

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA

R.D. WARREN,
individually and on behalf of all others
similarly situated,

Plaintiff,

v.

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

Defendants.

No. _____

**COMPLAINT
CLASS ACTION**

DEMAND FOR JURY TRIAL

I. INTRODUCTION

Plaintiff R.D. Warren (“Plaintiff”), individually and on behalf of all others similarly situated (“Class members”), alleges the following against Fiat Chrysler Automobiles N.V. (“FCA N.V.”) and FCA US, LLC (“FCA US”) (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).

II. NATURE OF THE ACTION

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

2. According to the U.S. Environmental Protection Agency (EPA), Defendants installed its “defeat device” in at least the following diesel models of its vehicles: Model Year (“MY”) 2014-2016 Dodge Ram 1500 and MY 2014-2016 Jeep Grand Cherokee.

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

4. The defeat devices Defendants designed and installed work by switching on the full emissions control systems in Defendants’ cars *only* when the car is undergoing periodic emissions

testing. The technology needed to control emissions from Defendants' cars to meet state and federal emissions regulations, reduces their performance, limiting acceleration, torque, and fuel efficiency.

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

6. Those violations are explained in a Notice of Violation the EPA issued to Defendants, a copy of which are attached to this Class Action Complaint as **Exhibit A**.

III. PARTIES

7. Plaintiff R.D. Warren is an adult resident of Jefferson County, Alabama.

8. Fiat Chrysler Automobiles N.V. (FCA N.V.), a Dutch corporation headquartered in London, United Kingdom, is an international automotive group engaged in designing, engineering, manufacturing, distributing, and selling vehicles, components, and production systems. FCA N.V. vehicles are produced for mass market under the Abarth, Alfa Romeo, Chrysler, Dodge, Fiat, Fiat Professional, Jeep, Lancia, and Ram brands and the SRT performance vehicle designation.

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

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

11. At all relevant times, FCA US manufactured, distributed, sold, leased, and warranted the Defeat Device Vehicles under the Dodge and Jeep brand names throughout all of

the United States, and including but not limited to Alabama. FCA US and/or its agents designed the EcoDiesel engines and engine control systems in the Defeat Device Vehicles, including the “defeat device.” FCA US also developed and disseminated the owners’ manuals and warranty booklets, advertisements, and other promotional materials relating to the Defeat Device Vehicles.

IV. ANY OTHERWISE-APPLICABLE STATUTES OF LIMITATION ARE TOLLED

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

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

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

15. The EPA determined that these one or more of these eight AECDs resulted in excess NOx emissions than may be reasonably be expected under normal vehicle operation. Despite being aware that the disclosure of these AECDs was required, Defendants did not disclose these AECDs to the EPA in their applications for COCs. Thus, Defendants’ deception with respect

to its EcoDiesel engines, engine control systems, and “defeat devices” was painstakingly concealed from consumers and regulators alike.

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

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

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

19. Instead of disclosing its emissions deception, or that the emissions from the Defeat Device Vehicles were far worse than represented, Defendants falsely represented that its vehicles complied with federal and state emissions standards, and that it was a reputable manufacturer whose representations could be trusted.

20. Defendants were under a continuous duty to disclose to Plaintiff and the other Class members the facts that it knew about the emissions from Defeat Device Vehicles, and of those vehicles’ failure to comply with federal and state laws.

21. Although it had the duty throughout the relevant period to disclose to Plaintiff and

Class members that it had engaged in the deception described in this Complaint, Defendants chose to evade federal and state emissions and clean air standards with respect to the Defeat Device Vehicles, and it intentionally misrepresented its blatant and deceptive lack of compliance with state law regulating vehicle emissions and clean air.

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

V. JURISDICTION AND VENUE

23. This Court has 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.

24. This Court has personal jurisdiction over Defendants because it conducts business in Alabama, and has sufficient minimum contacts with Alabama. Defendant FCA US is also registered with the Alabama Secretary of State as entity ID number 617-653 and has various dealerships in Alabama, including without limitation Benchmark Jeep.

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

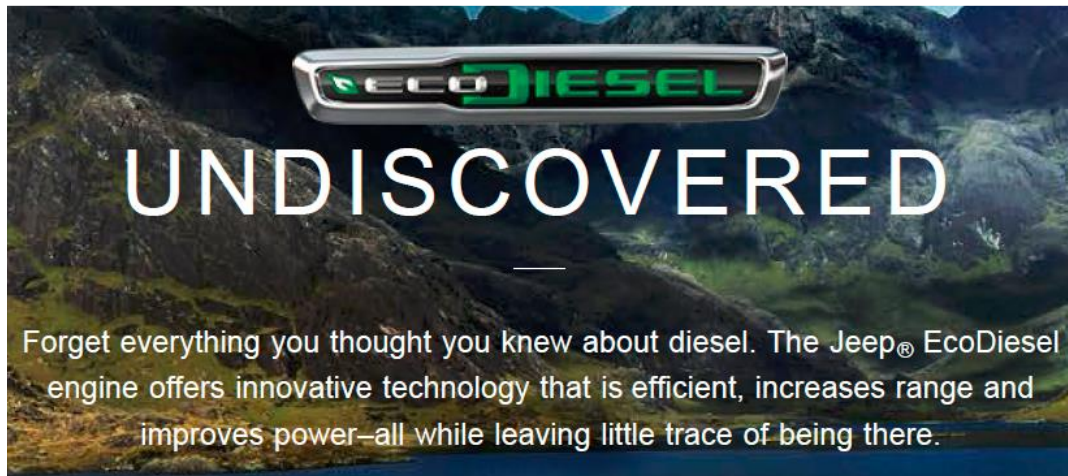
VI. FACTS

26. Defendants intentionally designed and sold cars that misled consumers and regulators about the amount of pollution those cars created and the fuel efficiency they produced. Despite touting themselves as an environmentally conscientious company that produced thoughtful cars for people who cared about the environment, Defendants sold expensive cars that

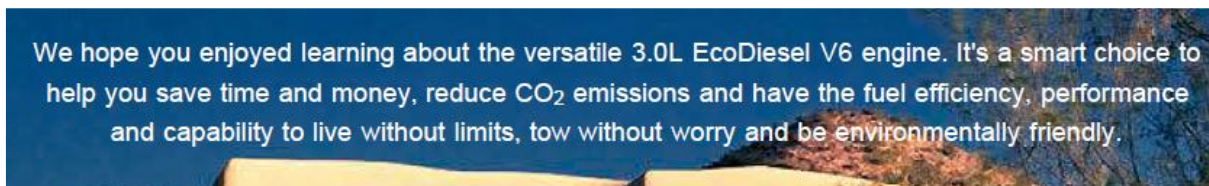
produced pollution at orders of a magnitude above federal and state regulations, and then intentionally and knowingly hid the truth about those cars.

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

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



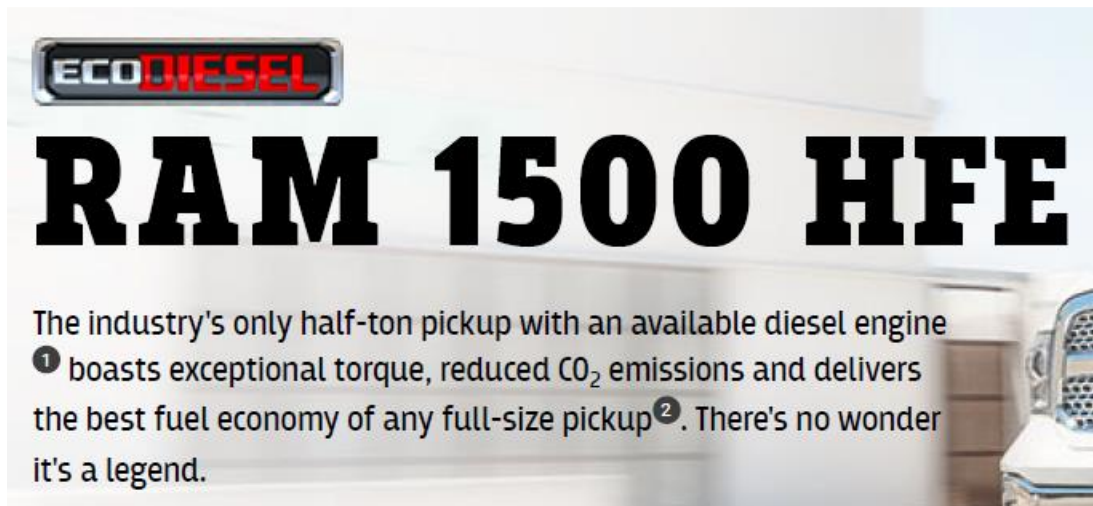
28. Defendants’ success is based in large part on promoting their diesel cars as “clean” and “environmentally friendly” vehicles. Indeed, being both highly efficient and “clean” are the centerpieces of Defendants’ diesel engine marketing campaign. “EcoDiesel” is in the very name of the vehicles about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



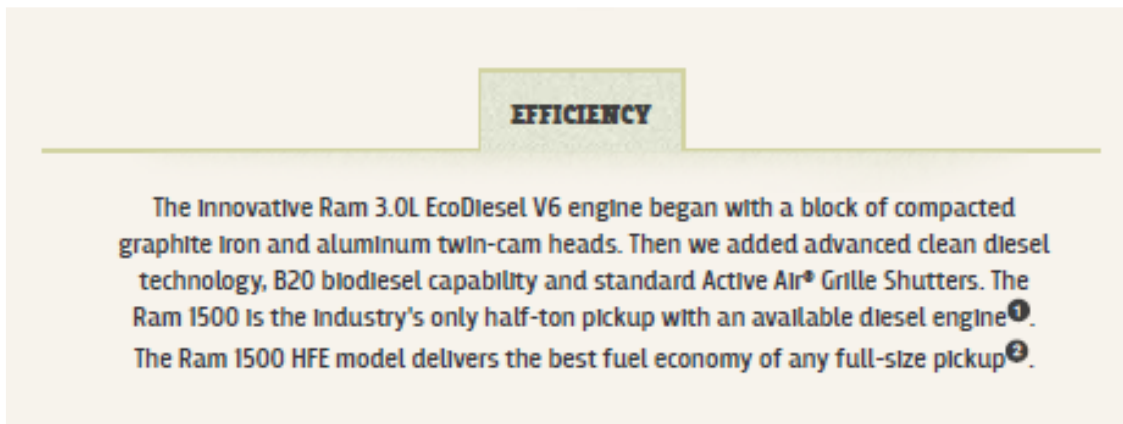
29. Defendants’ apparent concern for the environment is evident beyond just the model names and purported attributes of their vehicles. For example, on the “Savings” page of its website,

¹ <http://www.jeep.com/en/jeep-capabilities/eco-diesel-calculator/#introduction> (last accessed Jan. 12, 2017); <http://www.ramtrucks.com/en/ecodiesel/> (last accessed Jan. 12, 2017).

Defendants state that it takes “Did we mention low CO₂ emissions? Could this be the perfect engine?”²



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



B. Defendants Intentionally Hid the Excessive and Illegal Levels of Pollution Emitted from its Cars.

31. Contrary to Defendants’ self-promotion as a “clean” company, its diesel vehicles

² <http://www.jeep.com/en/jeep-capabilities/eco-diesel-calculator/#savings> (last accessed Jan. 12, 2017).

are unhealthy and unlawful.

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

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

34. The EPA determined that these one or more of these eight AECDs, alone or in combination, resulted in excess NO_x emissions than may be reasonably be expected under normal vehicle operation. Despite being aware that the disclosure of these AECDs was required, Defendants did not disclose these AECDs to the EPA in their applications for COCs. Thus, Defendants’ deception with respect to its EcoDiesel engines, engine control systems, and “defeat devices” was painstakingly concealed from consumers and regulators alike.

35. The EPA NOV states:

To date, despite having the opportunity to do so, [Defendants have] failed to demonstrate that [they] did not know, or should not have known, that a principal effect of one of 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 CAA.

Exhibit A, p. 7.

36. Most modern engines, including Defendants’ “EcoDiesel” engines, use computerized engine control systems to monitor sensors throughout a car’s engine and exhaust

systems and control operation of the car's systems to ensure optimal performance and efficiency.

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

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

39. In short, this software allows Defendants' diesel vehicles to meet emissions standards in labs or state testing stations, while permitting the vehicles to emit nitrogen oxides (NO_x) in excess of United States laws and regulations during the normal operation of the vehicles.

40. NO_x pollution contributes to nitrogen dioxide, ground-level ozone, and fine particulate matter. Exposure to these pollutants has been linked with serious health dangers, including asthma attacks and other respiratory illness serious enough to send people to the hospital. Ozone and particulate matter exposure have been associated with premature death due to respiratory-related or cardiovascular-related effects. Children, the elderly, and people with pre-existing respiratory illness are at an acute risk of health effects from these pollutants.

41. The Clean Air Act has strict emissions standards for vehicles and it requires vehicle manufacturers to certify to the EPA that the vehicles sold in the United States meet applicable federal emissions standards to control air pollution. Every vehicle sold in the United States must

be covered by an EPA-issued certificate of conformity. Under federal law, cars equipped with defeat devices, which reduce the effectiveness of emissions control systems during normal driving conditions, cannot be certified. By manufacturing and selling cars with defeat devices that allowed for higher levels of emissions than were certified to the EPA, FCA US violated the Clean Air Act, defrauded its customers, and engaged in unfair competition under state and federal laws.

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

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

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

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

45. Had Plaintiff and Class members known of the "defeat device" at the time they purchased or leased their Defeat Device Vehicles, they would not have purchased or leased those vehicles, or would have paid substantially less for the vehicles than they did. Moreover, when and

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

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

VII. PLAINTIFF'S FACTS

47. Plaintiff R.D. Warren purchased a 2014 Jeep Grand Cherokee Diesel. The purchase was made at Benchmark Chrysler Dodge Jeep Ram in Birmingham, Alabama. Plaintiff R.D. Warren would not have paid a premium for his Jeep Grand Cherokee if he had known the truth about its fuel efficiency and emissions, and he would not have purchased its Jeep Grand Cherokee if he knew it included an unlawful defeat device.

VIII. CLASS ACTION ALLEGATIONS

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

Plaintiff Warren seeks to represent a class of all Alabama corporations, companies, trusts, persons, and businesses of any type and/or formation who are current or former owners and/or lessees of, or that otherwise acquired, a "Defeat Device Vehicle." Defeat Device Vehicles include, without limitation: Model Year ("MY") 2014-2016 Jeep Grand Cherokee and MY 2014-2016 Dodge Ram 1500 or any other car that is powered by Defendants' 3.0-liter EcoDiesel engine (the "Alabama Class").

Plaintiff seeks to represent all persons or entities in the United States who are current or former owners and/or lessees of, or that otherwise acquired, a "Defeat

Device Vehicle.” Defeat Device Vehicles include, without limitation: Model Year (“MY”) 2014-2016 Jeep Grand Cherokee and MY 2014-2016 Dodge Ram 1500 or any other car that is powered by Defendants’ 3.0-liter EcoDiesel engine (the “U.S. Class”) (also, collectively with the Alabama Class, the “Class” or “Classes”).

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

50. Certification of Plaintiff’s claims for class-wide treatment is appropriate because Plaintiff can prove the elements of his 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.

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

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

52. The members of the Classes are so numerous and geographically dispersed that individual joinder of all Class members is impracticable. Upon information and belief, the number of victims in Alabama will easily exceed 1,000 (one thousand). However, the precise number of Class members is unknown to Plaintiff, 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).

53. This action involves common questions of law and fact, which predominate over any questions affecting individual 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 Defeat Device Vehicles into the stream of commerce in the United States;
- (c) Whether the EcoDiesel engine system in the Defeat Device Vehicles contains a defect in that it does not comply with EPA requirements;
- (d) Whether the EcoDiesel engine systems in Defeat Device Vehicles can be made to comply with EPA standards without substantially degrading the performance and/or efficiency of the Defeat Device Vehicles;
- (e) Whether Defendants knew about the “defeat device” and, if so, how long Defendants had known;
- (f) Whether Defendants designed, manufactured, marketed, and distributed Defeat Device Vehicles with a “defeat device”;
- (g) Whether Defendants’ conduct violates consumer protection statutes, warranty laws, and other laws as asserted herein;
- (h) Whether Plaintiff and the other Class members overpaid for their Defeat Device Vehicles;
- (i) Whether Plaintiff and the other Class members are entitled to equitable relief, including, but not limited to, restitution or injunctive relief; and
- (j) Whether Plaintiff and the other Class members are entitled to damages and other monetary relief and, if so, in what amount.

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

54. Plaintiff's claims are typical of the other Class members' claims because, among other things, all Class members were comparably injured through Defendants' wrongful conduct as described above.

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

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

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

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

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

57. 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 Plaintiff and the other 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 Class to individually seek redress for Defendants' wrongful conduct.

58. Even if 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.

IX. CAUSES OF ACTION

COUNT I Fraud by Concealment (Common Law)

59. Plaintiff realleges and incorporate by reference all paragraphs as though fully set forth herein.

60. Plaintiff brings this claim on behalf of the Classes.

61. Defendants intentionally concealed and suppressed material facts concerning the quality and character of the Defeat Device Vehicles. As alleged in this Complaint, Defendants engaged in deception to evade federal and state vehicle emissions standards by installing software designed to conceal its vehicles' emissions of the pollutants, which contributes to the creation of ozone and smog.

62. The software installed on the vehicles at issue was designed nefariously to kick-in during emissions certification testing, such that the vehicles would show far lower emissions than when actually operating on the road. The result was what Defendants' intended: vehicles passed emissions certifications by way of deliberately induced false readings. Reportedly, Defendants' deliberate, secret deception resulted in noxious emissions from these vehicles that far exceeded U.S. emissions standards.

63. Plaintiff and Class members reasonably relied upon Defendants' false representations which were made to Plaintiff and class members. They had no way of knowing that Defendants' representations were false and gravely misleading. As alleged herein, Defendants

employed extremely sophisticated methods of deception. Plaintiff and Class members did not, and could not, unravel Defendants' deception on their own.

64. Defendants concealed and suppressed material facts concerning what is evidently the true culture of Defendants —one characterized by an emphasis on profits and sales above compliance with federal and state clean air law, and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales above the trust that Plaintiff and Class members placed in its representations.

65. Necessarily, Defendants also took steps to ensure that its employees did not reveal the details of its deception to regulators or consumers, including Plaintiff and Class members. Defendants did so in order to boost the reputations of its vehicles and to falsely assure purchasers and lessors of its vehicles, including certified previously owned vehicles, that Defendants is a reputable manufacturer that complies with applicable law, including federal and state clean air law and emissions regulations, and that its vehicles likewise comply with applicable laws and regulations.

66. Defendants' false representations were material to consumers, both because they concerned the quality of the Defeat Device Vehicles, including their compliance with applicable federal and state laws and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Defendants well knew, its customers, including Plaintiff and Class members, highly valued that the vehicles they were purchasing or leasing were clean diesel cars, and they paid accordingly.

67. Defendants had a duty to disclose the emissions deception it engaged in with respect to the vehicles at issue because knowledge of the deception and its details were known and/or accessible only to Defendants, because Defendants had exclusive knowledge as to implementation

and maintenance of its deception, and because Defendants knew the facts were unknown to or reasonably discoverable by Plaintiff or Class members.

68. Defendants also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions standards, starting with references to them as clean diesel cars, or cars with clean diesel engines, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding its emissions deception, the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and its actual practices with respect to the vehicles at issue.

69. Having volunteered to provide information to Plaintiff and the Class, Defendants had the duty to disclose the entire truth. These omitted and concealed facts were material because they directly affect the value of the Defeat Device Vehicles purchased or leased by Plaintiff and Class members. Whether a manufacturer's products comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. Defendants represented to Plaintiff and Class members that they were purchasing clean diesel vehicles, and certification testing appeared to confirm this—except that, secretly, Defendants had thoroughly subverted the testing process.

70. Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Defendants money, and it did so at the expense of Plaintiff and Class members.

71. On information and belief, Defendants have still not made full and adequate disclosures, and continues to defraud Plaintiff and Class members by concealing material information regarding the emissions qualities of its referenced vehicles and its emissions deception.

72. Plaintiff and Class members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly “clean” diesel cars manufactured by Defendants, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiff’s and Class members’ actions were justified. Defendants was in exclusive control of the material facts, and such facts were not known to the public, Plaintiff, or Class members.

73. Because of the concealment and/or suppression of the facts, Plaintiff and Class members have sustained damages because they own vehicles that are diminished in value as a result of Defendants’ concealment of the true quality and quantity of those vehicles’ emissions and Defendants’ failure to timely disclose the actual emissions qualities and quantities of roughly one hundred thousand of Defendants’ Jeep- and Dodge-branded vehicles and the serious issues engendered by Defendants’ corporate policies. Had Plaintiff and Class members been aware of Defendants’ emissions deceptions with regard to the vehicles at issue, and the company’s callous disregard for compliance with applicable federal and state law and regulations, Plaintiff and Class members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

74. The value of Plaintiff’s and Class members’ vehicles has diminished as a result of Defendants’ fraudulent concealment of its emissions deception, which has greatly tarnished the

Jeep and Dodge brand names attached to Plaintiff's and Class members' vehicles and made any reasonable consumer reluctant to purchase any of the Defeat Device Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

75. Accordingly, Defendants are liable to Plaintiff and Class members for damages in an amount to be proven at trial.

76. Defendants' acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and Class members' rights and the representations that Defendants made to them, in order to enrich Defendants. Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

77. Plaintiff pleads this count pursuant to the law of Michigan, where FCA US has its American headquarters, on behalf of all members of the Classes.

78. Alternatively, Plaintiff may allege sub-classes, based on the residences at pertinent times of members of the Class, to allege fraudulent concealment under the laws of states other than the aforementioned states.

COUNT II
Breach of Contract

79. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

80. Plaintiff brings this Count on behalf of the Classes.

81. Defendants' misrepresentations and omissions alleged herein, including Defendants' failure to disclose the existence of the "defeat device" and/or defective design as alleged herein, caused Plaintiff and the other Class members to make their purchases or leases of their Defeat Device Vehicles. Absent those misrepresentations and omissions, Plaintiff and the

other Class members would not have purchased or leased these Defeat Device Vehicles, would not have purchased or leased these Defeat Device Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the EcoDiesel engine system and the “defeat device.” Accordingly, Plaintiff and the other Class members overpaid for their Defeat Device Vehicles and did not receive the benefit of their bargain.

82. Each and every sale or lease of a Defeat Device Vehicle constitutes a contract between Defendants and the purchaser or lessee. Defendants breached these contracts by selling or leasing Plaintiff and the other Class members defective Defeat Device Vehicles and by misrepresenting or failing to disclose the existence of the “defeat device” and/or defective design, including information known to Defendants rendering each Defeat Device Vehicle less safe and emissions compliant, and thus less valuable, than vehicles not equipped with EcoDiesel engine systems and “defeat devices.”

83. As a direct and proximate result of Defendants’ breach of contract, Plaintiff and the Classes 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.

84. Plaintiff pleads this count pursuant to the law of Michigan, where FCA US has its American headquarters, on behalf of all members of the Classes.

85. Alternatively, Plaintiff may allege sub-classes, based on the residences at pertinent times of members of the Class, to allege fraudulent concealment under the laws of states other than the aforementioned states.

COUNT III
Breach of Express Warranty

86. Plaintiff incorporates by reference every prior and subsequent allegation of this

Complaint as if fully restated here.

87. Plaintiff brings a cause of action against Defendants for breach of express warranty on behalf of themselves and the Classes.

88. Defendants made numerous representations, descriptions, and promises to Plaintiff and Class members regarding the performance and emission controls of its diesel vehicles.

89. Defendants, however, knew or should have known that its representations, descriptions, and promises were false. Defendants were aware that it had installed defeat devices in the vehicles it sold to Plaintiff and Class members.

90. Plaintiff and Class members reasonably relied on Defendants' representations in purchasing "clean" diesel vehicles. Those vehicles, however, did not perform as was warranted. Unbeknownst to Plaintiff, those vehicles included devices that caused their emission reduction systems to perform at levels worse than advertised. Those devices are defects. Accordingly, Defendants breached its express warranty by providing a product containing defects that were never disclosed to the Plaintiff and Class members.

91. As a direct and proximate result of Defendants' false and misleading representations and warranties, Plaintiff and Class members suffered significant damages and seek the relief described below.

92. Plaintiff pleads this count pursuant to the law of Michigan, where FCA US has its American headquarters, on behalf of all members of the Classes.

93. Alternatively, Plaintiff may allege sub-classes, based on the residences at pertinent times of members of the Class, to allege fraudulent concealment under the laws of states other than the aforementioned states.

COUNT IV
Breach of Implied Warranty

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

95. Plaintiff brings this cause of action against Defendants for breach of implied warranty on behalf of themselves and the Classes.

96. Defendants made numerous representations, descriptions, and promises to Plaintiff and Class members regarding the functionality of Defendants' "clean" diesel technology.

97. Plaintiff and Class members reasonably relied on Defendants' representations in purchasing the Defeat Device vehicles.

98. As set forth throughout this Complaint, Defendants knew that its representations, descriptions and promises regarding its diesel engines were false.

99. When Plaintiff and Class members purchased Defendants' diesel vehicles, they did not conform to the promises or affirmations of fact made in Defendants' promotional materials, including that the vehicles were designed to meet the most demanding environmental standards. Instead, as alleged above, those vehicles were designed to cheat those standards, and the vehicles emitted far higher levels of pollution than promised.

100. Accordingly, the Defeat Device Vehicles failed to conform to Defendants' implied warranty regarding their functionality.

101. As a direct and proximate result of Defendants' false and misleading representations and warranties, Plaintiff and Class members suffered significant injury when Defendants sold them cars that, it is now clear, are worth far less than the price Plaintiff and Class members paid for them. Accordingly, Plaintiff and the Class seek the relief described below.

102. Plaintiff pleads this count pursuant to the law of Michigan, where FCA US has its

American headquarters, on behalf of all members of the Classes.

103. Alternatively, Plaintiff may allege sub-classes, based on the residences at pertinent times of members of the Class, to allege fraudulent concealment under the laws of states other than the aforementioned states.

COUNT V
Magnuson - Moss Act (15 U.S.C. §§ 2301, et seq.)—Implied Warranty

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

105. Plaintiff asserts this cause of action on behalf of themselves and the other members of the Classes.

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

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

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

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

110. 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 an implied warranty.

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

112. Defendants has breached these implied warranties as described in more detail above. Without limitation, Defendants' Defeat Device vehicles are defective, as described above,

which resulted in the problems and failures also described above.

113. By Defendants' conduct as described herein, including Defendants' knowledge of the defects inherent in the vehicles and its action, and inaction, in the face of the knowledge, Defendants has failed to comply with its obligations under its written and implied promises, warranties, and representations.

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

115. All jurisdictional prerequisites have been satisfied.

116. Plaintiff and members of the Class are in privity with Defendants in that they purchased the software from Defendants or its agents.

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

COUNT VI
Unjust Enrichment

118. Plaintiff incorporate by reference each and every prior and subsequent allegation of this Complaint as if fully restated here.

119. Plaintiff bring this count on behalf of themselves and, where applicable, the Classes.

120. Plaintiff and members of the Class conferred a benefit on Defendants by, *inter alia*, using (and paying for) its vehicles.

121. Defendants have retained this benefit, and know of and appreciate this benefit.

122. Defendants were and continue to be unjustly enriched at the expense of Plaintiff and Class members.

123. Defendants should be required to disgorge this unjust enrichment.

124. Plaintiff pleads this count pursuant to the law of Michigan, where Defendants has its American headquarters, on behalf of all members of the Classes.

125. Alternatively, Plaintiff may allege sub-classes, based on the residences at pertinent times of members of the Class, to allege fraudulent concealment under the laws of states other than the aforementioned states.

COUNT VII
Violation of Alabama's Deceptive Trade Practices Act
(Ala. Code §8-19-5, *et seq.*)

126. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

127. Plaintiff brings this Count on behalf of Alabama members of the Classes and the Alabama Dealer Class and Alabama Class.

128. Defendants violated the Alabama Deceptive Trade Practices Act, Ala. Code §8-19-5, ("Alabama DTPA") and the substantially similar statutes of other states in which it conducts business, by selling the Defeat Device Vehicles.

129. Pursuant to the Alabama DTPA, it is unlawful to:

(2) Caus[e] confusion or misunderstanding as to the source sponsorship, approval, or certification of goods or services

(7) Represent[] that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another.

(27) Engaging in any other unconscionable, false, misleading, or deceptive

act or practice in the conduct of trade or commerce

Ala. Code §8-9-15

130. The Defeat Device Vehicles are “goods” as defined in Alabama DTPA.

131. As alleged above, Defendants made numerous representations concerning the benefits, efficiency, performance and safety features of EcoDiesel engine systems and the Defeat Device Vehicles that were misleading.

132. In purchasing or leasing the Defeat Device Vehicles, Plaintiff and the other Class members were deceived by Defendants’ failure to disclose that the Defeat Device Vehicles were equipped with defective EcoDiesel engine systems that failed EPA emissions standards.

133. Defendants’ conduct, as described hereinabove, was and is in violation of the Alabama DTPA. Defendants’ conduct violates at least the following enumerated Alabama DTPA provisions:

- A. Ala. Code §8-9-15(2) “Causing confusion or misunderstanding as to the source sponsorship, approval, or certification of goods or services”
- B. Ala. Code §8-9-15(7) “Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another”
- C. Ala. Code §8-9-15(27) “Engaging in any other unconscionable, false, misleading, or deceptive act or practice in the conduct of trade or commerce”

134. The Alabama Plaintiff and the Alabama Class members have suffered injury in fact and actual damages resulting from Defendants’ material omissions and misrepresentations because they paid an inflated purchase or lease price for the Defeat Device Vehicles and because they stand

to pay additional fuel costs if and when their Defeat Device Vehicles are made to comply with emissions standards.

135. Defendants knew, should have known, or was reckless in not knowing of the defective design and/or manufacture of the EcoDiesel engine systems, and that the Defeat Device Vehicles were not suitable for their intended use.

136. The facts concealed and omitted by Defendants to the Alabama Plaintiff and the Alabama Class members are material in that a reasonable consumer would have considered them to be important in deciding whether to purchase or lease the Defeat Device Vehicles or pay a lower price. Had the Alabama Plaintiff and the Alabama Class members known about the defective nature of the Defeat Device Vehicles, they would not have purchased or leased the Defeat Device Vehicles or would not have paid the prices they paid.

137. The Alabama Plaintiff, the Alabama Class members' injuries were proximately caused by Defendants' fraudulent and deceptive business practices.

138. Therefore, the Alabama Plaintiff and the Alabama Class members are entitled to equitable and monetary relief under the Alabama DTPA.

X. REQUEST FOR RELIEF

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

- A. Certification of the proposed Class, including appointment of Plaintiff's counsel as Class Counsel for the Classes;
- 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 program;

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

XI. DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial.

DATED this 12th day of January, 2017.

/s/ Travis E. Lynch

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