

**IN THE UNITED STATES COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

T&M FARMS and P&J FARMS,

Plaintiffs,

v.

CNH INDUSTRIAL AMERICA, LLC

Defendant.

Case No.: 2:19-cv-0085-LA

Class Action

Hon. Lynn Adelman

FIRST AMENDED CLASS ACTION COMPLAINT

Plaintiffs T&M Farms and P&J Farms file this first amended class action complaint against CNH Industrial America, LLC (“CNH”) on behalf of themselves and all others similarly situated in United States. In support thereof, Plaintiffs state the following:

INTRODUCTION

1. CNH is the American subsidiary of a global Dutch conglomerate that manufactures agricultural equipment. For years, CNH has carried out a deceptive, unfair, and unlawful scheme to induce farmers to purchase \$500,000 Module Express cotton pickers which it knows to be fundamentally flawed and which cannot reliably perform the very task for which they are designed: picking and building cotton modules in one piece of equipment.

2. The Module Express was purported to represent a revolution in cotton harvesting: a single piece of equipment that could both pick cotton and pack it into modules. But CNH rushed its picker to market, intent on beating John Deere (which was also designing a picker-baler) and increasing its share of the American cotton market. CNH knew that its Module Express pickers suffered from fundamental design defects—including problems with the power, hydraulic, module packing, and software systems—and continual, crippling manufacturing process failures, and that this incredibly expensive piece of farm equipment would never

function correctly.

3. Despite this knowledge, CNH carried out a methodical scheme to falsely represent specific characteristics of the Module Express with the intent and effect of inducing unsuspecting farmers into buying them. After farmers purchase a Module Express picker (and invariably face repeated mechanical failures) CNH deliberately misrepresents the nature of the problem as fixable and isolated, causing farmers to keep their pickers, trade in for “new model” pickers, and not realize their legal claims.

4. CNH buys back previously-sold Module Express pickers that have proven to be effectively useless from farmers at hugely deflated values. It then takes these pickers—which it knows cannot successfully operate to pick and bale cotton—and re-sells them to other farmers, based upon false representations that they are fully operational and reliable. It does so without disclosing the glut of failures and repair claims that these specific machines experienced, and by making specific representations as to their operability.

5. Further, CNH has consistently failed to provide the parts and service necessary for repairs while preventing farmers from having access to the manuals and parts necessary to attempt to fix the Module Express pickers outside of the CNH network.

6. Through its deliberate, pernicious conduct CNH has caused millions of dollars of harm to cotton farmers who often cannot absorb such losses without catastrophic effects to their livelihoods. Plaintiffs, two small family-owned cotton farms, bring this suit to establish CNH’s liability, end its wrongful conduct, and recover the damages incurred by the putative classes that are susceptible to class adjudication, in addition to their individual damages.

7. Finally, this case presents the prototypical situation for class treatment. CNH’s conduct is uniform among all members of the putative classes. The application of shared law to this common course of conduct will determine liability for the class as a whole, ensuring that the

rights of hundreds of cotton farmers are vindicated through the efficiency of a single trial.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d). Diversity jurisdiction exists as Defendant is a citizen of a state other than the states of which Plaintiffs are citizens. Plaintiffs, on behalf of themselves and the putative classes, seek more than \$5,000,000, and have a good faith basis to believe that more than \$5,000,000 is at issue in this case. Plaintiffs seek attorneys' fees, injunctive relief, and pecuniary and monetary damages on behalf of the classes (that may be adjudicated on a class basis). The Module Express pickers sell for approximately \$500,000 each. More than one hundred members, and more than 100 pickers, are included in each putative class.

9. Venue in this case is proper under 28 U.S.C. § 1391 and 28 U.S.C. § 1441 in the United States Court for the Eastern District of Wisconsin in that a substantial portion of Defendant's conduct which forms the basis of this action occurred in this judicial district. Defendant has its corporate headquarters in this district and the deceptive conduct at issue emanated from this judicial district. Defendant received, and continues to receive, substantial revenue from its unlawful conduct in this judicial district. Defendant is subject to personal jurisdiction in this judicial district at the time this action was commenced and is deemed to reside in this judicial district.

PARTIES

10. Plaintiff T&M Farms is a partnership that was formed and operates in Arkansas. T&M Farms purchased two new Case Module Express 625 pickers,¹ paying nearly \$500,000 for each. To do so, T&M Farms was induced to trade in working John Deere equipment and incur hundreds of thousands of dollars of debt with CNH's related financing company. The two

¹ These pickers bore the serial numbers YAT015823 and YAT015815.

Module Express 625s never performed as promised by CNH; they suffered constant mechanical failures and were never able to efficiently bale cotton into modules – the key distinguishing feature promoted by CNH to justify their purchase. CNH, through its agents and captive dealer, repeatedly represented to T&M Farms that the issues it was experiencing with the 625s could be fixed when, in fact, the pickers were incapable of operating as promised.

11. After years of repeated breakdowns, costly repairs, inability to source replacement parts, and consistent failures in performance and mechanical issues, similar to those experienced by other class members, T&M Farms traded in its two Module Express 625 pickers and purchased a previously owned Module Express 635 picker² through a captive CNH dealer in approximately April 2016. It received less than \$68,000 for each of its 625s, a loss of over \$400,000 on *each* of its two cotton pickers in just a few years of operation.

12. Unbeknownst to T&M Farms, the 635 Module Express it purchased had incurred previous significant and repeated mechanical failures. During a single year, encompassing a harvest season of just over a month, the 635 that CNH sold to T&M Farms broke down more than a half dozen times. T&M Farms discovered that the 635 it was sold was plagued with the same consistent, recurring problems as its previous 625 pickers. Specifically, the Module Express 635 suffered from a consistent lack of engine power, repeated failures throughout the hydraulic systems, and a consistent inability to harvest cotton and bale it into modules. Even when the 635 worked, it did so far less efficiently than promised by CNH. T&M Farms eventually had to buy an additional John Deere cotton picker in order to successfully complete their harvests. It was not until 2019 that T&M Farms discovered, or could have discovered its legal claims and the nature and extent of CNH's wrongful conduct.

13. Plaintiff P&J Farms is a partnership that was formed and operates in Alabama. In

² The third picker bore the serial number YCT017814.

the spring of 2017, while P&J Farms was using a Case IH Model 620 basket picker to harvest cotton, CNH, through one of its captive dealers, encouraged P&J Farms to trade its model 620 basket picker for a model 635 Module Express. P&J Farms relied upon CNH's representations that the Case Module Express 635 would pick, collect, and build gin-ready modules all in one machine, bringing cost and efficiency savings to its cotton harvest while experiencing less down time and requiring less maintenance.

14. P&J Farms traded in its functional cotton harvesting equipment and purchased two new Case Module Express 635s, paying over \$425,000 for each picker.³

15. The two Module Express 635s never performed as promised by CNH. They were plagued with problems requiring near constant maintenance, and suffered continuous mechanical failures that CNH was unable to fix—despite its promises to do so—and were never able to efficiently bale cotton into modules, the key distinguishing feature promoted by CNH to justify their purchase.

16. Due to the constant breakdowns, poor performance, and inefficiencies of the Module Express 635s, P&J Farms harvested only 2,350 total acres of cotton in its 2017 harvest, averaging just over 70 acres of harvest per day from both 635s. By comparison, using two John Deere cotton harvesters in 2018, P&J Farms was able to harvest over 3,350 acres, averaging between 150-180 acres a day, from the same fields in similar conditions.

17. After repeated breakdowns, costly repairs, inability to source replacement parts, and consistent failures in performance and mechanical issues, P&J Farms was forced to liquidate its enormous investment in the Module Express 635s and switch entirely to John Deere picker-balers. P&J sold its two Module Express 635s for at a loss of approximately \$80,000 each, after only one season of operation. P&J Farms estimates that due to the 635s' poor performance, it

³ These Module Express pickers bore the serial numbers YHT021801 and YHT021802.

also left well in excess of \$100,000 in cotton un-harvested, and was charged a 2 cent per pound grade degradation on all of the cotton harvested by the Case Module Express 635s. It was not until 2019 that P&J Farms discovered, or could have discovered its legal claims and the nature and extent of CNH's wrongful conduct.

18. Defendant CNH Industrial America LLC is a foreign corporation with its principle place of business in Racine, Wisconsin. It is a wholly-owned subsidiary of CNH Industrial NV, a Dutch-based capital goods company with annual revenues greater than \$25,000,000,000. CNH designs, markets, manufactures and sells the Case Module Express cotton pickers at issue in this case.

19. CNH's corporate offices in Racine, Wisconsin operate as the "nerve center" of its business activities and the full extent of its operations are controlled from this location, including all major marketing, design, and manufacturing decisions relevant to the allegations in this Complaint. The misrepresentations alleged herein were "made" in Wisconsin in that CNH caused them to exist from its corporate headquarters in Racine, Wisconsin. As set out below, CNH has engaged in a company-wide scheme to cause cotton farmers to buy faulty and ineffective pickers through false and misleading statements, and this scheme arose in and was controlled from the CNH headquarters in Racine, Wisconsin. Under precedential law, Wisconsin common law and the Wisconsin Deceptive Trade Practices Act, Wisconsin Statutes § 100.18 *et seq.*, apply to the claims of all class members, including non-residents.

20. CNH sells and services Module Express pickers through a network of captive dealers over which it exercises a high degree of control. CNH used these dealers to disseminate and reiterate its false statements to farmers, and to set the prices for new and used Module Express pickers. Upon information and belief, CNH transferred used, malfunctioning pickers between captive dealers to sell them to farmers in other geographic locations who were not

familiar with the failings of those specific machines, through a contractual “transfer program.” CNH closely monitored and controlled its dealers partly through a centralized computer system called the Case Communication Network. CNH sets prices for Module Express pickers sold by dealers through “price lists” which it unilaterally sets and which dealers are contractually required to follow.

21. Cotton farmers often have a close relationship with the salesmen employed as agents of their CNH dealers and rely upon these employees to provide specific recommendations as to equipment suitable for their needs. Generally, a single dealer will dominate a region and farmers will be highly dependent on that dealer for equipment and repair. Dealers have far greater knowledge of the equipment available. Often, farmers and dealers are located in small communities and have regular interactions. The transactions between CNH, through its dealers and agents, and farmers, including Plaintiffs and putative class members, are not arms-length transactions.

CLASS ACTION ALLEGATIONS

22. Plaintiffs bring this case as a putative class action under Federal Rule of Civil Procedure 23(b)(2) and (3) and proposes two classes:

The New Module Express Class

All persons and entities in the United States who purchased or leased a new Case Module Express cotton picker.

The Previously Owned Module Express Class

All persons and entities in the United States who purchased or leased a previously owned Case Module Express cotton picker.

23. Plaintiffs reserve the right to pursue certification of a liability-only class under Federal Rule of Civil Procedure 23(c)(4), to pursue an injunctive relief class, and to pursue certain specific measures of damages that are susceptible to class wide proof.

24. Plaintiffs maintain the right to create additional subclasses or classes, if necessary,

and to revise this definition to maintain a cohesive class that does not require individual inquiry to determine liability.

25. Excluded from the proposed class is any person or entity who is or has been compensated by CNH or its affiliates in connection with marketing or testing the Module Express, any person or entity in bankruptcy as of the date of class notice, any person or entity whose obligations have been discharged in bankruptcy, the Judge to whom this case is assigned, any member of the Judge's staff, and any member of the Judge's immediate family.

26. All information necessary to identify the class members and to determine the damages suffered by those members is in CNH's possession or control.

27. Plaintiff P&J Farms seeks to represent the New Module Express Class. Plaintiff T&M Farms seeks to represent the Previously Owned Module Express Class.

I. Existence and Predominance of Common Questions of Law and Fact

28. There are common questions of law and fact of general interest to the classes. These common questions of law and fact predominate over any questions affecting only individual members of the classes. CNH engaged in a consistent and uniform course of conduct in how it represented, designed, and manufactured the Module Express pickers that has harmed every member of the putative class. A common nucleus of relevant facts will be used to determine liability for the classes as a whole. All class members shared uniform Wisconsin law for certain claims, and the differences among law for other claims are virtually nonexistent; the "differences" are limited to effectively identical laws of a handful of states (as CNH only sold Module Express pickers in limited states). These shared facts and law give rise to common questions which include, but are not limited to, the following:

- a. Whether CNH made representations about the Module Express pickers that were untrue, deceptive, and misleading.

- b. Whether CNH represented the Module Express pickers to be a more efficient, cost-effective, and reliable method of harvesting cotton than alternatives.
- c. Whether CNH represented the Module Express pickers to be sufficiently powered to operate in all multiple conditions and to produce well-formed, weatherable modules.
- d. Whether the Module Express pickers were manufactured using substandard manufacturing processes, inadequate oversight, insufficient process and quality controls, and inadequate systems, tools and parts such that they did not operate as promised.
- e. Whether the Module Express pickers had inherent design flaws, including in the module building, power, and software components, such that they did not operate as promised.
- f. Whether CNH marketed and sold Module Express pickers while knowing that it would or could not provide the parts and support necessary for repairs.
- g. Whether Module Express pickers, as a result of CNH's conduct, lost value precipitously as compared to other similar agricultural equipment.
- h. Whether CNH acted intentionally and knowingly in designing, manufacturing, marketing, and selling the Module Express pickers.
- i. Whether CNH represented previously owned Module Express pickers which it knew were plagued with problems and not fully functional as working machines in fully operable condition.
- j. Whether CNH has been unjustly enriched through its conduct in designing, manufacturing, marketing, and selling the Module Express pickers such that it would be inequitable for CNH to retain the benefits conferred upon it by Plaintiffs and members of the putative classes.

II. Typicality and Numerosity

29. Plaintiffs' claims are typical of the claims of the class because Plaintiffs were subject to the same unlawful conduct. The members of the putative class are sufficiently numerous and dispersed such that individual joinder is not feasible or practical. Plaintiffs are informed and believe, based upon publicly available information and investigation, that there are more than 100 class members in each putative class.

III. Adequacy of Representation

30. Plaintiffs will fairly and adequately protect the interests of the members of the

classes and have no interest antagonistic to those of other class members. Plaintiffs have retained experienced class counsel competent to prosecute class actions and such counsel are financially able to represent the classes. The interests of the class members will be fairly and adequately protected by Plaintiffs and their counsel.

IV. Superiority

31. The class action is superior to other available methods for the fair and efficient adjudication of this controversy since individual joinder of all members of each class is impracticable. The interests of judicial economy favor adjudicating the claims for classes rather than for Plaintiffs on an individual basis. No unusual difficulties will be encountered in the management of a certified class in this case as a single nucleus of facts gives rise to each class member's claim and trial of CNH's liability with regard to all class members can be accomplished through common evidence. If necessary, the putative classes can be certified for purposes of establishing liability alone. However, the putative class can also be certified for purposes of establishing liability, injunctive relief, and certain measures of economic and pecuniary damages susceptible to class-wide proof. Further, the identity of each class member can be determined using records maintained by CNH and its agents.

V. CNH Has Acted And Refused To Act On Grounds Applicable To The Classes As A Whole.

32. Under Federal Rule of Civil Procedure 23(b)(2), CNH has acted and refused to act on grounds that apply generally to the classes as a whole, and thus injunctive relief and declaratory relief is appropriate.

33. The conduct at issue, CNH's practices in marketing, selling, and supporting defective Module Express pickers, apply to all putative class members equally. This conduct is ongoing. A finding that such conduct is unlawful and changes to those practices will apply to all class members equally.

FACTUAL ALLEGATIONS

34. This litigation involves cotton pickers that CNH designed, manufactured, marketed, and sold as the Case Module Express (the “Module Express” pickers).

35. Since the 1940’s, cotton has been harvested using three pieces of machinery: a mechanical picker (which collects the cotton off the plants), a boll buggy (which transfers the cotton from the picker to the module builder), and a module builder (which compacts the cotton into large rectangular shapes that maintain structure and can be transferred to a gin for processing). The importance of reliable, effective harvesting equipment in the cotton farming industry cannot be overstated. Cotton can only be harvested during certain weather conditions and during a certain temporal window, usually less than a month long. If cotton is not harvested during these narrow time frames, farmers often incur immense losses.

36. In the late 1990’s, the world’s two largest manufacturers of agricultural equipment—CNH and John Deere—separately began development of pickers that purportedly would allow cotton farmers to harvest cotton using a single piece of machinery. This “on-board module-building” type picker would, theoretically, both pick cotton and compact it into a module without the need for a buggy and stand-alone module builder. The cotton industry considered this to be a potentially revolutionary change; it would represent a leap in efficiency and cost-savings for farmers who were increasingly seeing profit shrink in the face of foreign competition.

37. CNH is a wholly owned subsidiary of CNH Industrial NV, a giant Dutch-based capital goods company that has annual revenues greater than \$25,000,000,000. CNH had long made cotton pickers and was locked in a battle with John Deere, the largest manufacturer of agricultural equipment, for a greater share of that market, particularly in the United States. Deere had begun development of its picker-baler years before CNH, filing for a patent in 1999,

two years before CNH sought a patent for its on-board module-building picker.⁴ But CNH looked to reap enormous gains if it could beat Deere to market with its new on-board module building picker.

38. Upon information and belief, at the time it began to bring its first onboard module-building picker to market, CNH knew that its new picker's design and manufacture suffered from inherent flaws, inadequate quality and process control, insufficient testing and troubleshooting, and manufacturing failures, such that its Module Express picker would never operate correctly. CNH also knew that attempting to resolve these problems prior to releasing the picker would require fundamental changes and significant delay. Delay of that magnitude would erase CNH's competitive advantage from beating Deere to market, and allow Deere to dominate the market before CNH could introduce its new picker. And so, upon information and belief, CNH made a financial decision to push its picker to market first, although the picker it would market and sell was irreparably flawed.

39. In October 2006, CNH introduced its new picker, the Case Module Express 625. The Module Express, as represented, was designed to pick cotton at more than three miles per hour, while at the same time forming the picked cotton into a rectangular module that could be deposited in the field. The rectangular module it was to create was 8 feet by 8 feet by 16 feet, half the size of a traditional cotton module, and up to 10,000 pounds in weight. Purportedly, a new auger system and software in the module building section of Module Express would pack the cotton such that it would hold together when deposited in the field, allowing the module to be manually covered with a tarp and later transferred to the gin. This would allow cotton farmers to trade in their current picker, buggy, and module builder for a single piece of equipment which

⁴ Notably, CNH appears to have since let its 2001 patent for the Module Express packing system lapse, and has rather filed patents for alternative packing systems; essentially recognizing that the system it sold to farmers as workable is untenable.

would accomplish all three tasks more quickly, more efficiently, and with less labor and operating costs than previously.

40. CNH priced the Module Express at nearly \$500,000. This is far more expensive than a traditional picker, and CNH priced it with the intent of capturing much of the purported cost savings CNH promised farmers they would see through the “revolutionary” Module Express. In approximately 2012, CNH changed the model number of the Module Express to 635. Upon information and belief, CNH implemented the model number change, not as a legitimate delineation between substantively different pickers, but as part of CNH’s larger scheme to control fallout from the faulty 625 designation through rebranding, much like when Ford sold rebranded Pintos as Bobcats. CNH used the rebranding to convince farmers to buy a “new” 635 picker that purportedly would not have the same flaws.

41. As discussed below, the CNH carried out a consistent scheme to deceptively market and sell the Module Express. CNH made specific, factual representations that were wholly untrue with the intent and effect of inducing farmers to purchase Module Express pickers. The Module Express is hugely flawed; a result of deep-set manufacturing failures and defective design, that CNH rushed to market and sold to unsuspecting farmers knowing that it would never operate as promised. CNH sold these pickers based upon misrepresentations, then falsely assured farmers that “patches” and fixes were coming that would fix the unfixable machine. CNH knew that it would not provide the parts, manuals, and service necessary for farmers to maintain and repair the pickers while representing otherwise. When farmers would trade in their Module Express pickers (often as the result of false statements that the “new” pickers were substantially different and would not suffer from the same flaws), CNH would take those inoperable machines, and resell them to other unsuspecting farmers at huge markups based upon false statements that these used pickers were operable.

42. Thus, farmers who CNH induced to buy a Module Express, with promises of huge gains in efficiency and cost savings, have been left with a what, as one farmer put it, ultimately is a “400,000 dollar bird nest.”

I. CNH Issued Materially False Statements Emanating From Wisconsin To Sell Defective Pickers.

43. CNH has consistently made statements regarding the Module Express pickers which are untrue, deceptive and misleading, with the intent and effect of inducing farmers into buying an expensive—and important—piece of equipment that would not operate as promised and which would be worth far less than it should be worth after purchase.

44. CNH engaged in its marketing scheme through a coordinated, centralized effort in its headquarters in Racine, Wisconsin. CNH executives (including Trent Haggard and Jim Walker) located there determined how to market and represent the Module Express, and disseminated those materials to the public and class members, often through press filings and uniform marketing documents distributed to captive dealers (and in turn to the public) that sold CNH equipment. All representations alleged herein were “made” in Wisconsin in that they were caused to exist from CNH’s headquarters in Racine, Wisconsin.

45. CNH’s deceptive scheme to induce the public to purchase Module Express pickers was uniform in all relevant aspects. Although CNH used multiple avenues to disseminate false, misleading, and deceptive representations, the singular narrative thread among all representations was that the Module Express was a reliable machine that was powerful and could operate in all conditions, that it would both pick cotton and build consistent, well-formed cotton modules, and that it was the most efficient and profitable way to harvest cotton. None of this was true.

46. CNH began its deceptive marketing scheme to the public in 2006, with an unveiling of the Module Express at a circus tent it erected in Mississippi, and continued it

throughout the production and sale of the Module Express to the present.

47. Among the deceptive representations made by CNH in public statements, including in marketing brochures, press releases, statements on CNH's website, and form statements by CNH dealers, were the following:

Specific Representations That The Module Express Was Designed And Constructed With Sufficient Power To Accomplish Specific Tasks In Diverse Conditions

- that the “Module Express harvests just as effectively on wet or dry ground”⁵
- that the Module Express has “the power to pick in the toughest conditions”⁶
- that the Module Express is “powerful, pulling through wet, uneven soil with no trouble at all”⁷
- that the Module Express “has the power to handle picking in the toughest conditions...”⁸
- that the Module Express “can harvest in difficult conditions as easily as it does on dry land.”^{9 10}

Specific Representations That The Module Express Is More Efficient And Profitable Than Traditional Equipment

⁵ See July 11, 2007 CNH public press release, available at <http://www.marketwired.com/press-release/cutting-edge-cotton-harvester-rolls-off-the-line-nyse-cnh-750508.htm>.

⁶ 2009 CNH website, available at <https://web.archive.org/web/20081115050612/http://www.caseih.com/products/series.aspx?seriesid=2880&navid=105&RL=ENNA>

⁷ Module Express Brochure, 2011-2018.

⁸ See June 21, 2007 CNH public press release, available at <https://www.farmprogress.com/cases-new-board-module-builder-technology>.

⁹ 2015 CNH website, available at <https://web.archive.org/web/20151021060133/http://www.caseih.com/northamerica/en-us/products/harvesting/module-express-cotton-pickers>

¹⁰ 2017 and 2018 CNH website, available at <https://www.caseih.com/northamerica/en-us/products/harvesting/module-express-cotton-pickers>

- that the “[c]ost savings with the Module Express total 25% compared with traditional cotton harvesting methods...”¹¹
- that “when it comes to cost per acre, nothing beats a Module Express” and the Module Express “offers unequalled cost-per-acre savings”¹²
- that the Module Express will “[m]aximize your ROI with industry-leading picking efficiency”¹³
- that the Module Express is the “most efficient cotton-harvesting package available”¹⁴
- that the Module Express is the “most profitable” way to harvest cotton.¹⁵
- that the Module Express “picks cotton at maximum efficiency...dramatically reducing a cotton producer’s equipment and labor investment while streamlining the harvest process.”^{16 17 18}

Specific Representations That The Module Express Would Produce Consistent, Well-Formed, Weatherable Cotton Modules

- that the Module Express will create “consistent domed [rectangular] modules for excellent weatherability and ginning”^{19 20 21}

¹¹ See July 11, 2007 CNH public press release, available at <http://www.marketwired.com/press-release/cutting-edge-cotton-harvester-rolls-off-the-line-nyse-cnh-750508.htm>.

¹² Module Express Brochure, 2011-2018.

¹³ See June 21, 2007 CNH public press release, available at <https://www.farmprogress.com/cases-new-board-module-builder-technology>.

¹⁴ See June 21, 2007 CNH public press release, available at <https://www.farmprogress.com/cases-new-board-module-builder-technology>.

¹⁵ Module Express Brochure, 2011-2018.

¹⁶ 2009 CNH website, available at <https://web.archive.org/web/20081115050612/http://www.caseih.com/products/series.aspx?seriesid=2880&navid=105&RL=ENNA>

¹⁷ 2015 CNH website, available at <https://web.archive.org/web/20151021060133/http://www.caseih.com/northamerica/en-us/products/harvesting/module-express-cotton-pickers>

¹⁸ 2017 and 2018 CNH website, available at <https://www.caseih.com/northamerica/en-us/products/harvesting/module-express-cotton-pickers>

¹⁹ 2009 CNH website, available at <https://web.archive.org/web/20081115050612/http://www.caseih.com/products/series.aspx?seriesid=2880&navid=105&RL=ENNA>.

- that the Module Express packing system is “fine-tuned to create consistent, domed modules for excellent weatherability and ginning”²²
- that the Module Express will create “consistent domed modules for excellent weatherability”²³

Specific Representations That The Module Express Was Does Not Require More Maintenance That Traditional Equipment, Was Well-Built, And Reliable

- that the “productivity gains don’t add maintenance” and the Module Express “requires less maintenance than a traditional basket picker”²⁴
- that the Module Express “requires less daily maintenance than a traditional basket picker”^{25 26}
- that the Module Express packing system “is proven to work year after year.”
- that the Module Express build and design allows for a “quicker start in harvest season” and allows farmers “to finish earlier in the season.”²⁷

48. Notably, CNH’s representations were specific and meaningful, designed to induce

²⁰ 2015 CNH website, available at <https://web.archive.org/web/20151021060133/http://www.caseih.com/northamerica/en-us/products/harvesting/module-express-cotton-pickers>

²¹ 2017 and 2018 CNH website, available at <https://www.caseih.com/northamerica/en-us/products/harvesting/module-express-cotton-pickers>

²² See June 21, 2007 CNH public press release, available at <https://www.farmprogress.com/cases-new-board-module-builder-technology>.

²³ Module Express Brochure, 2006-2011.

²⁴ See July 11, 2007 CNH public press release, available at <http://www.marketwired.com/press-release/cutting-edge-cotton-harvester-rolls-off-the-line-nyse-cnh-750508.htm>.

²⁵ 2015 CNH website, available at <https://web.archive.org/web/20151021060133/http://www.caseih.com/northamerica/en-us/products/harvesting/module-express-cotton-pickers>

²⁶ 2017 and 2018 CNH website, available at <https://www.caseih.com/northamerica/en-us/products/harvesting/module-express-cotton-pickers>

²⁷ Module Express Brochure, 2011-2018.

farmers to purchase the faulty Module Express pickers. These were not representations of opinion on a matter of judgment or puffery—*e.g.* that the Module Express picker was the “smarter choice” or the “best”—but rather representations of fact that may be objectively proven as false and which Plaintiffs will prove as false. These representations have specific meanings within the cotton industry. Industry usage and context confirms that CNH’s representations to the in selling the Module Express are measurable, quantifiable metrics which can be proven false.

49. Additionally, CNH failed to disclose material facts that it was under a duty to disclose to Plaintiffs and members of the putative class.²⁸ Among these omissions was the failure to disclose that the Module Express was a product of design flaws and a faulty manufacturing process, that the Module Express power, compacting, and software systems were not sufficient to create consistent, weatherable modules or to operate in varied terrain or weather environments, that the Module Express was not sufficiently reliable to be a sole method of harvesting cotton, and that the cost to own and operate the Module Express was far greater than alternatives.

50. These uniform, specific representations made by CNH from its Wisconsin headquarters to the public and the putative class were false, deceptive, and misleading. The Module Express pickers fail to operate as CNH promised. They fail and break down in the field quickly and often, need continual repairs, and are not reliable enough such that farmers can use them throughout a cotton harvest. The Module Express does not have sufficient power to pick cotton in diverse terrain or weather; it breaks down, bogs down, and elements related to the hydraulic system fail or get stuck. The module packing system fails to create consistent, domed, rectangular modules that will hold together and be weatherable. The Module Express does not

²⁸ Omissions are not in themselves actionable under the WDTPA, but they are relevant to such claims. Plaintiffs’ WDTPA claim is not based upon omissions, but as to specific misrepresentations that will be proven to be false. The omissions are relevant in this determination as recognized by precedential law.

save farmers time or money, particularly when the precipitous loss of value of the machines is taken into account. Nor is it the most efficient or cost-effective method of harvesting cotton; farmers who purchased Module Express pickers routinely were forced to borrow, lease, or buy alternative means of harvesting cotton during a harvest simply to protect their investment in the field. The cost-per-acre of using a Module Express would routinely be much higher than using comparable equipment from other manufacturers (or even using non-module building pickers). CNH sold the Module Express to cotton farmers as a “revolutionary” picker that was powerful and reliable, and which would save farmers time and money and lead to a greater return on their investment. This was untrue, deceptive, and, upon information and belief, CNH knew it to be so, but acted intentionally and aggressively to continue to sell the high-priced Module Express pickers to unsuspecting farmers and to falsely claim that previous problems had been remedied.

A. The Module Express Pickers Have Significant Design And Manufacturing Defects.

51. The Module Express pickers have significant design and manufacturing defects. CNH, upon information and belief following investigation, pushed the Module Express to market knowing that it had significant design flaws, particularly in the hydraulic, power, and module forming components. Such flaws manifest themselves often in a lack of sufficient power to operate in diverse terrain and weather conditions and lead to consistent eventual failures and break-downs in the Module Express pickers. CNH attempted to purportedly remedy some of these issues through multiple software patches, but was unable to do so.

52. Further, CNH experienced continual and widespread manufacturing failures at the plant in which the Module Express pickers are made. All Module Express pickers in the United States were manufactured at a plant CNH owns and operates in Benson, Wisconsin. From the beginning of the Module Express production, and consistently to this day, the Benson plant has had widespread problems with the manufacturing, workmanship, and assembly of Module

Express pickers that caused the pickers to be faulty and to break down quickly and continually in the field. Upon information and belief, CNH was well-aware of the problems with implementing and controlling an effective manufacturing processes for the Module Express and repeatedly changed management at the Benson plant to try to correct them, but was unable to correct the design and manufacturing flaws that persist to this day with the Module Express pickers.

II. CNH Misrepresented Module Express Pickers That Had Proven To Be Inoperable As Functional Pickers And Resold Them.

53. CNH engaged in a separate unlawful scheme by which it resold non-functioning, previously owned Module Express pickers to unsuspecting farmers as operable machines. CNH controls the resale market for Module Express pickers through its captive dealers. Often, the CNH dealers are the only avenue for farmers that purchased these pickers to attempt to regain some of their losses, either by trading in for new Module Express pickers (that CNH falsely represents as not suffering from the same flaws) or for other cotton harvesting machinery. When CNH does buy back Module Express pickers through trade-ins, it does so at hugely depressed values from farmers who have little to no alternative.

54. These previously owned pickers invariably suffer from the same repeated and irreparable defects in design and manufacturing that caused their prior owners to get rid of them. They did not operate as promised or required for the original owners, a fact of which CNH is well aware given the repair orders and claims made by dealers which CNH tracks by picker serial number through a centralized system.

55. Despite knowing that these specific previously owned Module Express pickers suffered from such failings that they could not operate to pick and bale cotton, CNH takes them from one dealer, moves them to a dealer located in another part of the country, and they represent them to purchasers as operable, in good working order, and capable of picking and baling cotton. These representations are false. CNH does not reveal to farmers which purchase

used machines that they have been subject to multiple repair claims, that CNH has not been able to adequately fix them, and that they do not operate as represented.

III. CNH Failed To Provide Parts, Manuals, And Support.

56. Additionally, CNH, based upon investigation, information, and belief, failed to make and supply sufficient replacement and repair parts, manuals, and support for the Module Express pickers. CNH represented to purchasers that the Module Express pickers could be maintained and would remain operational throughout a typical lifespan. As is customary in the industry, and as CNH knows, it is crucial that cotton harvesting equipment be operational during the window necessary to harvest cotton.

57. CNH, through mismanagement, an attempt to limit its back-end costs for failing pickers, or, most likely, a hidden abandonment of the Module Express it still manufactured and sold, did not acquire or manufacture sufficient amounts of crucial replacement parts for the Module Express pickers from at least 2012 through the present. The result was that when, inevitably, Module Express pickers broke down, farmers could not get them repaired quickly enough. This is particularly problematic for cotton farming, where harvesting is weather and time sensitive and farmers often have as few as 20 days a year to bring in their cotton crop. CNH knew that it was unable to supply sufficient volumes of replacement parts to keep its Module Express machines operating, but continued to sell Module Express pickers without disclosing this material fact. Farmers and putative class members were directly harmed as a result. CNH's conduct was unlawful, deceptive, and unfair.

TOLLING AND ACCRUAL OF THE APPLICABLE STATUTES OF LIMITATION

58. **Equitable Tolling:** Class members, despite all due diligence, could not obtain vital information relevant to the existence of the claims brought in this lawsuit. A reasonable person would not know that the diminished value and faults in the Module Express could

possibly be due to CNH's wrongful and intentionally wrongful conduct. Neither Plaintiffs nor any member of the putative classes could have discovered, through the use of reasonable diligence, that the CNH's conduct was unlawful and actionable within the time period of any applicable statutes of limitation. Nor could they have determined with the exercise of any reasonable diligence that the value of the Module Express would decrease precipitously, that CNH would not provide the parts and support necessary to maintain the Module Express pickers, that previously owned pickers were non-functional, that the pickers could not be effectively repaired, or that CNH would depress the resale value of the Module Express pickers.

59. **Equitable Estoppel/Fraudulent Concealment:** Throughout the relevant time period, CNH actively concealed the wrongful conduct at issue in this case, failed to disclose from putative class members material information concerning the defective design and manufacture of the Module Express pickers, the inadequate service and lack of replacement parts available to repair the Module Express pickers, and CNH's actions with regard to suppress the resale value of the Module Express pickers. Upon information and belief, CNH acted knowingly and intentionally to ensure that putative class members could not discover the nature and extent of the conduct giving rise to the claims brought herein, and that any class member who attempted to do so was prevented from suing within the statute of limitations. When Plaintiffs and class members would inquire as to the problems they experienced with the pickers, CNH (directly and through its agents and captive dealers) would repeatedly and consistently promise "patches" and fixes to its customers, falsely representing that the flaws with the Module Express pickers were isolated and fixable, so as to prevent customers from acting on any legal claims. As a result, neither Plaintiffs nor any putative class member could have discovered their claims, the issues with the Module Express pickers, or the conduct of CNH at issue in this litigation through the use of reasonable efforts or reasonable diligence.

FIRST CLAIM FOR RELIEF
Violation of the Wisconsin Deceptive Trade Practices Act

60. All allegations and paragraphs in this complaint are incorporated by reference into this claim.

61. This claim is brought by Plaintiffs individually and on behalf of both classes.

62. CNH is a “person, firm, corporation or association” as defined by Wisconsin Statutes § 100.18(1).

63. Plaintiffs and members of the putative class are members of “the public” as defined by Wisconsin Statutes § 100.18(1).

64. With the intent to sell, distribute, or increase consumption of merchandise, services, or anything else offered by CNH to members of the public, CNH made, published, circulated, and placed before the public—or caused (directly or indirectly) to be made, published, circulated, placed before the public—advertisements, announcements, statements, and representations which contained assertions, representations, or statements of fact which are untrue, deceptive, and misleading.

65. CNH also engaged in such untrue, deceptive, and misleading conduct as part of a plan or scheme the purpose or effect of which was not to sell merchandise as advertised.

66. Among the untrue, deceptive, and misleading statements made by CNH to the public with the intent to induce an obligation—specifically the purchase or lease of a Module Express cotton picker—are set about above, including that the Module Express pickers are efficient, cost effective, powerful and can operate in difficult conditions, will produce consistent well-formed modules, require less maintenance than basket pickers, and are reliable.

67. CNH additionally falsely represents previously owned Module Express pickers as operational, in good working order, and capable of picking and baling cotton.

68. CNH makes these representations consistently in marketing materials,

advertisements, and in newspaper articles.

69. These representations are not expressions of opinion, they are specific factual statements.

70. As set out above, the representations and scheme CNH enacted through them emanated from Wisconsin. CNH controls all marketing, manufacturing, and selling of the Module Express pickers from its corporate headquarters in Racine, Wisconsin. The representations at issue here were “made” in Wisconsin in that CNH “caused them to exist” from Wisconsin, and they were part of a nation-wide scheme whereby they were disseminated from Wisconsin across the country. Each representation at issue here was made before the parties entered into a contractual relationship to purchase the respective Module Express pickers which is the source of pecuniary loss for Plaintiffs and putative class members.

71. The representations are untrue, deceptive and misleading, as discussed above, because CNH acted knowingly and intentionally with the purpose of causing and inducing Plaintiffs and members of the putative classes to purchase Module Express pickers which CNH knew to be faulty, defective, and which would not operate as promised, and which CNH knew it would not adequately provide service and parts for future repair, and which CNH knew it would artificially depress re-purchase and trade in values for in the future.

72. The representations caused a pecuniary loss to Plaintiffs and members of the putative classes in that each incurred damages as a direct result thereof. Through its conduct, CNH intended to—and in fact did—materially induce Plaintiffs and each member of the putative classes to purchase or lease a Module Express picker which directly and proximately resulted in pecuniary losses, including not receiving the benefit of the bargain in purchasing the Module Express pickers, incurring transactional costs, purchasing equipment which lost value precipitously and was not re-sellable, losing time and money through inoperable equipment,

incurring monetary costs associated with faulty equipment during harvest, and purchasing equipment for which CNH knowingly would not provide viable repair parts or services.

73. Plaintiffs, on behalf themselves and the putative classes, seek to recover their damages, including diminution of value, cost of repair or replacement, refund of full purchase price, attorney's fees under Wisconsin Statutes § 100.18(11), costs, injunctive relief, and punitive damages.

SECOND CLAIM FOR RELIEF
Breach of the Implied Warranty of Merchantability

74. All allegations and paragraphs in this complaint are incorporated by reference into this claim.

75. This claim is brought by Plaintiffs individually and on behalf of both classes.

76. CNH sold goods, specifically the Module Express pickers, to Plaintiffs and members of the putative class. CNH is in the business of manufacturing and selling such goods and does so regularly.

77. These goods were not merchantable at the time of sale. They were not fit for the ordinary purpose for which such goods are used, specifically for harvesting cotton and forming it into modules. Nor were they of average quality, as set out above.

78. CNH has actual knowledge of the particular defects at issue in this case through internal communications and reports (tracking complaints from dealers detailing flaws in the Module Express pickers), direct complaints from customers and the public, and internal testing. CNH, at the corporate executive level, from its Racine, Wisconsin headquarters, is in constant contact with its highly-controlled dealers, both in the United States, and in other parts of the world in which cotton is produced and CNH sells pickers (South America, for example). CNH monitors cotton harvests and the operation of its pickers in such harvests and was continually aware of the defects in the Module Express pickers. CNH received notice of the defects through

complaints received by, and repairs conducted by, their controlled dealers, who were aware of the defects in the Module Express pickers and reported such defects to CNH. Additionally, CNH has received actual notice through other lawsuits which address such defects.

79. Plaintiffs and class members have been damaged by CNH's breach of the implied warranty of merchantability through purchasing and owning Module Express pickers that do not operate as represented, were not fit for the purpose they were sold, and which lost value more quickly than they would have otherwise.

Any Attempt By CNH To Limit Or Waive Remedies Is Without Effect.

80. Any attempt by CNH to limit or waive the implied warranty of merchantability is ineffective for two reasons. First, any express warranty that may be valid fails in its essential purpose. CNH, given ample opportunity, repeatedly failed to adequately repair Module Express pickers, which did not subsequently operate as equipment free of defects should operate. Any express warranty remedies do not provide a fair quantum of remedy, as CNH could not, and would not, and to this day cannot adequately repair or replace failing Module Express pickers, effectively depriving purchasers (including Plaintiffs and each member of the putative classes) of the benefit of the bargain. Therefore, any purported limitations of remedies or waiver of implied warranties in any express warranty are invalid.

81. Second, CNH cannot limit or waive the warranty of merchantability as any such attempts were made after contracting. When Plaintiffs and putative class members purchase Module Express pickers through CNH dealers, they agree to do so through initial documents which do not contain waivers and limitations. To the extent a warranty that purports to limit or waive remedies or warranties is subsequently provided, it is after such agreement is already made, is not signed, and therefore is without legal effect.

THIRD CLAIM FOR RELIEF
Breach of Contract-Violation of the Duty of Good Faith and Fair Dealing

82. All allegations and paragraphs in this complaint are incorporated by reference into this claim.

83. This claim is brought by Plaintiffs individually and on behalf of the classes.

84. To the extent necessary, this claim is pled in the alternative.

85. CNH entered into contracts with each member of the putative classes, either directly or through its controlled dealers, for the sale of Module Express pickers.

86. Inherent in every contract is the implied promise of good faith and fair dealing.

87. CNH breached the duty of good faith and fair dealing through the conduct set out above, including by misrepresenting and failing to disclose the nature and quality of the pickers sold, by failing to adequately supply parts and support for necessary repairs, and by manipulating the buy-back and resale market for used pickers.

88. Such conduct was objectively unreasonable and evaded the spirit of the bargain between CNH and putative class members.

89. As a result of CNH's misconduct and breach of good faith and fair dealing, Plaintiffs and putative class members did not receive the benefit of the bargain for which they contracted and have been otherwise damaged.

FOURTH CLAIM FOR RELIEF
Unjust Enrichment

90. All allegations and paragraphs in this complaint are incorporated by reference into this claim.

91. This claim is brought by Plaintiffs individually and on behalf of the classes.

92. To the extent necessary, this count is pled in the alternative.

93. CNH received money from Plaintiffs and each member of the putative classes, which in justice and equity it should not be permitted to keep. The benefit conferred by Plaintiffs

and each member of the putative classes was non-gratuitous, CNH realized value from this benefit, and CNH has knowledge of that benefit. It would be inequitable for CNH to retain this benefit without payment of the value to Plaintiffs and the putative classes.

FIFTH CLAIM FOR RELIEF
Fraud

94. All allegations and paragraphs in this complaint are incorporated by reference into this claim.

95. This claim is brought by Plaintiffs individually.

96. The elements of common law fraud include the following: 1) the defendant made a representation of fact to the plaintiff; 2) the representation of fact was false; 3) the plaintiff believed and relied on the misrepresentation to her detriment or damage; 4) the defendant made the misrepresentation with knowledge that it was false or recklessly without caring whether it was true or false; and 5) the defendant made the misrepresentation with intent to deceive and to induce the plaintiff to act on it to her detriment or damage. *Tietsworth v. Harley-Davidson, Inc.*, 270 Wis. 2d 146, 157, 677 N.W.2d 233, (Wis. 2004); *citing Ollerman v. O'Rourke Co., Inc.*, 94 Wis. 2d 17, 26, 288 N.W.2d 95 (Wis. 1980).

97. CNH made false representations of fact, as set out above, including that the Module Express pickers are efficient, cost effective, powerful and can operate in difficult conditions, will produce consistent well-formed modules, require less maintenance than basket pickers, and reliable. CNH made such false representations in brochures, through agents, and otherwise to Plaintiffs.

98. CNH made material omissions of fact, as set out above, including by failing to disclose that the Module Express Pickers suffered from significant design and manufacture flaws such that they did not have sufficient operational power to operate in adverse geographic or weather conditions, would not consistently form domed, weatherable bales, would continually

break down and require more maintenance than traditional pickers, would operate less efficiently and require greater repair and operation costs than traditional pickers, and would lose value more quickly than they otherwise should have.

99. CNH knew that these affirmations of fact are false, knew them to be false when made, or made such misrepresentations recklessly.

100. CNH made such misrepresentations with the intent to deceive and induce Plaintiffs to purchase Module Express Pickers.

101. Plaintiffs believed and relied on CNH's fraudulent representations and omissions and incurred direct and proximate damages as a result.

PRAYER FOR RELIEF ON BEHALF OF THE CLASSES

Plaintiffs, on behalf of each member of the putative classes, seek:

- (1) an order certifying the proposed class and appointing Plaintiffs as class representative and Plaintiffs' counsel as class counsel;
- (2) all class damages susceptible to class wide adjudication, including pecuniary loss and refund of all purchase prices;
- (3) reasonable attorney's fees and costs;
- (4) injunctive relief;
- (5) full restitution of all amounts paid to Defendant; and
- (6) all other relief which the Court or jury should find appropriate.

PRAYER FOR RELIEF ON BEHALF OF PLAINTIFFS INDIVIDUALLY

Additionally, on their own behalf alone, Plaintiffs seek:

- (1) all damages not recoverable or recovered through class adjudication;
- (2) reasonable attorney's fees and costs;
- (3) injunctive relief;

- (4) full restitution of all amounts paid to Defendant;
- (5) all other relief which the Court or jury should find appropriate.

Plaintiffs demand a trial of all claims by struck jury.

Respectfully submitted,

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