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12 UNITED STATES DISTRICT COURT
13 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
14

15 WENDY HIGHTMAN, on behalf of)
herself and all others similarly)
16 situated,)

17 Plaintiff,

18 v.

19 FIAT CHRYSLER US LLC, and)
DOES 1 through 10, inclusive,)
20

21 Defendants.)
22)
23)
24)
25)
26)
27)
28)

Case No.: '18CV2205 BEN KSC

CLASS ACTION COMPLAINT

1. Violation of Magnuson-Moss Warranty Act (15 U.S.C. § 2301, *et seq.*)
2. Breach of Contract/Common Law Warranty (Based on California Law)
3. Breach of the Duty of Good Faith and Fair Dealing (Based on California Law)
4. Violations of California False Advertising Law (Cal. Bus. & Prof. Code §§ 17500, *et seq.*);
5. Violation of California Consumer Legal Remedies Act (Cal. Civil Code § 1750 *et seq.*)
6. Violation of California Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, *et seq.*)

DEMAND FOR JURY TRIAL

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1 Plaintiff Wendy Hightman, an individual, on behalf of herself and on behalf of all
2 others similarly situated (*i.e.*, the members of the Plaintiff Class described and defined
3 within this Complaint), herein alleges as follows:

4 **I. OVERVIEW**

5 1. This is a civil action challenging Defendant Chrysler Automobiles US
6 LLC’s (hereinafter “FCA”) breach of its Lifetime Limited Powertrain Warranties
7 (hereinafter “Powertrain Warranty” or “Lifetime Powertrain Warranty”) for 2006, 2007,
8 2008, and 2009 Chrysler, Dodge, and Jeep vehicles sold and delivered on or after July 26,
9 2007, with a Lifetime Powertrain Warranty (hereinafter collectively referred to as (“Class
10 Vehicles”).¹

11 **A. FCA’s Declining Sales, Overstocked Inventory, and Frustrated Dealers**

12 2. By the first half of 2007, FCA’s (at the time named “DaimlerChrysler
13 Motors Company LLC”) U.S. sales were down about one percent.² The company was in
14 the early stages of its financial freefall; layoffs of 13,000 workers had been announced,
15 plants were closing, rumors of a merger or buyout were surmounting, and consumer
16 reports reflected low confidence in the reliability of FCA vehicles.³ To make matters
17 worse, the company was facing significant backlash from their dealers, who were
18 frustrated by overstocked inventories.⁴

19 3. To ease the tensions with their dealers, earlier that year, Steven Landry –
20 FCA’s Executive Vice President of Sales and Marketing at the time – met with the
21

22 ¹ Excluded from Class Vehicles are SRT, Sprinter, diesel equipped, and all Ram
23 Cab/Chassis vehicles; these vehicles were not sold with Lifetime Warranties.

24 ² See <https://www.reuters.com/article/us-chrysler-warranty-idUSN2620687220070726>
25 [last accessed September 18, 2018] see also;
[https://www.mediapost.com/publications/article/64687/chrysler-bows-to-dealers-with-](https://www.mediapost.com/publications/article/64687/chrysler-bows-to-dealers-with-industry-first-lifet.html)
26 [industry-first-lifet.html](https://www.mediapost.com/publications/article/64687/chrysler-bows-to-dealers-with-industry-first-lifet.html) [Last accessed August 22, 2018].

27 ³ See [https://money.cnn.com/2007/02/14/news/companies/chrysler_jobcuts/index.htm?po](https://money.cnn.com/2007/02/14/news/companies/chrysler_jobcuts/index.htm?postversion=2007021409)
28 [stversion=2007021409](https://money.cnn.com/2007/02/14/news/companies/chrysler_jobcuts/index.htm?postversion=2007021409) [last viewed on August 20, 2018]; see also
[https://www.consumerreports.org/cro/news/2007/10/consumer-reports-2007-annual-car-](https://www.consumerreports.org/cro/news/2007/10/consumer-reports-2007-annual-car-reliability-survey-highlights/index.htm)
[reliability-survey-highlights/index.htm](https://www.consumerreports.org/cro/news/2007/10/consumer-reports-2007-annual-car-reliability-survey-highlights/index.htm) [last viewed on August 20, 2018].

⁴ *Supra* note 2.

1 national dealer's council to discuss their agitations.⁵ Topping the list of their frustrations;
2 overstocked inventory, lack of coordinated marketing, and lack of competitive warranty
3 offerings.⁶ Despite the competitive financial incentive offerings, customers were
4 reporting to dealers that vehicle warranties, specifically powertrain, was the chief
5 consideration to their purchase.⁷ And FCA's independent consumer research supported
6 this. This research showed that new-car shoppers said they would consider buying one of
7 FCA's vehicles if offered a lifetime powertrain warranty.⁸

8 **B. FCA's Lifetime Powertrain Warranty and National Advertising Campaign**

9 4. On July 26, 2007, FCA made an announcement that it hoped would drive
10 sales and increase brand confidence. Effective immediately, the company would offer a
11 Lifetime Limited Powertrain Warranty on 88 percent of their fleet models.⁹ Being an
12 unprecedented warranty offering, the announcement received coverage from a multitude
13 of news media outlets across the country.¹⁰

14 5. To say FCA's Lifetime Warranty was a selling point would be an
15 understatement; it was THE selling point of their vehicles at the time. FCA touted the
16 Lifetime Warranty with a nationally integrated TV, print, and internet advertising
17 campaign. The Warranty received its own logo; an infinity symbol bound by four wheels
18

19 ⁵ *Id.*

20 ⁶ *Id.*

21 ⁷ *Id.*

22 ⁸ See <https://www.reuters.com/article/us-chrysler-warranty/chrysler-using-lifetime-warranty-to-boost-sales-idUSN2620687220070726> [last viewed August 23, 2018].

23 ⁹ See <http://www.foxnews.com/story/2007/07/27/chrysler-offers-lifetime-warranties-on-car-and-truck-powertrains.html> [Last viewed August 23, 2018].

24 ¹⁰ *Id.*; see also <https://www.wsj.com/articles/SB118547434253679182> [last viewed August 23, 2018]; <http://articles.latimes.com/2007/jul/27/business/fi-chrysler27> [last viewed August 22, 2018]; <https://www.mercurynews.com/2007/07/26/chrysler-offers-lifetime-warranties-on-car-and-truck-powertrains/> [last viewed August 23, 2018]; https://money.cnn.com/2007/10/02/autos/warranty_tricks/index.htm [last viewed August 22, 2018].

1 – denoting the lifetime coverage on the vehicle. Print and online advertisements boasted
2 statements such as “the best warranty coverage in the business” and “with this warranty,
3 you’re covered for the lifetime of the vehicle.”¹¹ The “lifetime theme” was even built
4 into commercial slogans; for Dodge: “Grab life, for a lifetime.”; for Jeep: “have a lifetime
5 of fun out there”.¹² FCA’s executives pushed these advertisements with public
6 statements such as:

7 This new Chrysler Lifetime Powertrain Warranty is a statement
8 of confidence to our customers to the reliability of their
9 powertrain. It’s peace-of-mind reassurance for as long as they
10 own the vehicle.

11 6. From 2007 through 2009, FCA sold hundreds of thousands of Class
12 Vehicles by providing these lifetime assurances to consumers. None of the
13 advertisements disclosed that the Life Warranty was subject to the inspection requirement
14 (discussed below) and would be void if those inspection were not performed within the
15 arbitrarily narrow window of time.



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¹¹ See <https://www.nytimes.com/2007/08/16/business/media/16adco.html?mtrref=www.google.com> [last viewed August 23, 2018]; see also https://www.youtube.com/watch?v=Ckiq5qWzD_Q [last viewed August 23, 2018].

¹² *Supra* note 2.

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INTRODUCING THE BEST WARRANTY COVERAGE IN THE BUSINESS.



The Chrysler Lifetime Powertrain Limited Warranty is the first to be offered by any automaker. Ever. Because with this warranty, you're covered, and it lasts for as long as you own your vehicle.

OUR LIFETIME POWERTRAIN LIMITED WARRANTY IS THE ICING. OUR VEHICLES ARE THE CAKE.

The big news is that this powertrain limited warranty applies to the vast majority of our great new Chrysler, Jeep, and Dodge vehicles.* So if you always wanted to leave civilization behind and explore the great outdoors in a Jeep Wrangler or a Patriot, our powertrain warranty goes with you. Or if you ever dreamed about cruising around town in the unmistakable Chrysler 300 relax. You won't be left stranded by a short-term powertrain warranty. Need a tough Dodge Ram truck for your job? You've got the peace of mind of knowing that our powertrain warranty is always there to keep you working.

THE NEXT STEP IS SIMPLE. GET TO YOUR CHRYSLER, JEEP, OR DODGE DEALER TODAY. The only difficult decision you have to make is picking which great vehicle you want. For more information, visit your local dealer.





*See dealer for scope of limited warranty and details. New Transcendals. Not available on SUV, off-road vehicles, hybrids, flex-fuel vehicles, and certain fleet vehicles. All positions beginning "02205". Chrysler, Jeep, and Dodge are registered trademarks of FCA Financial Group LLC.

C. The Lifetime Warranty’s Inspection Clause

7. But “peace-of-mind reassurance” was a hollow promise; FCA included an unconscionable provision to the Lifetime Warranty. This provision – which wasn’t communicated to Class members prior to their purchase – required the Class Vehicles to undergo a powertrain inspection within 60 days of each 5-year anniversary of the in-service date of the vehicle (hereinafter referred to as “the Inspection Clause”). FCA has routinely voided the Lifetime Powertrain based on the failure to have the powertrain inspected within that arbitrarily narrow window.

1 8. Many years later, after being denied coverage on their claims, Class
2 members – like Wendy Hightman – would discover that FCA voided their Lifetime
3 Warranties for failing to perform under the Inspection Clause. A review of consumer
4 blogs reveals numerous reports of FCA voiding Class Vehicle Lifetime Warranties
5 without reasonable justification. Below are a few representative examples of these
6 reports:

7
8 **Make & Model:** Chrysler Town & Country

9 **Year:**2008

10 **Complaint:**

11 I bought a 2008 Chrysler town & country and put it into service
12 21 Aug 2007. I chose this manufacturer specifically for the
13 lifetime warranty. . . .the five year inspection was done within
the constraints of Chrysler's warranty by the original dealer's
service department.

14 I vaguely remember the inspection being done because the
15 vehicle was in for a recall. Regardless of the reason, the free
16 inspection was completed at the five year point, but I missed
17 the 10-year inspection. . . My transmission failed and I had the
vehicle towed to another dealer for what I assumed would be
warranty covered. The dealer said the warranty was expired
and the cost to fix was over \$4800 . . .¹³

18
19 **Make & Model:** Chrysler 300

20 **Year:** 2008

21 **Complaint:**

22 I purchased my 08 Chrysler 300 in 2009. At the time, I also
23 purchased the Mopar vehicle protection plan coverage for the
life of the vehicle. . . . It gave me the piece of mind that if I ever
24 had any issues with the vehicle

25 It would be covered. I get my vehicle serviced at the Chrysler
26 dealership frequently and have minimal maintenance issues
until now. On Friday 12/09/2016 I experienced a coolant leak,

27 ¹³ See <https://www.ripoffreport.com/reports/chrysler/missouri/chrysler-chrysler-dodge-jeep-eagle-ram-dodge-jeep-eagle-ram-cancelled-lifetime-e-1444040> [last viewed August
28 23, 2017]

I promptly called my Chrysler vehicle protection to make sure it was covered. Much to my surprise, I was informed by the representative the powertrain portion of my warranty had been voided due to a missed 5-year inspection . . . ¹⁴

Make & Model: Dodge Magnum

Year: 2007

Complaint:

Chrysler failed to provide the required information regarding the inspection requirement of the lifetime limited powertrain warranty that came with my 2007 dodge magnum. I did not have any knowledge of the inspection and it is not in my warranty booklet, and now Chrysler has terminated my coverage due to missing the inspection.¹⁵

Make & Model: Chrysler Pacifica

Year: 2007

Complaint:

Purchased Chrysler Pacifica in 2007 because of lifetime warranty on drive train. Even spent \$1800 on an extended warranty (something we never usually do) because we planned to keep the car a long time (great driving, good for wife).

Related: Fred Beans Chrysler Dodge Jeep Ram - "PA Safety Inspection Failure!" Now I'm screwed!

In 2011, had to replace motor mounts (not a big deal and interestingly [not] covered under either warranty). No other problems until a week ago when the transmission died a horrible death. Chrysler will not honor warranty because the car was not inspected in 2012.

Called original dealer and they say inspection was not a stipulation in 2007 when car was purchased. Chrysler should have contacted us, which they never did.¹⁶

¹⁴ See <https://www.ripoffreport.com/reports/chrysler-company-llc/nationwide/chrysler-company-llc-chrysler-customer-assistance-department-chrysler-did-not-honor-mopar-1342995> [last viewed August 23, 2018].

¹⁵ See <https://www.ripoffreport.com/reports/chrysler-group-llc/nationwide/chrysler-group-llc-napleton-chrysler-jeep-dodge-ram-deceptive-lifetime-limited-powertrain-1142585> [last viewed August 23, 2018].

¹⁶ See <https://chrysler.pissedconsumer.com/chrysler-will-not-honor-lifetime-warranty-on-drive-train-20130714429266.html> [last viewed August 23, 2018].

1
2 9. Again, these are merely a few examples; similar reported instances of FCA
3 voiding Lifetime Warranties under the Inspection Clause are prevalent. Plaintiff and the
4 putative Class argue that the clause – and enforcement of it – is unconscionable for the
5 reasons explained below.

6 **1. FCA Unfairly Surprised Class Members with the Inspection Clause**

7 10. FCA failed to provide Class members with the specific terms and conditions
8 of the Lifetime Warranty prior to purchasing Class Vehicles. Moreover, the terms and
9 conditions of the Lifetime Powertrain Warranty were not available on FCA’s website and
10 FCA’s customer service department was “not empowered” to provide inquiring
11 consumers with the terms and conditions of the Lifetime Powertrain Warranty.¹⁷ When
12 consumers were finally provided with the terms and conditions *after* they had already
13 purchased their Class Vehicle, the inspection clause – arguably the most consequential
14 provision – was in fine print and indistinguishable from the surrounding terms.

15 **2. The Inspection Clause Contravenes Reasonable Expectations**

16 11. Class members could not reasonably expect the Inspection Clause to be
17 included in the Warranty; it is not a typical provision, it serves no commercial purpose,
18 and it is one-sided. Inspections – unlike scheduled maintenance – do not affect the
19 quality or fitness of powertrain components. No preventative service or maintenance is
20 performed during the quinquennial inspection. If a part is prone to failure or fails, FCA is
21 obligated under the Warranty to replace it. The questions as to who discovered the
22 failure, when the failure occurred, and/or when it was discovered, bears no relevancy to
23 the product’s defect. Therefore, the lack of opportunity to conduct a powertrain
24 inspection poses no additional risk to FCA; the inspection clause merely creates a risk of
25 warranty cancellation for the Class members.

26
27
28 ¹⁷ See <https://www.mouseprint.org/2007/08/06/chryslers-lifetime-warranty-the-ultimate-hidden-guarantee/> [last viewed August 20, 2018].

1 **3. The Inspection Clause Produces One-sided, Unfair, and Harsh Results**

2 12. Finally, failure to adhere to the Inspection Clause produces particularly one-
3 sided, unfair, and harsh results. Failure to obtain an inspection doesn't suspend coverage
4 until performance; it voids the entire warranty. Not only is this extremely inequitable, it
5 contravenes public policy when considering FCA's advertising of the Lifetime Warranty.
6 The Lifetime Warranty coverage was the chief consideration of the Class members when
7 they purchased a Class vehicle and FCA knew this; they enticed Class members to
8 purchase Class Vehicles by promising a Lifetime Powertrain Warranty, and then
9 conveniently failed to mention the unconscionable terms and conditions that would void
10 their Lifetime Warranty.

11 13. This action is brought to redress Defendant's violations of the consumer
12 protection statutes of California and the United States and to seek recovery for
13 Defendant's breach of express warranty, breach of the duty of good faith and fair dealing,
14 breach of common law contract, false advertising, and unfair business practices.

15 **II. JURISDICTION AND VENUE**

16 14. This Court has diversity jurisdiction over this action under 28 U.S.C.
17 § 1332(a) and (d) because (1) there are more than 100 class members; (2) the amount in
18 controversy for the Class exceeds \$5,000,000; and (3) Plaintiff and other putative
19 class members are citizens of a different states than Defendant.

20 15. This Court has personal jurisdiction over Defendant FCA because Defendant
21 conducted and continues to conduct substantial business in the District, and because
22 Defendant has committed the acts and omissions complained of herein in the District.

23 16. Venue as to Defendant is proper in this judicial district under 28 U.S.C
24 § 1391 because Defendant sells a substantial number of automobiles in this district, has
25 dealerships in this district, and many of Defendant's acts complained of herein occurred
26 within this district.

1 **III. PARTIES**

2 17. **Plaintiff Wendy Hightman** is a resident and citizen San Diego, California.
3 Plaintiff owns a 2007 Jeep Patriot, which she purchased on October 12, 2007, from a
4 Chrysler dealership in Guam.

5 18. **Defendant FCA US LLC (“FCA”)** is a Delaware limited liability company.
6 Defendant Fiat Chrysler Automobiles N.V. (“Fiat” or together with FCA, “Fiat Chrysler”
7 is FCA’s corporate parent.

8 19. Fiat’s predecessor, Fiat S.p.A., began its acquisition of FCA’s predecessor,
9 Chrysler Group LLC, in 2009, and completed it in January 2014, at which time Chrysler
10 Group LLC became a wholly owned subsidiary of Fiat and was renamed FCA US LLC.

11 20. FCA’s principle place of business and headquarters is located at 1000
12 Chrysler Drive, Auburn Hills, Michigan 48326. Fiat, the corporate parent of FCA, is a
13 Dutch corporation headquartered in London, United Kingdom.

14 21. Fiat owns numerous European automotive brands in addition to FCA’s
15 American brands, including Maserati, Alfa Romeo, Fiat Automobiles, Fiat Professional,
16 Lancia, and Abarth. As of 2017, Fiat Chrysler is the seventh largest automaker in the
17 world by unit production.

18 22. Chrysler Group LLC developed and disseminated the owners’ manuals,
19 warranty booklets, product brochures, advertisements, and other promotional materials
20 relating to the Class Vehicles, with the intent that such documents should be purposely
21 distributed throughout all fifty states, including in California.

22 23. The true names and capacities of Defendants sued herein as DOES 1 through
23 10, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by
24 such fictitious names. Each of the Defendants designated herein as a DOE is legally
25 responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek
26 leave of Court to amend this Complaint to reflect the true names and capacities of the
27 Defendants designated herein as DOES when such identities become known.
28

1 In order to maintain the Lifetime Powertrain Limited Warranty,
2 the person . . . covered by this Power-train Limited Warranty
3 must have a powertrain inspection performed by an authorized
4 Chrysler, Dodge, or Jeep dealer once every 5 years. . . . The
5 inspection must be made within sixty (60) days of each 5 year
6 anniversary of the in-service date of the vehicle. You must
7 have the inspection performed to continue this coverage.

8 (hereinafter “the Inspection Clause”)

9 30. According to FCA, although the Jeep admittedly underwent a second
10 powertrain inspection, such inspection did not occur within 60-days of the second 5-year
11 purchase anniversary, but rather, seven months prior to the 10-year purchase date
12 anniversary. Solely on this basis, FCA declined to replace or repair the engine gasket and
13 voided the Jeep’s Lifetime Warranty. Having no other choice, Plaintiff paid \$2,307.16 to
14 have the Jeep’s engine gasket replaced by Burger’s Chrysler; a repair that would have
15 been covered by FCA’s Lifetime Powertrain Warranty.

16 31. On July 16, 2018, Plaintiff again brought the Jeep into Burger’s Chrysler
17 because of a transmission failure. Again, FCA refused to cover the repair under
18 warranty. The cost for Plaintiff to have the transmission repaired was estimated at
19 \$5,128.87.

20 **V. CLASS ACTION ALLEGATIONS**

21 32. Plaintiff brings this action as a class action pursuant to Federal Rules of
22 Civil Procedure, Rule 23(a), (b)(2), and (b)(3) on behalf of the following classes:

23 **Nationwide Class:**

24 All persons or entities in the United States who are current
25 original owners of a Class Vehicle and all current and former
26 original owners of a Class Vehicle who were denied coverage
27 under the Lifetime Powertrain Warranty based on the
28 Inspection Clause.

1 33. In the alternative to the Nationwide Class, and pursuant to Federal Rules of
2 Civil Procedure, Rule 23(c)(5), Plaintiff seeks to represent the California Class in the
3 event that the Court declines to certify the Nationwide Class above. Specifically, the
4 California Class consists of the following:

5 **California Class**

6 All persons or entities in California who are current original
7 owners of a Class Vehicle and all current and former original
8 owners of a Class Vehicle who were denied Lifetime
9 Powertrain Warranty coverage based on the Inspection Clause.

10 34. Together, the Nationwide Class and the California Class shall be collectively
11 referred to herein as “the Class.” Excluded from the above Class are Defendant, its
12 employees, co-conspirators, officers, directors, legal representatives, heirs, successors
13 and wholly or partly own subsidiaries or affiliated companies; class counsel and their
14 employees; and the judicial officers and their immediate family members and associated
15 court staff assigned to this case, and all persons within the third degree of relationship to
16 any such persons.

17 35. Certification of Plaintiff’s claims for class-wide treatment is appropriate
18 because Plaintiff can prove the elements of her claims on a class-wide basis using the
19 same evidence as would be used to prove those elements in individual actions alleging
20 the same claim.

21 36. This action has been brought and may be properly maintained on behalf of
22 each of the Classes proposed herein under Federal Rules of Civil Procedure, Rule 23.

23 37. **Numerosity of the Class (Federal Rules of Civil Procedure, Rule**
24 **23(a)(1)** – The members of the Class are so numerous that their individual joinder is
25 impracticable. Plaintiff is informed and believes that there are tens of thousands of
26 current original owners of Class Vehicles and former original owners of Class Vehicles
27 who were denied coverage under the Lifetime Powertrain Warranty based on the
28 Inspection Clause. Because the class members may be identified through business

1 records regularly maintained by Defendant and its employees and agents, government
2 records, and the media, the number and identities of class members can be ascertained.
3 Members of the Class can be notified of the pending action by e-mail, mail, and
4 supplemented by published notice, if necessary.

5 38. **Commonality and Predominance (Federal Rules of Civil Procedure,**
6 **Rule 23(a)(2)** – There are questions of law and fact common to the Class. These
7 questions predominate over any questions affecting only individual class members.
8 These common legal and factual issues include, but are not limited to:

- 9 a. Whether FCA breached the expressed terms of the Lifetime Powertrain
10 Warranty in their systematic denial of valid Lifetime Powertrain
11 Warranty claims, based on the Inspection Clause.
12 b. Whether the Inspection Clause produces unfair and harsh results; thus,
13 rendering it unconscionable.
14 c. Whether FCA breached the covenant of good faith and fair dealing by
15 denying coverage for Lifetime Powertrain Warranty claims based on the
16 Inspection Clause.
17 d. Whether Plaintiff and members of the class are entitled to equitable,
18 legal, or injunctive relief and, if so, in what amount.

19 39. **Typicality (Federal Rules of Civil Procedure, Rule 23(a)(3))** – The claims
20 of the representative Plaintiff are typical of the claims of each member of the Class.
21 Plaintiff, like all other members of the Class, is both a current original owner of a Class
22 Vehicle and has sustained damages arising from Defendant’s cancellation of her Lifetime
23 Powertrain Warranty based on the Inspection Clause. as alleged herein. The
24 representative Plaintiff and the members of the Class were and are similarly or identically
25 harmed by the same unlawful, deceptive, unfair, systematic, and pervasive pattern of
26 misconduct engaged in by Defendant.

27 40. **Adequacy (Federal Rules of Civil Procedure, Rule 23(a)(4))** – The
28 representative Plaintiff will fairly and adequately represent and protect the interests of the

1 Class members and have retained counsel who are experienced and competent trial
2 lawyers in complex litigation and class action litigation. There are no material conflicts
3 between the claims of the representative Plaintiff and the members of the Class that
4 would make class certification inappropriate. Counsel for the Class will vigorously assert
5 the claims of all Class members.

6 41. **Superiority (Federal Rules of Civil Procedure, Rule 23(b)(3))** – This suit
7 may be maintained as a class action under Rule 23(b)(3) of the Federal Rules of Civil
8 Procedure, because questions of law and fact common to the Class predominate over the
9 questions affecting only individual members of the Class and a class action is superior to
10 other available means for the fair and efficient adjudication of this dispute. The damages
11 suffered by individual class members are small compared to the burden and expense of
12 individual prosecution of the complex and extensive litigation needed to address
13 Defendant’s conduct. Further, it would be virtually impossible for the members of the
14 Class to individually redress effectively the wrongs done to them. Even if Class
15 members themselves could afford such individual litigation, the court system could not.
16 In addition, individualized litigation increases the delay and expense to all parties and to
17 the court system resulting from complex legal and factual issues of the case.
18 Individualized litigation also presents a potential for inconsistent or contradictory
19 judgments. By contrast, the class action device presents far fewer management
20 difficulties; allows the hearing of claims which might otherwise go unaddressed because
21 of the relative expense of bringing individual lawsuits; and provides the benefits of single
22 adjudication, economies of scale, and comprehensive supervision by a single court.

23 42. The Class Plaintiff contemplates the eventual issuance of notice to the
24 proposed Class members setting forth the subject and nature of the instant action. Upon
25 information and belief, Defendant’s own business records and electronic media can be
26 utilized for the contemplated notices, as well as motor vehicle registration databases in
27 California and all other states within the United States. To the extent that any further
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1 notices may be required, the Class Plaintiff would contemplate the use of additional
2 media and/or mailings.

3 43. This action is properly maintained as a Class Action pursuant to Rule 23(b)
4 of the Federal Rules of Civil Procedure, in that:

5 a. without class certification and determination of declaratory,
6 injunctive, statutory, and other legal questions within the class format, prosecution of
7 separate actions by individual members of the Class will create the risk of:

8 i. inconsistent or varying adjudications with respect to individual
9 members of the Class which would establish incompatible standards of conduct for the
10 parties opposing the Class; or

11 ii. adjudication with respect to individual members of the Class
12 which would as a practical matter be dispositive of the interests of the other members not
13 parties to the adjudication or substantially impair or impede their ability to protect their
14 interests;

15 b. the parties opposing the Class have acted or refused to act on grounds
16 generally applicable to each member of the Class, thereby making appropriate final
17 injunctive or corresponding declaratory relief with respect to the Class as a whole; or

18 c. common questions of law and fact exist as to the members of the
19 Class and predominate over any questions affecting only individual members, and a Class
20 Action is superior to other available methods of the fair and efficient adjudication of the
21 controversy, including consideration of:

22 i. the interests of the members of the Class in individually
23 controlling the prosecution or defense of separate actions;

24 ii. the extent and nature of any litigation concerning controversy
25 already commenced by or against members of the Class;

26 iii. the desirability or undesirability of concentrating the litigation
27 of the claims in the particular forum; and
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1 iv. the difficulties likely to be encountered in the management of a
2 Class Action.

3 **VI. VIOLATIONS ALLEGED**

4 **FIRST CAUSE OF ACTION**

5 **VIOLATION OF MAGNUSON-MOSS WARRANTY ACT**

6 **(15 U.S.C. § 2301, et seq.)**

7 **(On behalf of the Nationwide Class, or Alternatively the California Class)**

8 44. Plaintiff incorporates by reference each preceding and succeeding paragraph
9 as though fully set forth at length herein.

10 45. Plaintiff brings this claim on behalf of herself and on behalf of the
11 Nationwide Class or, alternatively, on behalf of the California Class.

12 46. Plaintiff and the Class members are “consumers” within the meaning of the
13 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

14 47. FCA is a “supplier” and “warrantor” within the meaning of the Magnuson-
15 Moss Warranty Act, 15 U.S.C. § 2301(4)-(5);

16 48. The Class Vehicles are “consumer products” within the meaning of the
17 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

18 49. Title 15, United States Code, section 2301(d)(1) provides a cause of action
19 for any consumer who is damaged by the failure of a warrantor to comply with a written
20 or implied warranty.

21 50. FCA’s Lifetime Warranties are written warranties within the meaning of the
22 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(6).

23 51. FCA breached these warranties as described in more detail above. All Class
24 Vehicles were sold with the Lifetime Powertrain Limited Warranty and are subject to the
25 same terms and conditions.

26 52. As described above, FCA violated the Magnuson-Moss Warranty Act, 15
27 U.S.C. § 2302(b)(1)(A); 16 C.F.R. § 702.3 by failing to make the Lifetime Warranty
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1 available or visible to Plaintiff and other Class members prior to the sale of the Class
2 vehicles.

3 53. Plaintiff and the other Class members have had sufficient direct dealings
4 with either FCA or its agents (dealerships and technical support) to establish privity of
5 contract between FCA, on the one hand, and Plaintiff and each of the other Class
6 members on the other hand. Nonetheless, privity is not required here because Plaintiff
7 and each of the other Class members are intended third-party beneficiaries of contracts
8 between FCA and its dealers, and specifically, of FCA's express Lifetime Powertrain
9 Warranty. The dealers were not intended to be the ultimate consumers of the Class
10 Vehicles and have no rights under the warranty agreements provided with the Class
11 Vehicles; the warranty agreements were designed for and intended to benefit the
12 consumers only.

13 54. Affording FCA a reasonable opportunity to cure its breach of written
14 warranties would be unnecessary and futile here. Plaintiff has already done so by
15 contacting FCA after being told that her engine gasket would not be covered under the
16 Warranty because its void.

17 55. As a direct and proximate cause of Defendant's breach, Plaintiff and the
18 other Class Members bought Class Vehicles they otherwise would not have, overpaid for
19 their vehicles, did not receive the benefit of their bargain, and their Class Vehicles
20 suffered a diminution in value. Plaintiff and Class Members have also incurred and will
21 continue to incur costs related to the diagnosis and repair of the defective powertrain
22 parts.

23 56. The amount in controversy of Plaintiff's individual claims meets or exceeds
24 the sum of \$25. The amount in controversy of this action exceeds the sum of \$50,000,
25 exclusive of interest and costs, computed on the basis of all claims to be determined in
26 this lawsuit.

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1 proven at trial, which shall include, but is not limited to, all compensatory damages,
2 incidental and consequential damages, and other damages allowed by law.

3 **THIRD CAUSE OF ACTION**

4 **BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING**

5 **(Based on California Law)**

6 **(On behalf of the California Class)**

7 65. Plaintiff incorporates by reference each preceding and succeeding paragraph
8 as though fully set forth at length herein.

9 66. Plaintiff brings this claim on behalf of herself and on behalf of the California
10 Class.

11 67. All contracts in California contain an implied covenant of good faith and fair
12 dealing. The implied covenant of good faith and fair dealing is an independent duty and
13 may be breached even if there is no breach of a contract's express terms.

14 68. Defendant acted in bad faith to deny Plaintiff and the Class Members some
15 benefit of the bargain originally intended by the parties, thereby causing them injuries in
16 an amount to be determined at trial.

17 69. FCA breached the contract and the implied covenant of good faith and fair
18 dealing by denying Plaintiff's claim and voiding her warranty without reasonable
19 justification.

20 70. As a direct and proximate result of FCA's breach of the duty of good faith
21 and fair dealing, Plaintiff and the other Class members have been damaged in an amount
22 to be proven at trial, which shall include, but is not limited to, all compensatory damages,
23 incidental and consequential damages, and other damages allowed by law.

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1 **FOURTH CAUSE OF ACTION**
2 **VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW**
3 **(California Business & Professions Code §§ 17500, *et seq.*)**
4 **(On behalf of the California Class)**

5 71. Plaintiff incorporates by reference each preceding and succeeding paragraph
6 as though fully set forth at length herein.

7 72. California Business & Professions Code § 17500 states: “It is unlawful for
8 any . . . corporation . . . with intent directly or indirectly to dispose of real or personal
9 property . . . to induce the public to enter into any obligation relating thereto, to make or
10 disseminate or cause to be made or disseminated . . . from this state before the public in
11 any state, in any newspaper or other publication, or any advertising device, . . . or in any
12 other manner or means whatever, including over the Internet, any statement . . . which is
13 untrue or misleading, and which is known, or which by the exercise of reasonable care
14 should be known, to be untrue or misleading.”

15 73. FCA caused to be made or disseminated through California and the United
16 States, through advertising, marketing and other publications, statements that were untrue
17 or misleading, including statements that Class members “would receive peace-of-mind
18 reassurance for as long as they own the vehicle” with the Lifetime Powertrain Warranty.
19 However, the Warranty included an unconscionable provision – the Inspection Clause –
20 which was not disclosed to consumers prior to the point of purchase, that made it subject
21 to complete cancellation.

22 74. FCA violated section 17500 because the representations and omissions
23 regarding the Lifetime Powertrain Warranty for the Class Vehicles as set forth in this
24 Complaint were material and likely to mislead a reasonable consumer.

25 75. Plaintiff and the other Class members suffered an injury in fact, including
26 the loss of money or property, as a result of FCA’s unfair and misleading practices. In
27 purchasing their Class Vehicles, Plaintiff and the other Class members relied on the
28 misrepresentations and/or omissions regarding the Lifetime Warranty. FCA

1 representations Class members “would receive peace-of-mind reassurance for as long as
2 they own the vehicle” with a “Lifetime Powertrain Warranty” turned out not to be true, as
3 stated above. Had Plaintiff and the other Class members known this, they would not
4 have purchased their Class Vehicles and/or paid as much for them.

5 76. All of the wrongful conduct alleged herein occurred in the conduct of FCA’s
6 business. FCA’s wrongful conduct is part of a pattern or generalized course of conduct
7 perpetuated both in the State of California and nationwide.

8 77. Plaintiff, individually and on behalf of the other Class members, request that
9 this Court enter such orders or judgments as may be necessary to enjoin FCA from
10 denying future Lifetime Powertrain Warranty claims and to restore to Plaintiff and the
11 other Class members any money FCA acquired by unfair competition, including
12 restitution and/or restitutionary disgorgement, and for such other relief set forth below.

13 **FIFTH CAUSE OF ACTION**

14 **Violation of California Consumer Legal Remedies Act**

15 **(Civil Code § 1750 *et seq.*)**

16 **(On behalf of the California Class)**

17 78. Plaintiff incorporates by reference each preceding and succeeding paragraph
18 as though fully set forth at length herein.

19 79. California’s Consumers Legal Remedies Act (“CLRA”), California Civil
20 Code §§ 1750, *et seq.*, proscribes “unfair methods of competition and unfair or deceptive
21 acts or practices undertaken by any person in a transaction intended to result or which
22 results in the sale or lease of goods or services to any consumer.”

23 80. The Class Vehicles are “goods” as defined in California Civil Code
24 § 1761(a).

25 81. Plaintiff and the other Class members are “consumers” as defined in
26 California Civil Code § 1761(d), and Plaintiff, the other Class members, and Defendant
27 are “persons” as defined in California Civil Code § 1761(c).

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1 82. Plaintiff's and each and every Class members' purchase of the subject
2 vehicle constitute "transactions" as defined by California Civil Code § 1761(e).

3 83. The acts and practices of Defendant as discussed throughout the Complaint,
4 constitute "unfair or deceptive acts or practices" by Defendant, that are unlawful, as
5 enumerated in section 1770(a) of the California Civil Code, specifically in at least the
6 following CLEA provision:

7 i. Cal. Civ. Code § 1770(a)(5): Representing that goods have
8 characteristics, uses, and benefits which they do not have;

9 ii. Cal. Civ. Code § 1770(a)(9): Advertising goods with intent not to sell
10 them as advertised; and

11 iii. Cal. Civ. Code § 1770 (a)(19): inserting an unconscionable provision
12 in the contract.

13 84. Plaintiff and the other Class members have suffered injury in fact and actual
14 damages resulting from FCA's inclusion of the Inspection Clause in the Lifetime
15 Powertrain Warranty.

16 85. FCA had superior bargaining power to the Plaintiff; they drafted the
17 Warranty terms and those terms were non-negotiable. Moreover, the Inspection Clause
18 was not disclosed to Class members prior to their purchase. The facts concealed and
19 omitted by FCA to Plaintiff and the other Class members are material in that a reasonable
20 consumer would have considered them to be important in deciding whether to purchase
21 the Class Vehicles or pay a lower price.

22 86. As stated in detail above, the Inspection Clause resulted in unfair and harsh
23 results. Moreover, it served no viable commercial purpose.

24 87. Had Plaintiff known about the Inspection Clause, they would not have
25 purchased the Class Vehicles or would not have paid the prices they paid in fact.

26 88. Such misconduct materially affected the purchasing decisions of Plaintiff
27 and the members of the Classes.

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1 89. Plaintiff's and the other California Class members' injuries were
2 proximately caused by FCA's unfair and deceptive business practices.

3 90. Plaintiff seeks restitution and injunctive relief pursuant to California Civil
4 Code § 1780.

5 91. Plaintiff has provided Defendant with notice of his alleged violations of the
6 CLRA pursuant to California Civil Code § 1782(a). If, within 30 days of the date of this
7 written notice, Defendant fails to provide appropriate relief for their violation of the
8 CLRA, Plaintiff will amend this Complaint to seek monetary, compensatory, and punitive
9 damages, in addition to the injunctive relief now being sought, under the CLRA.

10 **SIXTH CAUSE OF ACTION**

11 **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW**

12 **(California Business & Professions Code §§ 17200, *et seq.*)**

13 **(On behalf of the California Class)**

14 92. Plaintiff incorporates by reference each preceding and succeeding paragraph
15 as though fully set forth at length herein.

16 93. California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code
17 §§ 17200, *et seq.*, defines unfair business competition to include any "unfair,"
18 "deceptive," "unlawful," or "untrue" business act or practice. The Act also provides for
19 injunctive relief, restitution, and disgorgement of profits for violations.

20 94. FCA's misleading, deceptive, unfair, and business acts and practices, as
21 described throughout this Complaint, was and is in violation of the UCL. FCA's conduct
22 violates the UCL in the following ways:

- 23 i. by knowingly and intentionally concealing from Plaintiff and the
24 other Class Members prior to their purchase of a Class Vehicle that
25 the Lifetime Powertrain Warranty was conditioned upon an
26 arbitrary requirement that Class Vehicles be inspected within 60
27 days of every five-year anniversary of the purchase date while
28 obtaining money from Plaintiff and the Class Members;

- 1 ii. by representing to Class members that they “would receive peace-
- 2 of-mind reassurance for as long as they own the vehicle” with the
- 3 Lifetime Powertrain Warranty;
- 4 iii. by refusing or otherwise failing to honor the Lifetime Powertrain
- 5 Warranty based on the unconscionable Inspection Clause;
- 6 iv. by violating federal laws, including the Magnuson-Moss Warranty
- 7 Act. 15 U.S.C. § 2301;
- 8 v. by violating California’s False Advertising Law, California Civil
- 9 Code §§ 17500, *et seq.*; and
- 10 vi. by violating California’s Consumer Remedies Act, California Civil
- 11 Code §§ 1770 (a)(19).

12 95. FCA’s misrepresentations and omissions alleged herein caused Plaintiff and
13 the other Class members to make their purchases of their Class Vehicles. Absent those
14 misrepresentations and omissions, Plaintiff and the other Class members would not have
15 purchased these Vehicles, would not have purchased these Class Vehicles at the prices
16 they paid, and/or would have purchased less expensive alternative vehicles with
17 practicable warranty conditions.

18 96. Defendant’s practice is also unfair since it has no utility and, even if it did,
19 any utility is outweighed by the gravity of harm to Plaintiff and the Class members.
20 Defendant’s practice is also immoral, unethical, oppressive or unscrupulous and causes
21 injury to consumers which outweigh its benefits.

22 97. Accordingly, Plaintiff and the Class members have suffered injury in fact,
23 including lost money or property as a result of FCA’s actions, misrepresentations, and
24 omissions.

25 98. Plaintiff seeks to enjoin further unlawful and/or unfair practices by FCA,
26 under California Business and Professions Code §§ 17200 *et seq.*

27 99. Plaintiff requests that this Court enter such orders or judgments as may be
28 necessary to enjoin FCA from continuing their unfair and unlawful practices.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and the members of the Class, demands judgment against and general and special relief from Defendant as follows:

1. for an order certifying that the action may be maintained as a Class Action as defined herein and appointing Plaintiff and her counsel of record to represent the defined Class;
2. for an order enjoining Defendant under California Business and Professions Code §§ 17203 and 17535 and California Civil Code §§ 1780 and 1781:
 - a. from engaging in the wrongful conduct of voiding the Lifetime Powertrain Warranty based on the unconscionable Inspection Clause as alleged herein; and
 - b. to disgorge all profits and compensation improperly obtained by Defendant as a result of such acts and practices declared by this Court to be an unlawful, fraudulent, or unfair business act or practice, a violation of laws, statutes, or regulations, or constituting unfair competition;
3. for damages under the causes of breach of express warranty, breach of contract and/or the covenant of good faith and fair dealing;
4. for reasonable attorney’s fees and costs, pursuant to California Code of Civil Procedure § 1021.5, and other statutes as may be applicable;
5. for prejudgment interest to the extent allowed by law;
6. for costs of suit incurred herein; and
7. for such other and further relief as the Court deems appropriate

DATED: September 24, 2018

MCCUNE WRIGHT AREVALO, LLP

BY: /s/ David C. Wright
David C. Wright
Attorney for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial for all claims so triable.

DATED: September 24, 2018

MCCUNE WRIGHT AREVALO, LLP

BY: /s/ David C. Wright

David C. Wright

Attorney for Plaintiff

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CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

Wendy Hightman

(b) County of Residence of First Listed Plaintiff San Diego (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) David C. Wright, State Bar No. 177468 McCune Wright Arevalo, LLP 3281 East Guasti Road, Suite 100 Ontario, California 91761 Tel: (909) 557-1250

DEFENDANTS

Fiat Chrysler US LLC

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

'18CV2205 BEN KSC

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

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

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

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

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

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. 1332 of the Class Action Fairness Act of 2005
Brief description of cause: Breach of Warranty and Violation of Consumer Protection Statutes

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 09/24/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ David C. Wright

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE