UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
Northern DIVISION

JOHN STEPHENS and BILL TURNER, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

FCA US LLC and FIAT CHRYSLER AUTOMOBILES N.V.,

Defendants.

Case No. 2:17-cv-40-WHA

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiffs John Stephens and Bill Turner, individually and on behalf of all others similarly situated (the "Class"), allege the following against auto manufacturer/distributor FCA US LLC and its corporate parent Fiat Chrysler Automobiles N.V. (together, "Fiat Chrysler" or "FCA") (collectively, "Defendants"); based where applicable on personal knowledge, information and belief, and the investigation of counsel. This Court has jurisdiction over this action pursuant to the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332(d).

I. NATURE OF THE ACTION

1. This action relates to the sale by Fiat Chrysler of "EcoDiesel"-branded diesel-powered light trucks and SUVs. These vehicles are and were advertised as offering efficient fuel economy, desirable performance, and clean, environmentally-friendly emissions. In reality, these vehicles, like the well-known Volkswagen diesel vehicles, were equipped with a software algorithm—a "defeat device"—designed to cheat federal and state emission testing for oxides of nitrogen, thereby deceiving the Environmental Protection Agency ("EPA") and other regulators into approving for sale hundreds of thousands of non-compliant vehicles.

2. The defeat device or devices consists of software installed on engine management systems that detects when the vehicle is undergoing emissions testing versus driving on the road, and adjusts the functioning of the vehicles' sophisticated emissions controls to ensure that they pass emissions testing. When not undergoing emissions testing, these vehicles emitted vastly more harmful pollutants than federal and state law allow.

3. Fiat Chrysler promised low-emission, environmentally friendly vehicles with efficient fuel economy and strong performance. Consumers believed these representations and bought hundreds of thousands of "EcoDiesel" vehicles. All the while, these consumers were unwittingly among the highest polluters on the road, despite having paid a premium for purportedly clean vehicles. The manufacturer's warranties, advertising, and other statements about the vehicles' legal compliance, cleanliness, and environmental friendliness were all false and misleading.

4. The EPA has recently acknowledged this deceit and, on January 12, 2017, issued a Notice of Violation to Defendants for violations of the Clean Air Act, 42 U.S.C. §§ 7401–7671q, and its implementing regulations.

5. The California Air Resources Board ("CARB") also publicly announced on January 12, 2017 that it issued a Notice of Violation to Defendants after detecting the "auxiliary emissions control devices" in Defendants' "EcoDiesel" vehicles. CARB stated that the company failed to disclose the devices, which can "significantly increase" NOx emissions when activated.

6. Plaintiffs and Class members are individuals and businesses who purchased or leased a Class Vehicle in the United States. The Class Vehicles are those model year 2014–2016 Ram 1500 pickup trucks and model year 2014–2016 Jeep Grand Cherokee SUVs equipped with Fiat Chrysler's 3.0-liter diesel engine.

7. Defendants induced Plaintiffs and Class members to purchase or lease the Class Vehicles, which are illegal because they violate the Clean Air Act (among other laws) and, on top of that, do not perform as represented in terms of emissions or fuel economy. No one would have purchased the Class Vehicles had they known the truth about the Class Vehicles. Additionally, no one *could* have purchased the Class Vehicles if not for Defendants' fraud because the EPA Certificates of Compliance that rendered them legal to sell in the United States were obtained only through Defendants' fraudulent scheme. Plaintiffs have suffered economic damages due to the steep diminution in value of their Class Vehicles, which pollute the environment at levels far in excess of the legal limits and cannot pass required emissions tests without cheating. To the extent the Class Vehicles can be repaired or retrofitted to pass federal and state emission requirements, they will, absent a full and comprehensive compensation program by Defendants, continue to suffer diminution in value and cause economic loss. This is because any repairs or retrofits will likely reduce mileage per gallon, increase costs of operation, and lower the vehicles' performance, durability, and reliability, thereby reducing market value and increasing cost of ownership and operation.

8. On behalf of themselves, the Nationwide Class, and the respective State Classes, Plaintiffs hereby bring this action for violations of the federal Magnuson-Moss Warranty Act (15 U.S.C. § 2301, *et seq.* ("MMWA")), common law fraud, breaches of contract and warranty, unjust enrichment, and violations of the consumer protection laws of the various states and the District of Columbia.

9. Plaintiffs seek monetary damages, restitution, pollution mitigation, and injunctive and other equitable relief. In addition, Plaintiffs and Class members are entitled to a significant

award of punitive or exemplary damages because Defendants deliberately, and with malice, deceived Plaintiffs and Class members for a period of years.

II. PARTIES

A. Plaintiffs

10. Plaintiff John Stephens is a citizen of Georgia, and a resident of Midland, Muscogee County, Georgia.

11. On or about June 21, 2014, Stephens bought a 2014 Dodge Ram 1500 with 3.0L diesel engine at Opelika Chrysler Dodge Jeep, an authorized FCA dealer in Opelika, Lee County, Alabama.

12. Mr. Stephens decided to buy the Ram because of FCA's representations regarding fuel economy and advanced diesel technology.

13. FCA failed to disclose the defeat device or the fact that the Ram polluted the environment in excess of the legal limits to Mr. Stephens before he purchased his Ram, despite FCA's knowledge of these facts, and Mr. Stephens, therefore, purchased his Ram with the incorrect understanding that it would not pollute the environment in excess of the legal limits when in normal operation.

14. Plaintiff Bill Turner is a citizen of Georgia, and a resident of Columbus, Muscogee County, Georgia.

15. In July, 2014, Mr. Turner leased a 2014 Jeep Grand Cherokee with 3.0L diesel engine from Newnan Peachtree Chrysler Dodge Jeep Ram, an authorized FCA dealer in Newnan, Coweta County, Georgia.

16. Mr. Turner decided to lease the Grand Cherokee because of FCA's representations regarding fuel economy and advanced diesel technology.

17. FCA failed to disclose the defeat device or the fact that the Grand Cherokee polluted the environment in excess of the legal limits to Mr. Turner before he leased his Grand Cherokee, despite FCA's knowledge of these facts, and Mr. Turner, therefore, leased his Grand Cherokee with the incorrect understanding that it would not pollute the environment in excess of the legal limits when in normal operation.

B. Defendants

18. FCA US LLC ("FCA US") is a limited liability company organized and existing under the laws of the State of Delaware, and is owned by holding company Fiat Chrysler Automobiles N.V. ("FCA N.V."), a Dutch corporation headquartered in London, United Kingdom. Prior to October 12, 2014, a controlling stake in FCA US was owned by an Italian predecessor holding company, Fiat S.p.A., headquartered in Turin, Italy. FCA US's principal place of business and headquarters is at 1000 Chrysler Drive, Auburn Hills, Michigan 48326.

19. FCA US is a motor vehicle manufacturer and a licensed distributor of Chrysler, Dodge, Jeep, and Ram brand motor vehicles. FCA US engages in commerce by distributing and selling new and unused passenger cars and motor vehicles under the Chrysler, Dodge, Jeep, Ram, and Fiat brands.

20. FCA N.V. owns numerous European automotive brands in addition to FCA US's American brands, including Ferrari, Maserati, Fiat, Fiat Professional, Alfa Romeo, Lancia, and Abarth, as well as several manufacturers of automotive and industrial parts and equipment. As of 2015, FCA is the seventh largest automaker in the world by unit production.

21. FCA has designed, manufactured, marketed, distributed, and sold two models of vehicle equipped with "EcoDiesel" engines: model year 2014-2016 Ram 1500s and model year 2014-2016 Jeep Grand Cherokees. These vehicles are equipped with a 3.0-liter engine developed

by V.M. Motori, an Italian Fiat subsidiary. As of 2011, V.M. Motori is jointly owned by Fiat and General Motors.

22. FCA and/or its agents designed, manufactured, and installed the "EcoDiesel" engine systems in the Class Vehicles. FCA also developed and disseminated the owner's manuals and warranty booklets, advertisements, and other promotional materials relating to the Class Vehicles.

23. FCA's business operations in the United States include the manufacture, distribution, and sale of motor vehicles and parts through its network of independent, franchised motor vehicle dealers. FCA is engaged in interstate commerce in that it sells vehicles, through this network, in every state in the United States, including Alabama. The dealers act as FCA's agents in selling the Class Vehicles and disseminating information about the Class Vehicles to customers and potential customers.

III. JURISDICTION AND VENUE

24. This Court has subject matter jurisdiction over this action pursuant to the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332(d), because at least one Class member is of diverse citizenship from one Defendant, there are more than 100 Class members, and the aggregate amount in controversy exceeds $5 million, exclusive of interest and costs. Subject-matter jurisdiction also arises pursuant to the Magnuson-Moss Warranty Act claims asserted under 15 U.S.C. § 2301, *et seq.* The Court has personal jurisdiction over Defendants pursuant to 18 U.S.C. §§ 1965(b) and (d), and supplemental jurisdiction over the state-law claims pursuant to 28 U.S.C. § 1367.

25. This Court has personal jurisdiction over Defendants because they have minimum contacts with the United States, this judicial district, and this state, and intentionally availed themselves of the laws of the United States and this state by conducting a substantial amount of

business throughout the state, including the distribution, sale, lease, and/or warranty of FCA vehicles in this state and District. At least in part because of Defendants' misconduct as alleged in this lawsuit, Class Vehicles ended up on this state's roads and in dozens of franchise dealerships. This Court has specific jurisdiction over FCA because it has purposefully availed itself of this forum by, through its agents, selling Class Vehicles within this forum. Venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial part of the events and/or omissions giving rise to Plaintiffs' claims occurred in this District. Defendants have marketed, advertised, sold, and leased the Class Vehicles, and otherwise conducted extensive business within this District. Plaintiff Stephens, as well a number of Class members, purchased their Class Vehicles from an FCA dealer located in this District.

IV. FACTS COMMON TO ALL COUNTS

A. The Defeat Device Scheme

26. On January 12, 2017, the EPA and CARB announced to the world that Defendants, just like Volkswagen before it, had violated the Clean Air Act in an attempt to reap profits at the expense of the air we breathe and the confidence of its own consumers.

27. The EPA's Notice of Violation of the Clean Air Act alleges that Defendants installed and failed to disclose engine management software in light-duty model year 2014, 2015 and 2016 Jeep Grand Cherokees and Dodge Ram 1500 trucks with 3.0 liter diesel engines sold in the United States. The undisclosed software results in increased emissions of nitrogen oxides (NOx) from the vehicles.

28. In announcing the Notice of Violation, Cynthia Giles, Assistant Administrator for the EPA's Office of Enforcement and Compliance Assurance, said: "Failing to disclose software that affects emissions in a vehicle's engine is a serious violation of the law, which can result in harmful pollution in the air we breathe." She further noted that the EPA will "investigate the

nature and impact of these devices. All automakers must play by the same rules, and we will continue to hold companies accountable that gain an unfair and illegal competitive advantage."

29. Through its testing at the National Vehicle and Fuel Emissions Laboratory, the EPA discovered eight Auxiliary Emission Control Devices ("AECDs") in the Class Vehicles. These devices were not disclosed in Defendants' applications for certificates of conformity (COCs), which designate vehicles that are approved for sale in the United States. Defendants knew that disclosure was required under the applicable regulations, but did not disclose the existence of these devices.

30. The installation of the AECDs in the Class Vehicles means that FCA was in violation of Section 203(a)(1) of the Clean Air Act, 42 U.S.C. § 7522(a)(1), each and every time an offending Class Vehicle was sold, offered for sale, introduced into commerce, or delivered for introduction into commerce or imported into the United States.

31. Based on current information, there are approximately 103,828 vehicles on the road affected by Defendants' unlawful and deceitful conduct.

32. EPA testing indicates that at least some of the AECDs "appear to cause the vehicle to perform differently when the vehicle is being tested for compliance with the EPA emissions standards," as opposed to during "normal operation and use." This is the definition of a defeat device, which is designed to pass lab certification tests but expel more emissions in ordinary use, so as to achieve greater fuel-economy and performance.

33. In the aftermath of Volkswagen's own strikingly similar emissions scandal, the EPA announced on September 25, 2015 that it would conduct additional testing of vehicles on the market "using driving cycles and conditions that may reasonably be expected to be encountered in

normal operation and use, for purposes of investigating a potential defeat device." This testing led to the discovery of FCA's nefarious conduct.

34. The EPA's Notice of Violation notes that, despite having the opportunity to do so, FCA has failed to show that it did not know, or should not have known, that the "principle effect of one or more of these AECDs was to bypass, defeat, or render inoperative one or more elements of design installed to comply with emissions standards under the [Clean Air Act.]"

35. The EPA has identified at least eight AECDs in the 3-liter diesel fueled FCA motor vehicles listed in the table above that were not described in the application for the COC purportedly covers each motor vehicle; most AECDs have been identified as a result of the EPA's investigation. The following is a list of the identified AECDs:

AECD #1 (Full EGR shut-off at highway speed)

AECD#2 (Reduced EGR with increasing vehicle speed)

AECD#3 (EGR shut-off for the exhaust valve cleaning stage)

AECD#4 (DEF dosing disablement during CR adaptation)

AECD#5 (EGR reduction due to modeled engine temperature)

AECD#6 (SCR catalyst warm-up disablement)

AECD#7 (Alternative SCR dosing modes)

AECD#8 (Use of load governor to delay ammonia refill of SCR catalyst)

36. The EPA believes that one of more of the AECDs, whether along or in combination with each other, reduce the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal operation and use. These AECDs: (1) Occur in operating conditions that may not be a part of the Federal emission test procedure; and (2) may not be justified in terms of protecting the vehicle

against damage or accident; they do not otherwise qualify for the enumerated defeat device exception of 40 C.F.R §86.1803.01. Therefore, one or more of the AECDs, whether alone or in combination, may be defeat devices.

37. The same day, the California Air Resources Board ("CARB") also publicly announced that it, too, has issued a Notice of Violation to Defendants after detecting the AECDs in Defendants' 2014, 2015, and 2016 Jeep Grand Cherokee and Ram 1500 "EcoDiesel" vehicles. CARB also said the company failed to disclose the devices, which it said can "significantly increase" NOx emissions when activated.

38. Defendants' fraudulent scheme was motivated the desire to expand market share in the United States by adding diesel engines to FCA's light truck and SUV lineup. Thus, FCA set about integrating a 3.0-liter, six-cylinder V.M. Motori turbodiesel engine into certain of FCA's popular light-duty trucks and SUVs: the Ram 1500 pickup, and the Jeep Grand Cherokee. Touting their supposedly ecologically-friendly nature, FCA marketed these engines using the name "EcoDiesel."

39. The "EcoDiesel" option was sold at a premium. For example, the feature is only available on the three most expensive 2014 Grand Cherokee models and adds at least $4,500 to those vehicles overall cost.[1] The "EcoDiesel" option on the 2015 Ram 1500 adds at least between $3,120 and $4,960.[2]

40. Despite the added costs, the "EcoDiesel" engines were far from environmentally friendly. They still suffered from the usual problems associated with diesel engines: high emissions of particulates and oxides of nitrogen. NO_X is a hazardous pollutant and "an indirect

[1] 2014 Jeep Grand Cherokee EcoDiesel V-6, http://www.caranddriver.com/reviews/2014-jeep-grand-cherokee-ecodiesel-v-6-first-drive-review (last visited Jan.12, 2017).

[2] 2015 Ram 1500 EcoDiesel 4x4.

greenhouse gas" that contributes to the formation of ground-level ozone, a greenhouse gas, and can travel hundreds of miles from the source of emission. Ozone is a colorless and odorless gas that, even at low levels, can cause cardiovascular and respiratory health problems, including chest pain, coughing, throat irritation, and congestion. The human health concerns from over-exposure to NO_X are well established, and include negative effects on the respiratory system, damage to lung tissue, and premature death. NO_X can penetrate deeply into sensitive parts of the lungs, and is known to cause or worsen respiratory diseases like asthma, emphysema, and bronchitis, as well as aggravate existing heart disease. Children, the elderly, people with lung diseases such as asthma, and people who work or exercise outside are particularly susceptible to such adverse health effects, though its effects are borne throughout the population.

41. Modern turbodiesel vehicles are capable of using certain measures to reduce the emissions of noxious gas. For example, vehicles may use a technology called "selective catalytic reduction" ("SCR") to reduce NOx emissions. SCR systems inject a measured amount of urea solution into the exhaust stream, which breaks NOx down into to less noxious substances before they are emitted.

42. The Class Vehicles use engine management computers to monitor sensors throughout the vehicle and control operation using sophisticated programming that can alter performance for different driving situations for maximum power and efficiency.

43. The computer that managed these systems in the Class Vehicles was an "electronic diesel control," which included a "defeat device." This "defeat device" consists of software programming capable of detecting when the Class Vehicles are undergoing emissions testing through certain sensor inputs, and then operating the engine and emissions controls in such a way that the vehicles reduce noxious emissions to a level that will allow them to pass testing. Because

these measures resulted in some combination of undesirable traits like greater fuel consumption, lower performance, or unsustainable consumption of the urea solution used in SCR, the Defendants ensured that at all other times, the Class Vehicles operated without reducing emissions, and thus polluted many times more than the legal emissions limits.

B. Applicable Emissions Standards & Testing

44. When a manufacturer wishes to introduce a new car in the U.S. market, it must obtain a certificate of conformity ("COC") from the EPA, by showing that the vehicle comports with the requirements of the Clean Air Act, 42 USC § 7522 and 40 CFR 86.1843-01.

45. As part of that certification process, the manufacture must disclose any "auxiliary emission control devices" ("AECDs") that are included in the car. AECDs are "any element of design which senses temperature, vehicle speed…or any other parameter for the purpose of activating, modulating, delaying, or deactivating the operation of any part of the emission control system." 40 CFR 86.1803-01. All cars have AECDs, and there is nothing per se illegal about modulating the operation of emissions control systems. However, in applying for a COC, the manufacturer must list all AECDs in the vehicles, and then justify why they are not defeat devices. 40 CFR 86.1844-01(d)(11).

46. 40 CFR 86.1803-01 provides that: "Defeat device means an auxiliary emission control device (AECD) that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use, unless:

> (1) Such conditions are substantially included in the Federal emission test procedure;
>
> (2) The need for the AECD is justified in terms of protecting the vehicle against damage or accident; or

(3) The AECD does not go beyond the requirements of engine starting."

47. Here, because the Class Vehicles are equipped with a defeat device and passed emissions testing only through the use of the defeat device, they should never have received COCs that rendered them legal for sale in the U.S.

C. Testing Shows that the Class Vehicles Emit Noxious Gasses in Excess of Legal Limits

48. On information and belief, testing of the Class Vehicles revealed that FCA "EcoDiesel" engines produce NOx emissions well-above legal limits. A 2014 Ram 1500 equipped with a 3.0L "EcoDiesel" engine and featuring selective catalytic reduction (SCR) NOx after-treatment technology was tested in chassis dynamometer as well as over-the road. In both scenarios, gaseous exhaust emissions, including oxides of nitrogen (NOx), nitrogen oxide (NO), carbon monoxide (CO), carbon dioxide (CO2), and total hydrocarbons (THS) were measured on a continuous basis using a real-time particle sensor from Pegasor. The tests showed significantly increased NOx emissions during on-road testing as opposed to during testing on a chassis dynamometer (*i.e.*, in the laboratory). The vehicle produced approximately 15-19 times more NOx on-road than the certified standard allows. The NOx during highway driving conditions exceeded by 35 times the US-EPA Tier2-Bin5 standard.

D. Defendants Marketed the Class Vehicles as Environmentally-Friendly, Emissions-Compliant, and Fuel-Efficient.

49. FCA's "EcoDiesel" vehicles were aggressively marketed as offering a combination of power, efficiency, and environmental cleanliness that others could not match. For example, FCA stated that the Class Vehicles' "exhaust is ultra-clean" due to their "advanced emissions-control technology." FCA further stated that the "emissions control system helps ensure that virtually no particulates and minimal [NOx] exit the tailpipe."

50. FCA also represented that the Class Vehicles were compliant with relevant emission standards. Indeed, in the owners' manual for each Class Vehicle there is a federally-mandated Emissions Warranty guaranteeing compliance with applicable emissions standards.

51. Unbeknownst to those consumers—consumers who FCA identified as wanting "an efficient, environmentally-friendly truck without sacrificing capability or performance – FCA could only achieve those impressive results by cheating on emissions testing. During normal driving, the vehicles polluted much more than was advertised or is legal.

V. CLASS ACTION ALLEGATIONS

52. Plaintiffs bring this action pursuant to Rules 23(a), 23(b)(2), and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of themselves and all others similarly situated.

> Plaintiffs seek to represent a class ("the Nationwide Class") defined as: All current and former owners and lessees of a Class Vehicle (as defined herein) that was purchased or leased within the United States (including its Territories and the District of Columbia).

53. Plaintiffs also respectively seek to represent the following Statewide Classes ("Statewide Classes") defined as follows:

- All current and former owners and lessees of a Class Vehicle (as defined herein) that was purchased or leased within Alabama ("the Alabama Class").
- All current and former owners and lessees of a Class Vehicle (as defined herein) that was purchased or leased within Georgia ("the Georgia Class").

54. Excluded from the above classes are individuals who have personal injury claims resulting from unlawfully high emissions form the Class Vehicles. Also excluded from the classes are Defendants and their subsidiaries and affiliates; all persons who make a timely election to be excluded from the classes and subclasses; governmental entities; and the Judge to whom this case is assigned and his/her immediate family. Plaintiffs reserve the right to revise the class definitions based upon information learned through discovery.

55. Certification of Plaintiffs' claims for class-wide treatment is appropriate because Plaintiffs can prove the elements of their claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claim.

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

1. Numerosity: Federal Rule of Civil Procedure 23(a)(1)

57. The members of the Nationwide Class and Statewide Classes are so numerous and geographically dispersed that individual joinder of all Nationwide Class and Statewide Class members is impracticable. While Plaintiffs are informed and believe that there are not less than hundreds of thousands of members of the Nationwide Class, the precise number of Nationwide Class and Statewide Class members is unknown to Plaintiffs, but may be ascertained from Defendants' records. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. mail, electronic mail, Internet postings, and/or published notice.

2. Commonality and Predominance: Federal Rule of Civil Procedure 23(a)(2) and 23(b)(3)

58. This action involves common questions of law and fact, which predominate over any questions affecting individual Nationwide Class and Statewide Class members, including, without limitation:

(a) Whether Defendants engaged in the conduct alleged herein;

(b) Whether Defendants designed, advertised, marketed, distributed, leased, sold, or otherwise placed Class Vehicles into the stream of commerce in the United States;

(c) Whether the emissions control systems in the Class Vehicles comply with EPA requirements;

(d) Whether the emissions control systems in Class Vehicles can be made to comply with EPA standards without substantially degrading the performance of the Class Vehicles;

(e) Whether Defendants designed, manufactured, marketed, and distributed Class Vehicles with a "defeat device;"

(f) Whether Defendants knew about the defeat device and, if so, how long Defendants have known;

(g) Whether Defendants' conduct violates consumer protection statutes, warranty laws, and other laws as asserted herein;

(h) Whether Plaintiffs and the Class members overpaid for their Class Vehicles;

(i) Whether Plaintiffs and the Class members are entitled to equitable relief, including, but not limited to, restitution or injunctive relief;

(j) Whether Plaintiffs and the Class members are entitled to damages and other monetary relief and, if so, in what amount; and

(k) Whether Defendants continue to conceal and misrepresent whether additional vehicles, besides those reported in the press to date, are in fact, Class Vehicles.

3. Typicality: Federal Rule of Civil Procedure 23(a)(3)

59. Plaintiffs' claims are typical of the claims of the Class members whom they seek to represent under Fed. R. Civ. P. 23(a)(3), because Plaintiffs and each Class Member purchased a Class Vehicle and were injured through Defendants' wrongful conduct as described above. Neither Plaintiffs nor the other Class members would have purchased the Class Vehicles had they known of the defects in the vehicles. Plaintiffs and the Class members suffered damages as a direct proximate result of the same wrongful practices by Defendants. Plaintiffs' claims arise from the same practices and courses of conduct that give rise to the claims of the Class members. Plaintiffs' claims are based upon the same legal theories as the claims of the Class members.

4. Adequacy: Federal Rule of Civil Procedure 23(a)(4)

60. Plaintiffs will fairly and adequately represent and protect the interests of the Class members as required by Fed. R. Civ. P. 23(a)(4). Plaintiffs' interests do not conflict with the interests of the Class members. Plaintiffs have retained counsel competent and experienced in complex class action litigation, including vehicle defect litigation and other consumer protection litigation. Plaintiffs intend to prosecute this action vigorously. Neither Plaintiffs nor their counsel have interests that conflict with the interests of the Class members. Therefore, the interests of the Class members will be fairly and adequately protected.

5. Declaratory and Injunctive Relief: Federal Rule of Civil Procedure 23(b)(2)

61. Defendants have acted or refused to act on grounds generally applicable to Plaintiffs and the members of the Nationwide Class and Statewide Classes, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to the Nationwide and Statewide Classes as a whole.

6. Superiority: Federal Rule of Civil Procedure 23(b)(3)

62. A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiffs and Class members are relatively small compared to the burden and expense that would be required to individually litigate their claims against Defendants, so it would be impracticable for members of the Nationwide Class and Statewide Classes to individually seek redress for Defendants' wrongful conduct.

63. Even if the Class members could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the court system. By 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.

VI. ANY APPLICABLE STATUES OF LIMITATION ARE TOLLED

A. Discovery Rule Tolling

64. For the following reasons, any otherwise-applicable statutes of limitation have been tolled by the discovery rule with respect to all claims.

65. Through the exercise of reasonable diligence, and within any applicable statutes of limitation, Plaintiffs and the Class members could not have discovered that Defendants were concealing and misrepresenting the true emissions levels of its vehicles, including but not limited to their use of defeat devices.

66. Plaintiffs and the Class members could not have reasonably discovered, and did not know of facts that would have caused a reasonable person to suspect, or that Defendants had intentionally failed to report information within their knowledge to federal and state authorities, dealerships, or consumers, until shortly before this action was filed.

67. Likewise, a reasonable and diligent investigation could not have disclosed that Defendants had information in their possession about the existence of its sophisticated emissions deception and that they concealed that information, which was only discovered by Plaintiffs shortly before this action was filed.

A. Tolling Due To Fraudulent Concealment

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

69. Upon information and belief, prior to the date of this Complaint, if not earlier, Defendants knew of the defeat device in the Class Vehicles and knew that the Class Vehicles

exceeded legal emissions limits in normal operation, but continued to distribute, sell, and/or lease the Class Vehicles to Plaintiffs and the class members. In doing so, Defendants concealed the existence of problem with NOx emissions, and/or failed to notify Plaintiffs and the Class members about the true nature of the Class Vehicles.

70. Instead of disclosing their deception, or that the emissions from the Class Vehicles were far worse than represented, Defendants falsely represented that its vehicles complied with federal and state emissions standards, and that they were reputable manufacturers whose representations could be trusted.

B. Estoppel

71. Defendants had a continuous duty to tell the truth about their products and to disclose to Plaintiffs and the Class members the facts that they knew regarding the excessive emissions from the Class Vehicles, as well as the fact that the vehicles did not comply with federal and state laws.

72. Although they had the duty throughout the relevant period to disclose to Plaintiffs and the Class members that they had engaged in the deception described in this Complaint, Defendants chose conceal the existence of a defeat device and their blatant and deceptive lack of compliance with federal and state law regulating vehicle emissions and clean air.

73. Defendants actively concealed the true character, quality, performance, and nature of the defeat device in the Class Vehicles, and Plaintiffs and the Class members reasonably relied upon Defendants' knowing and active concealment of these facts.

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

VII. CLAIMS ALLEGED

A. Claim Brought on Behalf of the Nationwide Class

COUNT I
FRAUD BY CONCEALMENT
(Common Law)

75. Plaintiffs repeat and reallege paragraphs 1-72 as if fully set forth herein.

76. Plaintiffs bring this Count individually and on behalf of the other members of the Nationwide Class (the "Class," for purposes of this Count).

77. FCA was aware of the installed defeat devices and the fact that the Class Vehicles emitted noxious gasses in excess of legal limits during normal operation when it marketed and sold the Class Vehicles to Plaintiffs and the other members of the Class.

78. FCA, as manufacturer of consumer products and motor vehicles, has a duty to disclose known defects, material safety information and that the Class Vehicles did not comply with applicable laws, such as due to the fact that the Class Vehicles emitted noxious gasses in excess of legal limits, to Plaintiffs and the other members of the Class.

79. Having been aware of the installed defeat devices and the fact that the Class Vehicles emitted noxious gasses in excess of legal limits during normal operation, and having known that Plaintiff and the other members of the Class could not have reasonably been expected to know of the installed defeat devices and the fact that the Class Vehicles emitted noxious gasses in excess of legal limits during normal operation, FCA had a duty to disclose these facts to Plaintiffs and other members of the Class in connection with the sale or lease of the Class Vehicles.

80. FCA did not disclose the installed defeat devices and the fact that the Class Vehicles emitted noxious gasses in excess of legal limits during normal operation to Plaintiffs and the Class members in connection with the sale and lease of the Class Vehicles.

81. Plaintiff and the Class members reasonably relied on FCA to perform its duty to disclose the known safety-related defects and that the Class Vehicles did not comply with applicable laws with respect to the Class Vehicles.

82. For the reasons set forth above, the existence of the installed defeat devices and the fact that the Class Vehicles emitted noxious gasses in excess of legal limits during normal operation constitutes material information with respect to the sale or lease of the Class Vehicles.

83. Had Plaintiff and the Class members known of the existence of the installed defeat devices and the fact that the Class Vehicles emitted noxious gasses in excess of legal limits during normal operation, they would not have purchased the Class Vehicles or would have paid less for the Class Vehicles.

84. Through its omissions regarding the installed defeat devices and the fact that the Class Vehicles emitted noxious gasses in excess of legal limits during normal operation, FCA intended to induce, and did induce, Plaintiff and the Class members to either purchase or lease a Class Vehicle that they otherwise would not have purchased or leased, or pay more for a Class Vehicle than they otherwise would have paid.

85. As a direct and proximate result of FCA's omission, Plaintiff and the Class members have incurred damages in an amount to be proven at trial.

COUNT II
BREACH OF CONTRACT

86. Plaintiffs repeat and reallege paragraphs 1-72 as if fully set forth herein.

87. Plaintiffs bring this Count individually and on behalf of the other members of the Nationwide Class (the "Class," for purposes of this Count).

88. Defendants' misrepresentations and omissions alleged herein, including Defendants' failure to disclose the existence of the defeat device and the fact that the Class

Vehicles emitted noxious gasses in excess of legal limits during normal operation, caused Plaintiffs and the Class members to purchase or lease their Class Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the Class members would not have purchased or leased these Class Vehicles, would not have purchased or leased these Class Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the defeat device. Accordingly, Plaintiffs and the Class members overpaid for their Class Vehicles and did not receive the benefits of their bargains.

89. Each and every sale or lease of a Class Vehicle constitutes a contract between Defendants and the purchaser or lessee. Defendants breached these contracts by selling or leasing Plaintiff's and the Class members' Class Vehicles and by misrepresenting or failing to disclose the existence of the defeat device and the fact that the Class Vehicles emitted noxious gasses in excess of legal limits during normal operation

90. As a direct and proximate result of Defendants' breach of contract, Plaintiffs and the Class have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT III
IMPLIED AND WRITTEN WARRANTY
Magnuson - Moss Warranty Act (15 U.S.C. §§ 2301, *et seq.*)

91. Plaintiffs repeat and reallege paragraphs 1-71 as if fully set forth herein.

92. Plaintiffs bring this Count individually and on behalf of the other members of the Nationwide Class (the "Class," for purposes of this Count).

93. Plaintiffs are "consumers" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. 2301(3).

94. FCA is a "supplier" and "warrantor" within the meaning of 15 U.S.C. § 2301(4) and (5).

95. The Class Vehicles are "consumer products" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

96. 15 U.S.C. § 2310(d)(1) provides a cause of action for any consumer who is damaged by the failure of a warrantor to comply with a written warranty.

97. FCA expressly warranted the Class Vehicles complied with the Federal Emission Warranty, which constitutes a "written warranty" within the meaning of 15 U.S.C. § 2301(6). The Class Vehicles' implied warranties of merchantability are covered by 15 U.S.C. § 2301(7).

98. With respect to Class members' purchases or leases of the Class Vehicles, the terms of FCA's written warranty and implied warranty became part of the basis of the bargain between FCA, on the one hand, and Plaintiffs and each of the Class members, on the other.

99. FCA breached its written and implied warranties as described in detail above. The Class Vehicles do not comply with Federal emission standards.

100. Plaintiffs and each of the Class members have had sufficient direct dealings with either FCA or its agents (including FCA dealerships) to establish privity of contract between FCA and Plaintiffs and the Class members. Nonetheless, privity is not required here because Plaintiffs and each of the Class members are intended third-party beneficiaries of contracts between FCA and its dealers, and specifically, of FCA's implied warranties. The dealers were not intended to be the ultimate consumers of the Class Vehicles and have no rights under the warranty agreements provided with the Class Vehicles; the warranty agreements were designed for and intended to benefit the consumers only. Finally, privity is also not required because the Class Vehicles are dangerous instrumentalities due to the aforementioned defects and nonconformities.

101. FCA had a reasonable opportunity to honor its warranty obligations upon first notice of investigation by the EPA, and could have taken corrective steps at that time to repair or replace the defective Class Vehicles.

102. At the time of the sale or lease of each Class Vehicle, FCA knew, should have known, or was reckless in not knowing of its failure to disclose information concerning the Class Vehicles' inability to perform as warranted, but nonetheless failed to rectify the situation and/or disclose the defective design. FCA has continued to show its refusal to rectify the situation by refusing to address the Class Vehicles' failure to meet applicable emission standards. Under the circumstances, the remedies available under any informal settlement procedure would be inadequate and any requirement that Plaintiffs resort to an informal dispute resolution procedure and/or afford FCA a reasonable opportunity to cure its breach of warranties is excused and thereby deemed satisfied.

103. The amount in controversy of the Plaintiffs' individual claims meets or exceeds $25.00 in value. In addition, the amount in controversy meets or exceeds $50,000 in value, exclusive of interest and costs, computed on the basis of all claims to be determined in this suit.

104. As a direct and proximate result of FCA's breach of the Federal Emission Warranty and the implied warranty of merchantability, Plaintiffs and the Class members have suffered damages in an amount to be determined at trial.

105. Plaintiffs, individually and on behalf of the Class members, seek all damages permitted by law, including the diminution in value of their vehicles, in an amount to be proven at trial.

COUNT IV
UNJUST ENRICHMENT

106. Plaintiffs repeat and reallege paragraphs 1-72 as if fully set forth herein.

107. Plaintiffs bring this Count individually and on behalf of the other members of the Nationwide Class (the "Class," for purposes of this Count).

108. FCA has benefitted from selling and leasing at an unjust profit defective Class Vehicles that had artificially inflated prices due to FCA's concealment of the installed defeat devices and the fact that the Class Vehicles emitted noxious gasses in excess of legal limits during normal operation, and Plaintiffs and the Class members have overpaid for these vehicles.

109. FCA has received and retained unjust benefits from Plaintiff and the Class members, and inequity has resulted.

110. It is inequitable and unconscionable for FCA to retain these benefits.

111. Because FCA concealed its fraud and deception, Plaintiff and the Class members were not aware of the true facts concerning the Class Vehicles and did not benefit from FCA's misconduct.

112. FCA knowingly accepted the unjust benefits of its wrongful conduct.

113. As a result of FCA's misconduct, the amount of its unjust enrichment should be disgorged and returned to Plaintiff and the Class members in an amount to be proven at trial..

COUNT V
VIOLATIONS OF THE DELAWARE CONSUMER FRAUD ACT
(6 Del. Code § 2513, *et seq.*)

114. Plaintiffs repeat and reallege paragraphs 1-71 as if fully set forth herein.

115. Plaintiffs bring this Count individually and on behalf of the other members of the Nationwide Class (the "Class," for purposes of this Count).

116. Defendants are "person[s]" within the meaning of 6 Del. Code § 2511(7).

117. The Delaware Consumer Fraud Act ("Delaware CFA") prohibits the "act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, or the concealment, suppression, or omission of any material fact with intent

that others rely upon such concealment, suppression or omission, in connection with the sale, lease or advertisement of any merchandise, whether or not any person has in fact been misled, deceived or damaged thereby." 6 Del. Code § 2513(a).

118. In the course of their business, Defendants concealed and suppressed material facts concerning the Class Vehicles. Defendants accomplished this by installing illegal defeat device software in the Class Vehicles that caused the vehicles to operate in a low emission test mode only during emissions testing. During normal operations, the Class Vehicles would emit grossly larger quantities of noxious contaminants, sometimes 40 times over applicable standards. The result was what FCA intended—the Class Vehicles passed emissions testing by way of deliberately induced false readings. Plaintiffs and Class members had no way of discerning that FCA's representations were false and misleading because FCA's defeat device software was extremely sophisticated technology. Plaintiffs and Class members did not and could not unravel FCA's deception on their own.

119. Defendants thus violated the Act by, at minimum: by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Class Vehicles.

120. Defendants engaged in misleading, false, unfair or deceptive acts or practices that violated the Delaware CFA by installing, failing to disclose and actively concealing the illegal defeat device and the true cleanliness and performance of the "clean" diesel engine system, by marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a reputable manufacturer that valued environmental cleanliness and efficiency, and that stood behind its vehicles after they were sold.

121. The Clean Air Act and EPA regulations require that automobiles limit their emissions output to specified levels. These laws are intended for the protection of public health and welfare. "Defeat devices" like those in the Class Vehicles are defined and prohibited by the Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By installing illegal "defeat devices" in the Class Vehicles and by making those vehicles available for purchase, FCA violated federal law and therefore engaged in conduct that violates the Delaware CFA.

122. Defendants knew the true nature of its "clean" diesel engine system for at least six years, but concealed all of that information until recently. FCA was also aware that it valued profits over environmental cleanliness, efficiency, and compliance with the law, and that it was manufacturing, selling, and distributing vehicles throughout the United States that did not comply with EPA regulations. FCA concealed this information as well.

123. FCA intentionally and knowingly misrepresented material facts regarding the Class Vehicles with intent to mislead Plaintiffs and the Class members.

124. FCA knew or should have known that its conduct violated the Delaware CFA.

125. Defendants owed Plaintiffs a duty to disclose the illegality and public health and safety risks of the Class Vehicles because they:

A. possessed exclusive knowledge that they were manufacturing, selling, and distributing vehicles throughout the United States that did not comply with EPA regulations;

B. intentionally concealed the foregoing from regulators, Plaintiffs, Class members; and/or

C. made incomplete representations about the environmental cleanliness and efficiency of the Class Vehicles generally, and the use of the defeat device in particular,

while purposefully withholding material facts from Plaintiffs that contradicted these representations.

126. Defendants concealed the illegal defeat device and the true emissions, efficiency, and performance of the "clean" diesel system, resulting in a raft of negative publicity once the defects finally began to be disclosed. The value of the Class Vehicles has therefore greatly diminished. In light of the stigma attached to those vehicles by FCA's conduct, they are now worth significantly less than they otherwise would be worth.

127. FCA's fraudulent use of the "defeat device" and its concealment of the true characteristics of the "clean" diesel engine system were material to Plaintiffs and the Class members.

128. Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental cleanliness and efficiency of FCA-branded vehicles, the quality of the FCA brand, the devaluing of environmental cleanliness and integrity at FCA, and the true value of the Class Vehicles.

129. Plaintiffs and the Class members suffered ascertainable loss and actual damages as a direct and proximate result of Defendants' misrepresentations and its concealment of and failure to disclose material information. Plaintiffs and the Class members who purchased or leased the Class Vehicles would not have purchased or leased them at all and/or – if the Vehicles' true nature had been disclosed and mitigated, and the Vehicles rendered legal to sell – would have paid significantly less for them. Plaintiffs also suffered diminished value of their vehicles, as well as lost or diminished use.

130. Defendants had an ongoing duty to all FCA customers to refrain from unfair and deceptive practices under the Delaware CFA. All owners of Class Vehicles suffered ascertainable

loss in the form of the diminished value of their vehicles as a result of FCA's deceptive and unfair acts and practices made in the course of FCA's business.

131. Defendants' violations present a continuing risk to Plaintiffs as well as to the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

132. As a direct and proximate result of Defendants' violations of the Delaware CFA, Plaintiffs and the Class members have suffered injury-in-fact and/or actual damage.

133. Plaintiffs seek damages under the Delaware CFA for injury resulting from the direct and natural consequences of Defendants' unlawful conduct. *See, e.g., Stephenson v. Capano Dev., Inc.*, 462 A.2d 1069, 1077 (Del. 1983). Plaintiffs also seek an order enjoining Defendants' unfair, unlawful, and/or deceptive practices, declaratory relief, attorneys' fees, and any other just and proper relief available under the Delaware CFA.

134. Defendants engaged in gross, oppressive or aggravated conduct justifying the imposition of punitive damages.

COUNT VI
BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY
(6 Del. Code §§ 2-314 and 2A-212)

135. Plaintiffs repeat and reallege paragraphs 1-71 as if fully set forth herein.

136. Plaintiffs bring this Count individually and on behalf of the other members of the Nationwide Class (the "Class," for purposes of this Count).

137. FCA is and was at all relevant times a merchant with respect to motor vehicles under 6 Del. C. §§ 2-104(1) and 2A-103(3).

138. Pursuant to 6 Del. C. §§ 6-2-314 and 6-2A-212, a warranty that the Class Vehicles were in merchantable condition was implied by law, and the Class Vehicles were sold and leased subject to an implied warranty of merchantability.

139. The Class Vehicles did not comply with the implied warranty of merchantability because, at the time of sale and at all times thereafter, they were defective and not in merchantable condition, would not pass without objection in the trade, and were not fit for the ordinary purpose for which vehicles were used. Specifically, the Class Vehicles included illegal defeat devices and did not comply with applicable emissions standards.

140. FCA had a reasonable opportunity to honor its warranty obligations upon first notice of investigation by the EPA, and could have taken corrective steps at that time to repair or replace the defective Class Vehicles.

141. Plaintiff and the Class members suffered injuries due to the defective nature of the Class Vehicles and FCA's breach of the implied warranty of merchantability.

142. FCA was provided notice of these issues by the investigations of the EPA and individual state regulators, numerous complaints filed against it including the instant Complaint, and by numerous individual letters and communications sent by Plaintiffs and others within a reasonable amount of time after the allegations of Class Vehicle defects became public.

143. As a direct and proximate result of FCA's breach of the implied warranty of merchantability, Plaintiff and the Class members have been damaged in an amount to be proven at trial.

COUNT VII
BREACH OF EXPRESS WARRANTY
(6 Del. Code §§ 2-313 and 2A-210)

144. Plaintiffs repeat and reallege paragraphs 1-71 as if fully set forth herein.

145. Plaintiffs bring this Count individually and on behalf of the other members of the Nationwide Class (the "Class," for purposes of this Count).

146. FCA is and was at all relevant times a merchant with respect to the Class Vehicles.

147. FCA provided an express warranty through a Federal Emissions Performance Warranty required by the EPA. The Performance Warranty applies to required repairs during the first two years or 24,000 miles if a vehicle fails an emissions test with certain components being covered for up to eight years or 80,000 miles. FCA also provided a Design and Defect Warranties required by the EPA covers repairs to the emission system and related parts for two years or 24,000 miles with certain major components being covered for up to eight years or 80,000 miles.

148. These warranties were part of the basis of the bargain that was reached when Plaintiffs and the Class members purchased or leased their Class Vehicles. FCA breached these express warranties by selling, and not repairing, the Class Vehicles that were installed with defeat devices and that did not comply with the relevant emissions standards.

149. FCA had a reasonable opportunity to honor its warranty obligations upon first notice of investigation by the EPA, and could have taken corrective steps at that time to repair or replace the defective Class Vehicles.

150. Furthermore, the Federal Emission Warranty fails in its essential purpose because the contractual remedy is insufficient to make Plaintiff and the Class members whole and because FCA has failed and/or has refused to adequately provided the promised remedies within a reasonable time.

151. Accordingly, recovery by Plaintiff and the Class members is not limited to the limited warranty of repair, and Plaintiff, individually and on behalf of the Class members, seeks all remedies as allowed by law.

152. Also, as alleged in more detail herein, at the time that FCA warranted and sold the Class Vehicles it knew that the Class Vehicles did not conform to the warranty and were inherently defective, and FCA improperly concealed material facts regarding its Class Vehicles. Plaintiff and

the Class members were therefore induced to purchase or lease the FCA Vehicles under false pretenses.

153. Moreover, much of the damage flowing from the Class Vehicles cannot be resolved through the limited remedy of repairs, as those incidental and consequential damages have already been suffered due to FCA's improper conduct as alleged herein, and due to its failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiff and the Class members' remedies would be insufficient to make them whole..

154. The EPA requires vehicle manufacturers to issue Design and Defect Warranties with respect to their vehicles' emission systems. Thus, the FCA Entity Defendants also provide an express warranty for their vehicles through a Federal Emission Control System Defect Warranty. The Design and Defect Warranty required by the EPA covers repair of emission control or emission related parts which fail to function or function improperly because of a defect in materials or workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes first, or, for the major emission control components, for eight years or 80,000 miles, whichever comes first.

155. As manufacturers of light-duty vehicles, the FCA Entity Defendants were required to provide these warranties to purchasers or lessees of their "clean" diesel vehicles.

156. The FCA Entity Defendants' warranties formed a basis of the bargain that was reached when Plaintiffs and other National Class members purchased or leased their Class Vehicles equipped with the non-compliant "clean" diesel engine and emission systems.

157. Plaintiffs and the National Class members experienced defects within the warranty period. Despite the existence of warranties, the FCA Entity Defendants failed to inform Plaintiffs

and National Class members that the Class Vehicles were intentionally designed and manufactured to be out of compliance with applicable state and federal emissions laws, and failed to fix the defective emission components free of charge.

158. The FCA Entity Defendants breached the express warranty promising to repair and correct a manufacturing defect or materials or workmanship of any parts they supplied. The FCA Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

159. Furthermore, the limited warranty promising to repair and/or correct a manufacturing defect fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and the other National Class members whole and because the FCA Entity Defendants have failed and/or have refused to adequately provide the promised remedies within a reasonable time.

160. Accordingly, recovery by Plaintiffs and the other National Class members is not restricted to the limited warranty promising to repair and/or correct a manufacturing defect, and Plaintiffs, individually and on behalf of the other National Class members, seek all remedies as allowed by law.

161. Also, as alleged in more detail herein, at the time the FCA Entity Defendants warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not conform to their warranties; further, the FCA Entity Defendants had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiffs and the other National Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

162. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of "replacements or adjustments," as many incidental and consequential damages have already been suffered because of FCA's fraudulent conduct as alleged herein, and because of its failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs' and the other National Class members' remedies would be insufficient to make Plaintiffs and the other National Class members whole.

163. As a direct and proximate result of FCA's breach of its express warranty, Plaintiff and the Class members have been damaged in an amount to be determined at trial.

B. Claims Brought on Behalf of the Statewide Classes

1. Claims Brought on Behalf of the Alabama Class

COUNT VIII
BREACH OF EXPRESS WARRANTY
(Ala. Code §§ 7-2-313 and 7-2A-210)

164. Plaintiff Stephens ("Plaintiff," for purposes of the Alabama Class's claims) repeats and realleges paragraphs 1-71 as if fully set forth herein..

165. Plaintiff brings this Count individually and on behalf of the other members of the Alabama Class (the "Class," for purposes of this Count).

166. FCA is and was at all relevant times a merchant with respect to the Class Vehicles.

167. FCA provided an express warranty through a Federal Emissions Performance Warranty required by the EPA. The Performance Warranty applies to required repairs during the first two years or 24,000 miles if a vehicle fails an emissions test with certain components being covered for up to eight years or 80,000 miles. FCA also provided a Design and Defect Warranties required by the EPA covers repairs to the emission system and related parts for two years or 24,000 miles with certain major components being covered for up to eight years or 80,000 miles.

168. These warranties were part of the basis of the bargain that was reached when Plaintiffs and the Class members purchased or leased their Class Vehicles. FCA breached these express warranties by selling, and not repairing, the Class Vehicles that were installed with defeat devices and that did not comply with the relevant emissions standards.

169. FCA had a reasonable opportunity to honor its warranty obligations upon first notice of investigation by the EPA, and could have taken corrective steps at that time to repair or replace the defective Class Vehicles.

170. Furthermore, the Federal Emission Warranty fails in its essential purpose because the contractual remedy is insufficient to make Plaintiff and the Class members whole and because FCA has failed and/or has refused to adequately provided the promised remedies within a reasonable time.

171. Accordingly, recovery by Plaintiff and the Class members is not limited to the limited warranty of repair, and Plaintiff, individually and on behalf of the Class members, seeks all remedies as allowed by law.

172. Also, as alleged in more detail herein, at the time that FCA warranted and sold the Class Vehicles it knew that the Class Vehicles did not conform to the warranty and were inherently defective, and FCA improperly concealed material facts regarding its Class Vehicles. Plaintiff and the Class members were therefore induced to purchase or lease the FCA Vehicles under false pretenses.

173. Moreover, much of the damage flowing from the Class Vehicles cannot be resolved through the limited remedy of repairs, as those incidental and consequential damages have already been suffered due to FCA's improper conduct as alleged herein, and due to its failure and/or

continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiff and the Class members' remedies would be insufficient to make them whole.

174. As a direct and proximate result of FCA's breach of its express warranty, Plaintiff and the Class members have been damaged in an amount to be determined at trial.

COUNT IX
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
(Ala. Code §§ 7-2-314 and 7-2A-212)

175. Plaintiff Stephens ("Plaintiff," for purposes of the Alabama Class's claims) repeats and realleges paragraphs 1-72 as if fully set forth herein.

176. Plaintiff brings this Count individually and on behalf of the other members of the Alabama Class (the "Class," for purposes of this Count).

177. FCA is and was at all relevant times a merchant with respect to motor vehicles under Ala. Code §§ 7-2-104 and 7-2A-103.

178. Pursuant to Ala. Code §§ 7-2-314 and 7-2A-212, a warranty that the Class Vehicles were in merchantable condition was implied by law, and the Class Vehicles were sold and leased subject to an implied warranty of merchantability.

179. The Class Vehicles did not comply with the implied warranty of merchantability because, at the time of sale and at all times thereafter, they were defective and not in merchantable condition, would not pass without objection in the trade, and were not fit for the ordinary purpose for which vehicles were used. Specifically, the Class Vehicles included illegal defeat devices and did not comply with applicable emissions standards.

180. FCA had a reasonable opportunity to honor its warranty obligations upon first notice of investigation by the EPA, and could have taken corrective steps at that time to repair or replace the defective Class Vehicles.

181. Plaintiff and the Class members suffered injuries due to the defective nature of the Class Vehicles and FCA's breach of the implied warranty of merchantability.

182. As a direct and proximate result of FCA's breach of the implied warranty of merchantability, Plaintiff and the Class members have been damaged in an amount to be proven at trial.

2. Claims Brought on Behalf of the Georgia Class

COUNT X
GEORGIA - BREACH OF EXPRESS WARRANTY
(O.C.G.A. §§ 11-2-313 and 11-2A-21)

183. Plaintiff Turner ("Plaintiff," for purposes of the Georgia Class's claims) repeats and realleges paragraphs 1-71 as if fully set forth herein.

184. Plaintiff brings this Count individually and on behalf of the other members of the Georgia Class (the "Class," for purposes of this Count).

185. FCA is and was at all relevant times a merchant with respect to the Class Vehicles.

186. FCA provided an express warranty through a Federal Emissions Performance Warranty required by the EPA. The Performance Warranty applies to required repairs during the first two years or 24,000 miles if a vehicle fails an emissions test with certain components being covered for up to eight years or 80,000 miles. FCA also provided a Design and Defect Warranties required by the EPA covers repairs to the emission system and related parts for two years or 24,000 miles with certain major components being covered for up to eight years or 80,000 miles.

187. These warranties were part of the basis of the bargain that was reached when Plaintiffs and the Class members purchased or leased their Class Vehicles. FCA breached these express warranties by selling, and not repairing, the Class Vehicles that were installed with defeat devices and that did not comply with the relevant emissions standards.

188. FCA had a reasonable opportunity to honor its warranty obligations upon first notice of investigation by the EPA, and could have taken corrective steps at that time to repair or replace the defective Class Vehicles.

189. Furthermore, the Federal Emission Warranty fails in its essential purpose because the contractual remedy is insufficient to make Plaintiff and the Class members whole and because FCA has failed and/or has refused to adequately provided the promised remedies within a reasonable time.

190. Accordingly, recovery by Plaintiff and the Class members is not limited to the limited warranty of repair, and Plaintiff, individually and on behalf of the Class members, seeks all remedies as allowed by law.

191. Also, as alleged in more detail herein, at the time that FCA warranted and sold the Class Vehicles it knew that the Class Vehicles did not conform to the warranty and were inherently defective, and FCA improperly concealed material facts regarding its Class Vehicles. Plaintiff and the Class members were therefore induced to purchase or lease the FCA Vehicles under false pretenses.

192. Moreover, much of the damage flowing from the Class Vehicles cannot be resolved through the limited remedy of repairs, as those incidental and consequential damages have already been suffered due to FCA's improper conduct as alleged herein, and due to its failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiff and the Class members' remedies would be insufficient to make them whole.

193. As a direct and proximate result of FCA's breach of its express warranty, Plaintiff and the Class members have been damaged in an amount to be determined at trial.

COUNT XI
GEORGIA - BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
(O.C.G.A. §§ 11-2-314 and 11-2A-212)

194. Plaintiff Turner ("Plaintiff," for purposes of the Georgia Class's claims) repeats and realleges paragraphs 1-71 as if fully set forth herein.

195. Plaintiff brings this Count individually and on behalf of the other members of the Georgia Class (the "Class," for purposes of this Count).

196. FCA is and was at all relevant times a merchant with respect to motor vehicles under O.C.G.A. §§ 11-2-104 and 11-2A-103.

197. Pursuant to O.C.G.A. §§ 11-2-314 and 11-2A-212, a warranty that the Class Vehicles were in merchantable condition was implied by law, and the Class Vehicles were sold and leased subject to an implied warranty of merchantability.

198. The Class Vehicles did not comply with the implied warranty of merchantability because, at the time of sale and at all times thereafter, they were defective and not in merchantable condition, would not pass without objection in the trade, and were not fit for the ordinary purpose for which vehicles were used. Specifically, the Class Vehicles included illegal defeat devices and did not comply with applicable emissions standards.

199. FCA had a reasonable opportunity to honor its warranty obligations upon first notice of investigation by the EPA, and could have taken corrective steps at that time to repair or replace the defective Class Vehicles.

200. Plaintiff and the Class members suffered injuries due to the defective nature of the Class Vehicles and FCA's breach of the implied warranty of merchantability.

201. As a direct and proximate result of FCA's breach of the implied warranty of merchantability, Plaintiff and the Class members have been damaged in an amount to be proven at trial.

VIII. REQUEST FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of members of the Nationwide Class, National Subclasses, and Statewide Classes respectfully request that the Court enter judgment in their favor and against Defendants, as follows:

A. Certification of the proposed Nationwide Class, National Subclasses, and Statewide Classes under Federal Rule of Civil Procedure 23, including appointment of Plaintiffs' counsel as Class Counsel;

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

C. Injunctive relief in the form of a recall or free replacement;

D. A declaration that the defeat device software described herein in the Class Vehicles is illegal and that the Class Vehicles are defective;

E. Public injunctive relief necessary to protect public health and welfare, and to remediate the environmental harm caused by the Class Vehicles' unlawful emissions;

F. Costs, restitution, damages, and disgorgement in an amount to be determined at trial;

G. Rescission of all Class Vehicle purchases or leases, including reimbursement and/or compensation of the full purchase price of all Class Vehicles, including taxes, licenses, and other fees;

H. Damages under the Magnuson-Moss Warranty Act;

I. For treble and/or punitive damages as permitted by applicable laws;

J. An order requiring Defendants to pay both pre- and post-judgment interest on any amounts awarded;

K. An award of costs and attorneys' fees; and

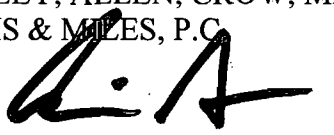
L. Such other or further relief as the Court may deem appropriate, just, and equitable.

IX. DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury of any and all issues in this action so triable of right.

DATED this 20th day of January, 2017.

BEASLEY, ALLEN, CROW, METHVIN,
PORTIS & MILES, P.C.

By 
Archie I. Grubb, II

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Court Name: U S DISTRICT COURT - AL/M
Division: 2
Receipt Number: 4602043839
Cashier ID: estrong
Transaction Date: 01/20/2017
Payer Name: BEASLEY ALLEN CROW METHVIN

CIVIL FILING FEE
For: BEASLEY ALLEN CROW METHVIN
Case/Party: D-ALM-2-17-CV-000040-001
Amount: $400.00

CHECK
Check/Money Order Num: 260204
Amt Tendered: $400.00

Total Due: $400.00
Total Tendered: $400.00
Change Amt: $0.00

2:17-CV-40

Stephens v. FCA USA LLC, et al