Injury Product Liability, 368 Asbestos Personal Injury Product Liability.
PERSONAL PROPERTY: 370 Other Fraud, 371 Truth in Lending, 380 Other Personal Property Damage, 385 Property Damage Product Liability.
FORFEITURE/PENALTY: 625 Drug Related Seizure of Property 21 USC § 881, 690 Other.
LABOR: 710 Fair Labor Standards Act, 720 Labor/Management Relations, 740 Railway Labor Act, 751 Family and Medical Leave Act, 790 Other Labor Litigation, 791 Employee Retirement Income Security Act.
IMMIGRATION: 462 Naturalization Application, 465 Other Immigration Actions.
BANKRUPTCY: 422 Appeal 28 USC § 158, 423 Withdrawal 28 USC § 157.
PROPERTY RIGHTS: 820 Copyrights, 830 Patent, 840 Trademark.
SOCIAL SECURITY: 861 HIA (1395ff), 862 Black Lung (923), 863 DIWC/DIWW (405(g)), 864 SSID Title XVI, 865 RSI (405(g)).
FEDERAL TAX SUITS: 870 Taxes (U.S. Plaintiff or Defendant), 871 IRS-Third Party 26 USC § 7609.
OTHER STATUTES: 375 False Claims Act, 376 Qui Tam (31 USC § 3729(a)), 400 State Reapportionment, 410 Antitrust, 430 Banks and Banking, 450 Commerce, 460 Deportation, 470 Racketeer Influenced and Corrupt Organizations, 480 Consumer Credit, 490 Cable/Sat TV, 850 Securities/Commodities/Exchange, 890 Other Statutory Actions, 891 Agricultural Acts, 893 Environmental Matters, 895 Freedom of Information Act, 896 Arbitration, 899 Administrative Procedure Act/Review or Appeal of Agency Decision, 950 Constitutionality of State Statutes.

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-Transfer
8 Multidistrict Litigation-Direct File

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); 15 U.S.C. §§ 2301 et seq
Brief description of cause:
Fraudulent concealment of motor vehicle emissions defeat device and violations of consumer protection laws

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$
CHECK YES only if demanded in complaint: JURY DEMAND: X Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):
JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)
(Place an "X" in One Box Only)
X SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE: 02/28/2017 SIGNATURE OF ATTORNEY OF RECORD: /s/ Joseph R. Saveri

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

**Authority For Civil Cover Sheet.** The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
  - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
  - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
  - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
  - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
  - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.

ATTACHMENT A  
ATTORNEYS FOR PLAINTIFF AND THE PROPOSED CLASSES

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