UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

JAMES BLEDSOE, PAUL CHOUFFET, JAY MARTIN, and MARTIN RIVAS, on behalf of themselves and all others similarly situated, Plaintiffs, v. FCA US LLC, a Delaware corporation, and CUMMINS INC., an Indiana corporation, Defendants.	Case No.: Hon. **JURY TRIAL DEMANDED**

CLASS ACTION COMPLAINT

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Plaintiffs James Bledsoe, Paul Chouffet, Jay Martin, and Martin Rivas, individually and on behalf of all others similarly situated (the "Class"), allege the following based upon the investigation of counsel, the review of scientific papers, and the investigation of experts.

I. INTRODUCTION

1. The world is besieged by a scandal involving tens of millions of diesel cars that violate relevant emissions standards and were sold under false pretenses that they were "clean" or "cleaner than gas vehicles," or environmentally friendly. The United States, most European countries, and other nations have implemented strict emissions standards for diesel engines designed to protect all of us from the harmful byproducts found in the exhaust from diesel engines.

2. Diesel engines pose a difficult challenge to the environment because they have an inherent trade-off between power, fuel efficiency, and emissions. Compared to gasoline engines, diesel engines generally produce greater torque, low-end power, better drivability, and much higher fuel efficiency. But these benefits come at the cost of much dirtier and more harmful emissions.

3. One by-product of diesel combustion is oxides of nitrogen ("NOx"), which generally describes several compounds comprised of nitrogen and oxygen atoms. These compounds are formed in the cylinder of the engine during the high temperature combustion process. NOx pollution contributes to nitrogen dioxide,

particulate matter in the air, and reacts with sunlight in the atmosphere to form ozone. Exposure to these pollutants has been linked with serious health dangers, including serious respiratory illnesses and premature death due to respiratory-related or cardiovascular-related effects. The United States Government, through the Environmental Protection Agency (EPA), as well as many states like California have passed and enforced laws designed to protect United States citizens from these pollutants and certain chemicals and agents known to cause disease in humans. Automobile manufacturers must abide by these U.S. laws and must adhere to EPA rules and regulations.

4. Seeing a major opportunity for growth, almost all of the major automobile manufacturers rushed to develop "clean diesel" and promoted new diesel vehicles as environmentally friendly and clean. Volkswagen, Mercedes, GM, FCA, and other manufacturers began selling diesel cars and trucks as more powerful, yet also as an environmentally friendly alternative to gasoline vehicles. And the marketing worked, as millions of diesel vehicles were purchased between 2007–2016.

5. The green bubble with respect to diesel vehicles popped on September 18, 2015, when the EPA issued a Notice of Violation of the Clean Air Act ("CAA") (the "First NOV") to Volkswagen Group of America, Audi AG, and VW America for installing illegal "defeat devices" in 2009–2015 Volkswagen and

Audi diesel cars equipped with 2.0-liter diesel engines. A defeat device, as defined by the EPA, is any apparatus that unduly reduces the effectiveness of emissions control systems under conditions a vehicle may reasonably be expected to experience. The EPA found that the VW/Audi Defeat Device allowed the vehicles to pass emissions testing while in the real world these vehicles polluted far in excess of emissions standards. The California Air Resources Board ("CARB") also announced that it had initiated an enforcement investigation of Volkswagen pertaining to the vehicles at issue in the First NOV.

6. On September 22, 2015, Volkswagen announced that 11 million diesel cars worldwide were installed with the same Defeat Device software that had evaded emissions testing by U.S. regulators. Contemporaneously, Volkswagen announced that it had set aside reserves of 6.5 billion euros ($7.3 billion) in the third quarter to address the matter.[1]

7. Volkswagen wasn't alone; soon government agencies began to reveal that many manufacturers had produced dozens of models that were exceeding emissions standards.

8. The "dieselgate" issue is not limited to passenger vehicles, and hence this case. In 2001, the Environmental Protection Agency (EPA) announced

[1] *See* Exhibit 1, Nathan Bomey, *Volkswagen Emission Scandal Widens: 11 Million Cars Affected*, USA Today (Sept. 22, 2015), http://www.usatoday.com/story/money/cars/2015/09/22/volkswagen-emissions-scandal/72605874/.

stringent emissions standards for heavy-duty highway diesel engines, slated to take effect in 2010.[2] Cummins Inc. and Chrysler (now known as FCA US LLC[3]) saw a golden business opportunity, and worked together to build a truck that, at least on paper, met these standards, three years ahead of schedule.[4] Cummins announced the new truck as the "strongest, cleanest, quietest best-in-class 2007 Cummins Turbo Diesel. Leapfrogging the competition, the Cummins 6.7-liter Turbo Diesel engine, used exclusively in Dodge Ram 2500 and 3500 Heavy Duty pickup trucks, has increased displacement[,] providing increased horsepower and torque[,] while achieving the world's lowest 2010 Environmental Protection Agency (EPA) NOx standard a full three years ahead of the requirements."[5]

9. In order to produce a diesel engine that has desirable torque and power characteristics, good fuel economy, and emissions levels low enough to meet the stringent European and United States governmental emission standards, FCA and Cummins (collectively, the Defendants) developed the 6.7-liter diesel engine with a sophisticated NOx adsorber (the "Adsorber Engine"). The primary emission control after-treatment technologies include a diesel particulate filter

[2] *See* Exhibit 2, "Cummins Technology Partnerships," https://cumminsengines.com/technology-partnerships.

[3] FCA stands for Fiat Chrysler Automobiles.

[4] *See id.*

[5] Exhibit 3, Cummins Inc.'s Jan. 23, 2007 Press Release, *available at* http://investor.cummins.com/phoenix.zhtml?c=112916&p=irol-newsArticle_pf&ID=953050.

(DPF) and a NOx adsorber catalyst system. The DPF traps and removes particulate (soot) emissions, while the NOx adsorber system facilitates the capture and reduction of NOx into less harmful substances, such as nitrogen and oxygen.

10. In contrast to Cummins' promises, real-world testing has revealed that the Dodge 2500 and 3500, equipped with the Cummins 6.7-liter turbo diesel engine (the "Affected Vehicles"), emit dangerous levels of NOx at many times higher than (i) their gasoline counterparts, (ii) what a reasonable consumer would expect from the cleanest engine in its class, (iii) United States Environmental Protection Agency maximum standards, and (iv) the levels set for the vehicles to obtain a certificate of compliance that allows them to be sold in the United States. The self-proclaimed "cleanest engine in its class" is far from clean.[6]

11. To appeal to environmentally conscious consumers, FCA and Cummins vigorously marketed the Adsorber Engine, and the Dodge Ram 2500 and 3500 with the Adsorber Engine, as the "strongest, cleanest, quietest" diesel engine in its class."[7] In 2011, Cummins stated that the "product has been in commercial use for over four years, delighting customers with its performance and durability, and delivering on Cummins [sic] commitment to a cleaner, healthier

[6] *See* Exhibit 4, "EPA 2010 Exhaust Emissions Regulations," *available at* https://cumminsengines.com/uploads/docs/4971350.pdf.

[7] *See id.*

environment."[8] FCA claims that "[t]he savings are measured in time, expense, and hassles: both versions of the 6.7-liter Cummins Turbo Diesel in Ram Heavy Duty pickups meet all 50-state emissions standards with no need for a [diesel exhaust fluid] system. Neither Ford nor GM pickups can offer that value."[9]

12. These representations are deceptive and false. The Affected Vehicles routinely exceed applicable Federal and California emissions limits. The legal limit of NOx emissions for stop-and-go driving is 200 mg/mile. When tested, Dodge Ram 2500s emitted 702 mg/mile, and 2,826 mg/mile at maximum emission. The California NOx limit for highway conditions is 400 mg/mile. Testing for the 2500 shows an average of 756 and max of 2,252 mg/mile.

13. As a result, the representations are deceptive and false because it is not the "cleanest engine in its class," and it does not contribute to a "cleaner, healthier environment." The representations are also false and deceptive because one of the Affected Vehicles does not save the consumer "time, expense, and hassles." As detailed below, the catalytic converter wears out more quickly because it is defective, which results in the vehicle burning fuel at a higher rate, and often requiring customers to replace the converter after the warranty has expired at a cost of approximately $3,000–$5,000.

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[8] *See id.*

[9] Exhibit 5, 2012 Dodge Ram brochure, *available at* http://www.auto-brochures.com/makes/ram/Ram_US%20HD_2012.pdf.

14. In addition, the Defendants had another reason to rush the Affected Vehicles to market. Under the EPA regulations, Cummins was able to "bank" emissions credits to spend on other, dirtier engines.[10] Cummins, in turn, could share those credits with FCA. As a result, the Defendants were able to design and build dirty trucks—effectively shifting the cost of those dirty trucks to purchasers of the Affected Vehicles.

15. Thus, the Defendants have perpetrated a gross deception on Plaintiffs and members of the proposed Class, who the Defendants told were buying low-emission, efficient, earth-friendly vehicles.

16. The Defendants never disclosed to consumers that the Affected Vehicles may be "clean" diesels in very limited circumstances, but are "dirty" diesels under most driving conditions. The Defendants never disclosed that they prioritize engine power and profits over the environment and people's time and money. The Defendants never disclosed that the Affected Vehicles' emissions materially exceed the emissions from gasoline-powered vehicles, that the emissions exceed what a reasonable consumer would expect from a "clean diesel," and that emissions materially exceed applicable emissions limits in real world driving conditions. The Defendants never disclosed that their defective NOx

[10] *See* 40 C.F.R. § 1036.701 *et seq.*

adsorber would ultimately cost the consumer more money because of increased fuel costs, increased maintenance costs, and the cost of replacing the catalyst.

17. Plaintiffs bring this action individually and on behalf of all other current and former owners or lessees of Affected Vehicles. Plaintiffs seek damages and equitable relief for the Defendants' misconduct related to the design, manufacture, marketing, sale, and lease of Affected Vehicles with unlawfully high emissions, as alleged in this Complaint.

18. The violations of law alleged herein are in two distinct categories. Plaintiffs' RICO allegations are based in part on a pattern of conduct and scheme that include obtaining certificates of compliance for vehicles that were in fact non-complaint and are illegally on the road. Plaintiffs' state law counts rely on Defendants' deceptive conduct in failing to disclose the polluting nature of the Dodge Ram and the fact that these vehicles do not perform as advertised. Plaintiffs' state law claims are not based on a violation of emission standards.

A. Jurisdiction and Venue

19. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 & 1332. There is also complete diversity of citizenship in this case because each Defendant is a citizen of a different state than any of the Plaintiffs, and the amount in controversy exceeds the sum of $75,000. 28 U.S.C. § 1332. This Court also has supplemental jurisdiction over the state law

claims because those claims are integrally related to the federal claims and form part of the same case and controversy under 28 U.S.C. § 1367.

20. This Court has personal jurisdiction over FCA by virtue of its transacting and doing business in this district and because FCA is registered to do business in Michigan. FCA has transacted and done business in the State of Michigan and in this district and has engaged in statutory violations and common law tortious conduct in Michigan and in this district.

21. This Court has personal jurisdiction over Cummins by virtue of its transacting and doing business in this district and because Cummins is registered to do business in Michigan. Cummins has transacted and done business in the State of Michigan and in this district and has engaged in statutory violations and common law tortious conduct in Michigan and in this district.

22. Venue is proper pursuant to 28 U.S.C. § 1391(a) & (b) because a substantial part of the events or omissions giving rise to the claims occurred in this district. Venue is proper pursuant to 18 U.S.C. § 1965(a) & (b) because Defendants transact affairs in this district, and the ends of justice require it. Venue is also proper in this district under 28 U.S.C. § 1391(b)(1) because the Defendants reside in this judicial district for venue purposes.

II. PARTIES

A. Plaintiffs

23. Each and every Plaintiff and Class member has suffered an ascertainable loss as a result of the Defendants' omissions and/or misrepresentations associated with the Adsorber Engine, including, but not limited to, out-of-pocket loss and future attempted repairs, future additional fuel costs, decreased performance of the vehicle, and diminished value of the vehicle.

24. None of the Defendants, nor any of its agents, dealers, or other representatives informed Plaintiffs or Class members of the existence of the comparatively and unlawfully high emissions and/or defective nature of the Adsorber Engine of the Affected Vehicles prior to purchase.

25. Plaintiff James Bledsoe (for the purpose of this paragraph, "Plaintiff") is a resident of California domiciled in Delhi, California. On or about September 7, 2007, Plaintiff purchased a 2007 Dodge Ram 2500 (for the purpose of this paragraph, the "Affected Vehicle"), in Merced, California. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions system that turned off or limited its emissions reduction system during normal driving conditions and emitted pollutants such as NOx at many multiples of emissions emitted from gasoline-powered vehicles, at many times the level a reasonable consumer would expect

from a "Clean Diesel," and at many multiples of that allowed by federal law. The Defendants' unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the Affected Vehicle without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. FCA and Cummins knew about, manipulated, or recklessly disregarded the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle was a "clean diesel" as compared to gasoline vehicles, complied with United States emissions standards, and would retain all of its operating characteristics throughout its useful life, including high fuel economy. Plaintiff selected and ultimately purchased his vehicle, in part, because of the Clean Diesel system, as represented through advertisements and representations made by the Defendants. Plaintiff recalls that the advertisements and representations touted the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system. None of the advertisements reviewed or representations received by Plaintiff contained any disclosure that the Affected Vehicle had high emissions compared to gasoline vehicles and the fact that the Defendants had designed part of the emissions reduction system to emit very high emissions for extended periods at a high rate of frequency during normal driving conditions.

Had Defendants disclosed this design, and the fact that the Affected Vehicle actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level than a reasonable consumer would expect, and emitted unlawfully high levels of pollutants, and would require Plaintiff to pay out-of-pocket costs to fix it, Plaintiff would have received these disclosures, and would not have purchased the vehicle, or would have paid less for it.

26. Plaintiff Paul Chouffet (for the purpose of this paragraph, "Plaintiff") is a resident of Texas domiciled in Irving, Texas. On or about May 12, 2009, Plaintiff purchased a 2009 Dodge Ram 2500 (for the purpose of this paragraph, the "Affected Vehicle"), in Turlock, Texas. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions system that turned off or limited its emissions reduction system during normal driving conditions and emitted pollutants such as NOx at many multiples of emissions emitted from gasoline-powered vehicles, at many times the level a reasonable consumer would expect from a "Clean Diesel," and at many multiples of that allowed by federal law. The Defendants' unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the Affected Vehicle without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. FCA and Cummins knew about, manipulated, or recklessly disregarded

the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle was a "clean diesel" as compared to gasoline vehicles, complied with United States emissions standards, and would retain all of its operating characteristics throughout its useful life, including high fuel economy. Plaintiff selected and ultimately purchased his vehicle, in part, because of the Clean Diesel system, as represented through advertisements and representations made by the Defendants. Plaintiff recalls that the advertisements and representations touted the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system. None of the advertisements reviewed or representations received by Plaintiff contained any disclosure that the Affected Vehicle had high emissions compared to gasoline vehicles and the fact that the Defendants had designed part of the emissions reduction system to emit very high emissions for extended periods at a high rate of frequency during normal driving conditions. Had Defendants disclosed this design, and the fact that the Affected Vehicle actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level than a reasonable consumer would expect, and emitted unlawfully high levels of pollutants, Plaintiff would have received these disclosures, and would not have purchased the vehicle, or would have paid less for it.

27. Plaintiff Jay Martin (for the purpose of this paragraph, "Plaintiff") is a resident of California domiciled in Fort Jones, California. On or about May 28, 2016, Plaintiff purchased a 2008 Dodge Ram 2500 (for the purpose of this paragraph, the "Affected Vehicle"), in Grants Pass, Oregon. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions system that turned off or limited its emissions reduction system during normal driving conditions and emitted pollutants such as NOx at many multiples of emissions emitted from gasoline-powered vehicles, at many times the level a reasonable consumer would expect from a "Clean Diesel," and at many multiples of that allowed by federal law. The Defendants' unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the Affected Vehicle without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. FCA and Cummins knew about, manipulated, or recklessly disregarded the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle was a "clean diesel" as compared to gasoline vehicles, complied with United States emissions standards, and would retain all of its operating characteristics throughout its useful life, including high fuel economy. Plaintiff selected and ultimately

purchased his vehicle, in part, because of the Clean Diesel system, as represented through advertisements and representations made by the Defendants. Plaintiff recalls that the advertisements and representations touted the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system. None of the advertisements reviewed or representations received by Plaintiff contained any disclosure that the Affected Vehicle had high emissions compared to gasoline vehicles and the fact that the Defendants had designed part of the emissions reduction system to emit very high emissions for extended periods at a high rate of frequency during normal driving conditions. Had Defendants disclosed this design, and the fact that the Affected Vehicle actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level than a reasonable consumer would expect, and emitted unlawfully high levels of pollutants, Plaintiff would have received these disclosures, and would not have purchased the vehicle, or would have paid less for it.

28. Plaintiff Martin Rivas (for the purpose of this paragraph, "Plaintiff") is a resident of Texas domiciled in Kingsville, Texas. On or about November 15, 2011, Plaintiff purchased a 2012 Dodge Ram 2500 (for the purpose of this paragraph, the "Affected Vehicle"), in Kingsville, Texas. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was

purchased, it was equipped with an emissions system that turned off or limited its emissions reduction system during normal driving conditions and emitted pollutants such as NOx at many multiples of emissions emitted from gasoline-powered vehicles, at many times the level a reasonable consumer would expect from a "Clean Diesel," and at many multiples of that allowed by federal law. The Defendants' unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the Affected Vehicle without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. FCA and Cummins knew about, manipulated, or recklessly disregarded the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle was a "clean diesel" as compared to gasoline vehicles, complied with United States emissions standards, and would retain all of its operating characteristics throughout its useful life, including high fuel economy. Plaintiff selected and ultimately purchased his vehicle, in part, because of the Clean Diesel system, as represented through advertisements and representations made by the Defendants. Plaintiff recalls that the advertisements and representations touted the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system. None of the advertisements reviewed or representations

received by Plaintiff contained any disclosure that the Affected Vehicle had high emissions compared to gasoline vehicles and the fact that the Defendants had designed part of the emissions reduction system to emit very high emissions for extended periods at a high rate of frequency during normal driving conditions. Had Defendants disclosed this design, and the fact that the Affected Vehicle actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level than a reasonable consumer would expect, and emitted unlawfully high levels of pollutants, Plaintiff would have received these disclosures, and would not have purchased the vehicle, or would have paid less for it.

29. Each of the Plaintiffs purchased their vehicles at an FCA-authorized dealership. And each received information about the characteristics, benefits, and quality of the RAM vehicles at the dealership.

B. Defendants

30. Defendant FCA US LLC ("FCA") is a limited liability company organized and existing under the laws of the State of Delaware, and is wholly owned by holding company Fiat Chrysler Automobiles N.V., a Dutch corporation headquartered in London, United Kingdom. FCA's principal place of business and headquarters is in Auburn Hills, Michigan, in the Eastern District of Michigan.

31. FCA (sometimes referred to as Chrysler) is a motor vehicle "Manufacturer" and a licensed "Distributor" of new, previously untitled Chrysler, Dodge, Jeep, and Ram brand motor vehicles. FCA's Chrysler brand is one of the "Big Three" American automobile brands. FCA engages in commerce by distributing and selling new and unused passenger cars and motor vehicles under its Chrysler, Dodge, Jeep, and Ram brands. Other major divisions of FCA include Mopar, its automotive parts and accessories division, and SRT, its performance automobile division. As of 2015, FCA is the seventh largest automaker in the world by unit production.

32. FCA's business operations in the United States include the manufacture, distribution, and sale of motor vehicles and parts through its network of independent, franchised motor vehicle dealers. FCA is engaged in interstate commerce in that it sells vehicles through this network located in every state of the United States.

33. FCA sells its trucks through FCA franchise dealerships. FCA distributes information about its RAM trucks to its dealers for the purpose of passing that information to consumers. FCA also understands that its dealers pass on information from FCA about the characteristics, benefits, and quality of its RAM products to consumers. The dealers act as FCA's agents in selling the

Affected Vehicles and disseminating information about the Affected Vehicles to customers and potential customers.

34. Cummins Inc. is a Fortune 500 company that designs, manufactures, and distributes engines, filtration, and power generation products. It earned approximately $19.1 billion in revenue in the year 2015. Cummins is doing business in the Eastern District of Michigan, and elsewhere. It conducts business in interstate and foreign commerce through its network of 600 company-owned and independent distributor facilities, supplying its customers with its products, and more than 7,200 dealer locations in over 190 countries and territories. It is headquartered in Columbus, Indiana.

III. FACTUAL ALLEGATIONS

A. The Environmental Challenges Posed by Diesel Engines and the U.S. Regulatory Response Thereto

35. The United States Government, through the Environmental Protection Agency (EPA), has passed and enforced laws designed to protect U.S. citizens from pollution and, in particular, certain chemicals and agents known to cause disease in humans. Automobile manufacturers must abide by these U.S. laws and must adhere to EPA rules and regulations.

36. The U.S. Clean Air Act has strict emissions standards for vehicles, and it requires vehicle manufacturers to certify to the EPA that the vehicles sold in the United States meet applicable federal emissions standards to control air

pollution. Every vehicle sold in the United States must be covered by an EPA-issued certificate of conformity.

37. There is a very good reason that these laws and regulations exist, particularly with regards to vehicles with diesel engines: In 2012, the World Health Organization declared diesel vehicle emissions to be carcinogenic, and about as dangerous as asbestos.

38. Diesel engines pose a particularly difficult challenge to the environment because they have an inherent trade-off between power, fuel efficiency, and emissions: the greater the power and fuel efficiency, the dirtier and more harmful the emissions.

39. Instead of using a spark plug to combust highly refined fuel with short hydrocarbon chains, as gasoline engines do, diesel engines compress a mist of liquid fuel and air to very high temperatures and pressures, which causes the diesel to spontaneously combust. This allows for a greater compression ratio and longer piston stroke, which produces greater efficiency and engine torque (that is, less fuel consumption and more power).

40. The diesel engine is able to do this both because it operates at a higher compression ratio than a gasoline engine and because diesel fuel contains more energy than gasoline.

41. But this greater energy and fuel efficiency come at a cost: diesel produces dirtier and more dangerous emissions. One by-product of diesel combustion is oxides of nitrogen (NOx), which include a variety of nitrogen and oxygen chemical compounds that only form at high temperatures.

42. NOx is a generic term for the mono-nitrogen oxides NO and NO2 (nitric oxide and nitrogen dioxide), which are predominantly produced from the reaction of nitrogen and oxygen gases in the combustion cylinder during combustion. NOx is produced by the burning of all fossil fuels, but is particularly difficult to control from the burning of diesel fuel in lean-burn conditions (which is the case for nearly all modern on-road diesel engines). NOx is a toxic pollutant, which produces smog and a litany of environmental and health problems. NOx pollution contributes to nitrogen dioxide, particulate matter in the air, and reacts with sunlight in the atmosphere to form ozone. Exposure to these pollutants has been linked with serious health dangers, including asthma attacks and other respiratory illness serious enough to send people to the hospital. Ozone and particulate matter exposure have been associated with premature death due to respiratory-related or cardiovascular-related effects. Children, the elderly, and people with pre-existing respiratory illness are at an increased risk of health effects from these pollutants. NOx can cause breathing problems, headaches, chronically

reduced lung function, eye irritation, and corroded teeth. It can indirectly affect humans by damaging the ecosystems they rely on.

43. The diesel cycle is inherently more efficient than the comparable spark-ignited Otto (gasoline) cycle. In fact, diesel engines can convert over 45% of diesel's chemical energy into useful mechanical energy, whereas gasoline engines convert only 30% of gasoline's chemical energy into mechanical energy. Though more efficient, diesel engines come with their own set of challenges, as emissions from diesel engines can include higher levels of NOx and particulate matter (PM) or soot than emissions from gasoline engines due to the different ways the different fuels combust and the different ways the resulting emissions are treated following combustion. Another way NOx emissions can be reduced is through exhaust gas recirculation or "EGR," whereby exhaust gases are routed back into the intake of the engine and mixed with fresh incoming air. Exhaust gas recirculation lowers NOx by reducing the available oxygen increasing the heat capacity of the exhaust gas mixture and by reducing maximum combustion temperatures; however, EGR can also lead to an increase in PM as well. Another way NOx and PM emissions can be reduced is through expensive exhaust gas after-treatment devices, primarily, catalytic converters, which use a series of chemical reactions to transform the chemical composition of a vehicle's NOx

emissions into less harmful, relatively inert, and nitrogen gas (N2), water (H2O) and carbon dioxide (CO2).

44. Diesel engines thus operate according to this trade-off between price, NOx, and PM, and for the EPA to designate a diesel car as a "clean" vehicle, it must produce both low PM and low NOx. In 2000, the EPA announced stricter emission standards requiring all diesel models starting in 2007 to produce drastically less NOx and PM than years prior. Before introducing an Affected Vehicle into the U.S. stream of commerce (or causing the same), FCA was required to first apply for, and obtain, an EPA-administered COC certifying that the vehicle comported with the emission standards for pollutants enumerated in 40 C.F.R. §§ 86.1811-04, 86.1811-09, & 86.1811-10. The CAA expressly prohibits automakers, like FCA, from introducing a new vehicle into the stream of commerce without a valid EPA COC.[11] Moreover, vehicles must be accurately described in the COC application "in all material respects" to be deemed covered by a valid COC.[12] California's emission standards are even more stringent than those of the EPA. California's regulator, CARB, requires a similar application from automakers to obtain an Executive Order, confirming compliance with California's emission regulations, before allowing the vehicle onto California's roads.

[11] *See* 42 U.S.C. § 7522(a)(1).

[12] *See* 40 C.F.R. § 86.1848-10(c)(6).

1. The Emissions Trading System

45. Under EPA regulations, engine manufacturers may earn emissions credits equal to their emissions limit, less the amount of emissions produced by the engines.[13] An engine manufacturer may average, bank, and trade these emissions credits.[14] To "average" credits means the engine manufacturer can use its emissions credits from one engine model and apply it to another engine model—effectively allowing the "clean" engine to pay for the dirty engine.[15] Banking credits allows an engine manufacturer to save their emissions credits for future years.[16] In some cases, engine manufacturers can use their credits retrospectively, to offset previous engines that exceeded their emissions levels.[17] Finally, engine manufacturers can trade and sell these emissions credits, either privately or on the open market.[18]

46. According to the EPA, this system was designed to offer "flexibility for individual emissions sources to tailor their compliance path to their needs," and "incentive[s] for early pollution reductions as a result of the ability to bank surplus

[13] *See* Exhibit 6, EPA, "What is Emissions Trading?," https://www.epa.gov/emissions-trading-resources/what-emissions-trading.

[14] *See* 40 C.F.R. § 1036.701(a).

[15] *See* 40 C.F.R. § 1036.710.

[16] *See* 40 C.F.R. § 1036.715.

[17] *See id.*

[18] *See* 40 C.F.R. § 1036.720.

allowances."[19] The EPA concludes that, "[u]nder the right circumstances, emissions trading programs have proven to be extremely effective. They can achieve substantial reductions in pollution while providing accountability and transparency."[20]

47. Falsely claiming to obtain reduced emission levels undermines this system. By using fraudulently obtained emissions credits for dirty engines, it increases the pollutants in the air, and shifts the cost of emissions compliance from the owners of vehicles with dirty engines to the owners of vehicles with clean engines. According to the TruckTrend website, "Dodge made a decisive move to head off 2010 emissions regulations at the pass. By increasing the [Cummins 6.7L engine], the company was able to meet the upcoming 2010 standards early. This allowed Chrysler to build up EPA emissions credits that could be used during future model years. During the later part of the 2007 model year, GM introduced the 6.6L Duramax LMM engine, which made 365 hp and 660 lb-ft, even with the addition of a DPF."[21] Upon information and belief, Cummins either gave or sold FCA the credits to allow FCA to use a more powerful engine that released more emissions.

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[19] Exhibit 6.

[20] *Id.*

[21] Exhibit 7, "A Decade of Cummins, Duramax, and Power Stroke Diesel Engines" (June 15, 2015), http://www.trucktrend.com/features/1507-a-decade-of-cummins-duramax-and-power-stroke-diesel-engines/.

2. Cummins' Entry into Clean-Diesel Market

48. Cummins, founded by Clessie Lyle Cummins, has been developing diesel engines since 1919.[22]

49. Cummins has a long history with Dodge, having supplied diesel engines for the manufacturer since 1988.[23]

50. In 1990, the EPA amended its air pollution standards under the Clean Air Act, which addressed diesel emissions.[24]

51. In 1998, the Department of Justice, on behalf of the EPA, sued every diesel manufacturer in the United States, including Cummins, for installing "defeat" devices on their engines.[25] The companies were forced to spend a combined one billion dollars, including an $83.4 million civil penalty, to bring their engines into conformity with national standards.[26]

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[22] *See* Exhibit 8, "Cummins History," https://cumminsengines.com/history.

[23] *See* Exhibit 3.

[24] *See* Exhibit 9, "Regulatory Authorities," https://www.dieselnet.com/standards/us/.

[25] *See* Exhibit 10, U.S. Dep't of Justice Press Release (June 16, 1998), *available at* https://www.justice.gov/archive/opa/pr/1998/June/281.html.

[26] *See* Exhibit 11, "How The EPA Won $1 Billion From Diesel Cheaters Long Before VW" (Sept. 21, 2015), http://jalopnik.com/how-the-epa-won-1-billion-from-diesel-cheaters-long-be-1732109485.

52. But Cummins continued to ship out engines without pollution control equipment through 2006, for which it would pay an additional $2.1 million settlement with the DOJ in 2010.[27]

53. As the EPA began to roll out increasingly tougher standards to take effect in 2004, 2007, and 2010, Cummins began developing its own clean diesel technology.

54. Between 2002 and 2007, Cummins increased its R&D budget by 60 percent, to $321 million, with almost a quarter dedicated to meeting the new emission standards.[28] More specifically, it expanded its component segment budget, which included emissions-related technologies, from $39 million in 2004 to $57 million in 2006. The emphasis was on developing its own system based on its own proprietary parts.[29]

55. In 2006, Cummins spent $720,000 on lobbying Congress on the "development of diesel technology for heavy and light duty trucks."[30]

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[27] *See* Exhibit 12, "Cummins Inc. Agrees to Pay $2.1 Million Penalty for Diesel Engine Clean Air Act Violations," U.S. Dep't of Justice (Feb. 22, 2010), *available at* https://www.justice.gov/opa/pr/cummins-inc-agrees-pay-21-million-penalty-diesel-engine-clean-air-act-violations.

[28] *See* Exhibit 13, "Cummins: An engine maker bets on clean air—and wins" (June 8, 2015), http://fortune.com/2015/06/08/cummins-diesel-engine/.

[29] Cummins' story suggests EPA regulations are an opportunity.

[30] Exhibit 14, "Lobbying Report" (Aug. 14, 2006), *available at* http://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=8FE6A473-F9E5-4951-BD7F-6019C32510AE&filingTypeID=3.

56. In September 2006, Cummins unveiled its 6.7-liter Turbo Diesel engine.[31]

57. By 2015, in addition to its engines, Cummins controlled 41 percent of the U.S. market on aftermarket diesel cleaning technologies.[32]

3. Dodge and Cummins Jointly Develop and Promote the Affected Vehicles

58. FCA and Cummins moved aggressively to promote its new vehicle, and to emphasize the strength of the relationship between the two companies. Below are a selection of public statements made by each, as part of an orchestrated campaign by each Defendant to sell the Affected Vehicles as a cleaner and more economical alternative for customers looking to purchase heavy-duty trucks.

4. Cummins

59. "[E]very Dodge Ram pickup will comply with the 2010 NOx and PM emissions standards."[33]

60. The Dodge 2500 was the "strongest, cleanest, quietest" diesel engine in its class, and delivered on their "commitment to a cleaner, healthier environment."[34]

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[31] *See* Exhibit 15, "Dodge Introduces Cleaner, Quieter and More Powerful 6.7-liter Cummins Turbo-Diesel Engine at State Fair of Texas" (Sept. 28, 2006), http://www.prnewswire.com/news-releases/dodge-introduces-cleaner-quieter-and-more-powerful-67-liter-cummins-turbo-diesel-engine-at-state-fair-of-texas-57203457.html.

[32] *See* Exhibit 13.

[33] Exhibit 3.

61. In Cummins' 2007 Sustainability Report, Cummins noted its Mission included "to demand that everything we do lead to a cleaner, healthier, safer environment."[35]

62. Cummins' 2008–2009 Sustainability Report stated: "Ensuring that everything we do leads to a cleaner, healthier and safer environment has been part of the Cummins Mission statement for many years. In practice, that means we are unwavering in our commitment to producing the cleanest diesel engines in the world and in reducing the Company's environmental footprint."[36]

63. In the same Report, Cummins announced that it "is committed to helping customers achieve the lowest operating costs. Fuel economy represents the largest single cost factor in many customers' operations. Customers count on Cummins not only for the most fuel efficient products, but also to use Six Sigma[37] tools to help them measure, optimize, and control the critical factors that impact fuel consumption."

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[34] Exhibit 4.

[35] Exhibit 16, Cummins Inc.'s 2007 Sustainability Report at 34, *available at* https://www.cummins.com/sites/default/files/sustainability/2007_Sustainability_Report_FINAL.pdf.

[36] Exhibit 17, Cummins Inc.'s 2009 Sustainability Report at 9, *available at* http://www.cummins.com/sites/default/files/sustainability/Cummins_2009_SustainabilityReport.pdf.

[37] "Six Sigma" refers to a series of techniques designed to improve the quality and reliability of a product. *See* Exhibit 18, "Six Sigma," Wikipedia, https://en.wikipedia.org/wiki/Six_Sigma.

64. Cummins' Mission Statement in 2010: "Demanding that everything we do leads to a cleaner, healthier, safer environment."[38]

65. Cummins' "10 Statements of Ethical Principles" include: "[1] We will follow the law everywhere," … "[5] We will demand that everything we do leads to a cleaner, healthier and safer environment," … and "[10] We will create a culture where all employees take responsibility for ethical behavior."[39]

66. "Cummins engineers determined that certifying the Dodge Ram pickup truck to the 0.2 g/mi 2010 NOx emission standard early would provide Cummins with significant commercial and technical advantages. Achieving these stringent emission standards required engineers to reduce particulate and NOx emissions by more than 90 percent. This catalyst system was used in more than 450,000 Chrysler ISB engines from 2007 to 2013. The EPA credits generated by this technology allowed Cummins' teams to focus on hitting the next round of emissions standards for other engine platforms, and allowed the company to avoid interim emissions phase-ins. As a result, Cummins increased its heavy duty market share and gained the market share lead in 2007. Today, the company

[38] Exhibit 19, Cummins Inc.'s 2010 Sustainability Report at 1, *available at* https://www.cummins.com/sites/default/files/sustainability/Cummins_2010_SustainabilityReport_FULL.pdf.

[39] Exhibit 16, Cummins Inc.'s 2007 Sustainability Report at 23.

maintains that lead with 41.5 percent of Class 8 vehicles, and 62.5 percent of Class 6 and 7 vehicles.[40]

67. "The application of the right technology on the Dodge Ram is an extension of the joint clean diesel development work Cummins and DaimlerChrysler have performed together for nearly two decades," said Cummins President and Chief Operating Officer Joe Loughrey. "The new best-in-class Cummins Turbo Diesel and the Dodge Ram will provide the strongest, cleanest, quietest solution for heavy-duty pickup truck customers."[41]

68. "Cummins built its 2-millionth pickup truck engine for the Chrysler Group LLC in December, the latest development in a more than 25-year partnership between the two companies."[42]

69. "This milestone build is a significant achievement for Cummins and our employees, and is an accomplishment of which we are immensely proud," said Wayne Ripberger, General Manager—Pickup and Light Commercial Vehicle Operations. "At Cummins, we take great pride in each and every engine we build—whether it's the first or the 2-millionth."[43]

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[40] *See* Exhibit 20, "Employees Honored for Making Cummins Stronger through Innovation," http://social.cummins.com/making-cummins-stronger-innovation/.

[41] Exhibit 3.

[42] Exhibit 21, "Two-Millionth Cummins Pickup Engine Rolls off Line for Chrysler," http://social.cummins.com/two-millionth-cummins-pickup-engine-rolls-line-chrysler/.

[43] *Id*.

70. In winning a 2008 award from *Automotive News*, Cummins stated "Cummins has been recognized for the 6.7L Dodge Ram Turbo Diesel engine which debuted in January 2007 and is available in the Dodge Ram 2500 and 3500 models. The 6.7L diesel engine is the strongest, cleanest, quietest heavy-duty diesel pickup truck engine available on the market and is the first to meet the 2010 EPA emissions regulations in all 50 states. Cummins achieves this by using a NOx Adsorber Catalyst—a breakthrough technology designed and integrated by Cummins." [44]

71. As noted by Joe Loughrey, President and Chief Operating Officer of Cummins, in accepting the award, "This is a significant product innovation and a terrific honor for Cummins to be recognized. We share this recognition with our customer, Chrysler, who collaborated with us in developing a common vision for a product that would deliver on our commitment to exceptional customer satisfaction while ensuring our contribution to a cleaner environment."[45]

72. "Cummins Inc. today announced a multiyear extension of its current agreement with Chrysler Group LLC. Cummins will supply 6.7-liter Turbo Diesel engines for Ram Heavy Duty pickups and Chassis Cab trucks while continuing to grow its partnership with Chrysler, which began 21 years ago. Cummins has

[44] Exhibit 22, Cummins Inc.'s Apr. 15, 2008 Press Release, *available at* http://investor.cummins.com/phoenix.zhtml?c=112916&p=irol-newsArticle_Print&ID=1129865.

[45] *Id.*

produced over 1.7 million Cummins Turbo Diesel engines for Dodge Ram Heavy Duty trucks since 1989. Today, over 80 percent of Ram Heavy Duty truck customers purchase their truck with the legendary Cummins Turbo Diesel."[46]

73. "Today's 6.7-liter Turbo Diesel delivers 350 hp (261 kW) and 650 lb-ft (881 N-m) of torque. This 118 percent increase in horsepower and 86 percent increase in torque have been achieved while also reducing exhaust emissions by 90 percent. In 2007, Dodge and Cummins produced the cleanest heavy-duty diesel pickup in the market by meeting U.S. Environmental Protection Agency (EPA) 2010 emissions levels a full three years in advance."[47]

74. "Cummins and Chrysler have a long and important history together," said Dave Crompton, Cummins VP and General Manager, Midrange Engine Business. "The Chrysler business continues to be a key part of our MidRange engine business. Cummins is proud to supply engines for the award-winning Ram Heavy Duty and to continue working with Chrysler to develop best-in-class products that customers can trust and depend on now and in the future."[48]

[46] Exhibit 23, Cummins Inc.'s Feb. 3, 2010 Press Release, *available at* http://investor.cummins.com/phoenix.zhtml?c=112916&p=irol-newsArticle&ID=1382531.

[47] *Id.*

[48] *Id.*

5. FCA

75. After completing two million trucks together, FCA stated that "[t]he Ram Truck-Cummins diesel partnership is one of the industry's most enduring and certainly fitting of such a tribute," said Fred Diaz, President and CEO, Ram Truck Brand and Chrysler de Mexico, in the news release. "Both companies have benefited greatly, but Ram diesel customers are the real beneficiaries. Every day they experience the toughness and capability a Cummins-powered Ram can deliver."[49]

76. In presenting an environmental award to Cummins, FCA/Chrysler stated: "Working in a close partnership, Chrysler and Cummins achieved remarkable results in meeting and exceeding both regulatory requirements and customer needs. The new Dodge Ram 2500 and 3500 are the first vehicles to achieve the stringent NOx 'phase-in' emission standard in all 50 states, and to do so three years early. The 6.7-liter Cummins Turbo Diesel maintains fuel efficiency as compared to the 2006 model. It also maintains the diesel engine's 30 percent fuel economy savings over gasoline engines, and thus lower CO2 emissions."[50]

[49] Exhibit 21.

[50] Exhibit 16, Cummins Inc.'s 2007 Sustainability Report at 13.

a. 2008 Brochure for Ram 2500/3500 Trucks

77. "THE CUMMINS® 6.7-LITER TURBO DIESEL. SO GOOD, SO POWERFUL, AND SO CLEAN IT WARRANTS A CLASS OF ITS OWN—AND IT'S ONLY IN A DODGE RAM HEAVY DUTY."[51]

78. "The most recent example of the world-famous Cummins powerplant [sic] continues the Cummins history with Dodge Ram—a legacy of pure, driven truck power taking advantage of an increasingly popular—and today, surprisingly clean—fuel source."[52]

79. "Consider all that Cummins has to offer, and you become part of history in the making in real time: today, over 1.5 million Cummins equipped Dodge Rams are powering the roads, farms, and industrial sites of the world. What can you expect from Cummins in your Ram? Count on diesel-specific efficiency. Outstanding performance that defines reliability. Longevity that reaches hundreds of thousands of miles. And durability so impressive, it approaches the inexhaustible."[53]

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[51] Exhibit 24, 2008 Dodge Ram brochure at 11, *available at* http://www.auto-brochures.com/makes/ram/Ram_US%20HD_2008.pdf (emphasis in original throughout).

[52] *Id.*

[53] *Id.*

80. "The large piston bowl is another engineering technique used to ensure good power and clean emissions. In fact, based on full-size diesel pickup trucks, the Cummins offers the cleanest diesel emissions of any."[54]

81. "ADVANCED REQUIREMENTS MET TODAY. The particulate filter is profoundly effective, and is a major factor in Cummins diesel emissions reduction Ram 2500 and 3500 pickup models. Reduced emissions are so important, the 6.7-liter is already able to meet the stringent truck emissions standards based on future requirements—for the 2010 model year. And it meets them in all 50 states."[55]

b. 2009 Brochure for Ram 2500/3500 Trucks

82. "THE INCREDIBLE CUMMINS 6.7-LITER TURBO DIESEL. SO POWERFUL, IT DROPS THE COMPETITTION WITH A ONE-TWO-THREE PUNCH OF 650* LB-FT OF TORQUE, 350 HORSEPOWER, AND SQUEAKY-CLEAN EMISSIONS."[56]

83. "THE CUMMINS® 6.7-LITER TURBO DIESEL: A CLEAN BREAK FROM OTHER DIESELS. Cummins and Dodge Ram form a team that results in outstanding reliability. . . . The Cummins 6.7-liter now ranks among the

[54] *Id.*

[55] *Id.*

[56] Exhibit 25, 2009 Dodge Ram brochure at 4, *available at* http://www.auto-brochures.com/makes/ram/Ram_US%20HD_2009.pdf.

cleanest of any full-size pickup diesel engine. Emissions are so low, they currently meet 2010 emissions regulations."[57]

84. "**LEAN, MEAN, AND VERY CLEAN**. Fewer moving parts than comparable gas engines reduces complexity—and consequent costs. And this Cummins is super-clean, making it the cleanest full-size pickup diesel out there."[58]

c. 2010 Brochure for Ram 2500/3500 Trucks

85. "**THE DRIVING FORCE BEHIND MANY RAM HEAVY DUTY MODELS: THE SINGULAR 6.7-LITER CUMMINS® TURBO DIESEL**. By any measure, it's got game. . . . As one of the cleanest, most powerful, and most respected diesel engines in any commercial pickup, this remarkable power plant can power significantly larger-class vehicles."[59]

d. 2011 Brochure for Ram 2500/3500 Trucks

86. "CUMMINS. THE QUIET AUTHORITY IN CHARGE OF DIESEL POWER. This is teamwork that just flat-out works. Ram Heavy Duty pickups and the formidable Cummins Turbo Diesel are a partnership of shared strengths—for this is a relationship that goes back decades while constantly looking forward to the next generation of trucks. The Cummins 6.7-liter workhorse is capable of driving much larger vehicles—part of the reason it works

[57] *Id.*

[58] *Id.*

[59] Exhibit 26, 2010 Dodge Ram brochure at 6, *available at* http://www.auto-brochures.com/makes/ram/Ram_US%20HD_2010.pdf.

so well in Ram Heavy Duty pickups. Boasting quiet and clean performance, the Cummins generates between 610 and 650 lb-ft of torque (at only 1,500 rpm) and 350 horsepower, depending on transmission, meeting virtually every need for towing, hauling, and responsive acceleration."

87. "The Cummins 6.7-liter Turbo Diesel in Ram Heavy Duty is the only one in its class to meet all 50-state emissions standards—with no need for DEF—resulting in impressive savings in time, costs and hassles."[60]

88. "FUEL FILTER: A WORKING MODEL OF EFFICIENCY. There is little doubt that diesel will play an increasingly important role for both truck and car propulsion. Diesel engines today are a model of cleanliness—in part, due to the fuel filter. The Cummins Turbo Diesel features a fuel filter with outstanding efficiency."[61]

e. 2012 Brochure for Ram 2500/3500 Trucks

89. "Diesel engines today are a model of cleanliness—in part, due to the fuel filter. The Cummins Turbo Diesel features a fuel filter with outstanding efficiency."[62]

90. "The 6.7L Cummins® Turbo Diesels. The most formidable partnership in the working world."[63]

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[60] Exhibit 27, 2011 Dodge Ram brochure at 8, *available at* http://www.auto-brochures.com/makes/ram/Ram_US%20HD_2011.pdf.

[61] *Id.*

[62] Exhibit 5 at 3.

91. "But the overarching factor that defines and separates Ram Heavy Duty is *value*. Like our teamwork with Cummins, whose brilliance gives you a Turbo Diesel with fewer moving party—translating into the real-world value of reduced maintenance costs."[64]

92. "Since 1988, Cummins and Dodge have collaborated to ship over 1.5 million Heavy Duty diesel pickup trucks and today enjoy around 30 percent market share in this highly competitive market in North America."[65]

93. "The depth of thinking on the part of Cummins is pivotal when put into the context of their history with Ram. For nearly a quarter of a century, this partnership benchmarked power, durability, reliability, and economy—and it has provided an enduring legacy attributed to old-fashioned hard work and truly innovative engineering. This success is literally history in the making: it's the longest collaboration of its kind in the industry—and it will continue."[66]

94. Referring to quality control testing: "Long before they work for you, Ram Heavy Duty prototypes endure conditions unlikely to be encountered in your life—or lifetime. Grueling durability tests, excessive climate testing, road simulation shake trials on tracks that resemble mountainous terrains—it's beyond

[63] *Id.* at 4.
[64] *Id.* at 1.
[65] *Id.* at 6.
[66] *Id.* at 3.

brutal. We measure every number—and we measure up, backing you with one of the best working warranties in the business."[67]

6. The Worldwide Emissions Scandal

95. As noted, the world was shocked to learn that Volkswagen had manufactured over 11 million cars that were on the road in violation of European emissions standards, and over 480,000 vehicles were operating in the United States in violation of EPA and state standards. But VW was not the only manufacturer of vehicles that exceeded emissions standards.

96. In May 2015 a study conducted on behalf of the Dutch Ministry of Infrastructure and the Environment ("TNO Study") found that all sixteen vehicles made by a variety of manufacturers, when tested, emitted significantly more NOx on real world trips while they passed laboratory tests. The report concluded that "[i]n most circumstances arising in normal situations on the road, the system scarcely succeeded in any effective reduction of NOx emissions."

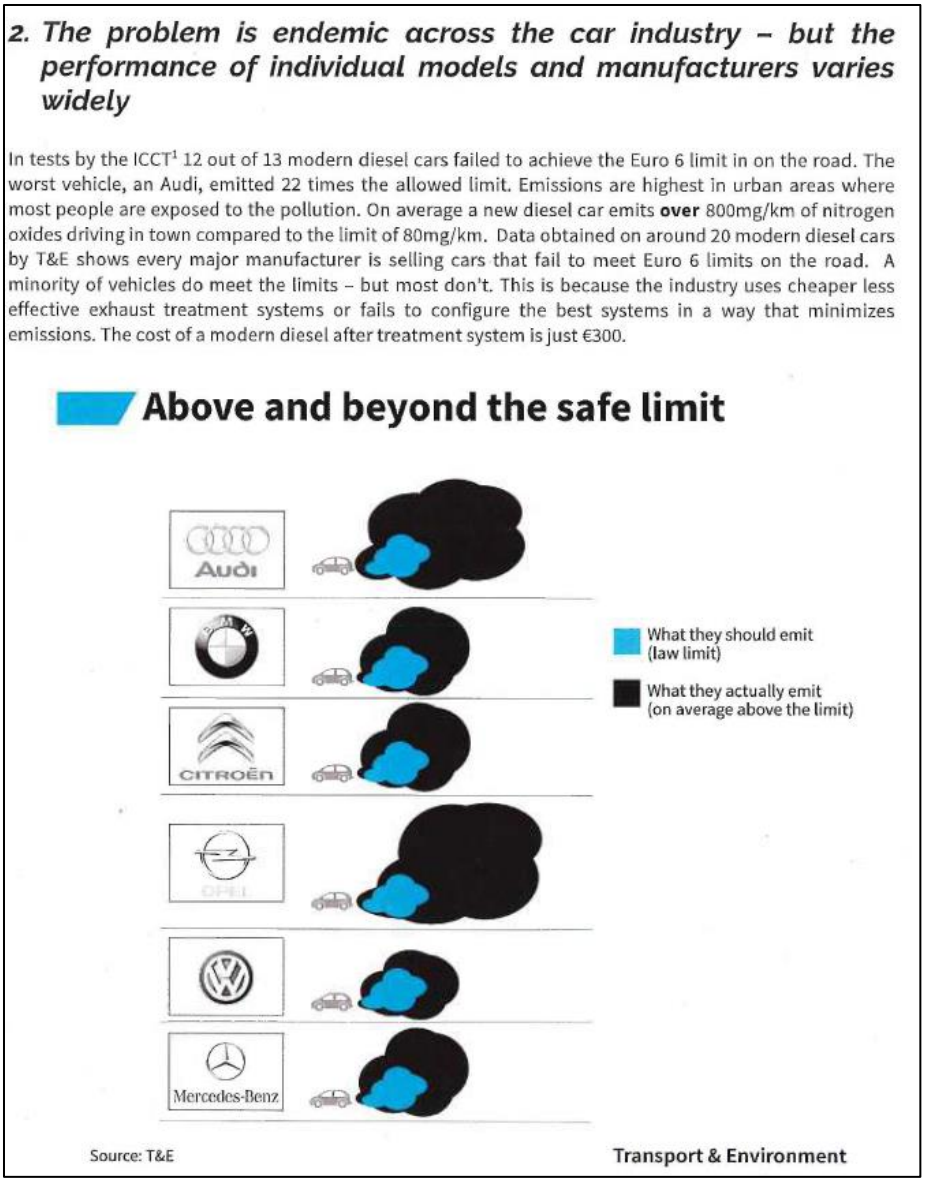
97. In a summary report TNO graphically depicted the widespread failure of most manufacturers:

In the wake of a major scandal involving Volkswagen and Audi diesel vehicles evading emissions standards with the help of certain software that

[67] *Id.* at 6.

manipulates emissions controls (called "defeat devices"),[68] scientific literature and reports and testing indicate that most of the diesel car manufactures of so called Clean Diesel vehicles emit far more pollution on the road than in lab tests. The EPA has widened its probe of auto emissions to include, for example, the Mercedes E250 BlueTEC.

[68] See Exhibit 28, the EPA's Notice of Violation ("NOV") to Volkswagen (Sept. 18, 2015), *available at* https://www.epa.gov/sites/production/files/2015-10/documents/vw-nov-caa-09-18-15.pdf. As detailed in the EPA's NOV, software in Volkswagen and Audi diesel vehicles detects when the vehicle is undergoing official emissions testing and turns full emissions controls on only during the test. But otherwise, while the vehicle is running, the emissions controls are suppressed. This results in cars that meet emissions standards in the laboratory or state testing station, but during normal operation emit NOx at up to 40 times the standard allowed under United States laws and regulations. Volkswagen has admitted to installing a defeat device in its diesel vehicles.



98. The TNO report found that the current system for testing cars in a laboratory produces "meaningless results."

99. TNO further remarked: "It is remarkable that the NOx emission under real-world conditions exceeds the type approval value by [so much]. It demonstrates that the settings of the engine, the EGR and the SCR during a real-world test trip are such that they do not result in low NOx emissions in practice. In

other words: ***In most circumstances arising in normal situations on the road, the systems scarcely succeed in any effective reduction of NOx emissions***." TNO Report at 6 (emphasis added). The lack of any "effective reduction of NOx emissions" is a complete contradiction of Defendants' claim that their vehicles are clean.

100. Other organizations are beginning to take notice of the emissions deception. The Transportation and Environment (T&E) organization, a European group aimed at promoting sustainable transportation, compiled data from "respected testing authorities around Europe." T&E stated in September 2015 that real-world emissions testing showed drastic differences from laboratory tests such that models tested emitted more pollutants on the road than in their laboratory tests. "For virtually every new model that comes onto the market the gap between test and real-world performance leaps," the report asserts.

101. Emissions Analytics is a U.K. company, which says that it was formed to "overcome the challenge of finding accurate fuel consumption and emissions figures for road vehicles." With regard to its recent on-road emissions testing, the company explains: "[I]n the European market, we have found that real-world emissions of the regulated nitrogen oxides are four times above the official level, determined in the laboratory. Real-world emissions of carbon dioxide are almost one-third above that suggested by official figures. For car buyers, this

means that fuel economy on average is one quarter worse than advertised. This matters, even if no illegal activity is found."

7. The Defendants' Emissions Deception

102. The Affected Vehicles contain a sophisticated NOx reduction after-treatment technology called a NOx adsorber. This technology is intended to reduce oxides of nitrogen (NOx) contained in the exhaust of the engine to levels sufficient to allow the vehicle to meet State and Federal emission certification requirements.

103. The NOx adsorber is a catalytic device that operates in two distinct modes: 1) NOx adsorption mode; and 2) NOx regeneration/reduction mode. During adsorption mode, NOx present in the diesel exhaust from the engine chemically binds to the surface of the NOx adsorber catalyst, effectively trapping or storing the NOx. However, the NOx adsorber has a limited capacity for storing NOx, and once the system is saturated (*i.e.*, full), it must be regenerated. A NOx sensor monitors the NOx levels coming out of the adsorber and can detect when NOx adsorber system has reached its capacity.

104. Once it is determined that the NOx adsorber is at or near saturation, the engine control system switches to a "regeneration mode." In this mode, the engine is operated in a fuel rich mode, eliminating excess oxygen and increasing levels of hydrocarbon from unburned fuel. In the absence of oxygen the

hydrocarbons react with the NOx in a "reduction" reaction to desorb the NOx and convert it to harmless nitrogen, oxygen, water, and carbon dioxide.

105. The NOx sensors and other engine and exhaust system sensors feed information to the engine control unit (ECU). Complex algorithms and control strategies coded in the ECU monitor the status of the adsorber system. When the need for a regeneration is detected, the ECU manages and adjusts operational parameters to switch from adsorption mode to regeneration/reduction mode.

106. The system is further complicated by the fact that a diesel particulate filter (DPF) system used to trap and oxidize particulate matter (aka soot) must also be monitored and controlled in a similar fashion, but usually at a different frequency of occurrence.

107. Testing was performed on a 2012 Dodge Ram 2500 powered by a Cummins 6.7 diesel engine using a portable emission measurement system (PEMS). The vehicle had accumulated approximately 70,000 miles at the time of testing. The results show the vehicle does not meet the relevant emission standards, as follows: During on-road testing designed to simulate the driving profile of the Federal Test Procedure (FTP) certification cycle, emissions were found to be 702 mg/mile on average, 3.5 times the federal and California standard of 200 mg/mile. Over significant distances, emissions were found to be as high as 1,100 to 2,800 mg/mile for periods lasting as long as 21% of the total drive time.

That is 5.5 to 14 times the relevant standard. During on-road PEMS testing designed to simulate the driving profile of the Highway certification cycle, average emissions were found to be 756 mg/mile, or 1.9 times the California (and Section 177 state) standard. Over significant distances, emissions were found to be as high as 1,200 to 2,250 mg/mile for periods lasting as long as 16% of the total drive time. That equates to 3.0 to 5.6 times the relevant standard.

108. The vehicle was also found to be particularly sensitive to hills, where steady speed emissions could spike as high as 2,100 mg/mile (5.5 times the standard) on a steady 1.5% grade.

109. The excess emissions are believed to result from excessive DPF active regeneration in combination with deactivated NOx adsorber catalyst. The need for excessive DPF regeneration events and lower overall activity of the NOx adsorber catalyst also lead to increased fuel consumption and shortened engine component life.

110. Furthermore, the need for frequent regenerations was measured to reduce the overall fuel economy of the vehicle by 3-4%.

111. In addition, the Cummins engine certification required on-board diagnostics that must be able to monitor NOx levels. If the NOx levels exceed certain limits service lights and potential engine derate strategies are to be deployed to motivate the operator to have the vehicle inspected and/or serviced.

At no time during the testing were any diagnostic indicators or engine derating observed.

112. These test results are consistent with those found by researchers who prepared the "CAFEE Report" that led to the uncovering of the Volkswagen scandal. There researchers from West Virginia University studied the emissions performance of a NOx adsorber-equipped passenger car during DPF regeneration. Testing revealed that during regeneration events there was an increase in NOx emissions by 97%. The authors also found particulate matter was found to exceed the European standards during DPF regeneration events by two to three orders of magnitude.[69]

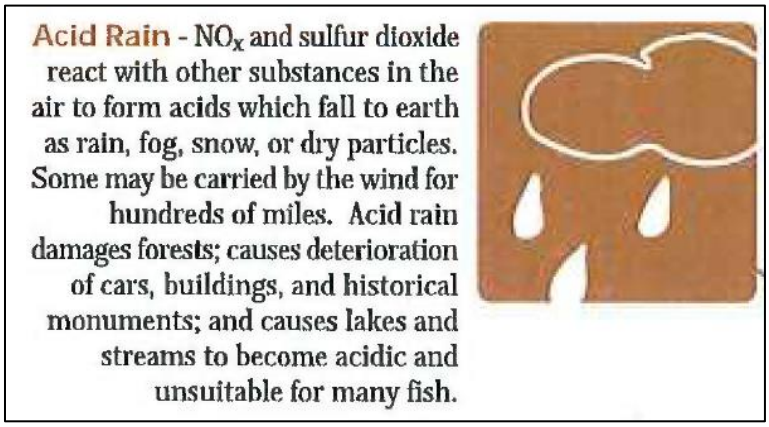
8. The Environmental Damage

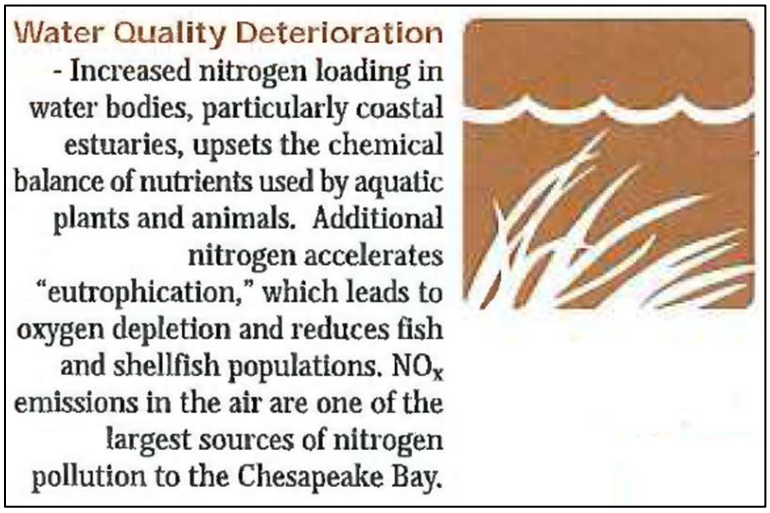
113. NOx contributes to ground-level ozone and fine particulate matter. According to the EPA, "Exposure to these pollutants has been linked with a range of serious health effects, including increased asthma attacks and other respiratory illnesses that can be serious enough to send people to the hospital. Exposure to ozone and particulate matter have also been associated with premature death due to respiratory-related or cardiovascular-related effects. Children, the elderly, and

[69] Exhibit 29, CAFEE Final Report (May 15, 2014) at 107-08, *available at* http://www.theicct.org/sites/default/files/publications/WVU_LDDV_in-use_ICCT_Report_Final_may2014.pdf.

people with pre-existing respiratory disease are particularly at risk for health effects of these pollutants."

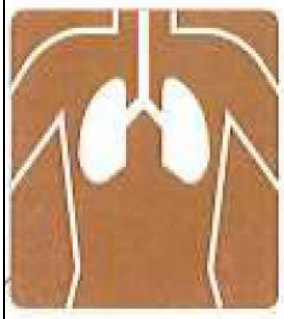
114. The EPA describes the danger of NOx as follows:



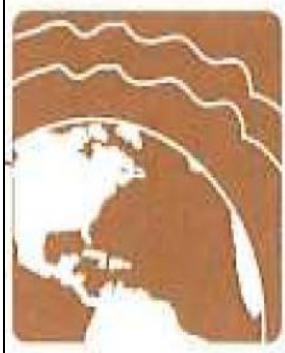


Toxic Chemicals - In the air, NO_x reacts readily with common organic chemicals, and even ozone, to form a wide variety of toxic products, some of which may cause biological mutations. Examples of these chemicals include the nitrate radical, nitroarenes, and nitrosamines.

Ground-level Ozone (Smog) - is formed when NO_x and volatile organic compounds (VOCs) react in the presence of heat and sunlight. Children, the elderly, people with lung diseases such as asthma, and people who work or exercise outside are susceptible to adverse effects such as damage to lung tissue and reduction in lung function. Ozone can be transported by wind currents and cause health impacts far from the original sources. Millions of Americans live in areas that do not meet the health standards for ozone. Other impacts from ozone include damaged vegetation and reduced crop yields.



Particles - NO_x react with ammonia, moisture, and other compounds to form nitric acid vapor and related particles. Human health concerns include effects on breathing and the respiratory system, damage to lung tissue, and premature death. Small particles penetrate deeply into sensitive parts of the lungs and can cause or worsen respiratory disease, such as emphysema and bronchitis, and aggravate existing heart disease.



Global Warming - One member of the NO_x family, nitrous oxide, is a greenhouse gas. It accumulates in the atmosphere with other greenhouse gases causing a gradual rise in the earth's temperature. This will lead to increased risks to human health, a rise in the sea level, and other adverse changes to plant and animal habitat.

115. On September 19, 2015, scientists at Northwest University Feinberg School of Medicine and Columbia University's Mailman School of Public Health released a study indicating that the elevated emissions from the non-compliant VW vehicles could lead to as many as 50 premature deaths, 3,000 lost workdays and $423 million in economic costs.

9. Plaintiffs' and Class Members' Economic Damage

116. As a result of FCA's and Cummins' unfair, deceptive, and/or fraudulent business practices, and their failure to disclose that under normal operating conditions the Affected Vehicles are not "clean" diesels, emit more

pollutants than do gasoline-powered vehicles, and emit more pollutants than permitted under federal and state laws, and failure to disclose that the Affected Vehicles do not meet and maintain the advertised fuel efficiency, owners and/or lessees of the Affected Vehicles have suffered losses in money and/or property. Had Plaintiffs and Class members known of the higher emissions at the time they purchased or leased their Affected Vehicles, they would not have purchased or leased those vehicles, or would have paid substantially less for the vehicles than they did. Moreover, when and if FCA recalls the Affected Vehicles and degrades the diesel engine performance and fuel efficiency in order to make the Affected Vehicles compliant with EPA standards, Plaintiffs and Class members will be required to spend additional sums on fuel and will not obtain the performance characteristics of their vehicles when purchased. Moreover, Affected Vehicles will necessarily be worth less in the marketplace because of their decrease in performance and efficiency and increased wear on their cars' engines.

IV. TOLLING OF THE STATUTE OF LIMITATIONS

A. Discovery Rule Tolling

117. Class members had no way of knowing about the Defendants' deception with respect to the comparatively and unlawfully high emissions of the Adsorber Engine in Affected Vehicles.

118. Within the time period of any applicable statutes of limitation, Plaintiffs and members of the proposed classes could not have discovered through the exercise of reasonable diligence that the Defendants were concealing the conduct complained of herein and misrepresenting the companies' true position with respect to the emission qualities of the Affected Vehicles.

119. Plaintiffs and the other Class members did not discover, and did not know of, facts that would have caused a reasonable person to suspect that the Defendants did not report information within their knowledge to federal and state authorities, the dealerships, or consumers; nor would a reasonable and diligent investigation have disclosed that the Defendants had concealed information about the true emissions of the Affected Vehicles, which was discovered by Plaintiffs only shortly before this action was filed. Nor, in any event, would such an investigation on the part of Plaintiffs and other Class members have disclosed that the Defendants valued profits over truthful marketing and compliance with law.

120. For these reasons, all applicable statutes of limitation have been tolled by operation of the discovery rule with respect to claims as to the Affected Vehicles.

B. Fraudulent Concealment Tolling

121. All applicable statutes of limitation have also been tolled by the Defendants' knowing and active fraudulent concealment and denial of the facts alleged herein throughout the time period relevant to this action.

122. Instead of disclosing their emissions scheme, the fact that the quality and quantity of emissions from the Affected Vehicles were far worse than represented, and their disregard of law, the Defendants falsely represented that the Affected Vehicles had emissions cleaner than their gasoline-powered counterparts, complied with federal and state emissions standards, that the diesel engines were "Clean," and that they were reputable manufacturers whose representation could be trusted.

C. Estoppel

123. The Defendants were under a continuous duty to disclose to Plaintiffs and the other Class members the true character, quality, and nature of emissions from the Affected Vehicles, and of those vehicles' emissions systems.

124. The Defendants knowingly, affirmatively, and actively concealed or recklessly disregarded the true nature, quality, and character of the emissions systems, and the emissions, of the Affected Vehicles.

125. Based on the foregoing, the Defendants are estopped from relying on any statutes of limitations in defense of this action.

V. CLASS ALLEGATIONS

126. Plaintiffs bring this action on behalf of themselves and as a class action, pursuant to the provisions of Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, on behalf of the following class and subclasses (collectively, the "Classes"):

The Nationwide Class

All persons or entities in the United States who owned and or leased an "Affected Vehicle" as of November 1, 2016. Affected Vehicles include, without limitation, the 2007–2010 Dodge Ram 2500 with Cummins diesel (2WD, 4WD), the 2011–2012 Dodge Ram 2500 with Cummins diesel (non-SCR systems, 2WD, 4WD), the 2007–2010 Dodge Ram 3500 with Cummins diesel (2WD, 4WD), and the 2011–2012 Dodge Ram 3500 with Cummins diesel (non-SCR systems, 2WD, 4WD).

The Alabama Subclass

All persons or entities in the state of Alabama who owned and/or leased an Affected Vehicle as of November 1, 2016.

The Alaska Subclass

All persons or entities in the state of Alaska who owned and/or leased an Affected Vehicle as of November 1, 2016.

The Arizona Subclass

All persons or entities in the state of Arizona who owned and/or leased an Affected Vehicle as of November 1, 2016.

The Arkansas Subclass

All persons or entities in the state of Arkansas who owned and/or leased an Affected Vehicle as of November 1, 2016.

The California Subclass

All persons or entities in the state of California who owned and/or leased an Affected Vehicle as of November 1, 2016.

The Colorado Subclass

All persons or entities in the state of Colorado who owned and/or leased an Affected Vehicle as of November 1, 2016.

The Connecticut Subclass

All persons or entities in the state of Connecticut who owned and/or leased an Affected Vehicle as of November 1, 2016.

The District of Columbia Subclass

All persons or entities in the District of Columbia who owned and/or leased an Affected Vehicle as of November 1, 2016.

The Delaware Subclass

All persons or entities in the state of Delaware who owned and/or leased an Affected Vehicle as of November 1, 2016.

The Florida Subclass

All persons or entities in the state of Florida who owned and/or leased an Affected Vehicle as of November 1, 2016.

The Georgia Subclass

All persons or entities in the state of Georgia who owned and/or leased an Affected Vehicle as of November 1, 2016.

The Hawaii Subclass

All persons or entities in the state of Hawaii who owned and/or leased an Affected Vehicle as of November 1, 2016.

The Idaho Subclass

All persons or entities in the state of Idaho who owned and/or leased an Affected Vehicle as of November 1, 2016.

The Illinois Subclass

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The Kansas Subclass

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The Kentucky Subclass

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The New Mexico Subclass

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The New York Subclass

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The North Carolina Subclass

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The North Dakota Subclass

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The Ohio Subclass

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The Oklahoma Subclass

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The Pennsylvania Subclass

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The Rhode Island Subclass

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The South Carolina Subclass

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The Tennessee Subclass

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The Washington Subclass

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The West Virginia Subclass

All persons or entities in the state of West Virginia who owned and/or leased an Affected Vehicle as of November 1, 2016.

The Wisconsin Subclass

All persons or entities in the state of Wisconsin who owned and/or leased an Affected Vehicle as of November 1, 2016.

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

128. Certification of Plaintiffs' claims for classwide treatment is appropriate because Plaintiffs can prove the elements of their claims on a

classwide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claim.

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

130. **Numerosity**. Federal Rule of Civil Procedure 23(a)(1): The members of the Classes are so numerous and geographically dispersed that individual joinder of all Class members is impracticable. While Plaintiffs are informed and believe that there are hundreds of thousands of members of the Class, the precise number of Class members is unknown to Plaintiffs, but may be ascertained from the Defendants' books and records. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. Mail, electronic mail, Internet postings, and/or published notice.

131. **Commonality and Predominance**: Federal Rule of Civil Procedure 23(a)(2) & (b)(3): This action involves common questions of law and fact, which predominate over any questions affecting individual Class members, including, without limitation:

a. Whether the Defendants engaged in the conduct alleged herein;

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

c. Whether the Adsorber Engine in the Affected Vehicles emit pollutants at levels that do not make them "clean" diesels and that do not comply with U.S. EPA requirements;

d. Whether the Defendants knew about the comparatively and unlawfully high emissions and, if so, how long the Defendants have known;

e. Whether the Defendants designed, manufactured, marketed, and distributed Affected Vehicles with defective or otherwise inadequate emission controls;

f. Whether the Defendants' conduct violates consumer protection statutes and constitutes breach of contract and fraudulent concealment as asserted herein;

g. Whether Plaintiffs and the other Class members overpaid for their Affected Vehicles; and

h. Whether Plaintiffs and the other Class members are entitled to damages and other monetary relief and, if so, in what amount.

132. **Typicality**: Federal Rule of Civil Procedure 23(a)(3): Plaintiffs' claims are typical of the other Class members' claims because, among other things, all Class members were comparably injured through the Defendants' wrongful conduct as described above.

133. **Adequacy**: Federal Rule of Civil Procedure 23(a)(4): Plaintiffs are adequate Class representatives because their interests do not conflict with the interests of the other members of the Classes they seek to represent; Plaintiffs have retained counsel competent and experienced in complex class action litigation; and Plaintiffs intend to prosecute this action vigorously. The Classes' interests will be fairly and adequately protected by Plaintiffs and their counsel.

134. **Declaratory Relief**: Federal Rule of Civil Procedure 23(b)(2): the Defendants have acted or refused to act on grounds generally applicable to Plaintiffs and the other members of the Classes, thereby making appropriate declaratory relief, with respect to each Class as a whole.

135. **Superiority**: Federal Rule of Civil Procedure 23(b)(3): A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiffs and the other Class members are relatively small compared to the burden and expense that would be required to

individually litigate their claims against the Defendants, so it would be impracticable for the members of the Classes to individually seek redress for the Defendants' wrongful conduct. Even if Class members could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

A. Claims Brought on Behalf of the Nationwide Class

COUNT I:

VIOLATION OF 18 U.S.C. § 1962(C)–(D): THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT ("RICO")

136. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth herein.

137. Plaintiffs bring this Count on behalf of the Nationwide Class against FCA US LLC ("FCA") and Cummins Inc. (inclusively, for purpose of this Count, the "RICO Defendants").

138. At all relevant times, the RICO Defendants have been "persons" under 18 U.S.C. § 1961(3) because they are capable of holding, and do hold, a "legal or beneficial interest in property."

139. 18 U.S.C. § 1962(c) makes it "unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity."

140. 18 U.S.C. § 1962(d), among other provisions, makes it unlawful for "any person to conspire to violate" *See* 18 U.S.C. § 1962(d).

141. By their own admission, the RICO Defendants moved aggressively to capture a large portion of the "clean" diesel truck market. In so doing, they created a product that fell far short of the promises the RICO Defendants made about the product. In particular, the RICO Defendants, along with other entities and individuals, were employed by or associated with, and conducted or participated in the affairs of, one or several RICO enterprises (the "Emission Fraud Enterprise"), whose purpose was to deceive regulators and the driving public into believing that the Class Vehicles were complaint with emissions standards, "clean," and "environmentally friendly" so as to increase revenues and minimize losses from the design, manufacture, distribution, and sale of the Class Vehicles and the defective catalyst devices installed therein. As a direct and proximate result of their fraudulent scheme and common course of conduct, Defendants were able to extract revenues of billions of dollars from Plaintiffs and the Class. As explained

in detail below, the RICO Defendants' years-long misconduct violated 18 U.S.C. §§ 1962(c) & (d).

1. The Emission Fraud Enterprise

142. At all relevant times, the RICO Defendants, along with other individuals and entities, including unknown third parties involved in the design, manufacture, testing, and sale of the Affected Vehicles, operated an association-in-fact enterprise engaged in interstate and foreign commerce, which was formed for the purpose of obtaining EPA Certificates of Conformity ("COCs"), as well as California Air Resources Board ("CARB") Executive Orders ("EOs"), in order to sell the Affected Vehicles containing the defective device throughout the United States, and through which they conducted a pattern of racketeering activity under 18 U.S.C. § 1961(4).

143. Alternatively, each of the RICO Defendants constitutes a single legal entity "enterprise" within the meaning of 18 U.S.C. § 1961(4), through which the RICO Defendants conducted their pattern of racketeering activity in the U.S. In particular, FCA designed, manufactured, and sold the Affected Vehicles, and FCA obtained the COCs and the EOs through material misrepresentations and omissions in order to introduce the Affected Vehicles into the U.S. Stream of Commerce. Cummins participated directly or indirectly in the enterprise by developing, supplying, and promoting the Adsorber Engine.

144. At all relevant times, the Emissions Fraud Enterprise: (a) had an existence separate and distinct from each Defendant; (b) was separate and distinct from the pattern of racketeering in which the RICO Defendants engaged; and (c) was an ongoing organization consisting of legal entities, including FCA and Cummins, and other entities and individuals associated for the common purpose of designing, manufacturing, distributing, testing, and selling the Affected Vehicles through fraudulent COCs and EOs, false emissions tests, deceptive and misleading marketing and materials, and deriving profits and revenues from those activities. Each member of the Emissions Fraud Enterprise shared in the bounty generated by the enterprise, *i.e.*, by sharing the benefit derived from increased sales revenue generated by the scheme to defraud consumers and franchise dealers alike nationwide, and sharing the benefit of earning emissions "credits" as described herein.

145. The Emissions Fraud Enterprise functioned by selling vehicles and component parts to the consuming public. Many of these products are legitimate, including vehicles that do not contain defeat devices. However, the RICO Defendants and their co-conspirators, through their illegal Emissions Fraud Enterprise, engaged in a pattern of racketeering activity, which involves a fraudulent scheme to increase revenue for Defendants and the other entities and

individuals associated-in-fact with the Enterprise's activities through the illegal scheme to sell the Affected Vehicles.

146. The Emissions Fraud Enterprise engaged in, and its activities affected, interstate and foreign commerce, because it involved commercial activities across state boundaries, such as the marketing, promotion, advertisement, and sale or lease of the Affected Vehicles throughout the country, and the receipt of monies from the sale of the same.

147. Within the Emissions Fraud Enterprise, there was a common communication network by which co-conspirators shared information on a regular basis. The Emissions Fraud Enterprise used this common communication network for the purpose of manufacturing, marketing, testing, and selling the Affected Vehicles to the general public nationwide.

148. Each participant in the Emissions Fraud Enterprise had a systematic linkage to each other through corporate ties, contractual relationships, financial ties, and continuing coordination of activities. Through the Emissions Fraud Enterprise, the RICO Defendants functioned as a continuing unit with the purpose of furthering the illegal scheme and their common purposes of increasing their revenues and market share, and minimizing losses.

149. The RICO Defendants participated in the operation and management of the Emissions Fraud Enterprise by directing its affairs, as described herein.

While the RICO Defendants participated in, and are members of, the enterprise, they have a separate existence from the enterprise, including distinct legal statuses, different offices and roles, bank accounts, officers, directors, employees, individual personhood, reporting requirements, and financial statements.

150. As detailed above, each RICO Defendant also relentlessly promoted the Affected Vehicles as clean, powerful, and cost-efficient. The Defendants routinely proclaimed the Affected Vehicles, and the Adsorber Engine, as the "cleanest" in its class, "meeting and exceeding both regulatory requirements and customer needs." The Affected Vehicles were "squeaky clean"; "super clean"; "a model of cleanliness"—"so clean it warrants a class of its own," and "durability so impressive, it approaches the inexhaustible." All of this success is due to the tight collaboration among the RICO Defendants—what Cummins called the "most formidable partnership in the working world."

151. The Enterprise functioned by selling Affected Vehicles, with the Adsorber Engine, to the public. The RICO Defendants engaged in a pattern of racketing activity through their scheme to increase revenue and profits for the RICO Defendants to sell the Affected Vehicles in interstate and foreign commerce, and to increase the emissions credits they earned, thereby allowing them to sell dirty vehicles as well, all for an additional profit. The enterprise involved commercial activities across state boundaries, such as the marketing, promotion,

advertisement, and sale or lease of the Affected Vehicles throughout the country, and the receipt of monies from the sale of the same.

152. The RICO Defendants worked closely together to further the enterprise, by and among the following manner and means:

a. Jointly planning to manufacture a diesel engine and truck that would purportedly meet EPA and California emissions standards three years early;

b. Designing the Affected Vehicles with the Adsorber Engines; Manufacturing, distributing, and selling the Class Vehicles that emitted greater pollution than permitted under the applicable regulations;

c. Misrepresenting and omitting (or causing such misrepresentations and omissions to be made) vehicle specifications on COC and EO applications;

d. Introducing the Affected Vehicles into the stream of U.S. commerce without a valid COC and/or EO;

e. Concealing the unlawfully high emissions from regulators and the public;

f. Misleading the public about the defects in the Affected Vehicles and the Adsorber Engine;

g. Otherwise misrepresenting or concealing the defective nature of the Affected Vehicles from the public and regulators;

h. Illegally selling and/or distributing the Class Vehicles;

i. Designing, testing, and installing the Adsorber Engine into the Affected Vehicles; and

j. Collecting revenues and profits from the sale of such products, including the Affected Vehicles and the Adsorber Engines.

2. Mail and Wire Fraud

153. To carry out, and attempt to carry out, the scheme to defraud, the RICO Defendants, each of whom is a person associated in fact with the enterprise, did knowingly conduct and participate, directly and indirectly, in the conduct of the affairs of the enterprise through a pattern of racketeering activity within the meaning of 18 U.S.C. §§ 1961(1), 1961(5) , & 1962(c), and which employed the use of the mail and wire facilities, in violation of 18 U.S.C. §§ 1341 (mail fraud) & 1343 (wire fraud).

154. Specifically, the RICO Defendants have committed, conspired to commit, and/or aided and abetted in the commission of, at least two predicate acts of racketeering activity (*i.e.*, violations of 18 U.S.C. §§ 1341 & 1343), within the past ten years. The multiple acts of racketeering activity which the RICO Defendants committed, or aided or abetted in the commission of, were related to

each other, posed a threat of continued racketeering activity, and therefore constitute a "pattern of racketeering activity." The racketeering activity was made possible by the RICO Defendants' regular use of the facilities, services, distribution channels, and employees of the enterprise. The RICO Defendants participated in the scheme to defraud by using mail, telephone, and the Internet to transmit mailings and wires in interstate or foreign commerce.

155. In devising and executing the illegal scheme, the RICO Defendants devised and knowingly carried out a material scheme and/or artifice to defraud Plaintiffs and the Nationwide Class or to obtain money from Plaintiffs and the Nationwide Class by means of materially false or fraudulent pretenses, representations, promises, or omissions of material facts. For the purpose of executing the illegal scheme, the RICO Defendants committed these racketeering acts intentionally and knowingly with the specific intent to advance the illegal scheme.

156. The RICO Defendants' predicate acts of racketeering, 18 U.S.C. § 1961(1), include but are not limited to:

a. **Mail Fraud**: The RICO Defendants violated 18 U.S.C. § 1341 by sending and receiving, and by causing to be sent and/or received, materials via U.S. Mail or commercial interstate carriers for the purpose of executing the

unlawful scheme to design, manufacture, market, and sell the Class Vehicles by means of false pretenses, misrepresentations, promises, and omissions.

b. **Wire Fraud**: The RICO Defendants violated 18 U.S.C. § 1343 by transmitting and/or receiving, and by causing to be transmitted and/or received, materials by wire for the purpose of executing the unlawful scheme to defraud and obtain money on false pretenses, misrepresentations, promises, and omissions.

157. The RICO Defendants' use of the mails and wires include, but are not limited to, the transmission, delivery and shipment of the following by the RICO Defendants or third parties that were foreseeably caused to be sent as a result of Defendants' illegal scheme:

a. Application for certificates submitted to the EPA and CARB and Approved Applications received in the mail on April 9, 2008, June 23, 2008, June 6, 2008, and July 2, 2008.

b. Applications submitted to the EPA and CARB for each model year as follows:

- 2007–2010 Dodge Ram 2500 with Cummins diesel (2WD, 4WD);
- 2011–2012 Dodge Ram 2500 with Cummins diesel (non-SCR systems, 2WD, 4WD);
- 2007–2010 Dodge Ram 3500 with Cummins diesel (2WD, 4WD); and
- 2011–2012 Dodge Ram 3500 with Cummins diesel (non-SCR systems, 2WD, 4WD).

c. The Affected Vehicles.

d. The Adsorber Engines.

e. The essential hardware for the Affected Vehicles.

f. False and misleading emissions tests.

g. Additional fraudulent applications for COCs and EOs.

h. Fraudulently obtained COCs and EOs.

i. Vehicle registrations and plates as a result of the fraudulently obtained EPA COCs and EOs.

j. False or misleading communications to the public and to regulators.

k. Sales and marketing materials, including advertising, websites, product packaging, brochures, and labeling, which misrepresented, falsely promoted, and concealed the true nature of the Affected Vehicles.

l. Documents intended to facilitate the manufacture and sale of the Affected Vehicles, including bills of lading, invoices, shipping records, reports and correspondence.

m. Documents to process and receive payment for the Class Vehicles by unsuspecting Class members, including invoices and receipts.

n. Payments to Cummins.

o. Deposits of proceeds.

p. Other documents and things, including electronic communications.

158. The RICO Defendants also used the internet and other electronic facilities to carry out the scheme and conceal the ongoing fraudulent activities. Specifically, the RICO Defendants made misrepresentations about the Class Vehicles on their websites, YouTube, and through ads online, all of which were intended to mislead regulators and the public about the fuel efficiency, emissions standards, and other performance metrics.

159. The RICO Defendants also communicated by U.S. Mail, by interstate facsimile, and by interstate electronic mail with various other affiliates, regional offices, divisions, dealerships and other third-party entities in furtherance of the scheme.

160. The mail and wire transmissions described herein were made in furtherance of Defendants' scheme and common course of conduct to deceive regulators and consumers and lure consumers into purchasing the Class Vehicles, which Defendants knew or recklessly disregarded as emitting illegal amounts of pollution, despite their advertising campaign that the Class Vehicles were "clean" diesel cars.

161. Many of the precise dates of the fraudulent uses of the U.S. Mail and interstate wire facilities are hidden to the Plaintiffs, and cannot be alleged without access to Defendants' books and records. However, Plaintiffs have described the types of predicate acts of mail and/or wire fraud that occurred.

162. The RICO Defendants have not undertaken the practices described herein in isolation, but as part of a common scheme and conspiracy. In violation of 18 U.S.C. § 1962(d), the RICO Defendants conspired to violate 18 U.S.C. § 1962(c), as described herein. Various other persons, firms and corporations, including third-party entities and individuals not named as defendants in this Complaint, have participated as co-conspirators with the RICO Defendants in these

offenses and have performed acts in furtherance of the conspiracy to increase or maintain revenues, increase market share, and/or minimize losses for the Defendants and their unnamed co-conspirators throughout the illegal scheme and common course of conduct.

163. The RICO Defendants aided and abetted others in the violations of the above laws, thereby rendering them indictable as principals in the 18 U.S.C. §§ 1341 & 1343 offenses.

164. To achieve their common goals, the RICO Defendants hid from the general public the unlawfulness and emission dangers of the Class Vehicles and obfuscated the true nature of the defect even after regulators raised concerns. The RICO Defendants suppressed and/or ignored warnings from third parties, whistleblowers, and governmental entities about the discrepancies in emissions testing and the defeat devices present in the Affected Vehicles.

165. The RICO Defendants and each member of the conspiracy, with knowledge and intent, have agreed to the overall objectives of the conspiracy and participated in the common course of conduct to commit acts of fraud and indecency in designing, manufacturing, distributing, marketing, testing, and/or selling the Class Vehicles (and the defeat devices contained therein).

166. Indeed, for the conspiracy to succeed each of the RICO Defendants and their coconspirators had to agree to implement and use the similar devices and

fraudulent tactics—specifically complete secrecy about the defeat devices in the Affected Vehicles.

167. The RICO Defendants knew and intended that government regulators, as well as Plaintiffs and Class members, would rely on the material misrepresentations and omissions made by them about the Affected Vehicles. The RICO Defendants knew and intended that consumers would incur costs as a result.

168. As fully alleged herein, Plaintiffs, along with hundreds of thousands of other consumers, relied upon Defendants' representations and omissions that were made or caused by them. Plaintiffs' reliance is made obvious by the fact that they purchased illegal vehicles that never should have been introduced into the U.S. stream of commerce and whose worth has now plummeted since the scheme was revealed. In addition, the EPA, CARB, and other regulators relied on the misrepresentations and material omissions made or caused to be made by the RICO Defendants; otherwise FCA could not have obtained valid COCs and EOs to sell the Class Vehicles.

169. As described herein, the RICO Defendants engaged in a pattern of related and continuous predicate acts for years. The predicate acts constituted a variety of unlawful activities, each conducted with the common purpose of obtaining significant monies and revenues from Plaintiffs and Class members based on their misrepresentations and omissions, while providing Class Vehicles

that were worth significantly less than the purchase price paid. The predicate acts also had the same or similar results, participants, victims, and methods of commission. The predicate acts were related and not isolated events.

170. The predicate acts all had the purpose of generating significant revenue and profits for the RICO Defendants at the expense of Plaintiffs and Class members. The predicate acts were committed or caused to be committed by the RICO Defendants through their participation in the enterprise and in furtherance of their fraudulent scheme, and were interrelated in that they involved obtaining Plaintiffs' and Class members' funds and avoiding the expenses associated with remediating the Affected Vehicles.

171. By reason of, and as a result of the conduct of the RICO Defendants, and in particular, their pattern of racketeering activity, Plaintiffs and Class members have been injured in their business and/or property in multiple ways, including but not limited to:

a. Purchase or lease of an illegal, defective Class Vehicle;

b. Overpayment for an Affected Vehicle, in that Plaintiffs and Class members believed they were paying for a vehicle that met certain emission and fuel efficiency standards and obtained a vehicle that was anything but;

c. The value of the Class Vehicles has diminished, thus reducing their resale value;

d. Other out-of-pocket and loss-of-use expenses; and

e. Payment for alternative transportation.

172. The RICO Defendants' violations of 18 U.S.C. § 1962(c) & (d) have directly and proximately caused injuries and damages to Plaintiffs and Class members, and Plaintiffs and Class members are entitled to bring this action for three times their actual damages, as well as injunctive/equitable relief, costs, and reasonable attorneys' fees pursuant to 18 U.S.C. § 1964(c).

COUNT II:

VIOLATIONS OF 15 U.S.C. § 2301 *ET SEQ.*
THE MAGNUSON-MOSS WARRANTY ACT ("MMWA")

173. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

174. This claim is brought on behalf of the Nationwide Class.

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

176. FCA is a "supplier" and "warrantor" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)–(5).

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

178. 15 U.S.C. § 2301(d)(1) provides a cause of action for any consumer who is damaged by the failure of a warrantor to comply with a written or implied warranty.

179. FCA's express warranties are written warranties within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(6). The Affected Vehicles' implied warranties are covered under 15 U.S.C. § 2301(7).

180. FCA breached these warranties, as described in more detail above. Without limitation, the Affected Vehicles are equipped with a defective Adsorber Engine that breaks down and releases emissions far in excess of U.S. and California regulations. The Affected Vehicles share a common design defect in that the Adsorber Engine fails to operate as represented by FCA.

181. Plaintiffs and the other Class members have had sufficient direct dealings with either FCA or its agents (*e.g.*, dealerships and technical support) to establish privity of contract between FCA on one hand, and Plaintiffs and each of the other Class members on the other hand. Nonetheless, privity is not required here because Plaintiffs and each of the other Class members are intended third-party beneficiaries of contracts between FCA and its dealers, and specifically, of FCA's implied warranties. The dealers were not intended to be the ultimate consumers of the Affected Vehicles and have no rights under the warranty

agreements provided with the Affected Vehicles; the warranty agreements were designed for and intended to benefit the consumers only.

182. Affording FCA a reasonable opportunity to cure its breach of written warranties would be unnecessary and futile here.

183. At the time of sale or lease of each Affected Vehicle, FCA knew, should have known, or was reckless in not knowing of its misrepresentations and omissions concerning the Affected Vehicles' inability to perform as warranted, but nonetheless failed to rectify the situation and/or disclose the defective design. Under the circumstances, the remedies available under any informal settlement procedure would be inadequate and any requirement that Plaintiffs resort to an informal dispute resolution procedure and/or afford FCA a reasonable opportunity to cure its breach of warranties is excused and thereby deemed satisfied.

184. Plaintiffs and the other Class members would suffer economic hardship if they returned their Affected Vehicles but did not receive the return of all payments made by them. Because FCA is refusing to acknowledge any revocation of acceptance and return immediately any payments made, Plaintiffs and the other Class members have not re-accepted their Affected Vehicles by retaining them.

185. The amount in controversy of Plaintiffs' individual claims meets or exceeds the sum of $25. The amount in controversy of this action exceeds the sum

of $50,000, exclusive of interest and costs, computed on the basis of all claims to be determined in this lawsuit.

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

B. Claims Brought on Behalf of the Michigan Subclass

COUNT I

VIOLATION OF THE MICHIGAN CONSUMER PROTECTION ACT (MICH. COMP. LAWS § 445.903 *ET SEQ.*)

187. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

188. This claim is brought on behalf of the Michigan Subclass.

189. Plaintiffs and the Michigan Class Members were "person[s]" within the meaning of the Mich. Comp. Laws § 445.902(1)(d).

190. The Michigan Consumer Protection Act ("Michigan CPA") prohibits "[u]nfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce," … including: "(c) Representing that goods or services have … characteristics … that they do not have;" … "(e) Representing that goods or services are of a particular standard … if they are of another;" … "(i) Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;" … "(s) Failing to reveal a material fact, the omission

of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer;" … "(bb) Making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is;" … and "(cc) Failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner." Mich. Comp. Laws § 445.903(1).

191. In the course of the Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of the Defendants' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, the Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact

could not reasonably be known by the consumer; making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is; and failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

192. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

193. Plaintiffs and Subclass members reasonably relied upon the Defendants' false misrepresentations. They had no way of knowing that the Defendants' representations were false and gravely misleading. As alleged herein, the Defendants engaged in extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel Defendants' deception on their own.

194. The Defendants' actions as set forth above occurred in the conduct of trade or commerce.

195. The Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

196. The Defendants intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

197. The Defendants knew or should have known that their conduct violated the Michigan CPA.

198. The Defendants owed Plaintiffs and the Subclass a duty to disclose the truth about their emissions systems manipulation because the Defendants:

a. Possessed exclusive knowledge that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;

b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or

c. Made incomplete representations that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

199. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions

and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

200. The Defendants' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

201. Plaintiffs and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of the Defendants' conduct in that Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of the Defendants' misrepresentations and omissions.

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

203. Plaintiffs seek monetary relief measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of $250 for Plaintiffs and each Michigan Class member; reasonable attorneys' fees; and any other just and proper relief available under Mich. Comp. Laws § 445.911. Plaintiffs also seek punitive damages against the Defendants because they carried out despicable conduct with willful and conscious disregard of the rights of others. The Defendants' unlawful conduct constitutes malice, oppression, and fraud warranting punitive damages.

COUNT II

FRAUDULENT CONCEALMENT
(BASED ON MICHIGAN LAW)

204. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

205. This claim is brought on behalf of the Michigan Subclass.

206. The Defendants intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of the Defendants' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or the Defendants acted

with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

207. The Defendants further affirmatively misrepresented to Plaintiffs and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles they were selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

208. The Defendants knew these representations were false when made.

209. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of the Defendants' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

210. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were

non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

211. As alleged in this Complaint, at all relevant times, the Defendants have held out the Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. The Defendants disclosed certain details about the diesel engine, but nonetheless, the Defendants intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

212. The truth about the defective emissions controls and the Defendants' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to the Defendants; Plaintiffs and the Subclass members did not know of these facts, and the Defendants actively concealed these facts from Plaintiffs and Subclass members.

213. Plaintiffs and Subclass members reasonably relied upon the Defendants' deception. They had no way of knowing that the Defendants' representations were false and/or misleading. As consumers, the Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own. Rather, the Defendants intended to deceive Plaintiffs and Subclass members by concealing the true facts about the Affected Vehicle emissions.

214. The Defendants also concealed and suppressed material facts concerning what is evidently the true culture of the Defendants—a culture characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. Defendants also emphasized profits and sales above the trust that Plaintiffs and Subclass members placed in their representations. Consumers buy diesel cars from the Defendants because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

215. The Defendants' false representations were material to consumers, because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As the Defendants well knew, their

customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

216. The Defendants had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to the Defendants, because the Defendants had exclusive knowledge as to such facts, and because the Defendants knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. The Defendants also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as *reduced-emissions* diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of their vehicles, their actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and their actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Subclass members, the Defendants had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or

leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. The Defendants represented to Plaintiffs and Subclass members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

217. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect their profits and to avoid the perception that their vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost the Defendants money, and they did so at the expense of Plaintiffs and Subclass members.

218. The Defendants still have not made full and adequate disclosures, and continue to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of the Affected Vehicles.

219. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have

purchased purportedly reduced-emissions diesel cars manufactured by the Defendants, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. The Defendants were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

220. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of the Defendants' concealment of the true quality and quantity of those vehicles' emissions and the Defendants' failure to timely disclose the defect or defective design of the diesel engine system, the actual emissions qualities and quantities of the Defendants' vehicles, and the serious issues engendered by the Defendants' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Defendants' disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

221. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of the Defendants' fraudulent concealment of the defective

emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Defendants' brand name attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

222. Accordingly, the Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

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

COUNT III

BREACH OF CONTRACT
(BASED ON MICHIGAN LAW)

224. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

225. Plaintiffs bring this Count on behalf of the Michigan Subclass.

226. The Defendants' misrepresentations and omissions alleged herein, including, but not limited to, the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the defective Adsorber Engine and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

227. Each and every sale or lease of an Affected Vehicle constitutes a contract between FCA and the purchaser or lessee. FCA breached these contracts by, among other things, selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and is thus less valuable than vehicles not equipped with the Adsorber Engine.

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

C. Claims Brought on Behalf of the Alabama Subclass

COUNT I

VIOLATIONS OF THE ALABAMA DECEPTIVE TRADE PRACTICES ACT (ALA. CODE § 8-19-1 *ET SEQ.*)

229. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

230. Plaintiffs bring this Count on behalf of the Alabama Subclass.

231. Plaintiffs and the Subclass members are "consumers" within the meaning of Ala. Code § 8-19-3(2).

232. Plaintiffs, the Subclass members, and the Defendants are "persons" within the meaning of Ala. Code § 8-19-3(5).

233. The Affected Vehicles are "goods" within the meaning of Ala. Code § 8-19-3(3).

234. The Defendants were and are engaged in "trade or commerce" within the meaning of Ala. Code § 8-19-3(8).

235. The Alabama Deceptive Trade Practices Act ("Alabama DTPA") declares several specific actions to be unlawful, including: "(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have," "(7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another," and "(27) Engaging in any other unconscionable, false, misleading, or deceptive act or practice in the conduct of trade or commerce." Ala. Code § 8-19-5.

236. Plaintiffs intend to assert a claim under the Alabama DTPA. Plaintiffs will make a demand in satisfaction of Ala. Code § 8-19-3 and may amend this Complaint to assert claims under the Alabama DTPA once the required 15 days have elapsed. This paragraph is included for purposes of notice only and is not intended to actually assert a claim under the Alabama DTPA.

COUNT II

BREACH OF CONTRACT
(BASED ON ALABAMA LAW)

237. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

238. Plaintiffs bring this Count on behalf of the Alabama Subclass.

239. The Defendants' misrepresentations and omissions alleged herein, including, but not limited to, the Defendants' failure to disclose that the NOx

reduction system in the Affected Vehicles turns off or is limited during normal driving conditions caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the Adsorber Engine and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

240. Each and every sale or lease of an Affected Vehicle constitutes a contract between FCA and the purchaser or lessee. FCA breached these contracts by, among other things, selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and is thus less valuable than vehicles not equipped with the Adsorber Engine.

241. As a direct and proximate result of FCA's breach of contract, Plaintiffs and the Subclass have been damaged in an amount to be proven at trial,

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

COUNT III

FRAUDULENT CONCEALMENT (BASED ON ALABAMA LAW)

242. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

243. This claim is brought on behalf of the Alabama Subclass.

244. The Defendants intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of the Defendants' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or the Defendants acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

245. The Defendants further affirmatively misrepresented to Plaintiffs and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles they were selling had no significant defects, were Earth-friendly and low-emission

vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

246. The Defendants knew these representations were false when made.

247. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of the Defendants' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

248. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

249. As alleged in this Complaint, at all relevant times, the Defendants have held out the Affected Vehicles to be reduced-emissions, EPA-compliant

vehicles. The Defendants disclosed certain details about the diesel engine, but nonetheless, the Defendants intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

250. The truth about the defective emissions controls and the Defendants' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to the Defendants; Plaintiffs and the Subclass members did not know of these facts, and the Defendants actively concealed these facts from Plaintiffs and Subclass members.

251. Plaintiffs and Subclass members reasonably relied upon the Defendants' deception. They had no way of knowing that the Defendants' representations were false and/or misleading. As consumers, the Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own. Rather, the Defendants intended to deceive Plaintiffs and Subclass members by concealing the true facts about the Affected Vehicle emissions.

252. The Defendants also concealed and suppressed material facts concerning what is evidently the true culture of the Defendants—a culture characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. Defendants also emphasized profits and sales above the trust that Plaintiffs and Subclass members placed in their representations. Consumers buy diesel cars from the Defendants because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

253. The Defendants' false representations were material to consumers, because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As the Defendants well knew, their customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

254. The Defendants had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to the

Defendants, because the Defendants had exclusive knowledge as to such facts, and because the Defendants knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. The Defendants also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as *reduced-emissions diesel cars* and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of their vehicles, their actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and their actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Subclass members, the Defendants had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. The Defendants represented to Plaintiffs and Subclass members that they were purchasing or

leasing reduced-emission diesel vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

255. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect their profits and to avoid the perception that their vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost the Defendants money, and they did so at the expense of Plaintiffs and Subclass members.

256. The Defendants still have not made full and adequate disclosures, and continue to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of the Affected Vehicles.

257. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars manufactured by the Defendants, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. The Defendants were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

258. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of the Defendants' concealment of the true quality and quantity of those vehicles' emissions and the Defendants' failure to timely disclose the defect or defective design of the diesel engine system, the actual emissions qualities and quantities of the Defendants' vehicles, and the serious issues engendered by the Defendants' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Defendants' disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

259. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of the Defendants' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Defendants' brand name attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

260. Accordingly, the Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

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

D. Claims Brought on Behalf of the Alaska Subclass

COUNT I

VIOLATION OF THE ALASKA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT (ALASKA STAT. ANN. § 45.50.471 *ET SEQ.*)

198. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

262. Plaintiffs bring this Count on behalf of the Alaska Subclass.

263. The Alaska CPA proscribes unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce unlawful, including: "(4) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the

person does not have;" "(6) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;" "(8) advertising goods or services with intent not to sell them as advertised;" or "(12) using or employing deception, fraud, false pretense, false promise, misrepresentation, or knowingly concealing, suppressing, or omitting a material fact with intent that others rely upon the concealment, suppression or omission in connection with the sale or advertisement of goods or services whether or not a person has in fact been misled, deceived or damaged." Alaska Stat. Ann. § 45.50.471. Plaintiffs will make a demand in satisfaction of Alaska Stat. Ann. § 45.50.535, and may amend this Complaint to assert claims under the Alaska CPA once the required notice period has elapsed. This paragraph is included for purposes of notice only and is not intended to actually assert a claim under the Alaska CPA.

COUNT II

FRAUDULENT CONCEALMENT
(BASED ON ALASKA LAW)

264. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

265. This claim is brought on behalf of the Alaska Subclass.

266. The Defendants intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving

conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of the Defendants' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or the Defendants acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

267. The Defendants further affirmatively misrepresented to Plaintiffs and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles they were selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

268. The Defendants knew these representations were false when made.

269. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of the Defendants' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

270. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

271. As alleged in this Complaint, at all relevant times, the Defendants have held out the Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. The Defendants disclosed certain details about the diesel engine, but nonetheless, the Defendants intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

272. The truth about the defective emissions controls and the Defendants' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to the Defendants; Plaintiffs and the Subclass members did not know of these facts, and the Defendants actively concealed these facts from Plaintiffs and Subclass members.

273. Plaintiffs and Subclass members reasonably relied upon the Defendants' deception. They had no way of knowing that the Defendants' representations were false and/or misleading. As consumers, the Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own. Rather, the Defendants intended to deceive Plaintiffs and Subclass members by concealing the true facts about the Affected Vehicle emissions.

274. The Defendants also concealed and suppressed material facts concerning what is evidently the true culture of the Defendants—a culture characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. Defendants also emphasized profits and sales above the trust that Plaintiffs and Subclass members placed in their representations. Consumers buy diesel cars from the Defendants because they feel they are clean

diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

275. The Defendants' false representations were material to consumers, because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As the Defendants well knew, their customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

276. The Defendants had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to the Defendants, because the Defendants had exclusive knowledge as to such facts, and because the Defendants knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. The Defendants also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as *reduced-emissions diesel cars* and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the

additional facts set forth above regarding the actual emissions of their vehicles, their actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and their actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Subclass members, the Defendants had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. The Defendants represented to Plaintiffs and Subclass members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

277. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect their profits and to avoid the perception that their vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which

perception would hurt the brand's image and cost the Defendants money, and they did so at the expense of Plaintiffs and Subclass members.

278. The Defendants still have not made full and adequate disclosures, and continue to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of the Affected Vehicles.

279. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars manufactured by the Defendants, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. The Defendants were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

280. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of the Defendants' concealment of the true quality and quantity of those vehicles' emissions and the Defendants' failure to timely disclose the defect or defective design of the diesel engine system, the actual emissions qualities and quantities of the Defendants' vehicles, and the serious

issues engendered by the Defendants' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Defendants' disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

281. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of the Defendants' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Defendants' brand name attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

282. Accordingly, the Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

283. The Defendants' acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Subclass members' rights and the representations that the Defendants made to them, in order to enrich the Defendants. The Defendants' conduct warrants an

assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT III

BREACH OF CONTRACT
(BASED ON ALASKA LAW)

284. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

285. Plaintiffs bring this Count on behalf of the Alaska Subclass.

286. The Defendants' misrepresentations and omissions alleged herein, including the Defendants' failure to disclose the existence of the Affected Vehicles' defect and/or defective design of emissions controls as alleged herein, caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the defective Adsorber Engine and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

287. Each and every sale or lease of an Affected Vehicle constitutes a contract between FCA and the purchaser or lessee. FCA breached these contracts by selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and the existence of the Adsorber Engine's defect and/or defective design of emissions controls, including information known to FCA rendering each Affected Vehicle non-EPA-compliant, and thus less valuable than vehicles not equipped with the Adsorber Engine.

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

E. Claims Brought on Behalf of the Arizona Subclass

COUNT I

VIOLATIONS OF THE ARIZONA CONSUMER FRAUD ACT (ARIZ. REV. STAT. § 44-1521 *ET SEQ.*)

289. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

290. Plaintiffs bring this Count on behalf of the Arizona Subclass.

291. The Arizona Consumer Fraud Act ("Arizona CFA") provides that "[t]he act, use or employment by any person of any deception, deceptive act or practice, fraud, … misrepresentation, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale … of any merchandise whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice." Ariz. Rev. Stat. § 44-1522(A).

292. In the course of the Defendants' business, it willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of the Defendants' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, the Defendants engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Affected Vehicles.

293. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by the Defendants' failure to disclose the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

294. Plaintiffs and Subclass members reasonably relied upon the Defendants' false misrepresentations. They had no way of knowing that the Defendants' representations were false and gravely misleading. As alleged herein, the Defendants engaged in extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own.

295. The Defendants' actions as set forth above occurred in the conduct of trade or commerce.

296. The Defendants' deception, fraud, misrepresentation, concealment, suppression or omission of material facts were likely to and did in fact deceive reasonable consumers.

297. The Defendants intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

298. The Defendants knew or should have known that their conduct violated the Arizona CFA.

299. The Defendants owed Plaintiffs and the Subclass a duty to disclose the truth about their emissions systems manipulation because the Defendants:

a. Possessed exclusive knowledge that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;

b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or

c. Made incomplete representations that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

300. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected

Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

301. The Defendants' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

302. Plaintiffs and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of the Defendants' conduct in that Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of the Defendants' misrepresentations and omissions.

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

304. Plaintiffs and the Subclass seek monetary relief against the Defendants in an amount to be determined at trial. Plaintiffs and the Subclass also seek punitive damages because the Defendants engaged in aggravated and outrageous conduct with an evil mind.

305. Plaintiffs also seek attorneys' fees and any other just and proper relief available.

COUNT II

BREACH OF CONTRACT
(BASED ON ARIZONA LAW)

306. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

307. Plaintiffs bring this Count on behalf of the Arizona Subclass.

308. The Defendants' misrepresentations and omissions alleged herein, including the Defendants' failure to disclose the existence of the Adsorber Engine's defect and/or defective design of emissions controls as alleged herein, and their failure to disclose that the Affected Vehicles would not meet and maintain their advertised MPG rate, caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the defective Adsorber Engine and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

309. Each and every sale or lease of an Affected Vehicle constitutes a contract between FCA and the purchaser or lessee. FCA breached these contracts

by selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and the existence of the Adsorber Engine's defect and/or defective design of emissions controls, including information known to FCA rendering each Affected Vehicle non-EPA-compliant, and thus less valuable than vehicles not equipped with the Adsorber Engine.

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

COUNT III

FRAUDULENT CONCEALMENT (BASED ON ARIZONA LAW)

311. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

312. This claim is brought on behalf of the Arizona Subclass.

313. The Defendants intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants

higher than a reasonable consumer would expect in light of the Defendants' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or the Defendants acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

314. The Defendants further affirmatively misrepresented to Plaintiffs and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles they were selling had no significant defects, were Earth friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

315. The Defendants knew these representations were false when made.

316. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of the Defendants' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

317. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions

and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

318. As alleged in this Complaint, at all relevant times, the Defendants have held out the Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. The Defendants disclosed certain details about the Adsorber Engine, but nonetheless, the intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

319. The truth about the defective emissions controls and the Defendants' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to the

Defendants; Plaintiffs and the Subclass members did not know of these facts and the Defendants actively concealed these facts from Plaintiffs and Subclass members.

320. Plaintiffs and Subclass members reasonably relied upon the Defendants' deception. They had no way of knowing that the Defendants' representations were false and/or misleading. As consumers, Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own. Rather, the Defendants intended to deceive Plaintiffs and Subclass members by concealing the true facts about the Affected Vehicle emissions.

321. The Defendants also concealed and suppressed material facts concerning what is evidently the true culture of the Defendants—a culture characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. Defendants also emphasized profits and sales above the trust that Plaintiffs and Subclass members placed in their representations. Consumers buy diesel cars from the Defendants because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

322. The Defendants' false representations were material to consumers, because they concerned the quality of the Affected Vehicles, because they

concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As the Defendants well knew, their customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

323. The Defendants had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to the Defendants, because the Defendants had exclusive knowledge as to such facts, and because the Defendants knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. The Defendants also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as *reduced-emissions diesel cars* and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of their vehicles, their actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and their actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and

Subclass members, the Defendants had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. The Defendants represented to Plaintiffs and Subclass members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

324. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect their profits and to avoid the perception that their vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost the Defendants money, and they did so at the expense of Plaintiffs and Subclass members.

325. The Defendants still have not made full and adequate disclosures, and continue to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of the Affected Vehicles.

326. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars manufactured by the Defendants, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. The Defendants were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

327. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of the Defendants' concealment of the true quality and quantity of those vehicles' emissions and the Defendants' failure to timely disclose the defect or defective design of the Adsorber Engine, the actual emissions qualities and quantities of the Defendants' vehicles, and the serious issues engendered by the Defendants' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Defendants' disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members

who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

328. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of the Defendants' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Defendants' brand name attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

329. Accordingly, the Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

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

F. Claims Brought on Behalf of the Arkansas Subclass

COUNT I

VIOLATIONS OF THE DECEPTIVE TRADE PRACTICE ACT (ARK. CODE ANN. § 4-88-101 *ET SEQ.*)

331. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

332. This claim is brought on behalf of the Arkansas Subclass.

333. The Defendants, Plaintiffs, and the Arkansas subclass are "persons" within the meaning of the Arkansas Deceptive Trade Practices Act ("Arkansas DTPA"), Ark. Code Ann. § 4-88-102(5).

334. The "Affected Vehicles" are "goods" within the meaning of Ark. Code Ann. § 4-88-102(4).

335. The Arkansas DTPA prohibits ""[d]eceptive and unconscionable trade practices," which include, but are not limited to, a list of enumerated items, including "[e]ngaging in any other unconscionable, false, or deceptive act or practice in business, commerce, or trade[.]" Ark. Code Ann. § 4-88-107(a)(10). The Arkansas DTPA also prohibits the following when utilized in connection with the sale or advertisement of any goods: "(1) The act, use, or employment by any person of any deception, fraud, or false pretense; or (2) The concealment, suppression, or omission of any material fact with intent that others rely upon the concealment, suppression, or omission." Ark. Code Ann. § 4-88-108.

336. In the course of the Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of the Defendants' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, the Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer; making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is; and failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

337. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by the Defendants' failure to disclose that the

NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

338. Plaintiffs and Subclass members reasonably relied upon the Defendants' false misrepresentations. They had no way of knowing that the Defendants' representations were false and gravely misleading. As alleged herein, the Defendants engaged in extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own.

339. The Defendants' actions as set forth above occurred in the conduct of trade or commerce.

340. The Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

341. The Defendants intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

342. The Defendants knew or should have known that their conduct violated the Arkansas DTPA.

343. The Defendants owed Plaintiffs and the Subclass a duty to disclose the truth about their emissions systems manipulation because the Defendants:

a. Possessed exclusive knowledge that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;

b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or

c. Made incomplete representations that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

344. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

345. The Defendants' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

346. Plaintiffs and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of the Defendants' conduct in that Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of the Defendants' misrepresentations and omissions.

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

348. Plaintiffs seek monetary relief measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of $250 for Plaintiffs and each Arkansas Class member; (c) reasonable attorneys' fees; and (d) any other just and proper relief available under Arkansas law. Plaintiffs also seek punitive damages against the Defendants because they carried out despicable conduct with willful and conscious disregard of the rights of others. The Defendants' unlawful conduct constitutes malice, oppression, and fraud warranting punitive damages.

COUNT II

FRAUDULENT CONCEALMENT (BASED ON ARKANSAS LAW)

349. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

350. This claim is brought on behalf of the Arkansas Subclass.

351. The Defendants intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, did not meet and maintain the advertised MPG rate, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of the Defendants' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or the Defendants acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

352. The Defendants further affirmatively misrepresented to Plaintiffs and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles they were selling had no significant defects, were earth-friendly and low-emission

vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

353. The Defendants knew these representations were false when made.

354. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of the Defendants' advertising campaign, non-EPA-compliant, costly in that the Plaintiffs and other Subclass members had to pay more for fuel than they reasonably expected, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

355. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, did not meet and maintain the advertised MPG rate, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

356. As alleged in this Complaint, at all relevant times, the Defendants have held out the Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. The Defendants disclosed certain details about the Adsorber Engine, but nonetheless, the Defendants intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

357. The truth about the defective emissions controls and the Defendants' manipulations of those controls, failure to meet and maintain the advertised MPG rate, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to the Defendants; Plaintiffs and the Subclass members did not know of these facts and the Defendants actively concealed these facts from Plaintiffs and Subclass members.

358. Plaintiffs and Subclass members reasonably relied upon the Defendants' deception. They had no way of knowing that the Defendants' representations were false and/or misleading. As consumers, Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on

their own. Rather, the Defendants intended to deceive Plaintiffs and Subclass members by concealing the true facts about the Affected Vehicle emissions.

359. The Defendants also concealed and suppressed material facts concerning what is evidently the true culture of each Defendant—one characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. Defendants also emphasized profits and sales above the trust that Plaintiffs and Subclass members placed in their representations. Consumers buy diesel cars from the Defendants because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

360. The Defendants' false representations were material to consumers, because they concerned the quality and cost-effectiveness of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As the Defendants well knew, their customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

361. The Defendants had a duty to disclose the emissions defect, defective design of emissions controls, failure to meet and maintain the advertised MPG rate, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to the Defendants, because the Defendants had exclusive knowledge as to such facts, and because the Defendants knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. The Defendants also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as *reduced-emissions diesel cars* and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of their vehicles, their actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and their actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Subclass members, the Defendants had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with

respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. The Defendants represented to Plaintiffs and Subclass members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

362. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect their profits and to avoid the perception that their vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost the Defendants money, and they did so at the expense of Plaintiffs and Subclass members.

363. The Defendants still have not made full and adequate disclosures, and continue to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of the Affected Vehicles.

364. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars manufactured by the Defendants, and/or would not have continued to drive their heavily polluting

vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. The Defendants were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

365. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of the Defendants' concealment of the true quality and quantity of those vehicles' emissions and fuel efficiency and the Defendants' failure to timely disclose the defect or defective design of the Adsorber Engine, the actual emissions qualities and quantities of the Defendants' vehicles, and the serious issues engendered by the Defendants' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Defendants' disregard for the truth and compliance with applicable federal and state law and regulations, and their failure to meet and maintain the advertised MPG rate, Plaintiffs and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

366. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of the Defendants' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the

Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Defendants' brand names, attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

367. Accordingly, the Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

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

COUNT III

BREACH OF CONTRACT
(BASED ON ARKANSAS LAW)

369. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

370. Plaintiffs bring this Count on behalf of the Arkansas Subclass members.

371. The Defendants' misrepresentations and omissions alleged herein, including the Defendants' failure to disclose the existence of the Adsorber Engine's defect and/or defective design of emissions controls as alleged herein, and their failure to disclose that the Affected Vehicles would not meet and maintain their advertised MPG rate, caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the defective Adsorber Engine and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

372. Each and every sale or lease of an Affected Vehicle constitutes a contract between FCA and the purchaser or lessee. FCA breached these contracts by selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and the existence of the Adsorber Engine's defect and/or defective design of emissions controls, including information known to FCA

rendering each Affected Vehicle non-EPA-compliant, and thus less valuable than vehicles not equipped with the Adsorber Engine.

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

G. Claims Brought on Behalf of the California Subclass

COUNT I

VIOLATIONS OF THE CALIFORNIA UNFAIR COMPETITION LAW (CAL. BUS. & PROF. CODE § 17200 *ET SEQ.*)

374. Plaintiffs James Bledsoe and Jay Martin (Plaintiffs, for purposes of all California Subclass Counts) incorporate by reference all paragraphs as though fully set forth herein.

375. This claim is brought on behalf of the California Subclass.

376. California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200 *et seq*., proscribes acts of unfair competition, including "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising."

377. The Defendants' conduct, as described herein, was and is in violation of the UCL. The Defendants' conduct violates the UCL in at least the following ways:

i. By failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions;

ii. By selling and leasing Affected Vehicles that suffer from a defective emissions control system and that emit unlawfully high levels of pollutants under normal driving conditions;

iii. By knowingly and intentionally concealing from Plaintiffs and the other Subclass members that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles suffer from a defective emissions control system and emit unlawfully high levels of pollutants under normal driving conditions;

iv. By marketing Affected Vehicles as reduced emissions vehicles possessing functional and defect-free, EPA-compliant diesel engine systems;

v. By advertising and posting a miles per gallon ("MPG") rate that the Affected Vehicles do not meet and maintain;

vi. By violating federal laws, including the Clean Air Act; and

vii. By violating other California laws, including California consumer protection laws and California laws governing vehicle emissions and emission testing requirements.

378. The Defendants intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

379. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by the Defendants' failure to disclose the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, that the Affected Vehicles would not meet and maintain the advertised MPG rate; and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

380. Plaintiffs and Subclass members reasonably relied upon the Defendants' false misrepresentations. They had no way of knowing that the Defendants' representations were false and gravely misleading. As alleged herein, the Defendants engaged in extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own.

381. The Defendants knew or should have known that their conduct violated the UCL.

382. The Defendants owed Plaintiffs and the Subclass a duty to disclose the truth about their emissions systems manipulation because the Defendants:

a. Possessed exclusive knowledge that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;

b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or

c. Made incomplete representations that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

383. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, and that the Affected Vehicles would not meet and maintain their advertised MPG rate, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

384. The Defendants' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

385. Plaintiffs and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of the Defendants' conduct in that Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. They also were required to pay more for fuel than they reasonably anticipated based on the Defendants' material representations. These injuries are the direct and natural consequence of the Defendants' misrepresentations and omissions.

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

387. The Defendants' misrepresentations and omissions alleged herein caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain defective Adsorber Engines that failed to comply with EPA and California emissions standards.

388. Accordingly, Plaintiffs and the other Subclass members have suffered injury in fact, including lost money or property, as a result of the Defendants' misrepresentations and omissions.

389. Plaintiffs request that this Court enter such orders or judgments as may be necessary to restore to Plaintiffs and members of the Subclass any money it acquired by unfair competition, including restitution and/or restitutionary disgorgement, as provided in Cal. Bus. & Prof. Code § 17203 and Cal. Civ. Code § 3345, and for such other relief as may be appropriate.

COUNT II

VIOLATIONS OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT (CAL. CIV. CODE § 1750 *ET SEQ.*)

390. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

391. This claim is brought on behalf of the California Subclass.

392. California's Consumers Legal Remedies Act ("CLRA"), Cal. Civ. Code § 1750 *et seq*., proscribes "unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer."

393. The Affected Vehicles are "goods" as defined in Cal. Civ. Code § 1761(a).

394. Plaintiffs and the other Subclass members are "consumers" as defined in Cal. Civ. Code § 1761(d), and Plaintiffs, the other Subclass members, and the Defendants are "persons" as defined in Cal. Civ. Code § 1761(c).

395. As alleged above, the Defendants made representations concerning the benefits, efficiency, performance, and safety features of the Affected Vehicles and Adsorber Engines that were misleading.

396. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles were equipped with defective Adsorber Engines that failed EPA and California emissions standards, and that the Affected Vehicles would not meet and maintain the advertised MPG rate.

397. The Defendants' conduct, as described hereinabove, was and is in violation of the CLRA. The Defendants' conduct violates at least the following enumerated CLRA provisions:

i. Cal. Civ. Code § 1770(a)(2): Misrepresenting the approval or certification of goods.

ii. Cal. Civ. Code § 1770(a)(3): Misrepresenting the certification by another.

iii. Cal. Civ. Code § 1770(a)(5): Representing that goods have sponsorship, approval, characteristics, uses, benefits, or quantities which they do not have.

iv. Cal. Civ. Code § 1770(a)(7): Representing that goods are of a particular standard, quality, or grade, if they are of another.

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

vi. Cal. Civ. Code § 1770(a)(16): Representing that goods have been supplied in accordance with a previous representation when they have not.

398. The Defendants intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

399. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by the Defendants' failure to disclose the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. They were also deceived by the Defendants' failure to disclose that the Affected Vehicles would not meet and maintain their advertised MPG rate.

400. Plaintiffs and Subclass members reasonably relied upon the Defendants' false misrepresentations. They had no way of knowing that the Defendants' representations were false and gravely misleading. As alleged herein, the Defendants engaged in extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own.

401. The Defendants knew or should have known that their conduct violated the CLRA.

402. The Defendants owed Plaintiffs and the Subclass a duty to disclose the truth about their emissions systems manipulation because the Defendants:

a. Possessed exclusive knowledge that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;

b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or

c. Made incomplete representations that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

403. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, and would not meet and maintain the Affected Vehicles' posted MPG rate, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

404. The Defendants' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

405. Plaintiffs and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of the Defendants' conduct in that Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. They also were required to pay more for fuel than they reasonably anticipated based on the Defendants' material representations. These injuries are the direct and natural consequence of the Defendants' misrepresentations and omissions.

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

407. The Defendants knew, should have known, or was reckless in not knowing of the defective design and/or manufacture of the Adsorber Engines, and that the Affected Vehicles were not suitable for their intended use.

408. The facts concealed and omitted by the Defendants from Plaintiffs and the other Subclass members are material in that a reasonable consumer would have considered them to be important in deciding whether to purchase or lease the Affected Vehicles or pay a lower price. Had Plaintiffs and the other Subclass members known about the defective nature of the Affected Vehicles, and their non-compliance with EPA requirements, and the failure of the Affected Vehicles to meet and maintain their posted MPG rate, they would not have purchased or leased the Affected Vehicles or would not have paid the prices they paid.

409. Plaintiffs and the Subclass have provided the Defendants with notice of their violations of the CLRA pursuant to Cal. Civ. Code § 1782(a).

410. Plaintiffs' and the other Subclass members' injuries were proximately caused by the Defendants' unlawful and deceptive business practices.

411. While Plaintiffs do not seek to recover damages under the CLRA in this initial Complaint, after mailing appropriate notice and demand in accordance

with CAL. CIVIL CODE §§ 1782(a) & (d), Plaintiffs will subsequently amend this Complaint to also include a request for compensatory and punitive damages.

COUNT III

VIOLATIONS OF THE CALIFORNIA FALSE ADVERTISING LAW (CAL. BUS. & PROF. CODE § 17500 *ET SEQ.*)

412. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

413. This claim is brought on behalf of the California Subclass.

414. California Bus. & Prof. Code § 17500 states: "It is unlawful for any … corporation … with intent directly or indirectly to dispose of real or personal property … to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated … from this state before the public in any state, in any newspaper or other publication, or any advertising device, … or in any other manner or means whatever, including over the Internet, any statement … which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading."

415. The Defendants caused to be made or disseminated through California and the United States, through advertising, marketing, and other publications, statements that were untrue or misleading, and which were known, or which by the exercise of reasonable care should have been known to the Defendants, to be

untrue and misleading to consumers, including Plaintiffs and the other Subclass members.

416. The Defendants have violated § 17500 because the misrepresentations and omissions regarding the functionality, reliability, environmental-friendliness, lawfulness, fuel efficiency, and safety of Affected Vehicles as set forth in this Complaint were material and likely to deceive a reasonable consumer.

417. Plaintiffs and the other Subclass members have suffered an injury in fact, including the loss of money or property, as a result of the Defendants' unfair, unlawful, and/or deceptive practices. In purchasing or leasing their Affected Vehicles, Plaintiffs and the other Subclass members relied on the misrepresentations and/or omissions of the Defendants with respect to the functionality, reliability, environmental-friendliness, fuel efficiency, and lawfulness of the Affected Vehicles. The Defendants' representations turned out not to be true because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and the Affected Vehicles are distributed with Adsorber Engines that include defective emissions controls and a "Defeat Device." The Affected Vehicles also do not meet and maintain the posted MPG rate. Had Plaintiffs and the other Subclass members known this, they would not have purchased or leased their Affected Vehicles and/or paid as much for them.

Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

418. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of the Defendants' business. The Defendants' wrongful conduct is part of a pattern or generalized course of conduct that is still perpetuated and repeated, both in the State of California and nationwide.

419. Plaintiffs, individually and on behalf of the other Subclass members, request that this Court enter such orders or judgments as may be necessary to restore to Plaintiffs and the other Subclass members any money the Defendants acquired by unfair competition, including restitution and/or restitutionary disgorgement, and for such other relief as may be appropriate.

COUNT IV

BREACH OF CONTRACT
(BASED ON CALIFORNIA LAW)

420. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

421. Plaintiffs bring this Count on behalf of the California Subclass members.

422. The Defendants' misrepresentations and omissions alleged herein, including the Defendants' failure to disclose the existence of the Adsorber Engine's defect and/or defective design of emissions controls as alleged herein,

and their failure to disclose that the Affected Vehicles would not meet and maintain their advertised MPG rate, caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the defective Adsorber Engine and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

423. Each and every sale or lease of an Affected Vehicle constitutes a contract between FCA and the purchaser or lessee. FCA breached these contracts by selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and the existence of the Adsorber Engine's defect and/or defective design of emissions controls, including information known to FCA rendering each Affected Vehicle non-EPA-compliant, and thus less valuable than vehicles not equipped with the Adsorber Engine.

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

COUNT V

FRAUDULENT CONCEALMENT (BASED ON CALIFORNIA LAW)

425. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

426. This claim is brought on behalf of the California Subclass.

427. The Defendants intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, did not meet and maintain the advertised MPG rate, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of the Defendants' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or the Defendants acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

428. The Defendants further affirmatively misrepresented to Plaintiffs and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles they were selling had no significant defects, were earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

429. The Defendants knew these representations were false when made.

430. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of the Defendants' advertising campaign, non-EPA-compliant, costly in that the Plaintiffs and other Subclass members had to pay more for fuel than they reasonably expected, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

431. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, did not meet and maintain the advertised MPG rate, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those

expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

432. As alleged in this Complaint, at all relevant times, the Defendants have held out the Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. The Defendants disclosed certain details about the Adsorber Engine, but nonetheless, the Defendants intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

433. The truth about the defective emissions controls and the Defendants' manipulations of those controls, failure to meet and maintain the advertised MPG rate, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to the Defendants; Plaintiffs and the Subclass members did not know of these facts and the Defendants actively concealed these facts from Plaintiffs and Subclass members.

434. Plaintiffs and Subclass members reasonably relied upon the Defendants' deception. They had no way of knowing that the Defendants' representations were false and/or misleading. As consumers, Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own. Rather, the Defendants intended to deceive Plaintiffs and Subclass members by concealing the true facts about the Affected Vehicle emissions.

435. The Defendants also concealed and suppressed material facts concerning what is evidently the true culture of each Defendant—one characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. Defendants also emphasized profits and sales above the trust that Plaintiffs and Subclass members placed in their representations. Consumers buy diesel cars from the Defendants because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

436. The Defendants' false representations were material to consumers, because they concerned the quality and cost-effectiveness of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As the Defendants well knew,

their customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

437. The Defendants had a duty to disclose the emissions defect, defective design of emissions controls, failure to meet and maintain the advertised MPG rate, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to the Defendants, because the Defendants had exclusive knowledge as to such facts, and because the Defendants knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. The Defendants also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as *reduced-emissions diesel cars* and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of their vehicles, their actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and their actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Subclass members, the Defendants had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the

Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. The Defendants represented to Plaintiffs and Subclass members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

438. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect their profits and to avoid the perception that their vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost the Defendants money, and they did so at the expense of Plaintiffs and Subclass members.

439. The Defendants still have not made full and adequate disclosures, and continue to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of the Affected Vehicles.

440. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had

known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars manufactured by the Defendants, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. The Defendants were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

441. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of the Defendants' concealment of the true quality and quantity of those vehicles' emissions and fuel efficiency and the Defendants' failure to timely disclose the defect or defective design of the Adsorber Engine, the actual emissions qualities and quantities of the Defendants' vehicles, and the serious issues engendered by the Defendants' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Defendants' disregard for the truth and compliance with applicable federal and state law and regulations, and their failure to meet and maintain the advertised MPG rate, Plaintiffs and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

442. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of the Defendants' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Defendants' brand names, attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

443. Accordingly, the Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

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

H. Claims Brought on Behalf of the Colorado Subclass

COUNT I

VIOLATIONS OF THE COLORADO CONSUMER PROTECTION ACT (COLO. REV. STAT. § 6-1-101 *ET SEQ.*)

445. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

446. Plaintiffs bring this Count on behalf of the Colorado Subclass.

447. Colorado's Consumer Protection Act (the "Colorado CPA") prohibits a person from engaging in a "deceptive trade practice," which includes knowingly making "a false representation as to the source, sponsorship, approval, or certification of goods," or "a false representation as to the characteristics, ingredients, uses, benefits, alterations, or quantities of goods." Colo. Rev. Stat. § 6-1-105(1)(b), (e). The Colorado CPA further prohibits "represent[ing] that goods … are of a particular standard, quality, or grade … if he knows or should know that they are of another," and "advertis[ing] goods … with intent not to sell them as advertised." Colo. Rev. Stat. § 6-1-105(1)(g), (i).

448. Each Defendant is a "person" under § 6-1-102(6) of the Colorado CPA, Col. Rev. Stat. § 6-1-101 *et seq*.

449. Plaintiffs and Colorado Subclass members are "consumers" for the purpose of Col. Rev. Stat. § 6-1-113(1)(a) who purchased or leased one or more Affected Vehicles.

450. In the course of the Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of the Defendants' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, the Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer; making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is; and failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

451. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by the Defendants' failure to disclose that the

NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

452. Plaintiffs and Subclass members reasonably relied upon the Defendants' false misrepresentations. They had no way of knowing that the Defendants' representations were false and gravely misleading. As alleged herein, the Defendants engaged in extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own.

453. The Defendants' actions as set forth above occurred in the conduct of trade or commerce.

454. The Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

455. The Defendants intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

456. The Defendants knew or should have known that their conduct violated the Colorado CPA.

457. The Defendants owed Plaintiffs and the Subclass a duty to disclose the truth about their emissions systems manipulation because the Defendants:

a. Possessed exclusive knowledge that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;

b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or

c. Made incomplete representations that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

458. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

459. The Defendants' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

460. Plaintiffs and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of Defendants' conduct in that Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Defendants' misrepresentations and omissions.

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

462. Pursuant to Col. Rev. Stat. § 6-1-113, Plaintiffs and the Subclass seek monetary relief against Defendants measured as the greater of (a) actual damages in an amount to be determined at trial and the discretionary trebling of such damages, or (b) statutory damages in the amount of $500 for each Plaintiff and Subclass member.

463. Plaintiffs and the Subclass also seek declaratory relief, attorneys' fees, and any other just and proper relief available under the Colorado CPA.

COUNT II

BREACH OF CONTRACT
(BASED ON COLORADO LAW)

464. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

465. Plaintiffs bring this Count on behalf of the Colorado Subclass.

466. The Defendants' misrepresentations and omissions alleged herein, including the Defendants' failure to disclose the existence of the diesel engine system's defect and/or defective design of emissions controls as alleged herein, caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the Adsorber Engine and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

467. Each and every sale or lease of an Affected Vehicle constitutes a contract between FCA and the purchaser or lessee. FCA breached these contracts by selling or leasing to Plaintiffs and the other Subclass members defective

Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and the existence of the diesel engine system's defect and/or defective design of emissions controls, including information known to FCA rendering each Affected Vehicle non-EPA-compliant, and thus less valuable than vehicles not equipped with the Adsorber Engine.

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

COUNT III

FRAUDULENT CONCEALMENT (BASED ON COLORADO LAW)

469. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

470. Plaintiffs bring this Count on behalf of the Colorado Subclass.

471. The Defendants intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of the Defendants'

advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or the Defendants acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

472. The Defendants further affirmatively misrepresented to Plaintiffs and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles they were selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

473. The Defendants knew these representations were false when made.

474. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of the Defendants' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

475. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device,"

emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

476. As alleged in this Complaint, at all relevant times, the Defendants have held out the Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. The Defendants disclosed certain details about the diesel engine, but nonetheless, the Defendants intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

477. The truth about the defective emissions controls and the Defendants' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to the Defendants; Plaintiffs and the Subclass members did not know of these facts, and

the Defendants actively concealed these facts from Plaintiffs and Subclass members.

478. Plaintiffs and Subclass members reasonably relied upon the Defendants' deception. They had no way of knowing that the Defendants' representations were false and/or misleading. As consumers, the Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own. Rather, the Defendants intended to deceive Plaintiffs and Subclass members by concealing the true facts about the Affected Vehicle emissions.

479. The Defendants also concealed and suppressed material facts concerning what is evidently the true culture of the Defendants—a culture characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. Defendants also emphasized profits and sales above the trust that Plaintiffs and Subclass members placed in their representations. Consumers buy diesel cars from the Defendants because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

480. The Defendants' false representations were material to consumers, because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations

regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As the Defendants well knew, their customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

481. The Defendants had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to the Defendants, because the Defendants had exclusive knowledge as to such facts, and because the Defendants knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. The Defendants also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as *reduced-emissions diesel cars* and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of their vehicles, their actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and their actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Subclass members, the Defendants had the duty to disclose not just the partial

truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. The Defendants represented to Plaintiffs and Subclass members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

482. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect their profits and to avoid the perception that their vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost the Defendants money, and they did so at the expense of Plaintiffs and Subclass members.

483. The Defendants still have not made full and adequate disclosures, and continue to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of the Affected Vehicles.

484. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars manufactured by the Defendants, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. The Defendants were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

485. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of the Defendants' concealment of the true quality and quantity of those vehicles' emissions and the Defendants' failure to timely disclose the defect or defective design of the diesel engine system, the actual emissions qualities and quantities of the Defendants' vehicles, and the serious issues engendered by the Defendants' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Defendants' disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members

who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

486. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of the Defendants' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Defendants' brand name attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

487. Accordingly, the Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

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

I. Claims Brought on Behalf of the Connecticut Subclass

COUNT I

VIOLATIONS OF THE CONNECTICUT UNFAIR TRADE PRACTICES ACT (CONN. GEN. STAT. ANN. § 42-110A *ET SEQ.*)

489. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

490. Plaintiffs bring this Count on behalf of the Connecticut Subclass.

491. Defendants and Plaintiffs are each "persons" as defined by Conn. Gen. Stat. Ann. § 42-110a(3).

492. The Connecticut Unfair Trade Practices Act ("Connecticut UTPA") provides that "[n]o person shall engage in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." Conn. Gen. Stat. Ann. § 42-110b(a). The Connecticut UTPA further provides a private right of action under Conn. Gen. Stat. Ann. § 42-110g(a). In the course of Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of Defendants' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of

pollutants, including NOx, as described above. Accordingly, Defendants engaged in unfair and deceptive trade practices because their conduct (1) offends public policy as it has been established by statutes, the common law or other established concept of unfairness; (2) is immoral, unethical, oppressive or unscrupulous; or (3) causes substantial injury to consumers, competitors or other business persons. The harm caused to consumers, motorists, and pedestrians outweighs any benefit associated with such practices, and Defendants fraudulently concealed the defective nature of the Affected Vehicles from consumers.

493. Defendants have also engaged in deceptive conduct because (1) they made representations, omissions, or engaged in other conduct likely to mislead consumers; (2) consumers interpret the message reasonably under the circumstances; and (3) the misleading representation, omission, or practice is material—that is, likely to affect consumer decisions or conduct.

494. In the course of the Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of the Defendants' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described

above. Accordingly, the Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer; making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is; and failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

495. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

496. Plaintiffs and Subclass members reasonably relied upon the Defendants' false misrepresentations. They had no way of knowing that the Defendants' representations were false and gravely misleading. As alleged herein,

the Defendants engaged in extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own.

497. The Defendants' actions as set forth above occurred in the conduct of trade or commerce.

498. The Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

499. The Defendants intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

500. The Defendants knew or should have known that their conduct violated the Connecticut UTPA.

501. The Defendants owed Plaintiffs and the Subclass a duty to disclose the truth about their emissions systems manipulation because the Defendants:

a. Possessed exclusive knowledge that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;

b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or

c. Made incomplete representations that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

502. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

503. The Defendants' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

504. Plaintiffs and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of Defendants' conduct in that Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their

Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Defendants' misrepresentations and omissions.

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

506. Plaintiffs and the other Class members sustained damages as a result of Defendants' unlawful acts, and are therefore entitled to damages and other relief as provided under the Connecticut UTPA.

507. Plaintiffs also seek court costs and attorneys' fees as a result of Defendants' violation of the Connecticut UTPA as provided in Conn. Gen. Stat. Ann. § 42-110g(d). A copy of this Complaint has been mailed to the Attorney General and the Commissioner of Consumer Protection of the State of Connecticut in accordance with Conn. Gen. Stat. Ann. § 42-110g(c).

COUNT II

BREACH OF CONTRACT
(BASED ON CONNECTICUT LAW)

508. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

509. Plaintiffs bring this Count on behalf of the Connecticut Subclass members.

510. FCA's misrepresentations and omissions alleged herein, including, but not limited to, FCA's failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the Adsorber Engine and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

511. Each and every sale or lease of an Affected Vehicle constitutes a contract between FCA and the purchaser or lessee. FCA breached these contracts by, among other things, selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, rendering the Affected Vehicles less valuable than vehicles not equipped with the Adsorber Engine.

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

COUNT III

FRAUDULENT NON-DISCLOSURE (BASED ON CONNECTICUT LAW)

513. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

514. Plaintiffs bring this Count on behalf of the Connecticut Subclass.

515. The Defendants intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of the Defendants' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or the Defendants acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

516. The Defendants further affirmatively misrepresented to Plaintiffs and Subclass members in advertising and other forms of communication, including

standard and uniform material provided with each car, that the Affected Vehicles they were selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

517. The Defendants knew these representations were false when made.

518. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of the Defendants' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

519. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

520. As alleged in this Complaint, at all relevant times, the Defendants have held out the Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. The Defendants disclosed certain details about the diesel engine, but nonetheless, the Defendants intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

521. The truth about the defective emissions controls and the Defendants' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to the Defendants; Plaintiffs and the Subclass members did not know of these facts, and the Defendants actively concealed these facts from Plaintiffs and Subclass members.

522. Plaintiffs and Subclass members reasonably relied upon the Defendants' deception. They had no way of knowing that the Defendants' representations were false and/or misleading. As consumers, the Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on

their own. Rather, the Defendants intended to deceive Plaintiffs and Subclass members by concealing the true facts about the Affected Vehicle emissions.

523. The Defendants also concealed and suppressed material facts concerning what is evidently the true culture of the Defendants—a culture characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. Defendants also emphasized profits and sales above the trust that Plaintiffs and Subclass members placed in their representations. Consumers buy diesel cars from the Defendants because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

524. The Defendants' false representations were material to consumers, because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As the Defendants well knew, their customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

525. The Defendants had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to the Defendants, because the Defendants had exclusive knowledge as to such facts, and because the Defendants knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. The Defendants also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as *reduced-emissions diesel cars* and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of their vehicles, their actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and their actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Subclass members, the Defendants had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-

compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. The Defendants represented to Plaintiffs and Subclass members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

526. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect their profits and to avoid the perception that their vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost the Defendants money, and they did so at the expense of Plaintiffs and Subclass members.

527. The Defendants still have not made full and adequate disclosures, and continue to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of the Affected Vehicles.

528. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars manufactured by the Defendants, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information

concealed from them. Plaintiffs' and Subclass members' actions were justified. The Defendants were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

529. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of the Defendants' concealment of the true quality and quantity of those vehicles' emissions and the Defendants' failure to timely disclose the defect or defective design of the diesel engine system, the actual emissions qualities and quantities of the Defendants' vehicles, and the serious issues engendered by the Defendants' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Defendants' disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

530. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of the Defendants' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Defendants' brand name attached to Plaintiffs'

and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

531. Accordingly, the Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

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

J. Claims Brought on Behalf of the Delaware Subclass

COUNT I

VIOLATIONS OF THE DELAWARE CONSUMER FRAUD ACT (DEL. CODE § 2513 *ET SEQ.*)

533. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

534. Plaintiffs bring this Count on behalf of the Delaware Subclass.

535. Each Defendant is a "person" within the meaning of 6 Del. Code § 2511(7).

536. The Delaware Consumer Fraud Act ("Delaware CFA") prohibits the "act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, or the concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale, lease or advertisement of any merchandise, whether or not any person has in fact been misled, deceived or damaged thereby." 6 Del. Code § 2513(a). In the course of Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of Defendants' advertising campaigns, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, Defendants have engaged in deception, fraud, false pretense, false promise, misrepresentation, or the concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale, lease or advertisement of the Affected Vehicles.

537. In the course of the Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected

Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of the Defendants' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, the Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer; making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is; and failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

538. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the

Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

539. Plaintiffs and Subclass members reasonably relied upon the Defendants' false misrepresentations. They had no way of knowing that the Defendants' representations were false and gravely misleading. As alleged herein, the Defendants engaged in extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own.

540. The Defendants' actions as set forth above occurred in the conduct of trade or commerce.

541. The Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

542. The Defendants intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

543. The Defendants knew or should have known that their conduct violated the Delaware CFA.

544. The Defendants owed Plaintiffs and the Subclass a duty to disclose the truth about their emissions systems manipulation because the Defendants:

a. Possessed exclusive knowledge that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;

b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or

c. Made incomplete representations that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

545. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

546. The Defendants' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

547. Plaintiffs and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of Defendants' conduct in that Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Defendants' misrepresentations and omissions.

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

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

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

COUNT II

BREACH OF CONTRACT
(BASED ON DELAWARE LAW)

551. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

552. Plaintiffs bring this Count on behalf of the Delaware Subclass.

553. The Defendants' misrepresentations and omissions alleged herein, including, but not limited to, the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the Adsorber Engine and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

554. Each and every sale or lease of an Affected Vehicle constitutes a contract between FCA and the purchaser or lessee. FCA breached these contracts by, among other things, selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that they are thus less valuable than vehicles not equipped with the Adsorber Engine.

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

COUNT III

FRAUDULENT CONCEALMENT (BASED ON DELAWARE LAW)

556. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

557. Plaintiffs bring this Count on behalf of the Delaware Subclass.

558. The Defendants intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of the Defendants' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or Defendants acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

559. The Defendants further affirmatively misrepresented to Plaintiffs and Subclass members in advertising and other forms of communication, including

standard and uniform material provided with each car, that the Affected Vehicles they were selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

560. Defendants knew these representations were false when made.

561. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendants' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

562. Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

563. As alleged in this Complaint, at all relevant times, Defendants have held out the Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendants disclosed certain details about the diesel engine, but nonetheless, Defendants intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

564. The truth about the defective emissions controls and Defendants' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to Defendants; Plaintiffs and the Subclass members did not know of these facts and Defendants actively concealed these facts from Plaintiffs and Subclass members.

565. Plaintiffs and Subclass members reasonably relied upon Defendants' deception. They had no way of knowing that Defendants' representations were false and/or misleading. As consumers, Plaintiffs and Subclass members did not, and could not, unravel Defendants' deception on their own. Rather, Defendants

intended to deceive Plaintiffs and Subclass members by concealing the true facts about the Affected Vehicle emissions.

566. Defendants also concealed and suppressed material facts concerning what is evidently the true culture of Defendants—one characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. Defendants also emphasized profits and sales above the trust that Plaintiffs and Subclass members placed in their representations. Consumers buy diesel cars from Defendants because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

567. Defendants' false representations were material to consumers, because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Defendants well knew, their customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

568. Defendants had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to Defendants, because Defendants had exclusive knowledge as to such facts, and because Defendants knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. Defendants also had a duty to disclose because they made general affirmative representations about the qualities of their vehicles with respect to emissions, starting with references to them as *reduced-emissions diesel cars* and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of their vehicles, their actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and their actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Subclass members, Defendants had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a

consumer, including with respect to the emissions certifications testing their vehicles must pass. Defendants represented to Plaintiffs and Subclass members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

569. Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect their profits and to avoid the perception that the Affected Vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Defendants money, and they did so at the expense of Plaintiffs and Subclass members.

570. Defendants have still not made full and adequate disclosures, and continue to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of the Affected Vehicles.

571. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars manufactured by Defendants, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them.

Plaintiffs' and Subclass members' actions were justified. Defendants were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

572. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of Defendants' concealment of the true quality and quantity of those vehicles' emissions and Defendants' failure to timely disclose the defect or defective design of the diesel engine system, the actual emissions qualities and quantities of the vehicles, and the serious issues engendered by Defendants' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Defendants' disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

573. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of Defendants' fraudulent concealment of the defective emissions controls of the Affected Vehicles, of the unlawfully high emissions of the Affected Vehicles, and of the non-compliance with EPA emissions requirements, all of which has greatly tarnished the brand name attached to

Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

574. Accordingly, Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

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

K. Claims Brought on Behalf of the District of Columbia Subclass

COUNT I

VIOLATION OF THE CONSUMER PROTECTION PROCEDURES ACT (D.C. CODE § 28-3901 *ET SEQ.*)

576. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

577. Plaintiffs bring this Count on behalf of the D.C. Subclass.

578. Each Defendant is a "person" under the Consumer Protection Procedures Act ("District of Columbia CPPA"), D.C. Code § 28-3901(a)(1).

579. Class Members are "consumers," as defined by D.C. Code § 28-3901(1)(2), who purchased or leased one or more Affected Vehicles.

580. The Defendants' actions as set forth herein constitute "trade practices" under D.C. Code § 28-3901.

581. In the course of the Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of the Defendants' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, the Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer; making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is; and

failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

582. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

583. Plaintiffs and Subclass members reasonably relied upon the Defendants' false misrepresentations. They had no way of knowing that the Defendants' representations were false and gravely misleading. As alleged herein, the Defendants engaged in extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own.

584. The Defendants' actions as set forth above occurred in the conduct of trade or commerce.

585. The Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

586. The Defendants intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

587. The Defendants knew or should have known that their conduct violated the District of Columbia CPPA.

588. The Defendants owed Plaintiffs and the Subclass a duty to disclose the truth about their emissions systems manipulation because the Defendants:

a. Possessed exclusive knowledge that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;

b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or

c. Made incomplete representations that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

589. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had

emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

590. The Defendants' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

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

592. As a direct and proximate result of the Defendants' violations of the District of Columbia CPPA, Plaintiffs and the D.C. Subclass have suffered injury-in-fact and/or actual damage.

593. Plaintiffs and the D.C. Subclass are entitled to recover treble damages or $1,500, whichever is greater, punitive damages, reasonable attorneys' fees, and any other relief the Court deems proper, under D.C. Code § 28-3901.

594. Plaintiffs seek punitive damages against the Defendants because the Defendants' conduct evidences malice and/or egregious conduct. The Defendants maliciously and egregiously misrepresented the safety, cleanliness, efficiency and reliability of the Affected Vehicles, deceived Class Members, and concealed

material facts that only they knew, all to avoid the expense and public relations nightmare of correcting their defective and environmentally dirty Adsorber Engine.

595. The Defendants' unlawful conduct constitutes malice warranting punitive damages.

COUNT II

FRAUDULENT CONCEALMENT (BASED ON DISTRICT OF COLUMBIA LAW)

596. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

597. This claim is brought on behalf of the District of Columbia Subclass.

598. The Defendants intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, did not meet and maintain the advertised MPG rate, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of the Defendants' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or the Defendants acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

599. The Defendants further affirmatively misrepresented to Plaintiffs and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles they were selling had no significant defects, were earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

600. The Defendants knew these representations were false when made.

601. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of the Defendants' advertising campaign, non-EPA-compliant, costly in that the Plaintiffs and other Subclass members had to pay more for fuel than they reasonably expected, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

602. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, did not meet and maintain the advertised MPG rate, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those

expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

603. As alleged in this Complaint, at all relevant times, the Defendants have held out the Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. The Defendants disclosed certain details about the Adsorber Engine, but nonetheless, the Defendants intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

604. The truth about the defective emissions controls and the Defendants' manipulations of those controls, failure to meet and maintain the advertised MPG rate, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to the Defendants; Plaintiffs and the Subclass members did not know of these facts and the Defendants actively concealed these facts from Plaintiffs and Subclass members.

605. Plaintiffs and Subclass members reasonably relied upon the Defendants' deception. They had no way of knowing that the Defendants' representations were false and/or misleading. As consumers, Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own. Rather, the Defendants intended to deceive Plaintiffs and Subclass members by concealing the true facts about the Affected Vehicle emissions.

606. The Defendants also concealed and suppressed material facts concerning what is evidently the true culture of each Defendant—one characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. Defendants also emphasized profits and sales above the trust that Plaintiffs and Subclass members placed in their representations. Consumers buy diesel cars from the Defendants because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

607. The Defendants' false representations were material to consumers, because they concerned the quality and cost-effectiveness of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As the Defendants well knew,

their customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

608. The Defendants had a duty to disclose the emissions defect, defective design of emissions controls, failure to meet and maintain the advertised MPG rate, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to the Defendants, because the Defendants had exclusive knowledge as to such facts, and because the Defendants knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. The Defendants also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as *reduced-emissions diesel cars* and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of their vehicles, their actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and their actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Subclass members, the Defendants had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the

Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. The Defendants represented to Plaintiffs and Subclass members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

609. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect their profits and to avoid the perception that their vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost the Defendants money, and they did so at the expense of Plaintiffs and Subclass members.

610. The Defendants still have not made full and adequate disclosures, and continue to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of the Affected Vehicles.

611. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had

known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars manufactured by the Defendants, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. The Defendants were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

612. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of the Defendants' concealment of the true quality and quantity of those vehicles' emissions and fuel efficiency and the Defendants' failure to timely disclose the defect or defective design of the Adsorber Engine, the actual emissions qualities and quantities of the Defendants' vehicles, and the serious issues engendered by the Defendants' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Defendants' disregard for the truth and compliance with applicable federal and state law and regulations, and their failure to meet and maintain the advertised MPG rate, Plaintiffs and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

613. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of the Defendants' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Defendants' brand names, attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

614. Accordingly, the Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

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

COUNT III

BREACH OF CONTRACT
(BASED ON DISTRICT OF COLUMBIA LAW)

616. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

617. Plaintiffs bring this Count on behalf of the District of Columbia Subclass members.

618. The Defendants' misrepresentations and omissions alleged herein, including the Defendants' failure to disclose the existence of the Adsorber Engine's defect and/or defective design of emissions controls as alleged herein, and their failure to disclose that the Affected Vehicles would not meet and maintain their advertised MPG rate, caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the defective Adsorber Engine and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

619. Each and every sale or lease of an Affected Vehicle constitutes a contract between FCA and the purchaser or lessee. FCA breached these contracts by selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal

driving conditions and the existence of the Adsorber Engine's defect and/or defective design of emissions controls, including information known to FCA rendering each Affected Vehicle non-EPA-compliant, and thus less valuable than vehicles not equipped with the Adsorber Engine.

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

L. Claims Brought on Behalf of the Florida Subclass

COUNT I

VIOLATIONS OF THE FLORIDA UNFAIR AND DECEPTIVE TRADE PRACTICES ACT (FLA. STAT. § 501.201 *ET SEQ.*)

621. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

622. Plaintiffs bring this Count on behalf of the Florida Subclass.

623. Plaintiffs and the Subclass are "consumers" within the meaning of Florida Unfair and Deceptive Trade Practices Act ("Florida UDTPA"), Fla. Stat. § 501.203(7).

624. Defendants engaged in "trade or commerce" within the meaning of Fla. Stat. § 501.203(8).

625. Florida's Deceptive and Unfair Trade Practices Act prohibits "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce." Fla. Stat. § 501.204(1). Defendants participated in unfair and deceptive trade practices that violated the Florida UDTPA as described herein. In the course of Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of Defendants' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices as defined in Fla. Stat. § 501.204(1). Defendants' conduct offends established public policy, is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers, and is likely to mislead consumers.

626. In the course of the Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the

Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of the Defendants' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, the Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer; making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is; and failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

627. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

628. Plaintiffs and Subclass members reasonably relied upon the Defendants' false misrepresentations. They had no way of knowing that the Defendants' representations were false and gravely misleading. As alleged herein, the Defendants engaged in extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own.

629. The Defendants' actions as set forth above occurred in the conduct of trade or commerce.

630. The Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

631. The Defendants intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

632. The Defendants knew or should have known that their conduct violated the Florida UDTPA.

633. The Defendants owed Plaintiffs and the Subclass a duty to disclose the truth about their emissions systems manipulation because the Defendants:

a. Possessed exclusive knowledge that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;

b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or

c. Made incomplete representations that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

634. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

635. The Defendants' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

636. Plaintiffs and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of the Defendants' conduct in that Plaintiffs and the other Subclass members overpaid for

their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of the Defendants' misrepresentations and omissions.

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

638. Accordingly, the Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

COUNT II

BREACH OF CONTRACT
(BASED ON FLORIDA LAW)

639. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

640. Plaintiffs bring this Count on behalf of the Florida Subclass members.

641. The Defendants' misrepresentations and omissions alleged herein, including the Defendants' failure to disclose the existence of the Adsorber Engine's defect and/or defective design of emissions controls as alleged herein, and their failure to disclose that the Affected Vehicles would not meet and maintain their advertised MPG rate, caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent

those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the defective Adsorber Engine and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

642. Each and every sale or lease of an Affected Vehicle constitutes a contract between FCA and the purchaser or lessee. FCA breached these contracts by selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and the existence of the Adsorber Engine's defect and/or defective design of emissions controls, including information known to FCA rendering each Affected Vehicle non-EPA-compliant, and thus less valuable than vehicles not equipped with the Adsorber Engine.

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

COUNT III

FRAUDULENT CONCEALMENT (BASED ON FLORIDA LAW)

644. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

645. Plaintiffs bring this Count on behalf of the Florida Subclass.

646. The Defendants intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of the Defendants' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or the Defendants acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

647. The Defendants further affirmatively misrepresented to Plaintiffs and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles they were selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

648. The Defendants knew these representations were false when made.

649. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of the Defendants' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

650. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

651. As alleged in this Complaint, at all relevant times, the Defendants have held out the Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. The Defendants disclosed certain details about the diesel engine, but nonetheless, the Defendants intentionally failed to disclose the important facts that

the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

652. The truth about the defective emissions controls and the Defendants' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to the Defendants; Plaintiffs and the Subclass members did not know of these facts, and the Defendants actively concealed these facts from Plaintiffs and Subclass members.

653. Plaintiffs and Subclass members reasonably relied upon the Defendants' deception. They had no way of knowing that the Defendants' representations were false and/or misleading. As consumers, the Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own. Rather, the Defendants intended to deceive Plaintiffs and Subclass members by concealing the true facts about the Affected Vehicle emissions.

654. The Defendants also concealed and suppressed material facts concerning what is evidently the true culture of the Defendants—a culture

characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. Defendants also emphasized profits and sales above the trust that Plaintiffs and Subclass members placed in their representations. Consumers buy diesel cars from the Defendants because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

655. The Defendants' false representations were material to consumers, because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As the Defendants well knew, their customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

656. The Defendants had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to the Defendants, because the Defendants had exclusive knowledge as to such facts, and because the Defendants knew these facts were not known to or reasonably

discoverable by Plaintiffs or Subclass members. The Defendants also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as *reduced-emissions diesel cars* and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of their vehicles, their actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and their actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Subclass members, the Defendants had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. The Defendants represented to Plaintiffs and Subclass members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

657. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect their profits and to avoid the perception that their vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost the Defendants money, and they did so at the expense of Plaintiffs and Subclass members.

658. The Defendants still have not made full and adequate disclosures, and continue to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of the Affected Vehicles.

659. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars manufactured by the Defendants, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. The Defendants were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

660. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are

diminished in value as a result of the Defendants' concealment of the true quality and quantity of those vehicles' emissions and the Defendants' failure to timely disclose the defect or defective design of the diesel engine system, the actual emissions qualities and quantities of the Defendants' vehicles, and the serious issues engendered by the Defendants' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Defendants' disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

661. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of the Defendants' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Defendants' brand name attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

662. Accordingly, the Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

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

M. Claims Brought on Behalf of the Georgia Subclass

COUNT I

VIOLATION OF GEORGIA'S FAIR BUSINESS PRACTICES ACT (GA. CODE ANN. § 10-1-390 *ET SEQ.*)

664. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

665. This claim is made on behalf of the Georgia Subclass.

666. The Georgia Fair Business Practices Act ("Georgia FBPA") declares "[u]nfair or deceptive acts or practices in the conduct of consumer transactions and consumer acts or practices in trade or commerce" to be unlawful, Ga. Code. Ann. § 10-1-393(a), including, but not limited to, "representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have," "[r]epresenting that goods or services are of a particular standard, quality, or grade … if they are of another," and "[a]dvertising goods or services with intent not to sell them as advertised." Ga. Code. Ann. § 10-

1-393(b). Plaintiffs will make a demand in satisfaction of O.C.G.A. § 10-1-399(b), and may amend this Complaint to assert claims under the Georgia FBPA once the required notice period has elapsed. This paragraph is included for purposes of notice only and is not intended to actually assert a claim under the Georgia FBPA.

COUNT II

BREACH OF CONTRACT
(BASED ON GEORGIA LAW)

667. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

668. This claim is brought on behalf of the Georgia Subclass.

669. The Defendants' misrepresentations and omissions alleged herein, including the Defendants' failure to disclose the existence of the Adsorber Engine's defect and/or defective design of emissions controls as alleged herein, and their failure to disclose that the Affected Vehicles would not meet and maintain their advertised MPG rate, caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain

the defective Adsorber Engine and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

670. Each and every sale or lease of an Affected Vehicle constitutes a contract between FCA and the purchaser or lessee. FCA breached these contracts by selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and the existence of the Adsorber Engine's defect and/or defective design of emissions controls, including information known to FCA rendering each Affected Vehicle non-EPA-compliant, and thus less valuable than vehicles not equipped with the Adsorber Engine.

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

COUNT III

FRAUDULENT CONCEALMENT (BASED ON GEORGIA LAW)

672. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

673. This claim is brought on behalf of the Georgia Subclass.

674. The Defendants intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of the Defendants' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or the Defendants acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

675. The Defendants further affirmatively misrepresented to Plaintiffs and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles they were selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

676. The Defendants knew these representations were false when made.

677. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable

consumer would expect in light of the Defendants' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

678. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

679. As alleged in this Complaint, at all relevant times, the Defendants have held out the Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. The Defendants disclosed certain details about the diesel engine, but nonetheless, the Defendants intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants,

and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

680. The truth about the defective emissions controls and the Defendants' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to the Defendants; Plaintiffs and the Subclass members did not know of these facts, and the Defendants actively concealed these facts from Plaintiffs and Subclass members.

681. Plaintiffs and Subclass members reasonably relied upon the Defendants' deception. They had no way of knowing that the Defendants' representations were false and/or misleading. As consumers, the Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own. Rather, the Defendants intended to deceive Plaintiffs and Subclass members by concealing the true facts about the Affected Vehicle emissions.

682. The Defendants also concealed and suppressed material facts concerning what is evidently the true culture of the Defendants—a culture characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. Defendants also emphasized profits and sales above the trust that Plaintiffs and Subclass members placed in their representations.

Consumers buy diesel cars from the Defendants because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

683. The Defendants' false representations were material to consumers, because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As the Defendants well knew, their customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

684. The Defendants had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to the Defendants, because the Defendants had exclusive knowledge as to such facts, and because the Defendants knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. The Defendants also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as *reduced-emissions diesel cars* and as compliant with all laws in each country,

which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of their vehicles, their actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and their actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Subclass members, the Defendants had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. The Defendants represented to Plaintiffs and Subclass members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

685. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect their profits and to avoid the perception that their vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which

perception would hurt the brand's image and cost the Defendants money, and they did so at the expense of Plaintiffs and Subclass members.

686. The Defendants still have not made full and adequate disclosures, and continue to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of the Affected Vehicles.

687. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars manufactured by the Defendants, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. The Defendants were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

688. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of the Defendants' concealment of the true quality and quantity of those vehicles' emissions and the Defendants' failure to timely disclose the defect or defective design of the diesel engine system, the actual emissions qualities and quantities of the Defendants' vehicles, and the serious

issues engendered by the Defendants' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Defendants' disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

689. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of the Defendants' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Defendants' brand name attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

690. Accordingly, the Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

691. The Defendants' acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Subclass members' rights and the representations that the Defendants made to them, in order to enrich the Defendants. The Defendants' conduct warrants an

assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

N. Claims Brought on Behalf of the Hawaii Subclass

COUNT I

UNFAIR AND DECEPTIVE ACTS IN VIOLATION OF HAWAII LAW (HAW. REV. STAT. § 480 *ET SEQ.*)

556. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

557. This claim is brought on behalf of the Hawaii Subclass.

569. Each Defendant is a "person" under Haw. Rev. Stat. § 480-1.

570. Class Members are "consumer[s]" as defined by Haw. Rev. Stat. § 480-1, who purchased or leased one or more Affected Vehicles.

571. The Defendants' acts or practices as set forth above occurred in the conduct of trade or commerce.

572. Haw. Rev. Stat. § 480-2(a) prohibits "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce."

692. In the course of the Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would

expect in light of the Defendants' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, the Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer; making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is; and failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

693. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

694. Plaintiffs and Subclass members reasonably relied upon the Defendants' false misrepresentations. They had no way of knowing that the Defendants' representations were false and gravely misleading. As alleged herein, the Defendants engaged in extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own.

695. The Defendants' actions as set forth above occurred in the conduct of trade or commerce.

696. The Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

697. The Defendants intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

698. The Defendants knew or should have known that their conduct violated Haw. Rev. Stat. § 480 *et seq.*

699. The Defendants owed Plaintiffs and the Subclass a duty to disclose the truth about their emissions systems manipulation because the Defendants:

a. Possessed exclusive knowledge that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;

b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or

c. Made incomplete representations that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

700. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

701. Pursuant to Haw. Rev. Stat. § 480-13, Plaintiffs and the Hawaii Subclass seek monetary relief against the Defendants measured as the greater of (a) $1,000 and (b) threefold actual damages in an amount to be determined at trial.

702. Under Haw. Rev. Stat. § 480-13.5, Plaintiffs seek an additional award against the Defendants of up to $10,000 for each violation directed at a Hawaiian

elder. The Defendants knew or should have known that their conduct was directed to one or more Class Members who are elders. The Defendants' conduct caused one or more of these elders to suffer a substantial loss of property set aside for retirement or for personal or family care and maintenance, or assets essential to the health or welfare of the elder. One or more Hawaii Subclass members who are elders are substantially more vulnerable to the Defendants' conduct because of age, poor health or infirmity, impaired understanding, restricted mobility, or disability, and each of them suffered substantial physical, emotional, or economic damage resulting from the Defendants' conduct.

COUNT II

FRAUDULENT CONCEALMENT
(BASED ON HAWAII LAW)

703. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

704. This claim is brought on behalf of the Hawaii Subclass.

705. The Defendants intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of the Defendants' advertising campaign, emitted unlawfully high levels of pollutants such as NOx,

and were non-compliant with EPA emission requirements, or the Defendants acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

706. The Defendants further affirmatively misrepresented to Plaintiffs and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles they were selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

707. The Defendants knew these representations were false when made.

708. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of the Defendants' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

709. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had

emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

710. As alleged in this Complaint, at all relevant times, the Defendants have held out the Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. The Defendants disclosed certain details about the diesel engine, but nonetheless, the Defendants intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

711. The truth about the defective emissions controls and the Defendants' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to the Defendants; Plaintiffs and the Subclass members did not know of these facts, and

the Defendants actively concealed these facts from Plaintiffs and Subclass members.

712. Plaintiffs and Subclass members reasonably relied upon the Defendants' deception. They had no way of knowing that the Defendants' representations were false and/or misleading. As consumers, the Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own. Rather, the Defendants intended to deceive Plaintiffs and Subclass members by concealing the true facts about the Affected Vehicle emissions.

713. The Defendants also concealed and suppressed material facts concerning what is evidently the true culture of the Defendants—a culture characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. Defendants also emphasized profits and sales above the trust that Plaintiffs and Subclass members placed in their representations. Consumers buy diesel cars from the Defendants because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

714. The Defendants' false representations were material to consumers, because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations

regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As the Defendants well knew, their customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

715. The Defendants had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to the Defendants, because the Defendants had exclusive knowledge as to such facts, and because the Defendants knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. The Defendants also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as *reduced-emissions diesel cars* and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of their vehicles, their actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and their actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Subclass members, the Defendants had the duty to disclose not just the partial

truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. The Defendants represented to Plaintiffs and Subclass members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

716. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect their profits and to avoid the perception that their vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost the Defendants money, and they did so at the expense of Plaintiffs and Subclass members.

717. The Defendants still have not made full and adequate disclosures, and continue to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of the Affected Vehicles.

718. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars manufactured by the Defendants, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. The Defendants were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

719. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of the Defendants' concealment of the true quality and quantity of those vehicles' emissions and the Defendants' failure to timely disclose the defect or defective design of the diesel engine system, the actual emissions qualities and quantities of the Defendants' vehicles, and the serious issues engendered by the Defendants' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Defendants' disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members

who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

720. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of the Defendants' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Defendants' brand name attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

721. Accordingly, the Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

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

COUNT III

BREACH OF CONTRACT
(BASED ON HAWAII LAW)

723. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

724. This claim is brought on behalf of the Hawaii Subclass.

725. The Defendants' misrepresentations and omissions alleged herein, including the Defendants' failure to disclose the existence of the Adsorber Engine's defect and/or defective design of emissions controls as alleged herein, and their failure to disclose that the Affected Vehicles would not meet and maintain their advertised MPG rate, caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the defective Adsorber Engine and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

726. Each and every sale or lease of an Affected Vehicle constitutes a contract between FCA and the purchaser or lessee. FCA breached these contracts

by selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and the existence of the Adsorber Engine's defect and/or defective design of emissions controls, including information known to FCA rendering each Affected Vehicle non-EPA-compliant, and thus less valuable than vehicles not equipped with the Adsorber Engine.

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

O. Claims Brought on Behalf of the Idaho Subclass

COUNT I

VIOLATIONS OF THE IDAHO CONSUMER PROTECTION ACT (IDAHO CODE § 48-601 *ET SEQ.*)

728. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

729. Plaintiffs bring this Count on behalf of the Idaho Subclass.

730. Each Defendant is a "person" under the Idaho Consumer Protection Act ("Idaho CPA"), Idaho Code § 48-602(1).

731. The Defendants' acts or practices as set forth above occurred in the conduct of "trade" or "commerce" under Idaho Code § 48-602(2).

732. Idaho Code § 48-603 prohibits the following conduct in trade or commerce: engaging in any act or practice which is otherwise misleading, false, or deceptive to the consumer; and engaging in any unconscionable method, act or practice in the conduct of trade or commerce, as provided in section 48-603C.

733. In the course of the Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of the Defendants' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, the Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer; making a representation of fact or

statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is; and failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

734. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

735. Plaintiffs and Subclass members reasonably relied upon the Defendants' false misrepresentations. They had no way of knowing that the Defendants' representations were false and gravely misleading. As alleged herein, the Defendants engaged in extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own.

736. The Defendants' actions as set forth above occurred in the conduct of trade or commerce.

737. The Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

738. The Defendants intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

739. The Defendants knew or should have known that their conduct violated the Idaho CPA.

740. The Defendants owed Plaintiffs and the Subclass a duty to disclose the truth about their emissions systems manipulation because the Defendants:

a. Possessed exclusive knowledge that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;

b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or

c. Made incomplete representations that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

741. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had

emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

742. The Defendants' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

743. Plaintiffs and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of the Defendants' conduct in that Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of the Defendants' misrepresentations and omissions.

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

745. Plaintiffs also seek attorneys' fees and any other just and proper relief available under the Idaho CPA.

746. Plaintiffs also seek punitive damages against the Defendants because the Defendants' conduct evidences an extreme deviation from reasonable standards. The Defendants' unlawful conduct constitutes malice, oppression, and fraud warranting punitive damages.

COUNT II

BREACH OF CONTRACT (BASED ON IDAHO LAW)

747. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

748. Plaintiffs bring this Count on behalf of the Idaho Subclass.

749. The Defendants' misrepresentations and omissions alleged herein, including the Defendants' failure to disclose the existence of the Adsorber Engine's defect and/or defective design of emissions controls as alleged herein, and their failure to disclose that the Affected Vehicles would not meet and maintain their advertised MPG rate, caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the defective Adsorber Engine and which were not marketed as including such a

system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

750. Each and every sale or lease of an Affected Vehicle constitutes a contract between FCA and the purchaser or lessee. FCA breached these contracts by selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and the existence of the Adsorber Engine's defect and/or defective design of emissions controls, including information known to FCA rendering each Affected Vehicle non-EPA-compliant, and thus less valuable than vehicles not equipped with the Adsorber Engine.

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

COUNT III

FRAUDULENT CONCEALMENT (BASED ON IDAHO LAW)

752. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

753. This claim is brought on behalf of the Idaho Subclass.

754. The Defendants intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of the Defendants' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or the Defendants acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

755. The Defendants further affirmatively misrepresented to Plaintiffs and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles they were selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

756. The Defendants knew these representations were false when made.

757. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of the Defendants' advertising campaign, non-

EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

758. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

759. As alleged in this Complaint, at all relevant times, the Defendants have held out the Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. The Defendants disclosed certain details about the diesel engine, but nonetheless, the Defendants intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants,

and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

760. The truth about the defective emissions controls and the Defendants' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to the Defendants; Plaintiffs and the Subclass members did not know of these facts, and the Defendants actively concealed these facts from Plaintiffs and Subclass members.

761. Plaintiffs and Subclass members reasonably relied upon the Defendants' deception. They had no way of knowing that the Defendants' representations were false and/or misleading. As consumers, the Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own. Rather, the Defendants intended to deceive Plaintiffs and Subclass members by concealing the true facts about the Affected Vehicle emissions.

762. The Defendants also concealed and suppressed material facts concerning what is evidently the true culture of the Defendants—a culture characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. Defendants also emphasized profits and sales above the trust that Plaintiffs and Subclass members placed in their representations.

Consumers buy diesel cars from the Defendants because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

763. The Defendants' false representations were material to consumers, because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As the Defendants well knew, their customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

764. The Defendants had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to the Defendants, because the Defendants had exclusive knowledge as to such facts, and because the Defendants knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. The Defendants also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as *reduced-emissions diesel cars* and as compliant with all laws in each country,

which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of their vehicles, their actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and their actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Subclass members, the Defendants had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. The Defendants represented to Plaintiffs and Subclass members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

765. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect their profits and to avoid the perception that their vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which

perception would hurt the brand's image and cost the Defendants money, and they did so at the expense of Plaintiffs and Subclass members.

766. The Defendants still have not made full and adequate disclosures, and continue to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of the Affected Vehicles.

767. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars manufactured by the Defendants, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. The Defendants were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

768. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of the Defendants' concealment of the true quality and quantity of those vehicles' emissions and the Defendants' failure to timely disclose the defect or defective design of the diesel engine system, the actual emissions qualities and quantities of the Defendants' vehicles, and the serious

issues engendered by the Defendants' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Defendants' disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

769. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of the Defendants' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Defendants' brand name attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

770. Accordingly, the Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

771. The Defendants' acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Subclass members' rights and the representations that the Defendants made to them, in order to enrich the Defendants. The Defendants' conduct warrants an

assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

P. Claims Brought on Behalf of the Illinois Subclass

COUNT I

VIOLATION OF THE ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT (815 ILL. COMP. STAT. 505/1 *ET SEQ.* AND 720 ILL. COMP. STAT. 295/1A)

772. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

773. This claim is brought on behalf of the Illinois Subclass.

774. Each Defendant is a "person" as that term is defined in 815 Ill. Comp. Stat. 505/1(c).

775. Plaintiffs and the Subclass members are "consumers" as that term is defined in 815 Ill. Comp. Stat. 505/1(e).

776. The Illinois Consumer Fraud and Deceptive Business Practices Act ("Illinois CFA") prohibits "unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact … in the conduct of trade or commerce … whether

any person has in fact been misled, deceived or damaged thereby." 815 Ill. Comp. Stat. 505/2.

777. In the course of the Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of the Defendants' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, the Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer; making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is; and failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

778. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

779. Plaintiffs and Subclass members reasonably relied upon the Defendants' false misrepresentations. They had no way of knowing that the Defendants' representations were false and gravely misleading. As alleged herein, the Defendants engaged in extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own.

780. The Defendants' actions as set forth above occurred in the conduct of trade or commerce.

781. The Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

782. The Defendants intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

783. The Defendants knew or should have known that their conduct violated the Illinois CFA.

784. The Defendants owed Plaintiffs and the Subclass a duty to disclose the truth about their emissions systems manipulation because the Defendants:

a. Possessed exclusive knowledge that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;

b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or

c. Made incomplete representations that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

785. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected

Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

786. The Defendants' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

787. Plaintiffs and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of the Defendants' conduct in that Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of the Defendants' misrepresentations and omissions.

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

789. Pursuant to 815 Ill. Comp. Stat. 505/10a(a), Plaintiffs and the Subclass members seek monetary relief against the Defendants in the amount of actual damages, as well as punitive damages because the Defendants acted with fraud and/or malice and/or was grossly negligent.

790. Plaintiffs also seek punitive damages, attorneys' fees, and any other just and proper relief available under 815 Ill. Comp. Stat. § 505/1 *et seq.*

COUNT II

BREACH OF CONTRACT
(BASED ON ILLINOIS LAW)

791. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

792. Plaintiffs bring this Count on behalf of the Illinois Subclass.

793. The Defendants' misrepresentations and omissions alleged herein, including the Defendants' failure to disclose the existence of the Adsorber Engine's defect and/or defective design of emissions controls as alleged herein, and their failure to disclose that the Affected Vehicles would not meet and maintain their advertised MPG rate, caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the defective Adsorber Engine and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

794. Each and every sale or lease of an Affected Vehicle constitutes a contract between FCA and the purchaser or lessee. FCA breached these contracts

by selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and the existence of the Adsorber Engine's defect and/or defective design of emissions controls, including information known to FCA rendering each Affected Vehicle non-EPA-compliant, and thus less valuable than vehicles not equipped with the Adsorber Engine.

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

COUNT III

FRAUDULENT CONCEALMENT (BASED ON ILLINOIS LAW)

796. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

797. This claim is brought on behalf of the Illinois Subclass.

798. The Defendants intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants

higher than a reasonable consumer would expect in light of the Defendants' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or the Defendants acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

799. The Defendants further affirmatively misrepresented to Plaintiffs and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles they were selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

800. The Defendants knew these representations were false when made.

801. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of the Defendants' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

802. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions

and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

803. As alleged in this Complaint, at all relevant times, the Defendants have held out the Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. The Defendants disclosed certain details about the diesel engine, but nonetheless, the Defendants intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

804. The truth about the defective emissions controls and the Defendants' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to the

Defendants; Plaintiffs and the Subclass members did not know of these facts, and the Defendants actively concealed these facts from Plaintiffs and Subclass members.

805. Plaintiffs and Subclass members reasonably relied upon the Defendants' deception. They had no way of knowing that the Defendants' representations were false and/or misleading. As consumers, the Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own. Rather, the Defendants intended to deceive Plaintiffs and Subclass members by concealing the true facts about the Affected Vehicle emissions.

806. The Defendants also concealed and suppressed material facts concerning what is evidently the true culture of the Defendants—a culture characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. Defendants also emphasized profits and sales above the trust that Plaintiffs and Subclass members placed in their representations. Consumers buy diesel cars from the Defendants because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

807. The Defendants' false representations were material to consumers, because they concerned the quality of the Affected Vehicles, because they

concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As the Defendants well knew, their customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

808. The Defendants had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to the Defendants, because the Defendants had exclusive knowledge as to such facts, and because the Defendants knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. The Defendants also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as *reduced-emissions diesel cars* and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of their vehicles, their actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and their actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and

Subclass members, the Defendants had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. The Defendants represented to Plaintiffs and Subclass members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

809. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect their profits and to avoid the perception that their vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost the Defendants money, and they did so at the expense of Plaintiffs and Subclass members.

810. The Defendants still have not made full and adequate disclosures, and continue to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of the Affected Vehicles.

811. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars manufactured by the Defendants, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. The Defendants were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

812. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of the Defendants' concealment of the true quality and quantity of those vehicles' emissions and the Defendants' failure to timely disclose the defect or defective design of the diesel engine system, the actual emissions qualities and quantities of the Defendants' vehicles, and the serious issues engendered by the Defendants' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Defendants' disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members

who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

813. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of the Defendants' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Defendants' brand name attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

814. Accordingly, the Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

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

Q. Claims Brought on Behalf of the Kansas Subclass

COUNT I

VIOLATIONS OF THE KANSAS CONSUMER PROTECTION ACT (KAN. STAT. ANN. § 50-623 *ET SEQ.*)

816. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

817. Plaintiffs bring this Count on behalf of the Kansas Subclass.

645. Each Defendant is a "supplier" under the Kansas Consumer Protection Act ("Kansas CPA"), Kan. Stat. Ann. § 50-624(l).

750. Kansas Class Members are "consumers," within the meaning of Kan. Stat. Ann. § 50-624(b), who purchased or leased one or more Affected Vehicles.

751. The sale of the Affected Vehicles to the Kansas Class Members was a "consumer transaction" within the meaning of Kan. Stat. Ann. § 50-624(c).

752. The Kansas CPA states "[n]o supplier shall engage in any deceptive act or practice in connection with a consumer transaction," Kan. Stat. Ann. § 50-626(a), and that deceptive acts or practices include: (1) knowingly making representations or with reason to know that "(A) Property or services have sponsorship, approval, accessories, characteristics, ingredients, uses, benefits or quantities that they do not have;" and "(D) property or services are of particular standard, quality, grade, style or model, if they are of another which differs materially from the representation;" "(2) the willful use, in any oral or written

representation, of exaggeration, falsehood, innuendo or ambiguity as to a material fact;" and "(3) the willful failure to state a material fact, or the willful concealment, suppression or omission of a material fact." The Kansas CPA also provides that "[n]o supplier shall engage in any unconscionable act or practice in connection with a consumer transaction." Kan. Stat. Ann. § 50-627(a).

753. In the course of the Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of the Defendants' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, the Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer; making a representation of fact or statement of fact material to the transaction such that a person reasonably believes

the represented or suggested state of affairs to be other than it actually is; and failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

818. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

819. Plaintiffs and Subclass members reasonably relied upon the Defendants' false misrepresentations. They had no way of knowing that the Defendants' representations were false and gravely misleading. As alleged herein, the Defendants engaged in extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own.

820. The Defendants' actions as set forth above occurred in the conduct of trade or commerce.

821. The Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

822. The Defendants intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

823. The Defendants knew or should have known that their conduct violated the Kansas CPA.

824. The Defendants owed Plaintiffs and the Subclass a duty to disclose the truth about their emissions systems manipulation because the Defendants:

a. Possessed exclusive knowledge that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;

b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or

c. Made incomplete representations that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

825. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had

emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

826. The Defendants' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

827. Plaintiffs and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of the Defendants' conduct in that Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of the Defendants' misrepresentations and omissions.

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

754. Pursuant to Kan. Stat. Ann. § 50-634, Plaintiffs and the Kansas Class seek monetary relief against the Defendants measured as the greater of (a) actual

damages in an amount to be determined at trial and (b) statutory damages in the amount of $10,000 for each Plaintiff and Kansas Class member.

772. Plaintiffs also seek an order enjoining the Defendants' unfair, unlawful, and/or deceptive practices, declaratory relief, attorneys' fees, and any other just and proper relief available under Kan. Stat. Ann. § 50-623 *et seq*.

COUNT II

FRAUDULENT CONCEALMENT (BASED ON KANSAS LAW)

829. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

830. This claim is brought on behalf of the Kansas Subclass.

831. The Defendants intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of the Defendants' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or the Defendants acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

832. The Defendants further affirmatively misrepresented to Plaintiffs and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles they were selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

833. The Defendants knew these representations were false when made.

834. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of the Defendants' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

835. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected

Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

836. As alleged in this Complaint, at all relevant times, the Defendants have held out the Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. The Defendants disclosed certain details about the diesel engine, but nonetheless, the Defendants intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

837. The truth about the defective emissions controls and the Defendants' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to the Defendants; Plaintiffs and the Subclass members did not know of these facts, and the Defendants actively concealed these facts from Plaintiffs and Subclass members.

838. Plaintiffs and Subclass members reasonably relied upon the Defendants' deception. They had no way of knowing that the Defendants'

representations were false and/or misleading. As consumers, the Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own. Rather, the Defendants intended to deceive Plaintiffs and Subclass members by concealing the true facts about the Affected Vehicle emissions.

839. The Defendants also concealed and suppressed material facts concerning what is evidently the true culture of the Defendants—a culture characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. Defendants also emphasized profits and sales above the trust that Plaintiffs and Subclass members placed in their representations. Consumers buy diesel cars from the Defendants because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

840. The Defendants' false representations were material to consumers, because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As the Defendants well knew, their customers, including Plaintiffs and Subclass members, highly valued that the

vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

841. The Defendants had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to the Defendants, because the Defendants had exclusive knowledge as to such facts, and because the Defendants knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. The Defendants also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as reduced-emissions diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of their vehicles, their actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and their actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Subclass members, the Defendants had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products

pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. The Defendants represented to Plaintiffs and Subclass members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

842. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect their profits and to avoid the perception that their vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost the Defendants money, and they did so at the expense of Plaintiffs and Subclass members.

843. The Defendants still have not made full and adequate disclosures, and continue to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of the Affected Vehicles.

844. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars manufactured by the

Defendants, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. The Defendants were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

845. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of the Defendants' concealment of the true quality and quantity of those vehicles' emissions and the Defendants' failure to timely disclose the defect or defective design of the diesel engine system, the actual emissions qualities and quantities of the Defendants' vehicles, and the serious issues engendered by the Defendants' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Defendants' disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

846. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of the Defendants' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the

Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Defendants' brand name attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

847. Accordingly, the Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

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

COUNT III

BREACH OF CONTRACT
(BASED ON KANSAS LAW)

849. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

850. Plaintiffs bring this Count on behalf of the Kansas Subclass.

851. The Defendants' misrepresentations and omissions alleged herein, including the Defendants' failure to disclose the existence of the Adsorber

Engine's defect and/or defective design of emissions controls as alleged herein, and their failure to disclose that the Affected Vehicles would not meet and maintain their advertised MPG rate, caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the defective Adsorber Engine and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

852. Each and every sale or lease of an Affected Vehicle constitutes a contract between FCA and the purchaser or lessee. FCA breached these contracts by selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and the existence of the Adsorber Engine's defect and/or defective design of emissions controls, including information known to FCA rendering each Affected Vehicle non-EPA-compliant, and thus less valuable than vehicles not equipped with the Adsorber Engine.

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

R. Claims Brought on Behalf of the Kentucky Subclass

COUNT I

VIOLATIONS OF THE KENTUCKY CONSUMER PROTECTION ACT (KY. REV. STAT. ANN. § 367.110 *ET SEQ.*)

854. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

855. Plaintiffs bring this Count on behalf of the Kentucky Subclass.

856. Each Defendant, each Plaintiff, and each member of the Kentucky Subclass is a "person" within the meaning of the Ky. Rev. Stat. Ann. § 367.110(1).

857. The Defendants engaged in "trade" or "commerce" within the meaning of Ky. Rev. Stat. Ann. § 367.110(2).

858. The Kentucky Consumer Protection Act ("Kentucky CPA") makes unlawful "[u]nfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce." Ky. Rev. Stat. Ann. § 367.170(1). In the course of Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants

than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of the Defendants' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, Defendants engaged in deceptive business practices prohibited by the Kentucky CPA.

859. In the course of the Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of the Defendants' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, the Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer; making a representation of fact or statement of fact material to the transaction such that a person reasonably believes

the represented or suggested state of affairs to be other than it actually is; and failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

860. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

861. Plaintiffs and Subclass members reasonably relied upon the Defendants' false misrepresentations. They had no way of knowing that the Defendants' representations were false and gravely misleading. As alleged herein, the Defendants engaged in extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own.

862. The Defendants' actions as set forth above occurred in the conduct of trade or commerce.

863. The Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

864. The Defendants intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

865. The Defendants knew or should have known that their conduct violated the Kentucky CPA.

866. The Defendants owed Plaintiffs and the Subclass a duty to disclose the truth about their emissions systems manipulation because the Defendants:

a. Possessed exclusive knowledge that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;

b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or

c. Made incomplete representations that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

867. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had

emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

868. The Defendants' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

869. Plaintiffs and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of the Defendants' conduct in that Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of the Defendants' misrepresentations and omissions.

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

871. Pursuant to Ky. Rev. Stat. Ann. § 367.220, Plaintiffs and the Subclass seek to recover actual damages in an amount to be determined at trial; declaratory

relief; attorneys' fees; and any other just and proper relief available under Ky. Rev. Stat. Ann. § 367.220.

COUNT II

BREACH OF CONTRACT
(BASED ON KENTUCKY LAW)

872. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

873. Plaintiffs bring this Count on behalf of the Kentucky Subclass.

874. The Defendants' misrepresentations and omissions alleged herein, including, but not limited to, the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the defective Adsorber Engine and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

875. Each and every sale or lease of an Affected Vehicle constitutes a contract between FCA and the purchaser or lessee. FCA breached these contracts by, among other things, selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that they were thus less valuable than vehicles not equipped with the Adsorber Engine.

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

COUNT III

FRAUD BY OMISSION
(BASED ON KENTUCKY LAW)

877. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

878. This claim is brought on behalf of the Kentucky Subclass.

879. The Defendants intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants

higher than a reasonable consumer would expect in light of the Defendants' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or the Defendants acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

880. The Defendants further affirmatively misrepresented to Plaintiffs and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles they were selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

881. The Defendants knew these representations were false when made.

882. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of the Defendants' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

883. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions

and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

884. As alleged in this Complaint, at all relevant times, the Defendants have held out the Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. The Defendants disclosed certain details about the diesel engine, but nonetheless, the Defendants intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

885. The truth about the defective emissions controls and the Defendants' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to the

Defendants; Plaintiffs and the Subclass members did not know of these facts, and the Defendants actively concealed these facts from Plaintiffs and Subclass members.

886. Plaintiffs and Subclass members reasonably relied upon the Defendants' deception. They had no way of knowing that the Defendants' representations were false and/or misleading. As consumers, the Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own. Rather, the Defendants intended to deceive Plaintiffs and Subclass members by concealing the true facts about the Affected Vehicle emissions.

887. The Defendants also concealed and suppressed material facts concerning what is evidently the true culture of the Defendants—a culture characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. Defendants also emphasized profits and sales above the trust that Plaintiffs and Subclass members placed in their representations. Consumers buy diesel cars from the Defendants because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

888. The Defendants' false representations were material to consumers, because they concerned the quality of the Affected Vehicles, because they

concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As the Defendants well knew, their customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

889. The Defendants had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to the Defendants, because the Defendants had exclusive knowledge as to such facts, and because the Defendants knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. The Defendants also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as reduced-emissions diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of their vehicles, their actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and their actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and

Subclass members, the Defendants had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. The Defendants represented to Plaintiffs and Subclass members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

890. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect their profits and to avoid the perception that their vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost the Defendants money, and they did so at the expense of Plaintiffs and Subclass members.

891. The Defendants still have not made full and adequate disclosures, and continue to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of the Affected Vehicles.

892. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars manufactured by the Defendants, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. The Defendants were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

893. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of the Defendants' concealment of the true quality and quantity of those vehicles' emissions and the Defendants' failure to timely disclose the defect or defective design of the diesel engine system, the actual emissions qualities and quantities of the Defendants' vehicles, and the serious issues engendered by the Defendants' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Defendants' disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members

who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

894. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of the Defendants' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Defendants' brand name attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

895. Accordingly, the Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

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

S. Claims Brought on Behalf of the Louisiana Subclass

COUNT I

VIOLATION OF THE LOUISIANA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW (LA. STAT. ANN. § 51:1401 *ET SEQ.*)

897. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

898. This claim is brought only on behalf of members of the Louisiana Subclass.

689. The Defendants, Plaintiffs, and the Louisiana Subclass are "persons" within the meaning of the La. Stat. Ann. § 51:1402(8).

836. Plaintiffs and the Louisiana Subclass are "consumers" within the meaning of La. Stat. Ann. § 51:1402(1).

837. The Defendants engaged in "trade" or "commerce" within the meaning of La. Stat. Ann. § 51:1402(9).

838. The Louisiana Unfair Trade Practices and Consumer Protection Law ("Louisiana CPL") makes unlawful "deceptive acts or practices in the conduct of any trade or commerce." La. Stat. Ann. § 51:1405(A).

899. In the course of the Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected

Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of the Defendants' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, the Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer; making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is; and failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

900. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the

Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

901. Plaintiffs and Subclass members reasonably relied upon the Defendants' false misrepresentations. They had no way of knowing that the Defendants' representations were false and gravely misleading. As alleged herein, the Defendants engaged in extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own.

902. The Defendants' actions as set forth above occurred in the conduct of trade or commerce.

903. The Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

904. The Defendants intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

905. The Defendants knew or should have known that their conduct violated the Louisiana CPL.

906. The Defendants owed Plaintiffs and the Subclass a duty to disclose the truth about their emissions systems manipulation because the Defendants:

a. Possessed exclusive knowledge that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;

b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or

c. Made incomplete representations that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

907. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

908. As a direct and proximate result of the Defendants' violations of the Louisiana CPL, Plaintiffs and the Louisiana Subclass have suffered injury-in-fact and/or actual damage.

909. Pursuant to La. Stat. Ann. § 51:1409, Plaintiffs and the Louisiana Subclass seek to recover actual damages in an amount to be determined at trial; treble damages for the Defendants' knowing violations of the Louisiana CPL; an order enjoining the Defendants' unfair, unlawful, and/or deceptive practices; declaratory relief; attorneys' fees; and any other just and proper relief available under La. Stat. Ann. § 51:1409.

COUNT II

FRAUDULENT CONCEALMENT
(BASED ON LOUISIANA LAW)

910. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

911. This claim is brought on behalf of the Louisiana Subclass.

912. The Defendants intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of the Defendants' advertising campaign, emitted unlawfully high levels of pollutants such as NOx,

and were non-compliant with EPA emission requirements, or the Defendants acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

913. The Defendants further affirmatively misrepresented to Plaintiffs and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles they were selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

914. The Defendants knew these representations were false when made.

915. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of the Defendants' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

916. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had

emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

917. As alleged in this Complaint, at all relevant times, the Defendants have held out the Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. The Defendants disclosed certain details about the diesel engine, but nonetheless, the Defendants intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

918. The truth about the defective emissions controls and the Defendants' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to the Defendants; Plaintiffs and the Subclass members did not know of these facts, and

the Defendants actively concealed these facts from Plaintiffs and Subclass members.

919. Plaintiffs and Subclass members reasonably relied upon the Defendants' deception. They had no way of knowing that the Defendants' representations were false and/or misleading. As consumers, the Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own. Rather, the Defendants intended to deceive Plaintiffs and Subclass members by concealing the true facts about the Affected Vehicle emissions.

920. The Defendants also concealed and suppressed material facts concerning what is evidently the true culture of the Defendants—a culture characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. Defendants also emphasized profits and sales above the trust that Plaintiffs and Subclass members placed in their representations. Consumers buy diesel cars from the Defendants because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

921. The Defendants' false representations were material to consumers, because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations

regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As the Defendants well knew, their customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

922. The Defendants had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to the Defendants, because the Defendants had exclusive knowledge as to such facts, and because the Defendants knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. The Defendants also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as reduced-emissions diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of their vehicles, their actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and their actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Subclass members, the Defendants had the duty to disclose not just the partial

truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. The Defendants represented to Plaintiffs and Subclass members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

923. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect their profits and to avoid the perception that their vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost the Defendants money, and they did so at the expense of Plaintiffs and Subclass members.

924. The Defendants still have not made full and adequate disclosures, and continue to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of the Affected Vehicles.

925. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars manufactured by the Defendants, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. The Defendants were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

926. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of the Defendants' concealment of the true quality and quantity of those vehicles' emissions and the Defendants' failure to timely disclose the defect or defective design of the diesel engine system, the actual emissions qualities and quantities of the Defendants' vehicles, and the serious issues engendered by the Defendants' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Defendants' disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members

who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

927. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of the Defendants' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Defendants' brand name attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

928. Accordingly, the Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

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

COUNT III

BREACH OF CONTRACT
(BASED ON LOUISIANA LAW)

930. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

931. This claim is brought on behalf of the Louisiana Subclass.

932. The Defendants' misrepresentations and omissions alleged herein, including the Defendants' failure to disclose the existence of the Adsorber Engine's defect and/or defective design of emissions controls as alleged herein, and their failure to disclose that the Affected Vehicles would not meet and maintain their advertised MPG rate, caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the defective Adsorber Engine and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

933. Each and every sale or lease of an Affected Vehicle constitutes a contract between FCA and the purchaser or lessee. FCA breached these contracts

by selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and the existence of the Adsorber Engine's defect and/or defective design of emissions controls, including information known to FCA rendering each Affected Vehicle non-EPA-compliant, and thus less valuable than vehicles not equipped with the Adsorber Engine.

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

T. Claims Brought on Behalf of the Maine Subclass

COUNT I

VIOLATION OF MAINE UNFAIR TRADE PRACTICES ACT (ME. REV. STAT. ANN. TIT. 5 § 205-A *ET SEQ.*)

935. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

936. Plaintiffs intend to assert a claim under the Maine Unfair Trade Practices Act ("Maine UTPA") which makes unlawful "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." Me. Rev. Stat. Ann. tit. 5 § 207. Plaintiffs will make a demand in

satisfaction of Me. Rev. Stat. Ann. tit. 5, § 213(A), and may amend this Complaint to assert claims under the Maine UTPA once the required 30 days have elapsed. This paragraph is included for purposes of notice only and is not intended to actually assert a claim under the Maine UTPA.

COUNT II

FRAUDULENT CONCEALMENT (BASED ON MAINE LAW)

937. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

938. This claim is brought on behalf of the Maine Subclass.

939. The Defendants intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of the Defendants' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or the Defendants acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

940. The Defendants further affirmatively misrepresented to Plaintiffs and Subclass members in advertising and other forms of communication, including

standard and uniform material provided with each car, that the Affected Vehicles they were selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

941. The Defendants knew these representations were false when made.

942. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of the Defendants' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

943. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

944. As alleged in this Complaint, at all relevant times, the Defendants have held out the Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. The Defendants disclosed certain details about the diesel engine, but nonetheless, the Defendants intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

945. The truth about the defective emissions controls and the Defendants' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to the Defendants; Plaintiffs and the Subclass members did not know of these facts, and the Defendants actively concealed these facts from Plaintiffs and Subclass members.

946. Plaintiffs and Subclass members reasonably relied upon the Defendants' deception. They had no way of knowing that the Defendants' representations were false and/or misleading. As consumers, the Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on

their own. Rather, the Defendants intended to deceive Plaintiffs and Subclass members by concealing the true facts about the Affected Vehicle emissions.

947. The Defendants also concealed and suppressed material facts concerning what is evidently the true culture of the Defendants—a culture characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. Defendants also emphasized profits and sales above the trust that Plaintiffs and Subclass members placed in their representations. Consumers buy diesel cars from the Defendants because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

948. The Defendants' false representations were material to consumers, because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As the Defendants well knew, their customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

949. The Defendants had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to the Defendants, because the Defendants had exclusive knowledge as to such facts, and because the Defendants knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. The Defendants also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as reduced-emissions diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of their vehicles, their actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and their actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Subclass members, the Defendants had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-

compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. The Defendants represented to Plaintiffs and Subclass members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

950. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect their profits and to avoid the perception that their vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost the Defendants money, and they did so at the expense of Plaintiffs and Subclass members.

951. The Defendants still have not made full and adequate disclosures, and continue to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of the Affected Vehicles.

952. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars manufactured by the Defendants, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information

concealed from them. Plaintiffs' and Subclass members' actions were justified. The Defendants were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

953. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of the Defendants' concealment of the true quality and quantity of those vehicles' emissions and the Defendants' failure to timely disclose the defect or defective design of the diesel engine system, the actual emissions qualities and quantities of the Defendants' vehicles, and the serious issues engendered by the Defendants' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Defendants' disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

954. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of the Defendants' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Defendants' brand name attached to Plaintiffs'

and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

955. Accordingly, the Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

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

COUNT III

BREACH OF CONTRACT (BASED ON MAINE LAW)

957. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

958. This claim is brought on behalf of the Maine Subclass.

959. The Defendants' misrepresentations and omissions alleged herein, including the Defendants' failure to disclose the existence of the Adsorber Engine's defect and/or defective design of emissions controls as alleged herein, and their failure to disclose that the Affected Vehicles would not meet and

maintain their advertised MPG rate, caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the defective Adsorber Engine and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

960. Each and every sale or lease of an Affected Vehicle constitutes a contract between FCA and the purchaser or lessee. FCA breached these contracts by selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and the existence of the Adsorber Engine's defect and/or defective design of emissions controls, including information known to FCA rendering each Affected Vehicle non-EPA-compliant, and thus less valuable than vehicles not equipped with the Adsorber Engine.

961. As a direct and proximate result of FCA's breach of contract, Plaintiffs and the Subclass have been damaged in an amount to be proven at trial,

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

U. Claims Brought on Behalf of the Maryland Subclass

COUNT I

VIOLATIONS OF THE MARYLAND CONSUMER PROTECTION ACT (MD. CODE ANN. COM. LAW § 13-101 *ET SEQ.*)

962. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

963. This claim is brought only on behalf of members of the Maryland Subclass.

964. Each of the Defendants, Plaintiffs, and the Maryland Subclass are "persons" within the meaning of Md. Code Ann. Com. Law § 13-101(h).

965. The Maryland Consumer Protection Act ("Maryland CPA") provides that a person may not engage in any unfair or deceptive trade practice in the sale of any consumer good. Md. Com. Law Code § 13-303. In the course of Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, that the vehicles have a "Defeat Device," and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, Defendants engaged in unfair and deceptive trade practices. Defendants' acts and practices

offend public policy; were immoral, unethical, oppressive, or unscrupulous; caused substantial injury to consumers; had the capacity, tendency or effect of deceiving or misleading consumers; failed to state a material fact that deceives or tends to deceive; and constitute deception, fraud, false pretense, false premise, misrepresentation, or knowing concealment, suppression, or omission of any material fact with the intent that a consumer rely on the same in connection therewith.

966. In the course of the Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of the Defendants' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, the Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact

could not reasonably be known by the consumer; making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is; and failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

967. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

968. Plaintiffs and Subclass members reasonably relied upon the Defendants' false misrepresentations. They had no way of knowing that the Defendants' representations were false and gravely misleading. As alleged herein, the Defendants engaged in extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own.

969. The Defendants' actions as set forth above occurred in the conduct of trade or commerce.

970. The Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

971. The Defendants intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

972. The Defendants knew or should have known that their conduct violated the Maryland CPA.

973. The Defendants owed Plaintiffs and the Subclass a duty to disclose the truth about their emissions systems manipulation because the Defendants:

a. Possessed exclusive knowledge that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;

b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or

c. Made incomplete representations that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

974. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions

and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

975. The Defendants' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

976. Plaintiffs and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of the Defendants' conduct in that Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of the Defendants' misrepresentations and omissions.

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

978. Pursuant to Md. Code Ann. Com. Law § 13-408, Plaintiffs and the Maryland Subclass seek actual damages, attorneys' fees, and any other just and proper relief available under the Maryland CPA.

COUNT II

BREACH OF CONTRACT
(BASED ON MARYLAND LAW)

979. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

980. Plaintiffs bring this Count on behalf of the Maryland Subclass members.

981. The Defendants' misrepresentations and omissions alleged herein, including, but not limited to, the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the Adsorber Engine and which were not marketed as including such a system. Accordingly, Plaintiffs

and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

982. Each and every sale or lease of an Affected Vehicle constitutes a contract between FCA and the purchaser or lessee. FCA breached these contracts by, among other things, selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that they were thus less valuable than vehicles not equipped with the Adsorber Engine.

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

COUNT III

FRAUDULENT CONCEALMENT (BASED ON MARYLAND LAW)

984. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

985. This claim is brought on behalf of the Maryland Subclass.

986. The Defendants intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving

conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of the Defendants' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or the Defendants acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

987. The Defendants further affirmatively misrepresented to Plaintiffs and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles they were selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

988. The Defendants knew these representations were false when made.

989. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of the Defendants' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

990. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

991. As alleged in this Complaint, at all relevant times, the Defendants have held out the Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. The Defendants disclosed certain details about the diesel engine, but nonetheless, the Defendants intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

992. The truth about the defective emissions controls and the Defendants' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to the Defendants; Plaintiffs and the Subclass members did not know of these facts, and the Defendants actively concealed these facts from Plaintiffs and Subclass members.

993. Plaintiffs and Subclass members reasonably relied upon the Defendants' deception. They had no way of knowing that the Defendants' representations were false and/or misleading. As consumers, the Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own. Rather, the Defendants intended to deceive Plaintiffs and Subclass members by concealing the true facts about the Affected Vehicle emissions.

994. The Defendants also concealed and suppressed material facts concerning what is evidently the true culture of the Defendants—a culture characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. Defendants also emphasized profits and sales above the trust that Plaintiffs and Subclass members placed in their representations. Consumers buy diesel cars from the Defendants because they feel they are clean

diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

995. The Defendants' false representations were material to consumers, because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As the Defendants well knew, their customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

996. The Defendants had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to the Defendants, because the Defendants had exclusive knowledge as to such facts, and because the Defendants knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. The Defendants also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as reduced-emissions diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the

additional facts set forth above regarding the actual emissions of their vehicles, their actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and their actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Subclass members, the Defendants had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. The Defendants represented to Plaintiffs and Subclass members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

997. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect their profits and to avoid the perception that their vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which

perception would hurt the brand's image and cost the Defendants money, and they did so at the expense of Plaintiffs and Subclass members.

998. The Defendants still have not made full and adequate disclosures, and continue to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of the Affected Vehicles.

999. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars manufactured by the Defendants, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. The Defendants were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

1000. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of the Defendants' concealment of the true quality and quantity of those vehicles' emissions and the Defendants' failure to timely disclose the defect or defective design of the diesel engine system, the actual emissions qualities and quantities of the Defendants' vehicles, and the serious

issues engendered by the Defendants' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Defendants' disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1001. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of the Defendants' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Defendants' brand name attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1002. Accordingly, the Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

1003. The Defendants' acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Subclass members' rights and the representations that the Defendants made to them, in order to enrich the Defendants. The Defendants' conduct warrants an

assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

V. Claims Brought on Behalf of the Massachusetts Subclass

COUNT I

VIOLATIONS OF THE MASSACHUSETTS CONSUMER PROTECTION ACT (MASS. GEN. LAWS CH. 93A)

1004. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1005. Plaintiffs intend to assert a claim under the Massachusetts Consumer Protection Act ("MCPA"), which makes it unlawful to engage in any "[u]nfair methods of competition or deceptive acts or practices in the conduct of any trade or commerce." Mass. Gen. Laws ch. 93A, § 2(1). Plaintiffs will make a demand in satisfaction of Mass. Gen. Laws ch. 93A, § 9(3), and may amend this Complaint to assert claims under the MCPA once the required 30 days have elapsed. This paragraph is included for purposes of notice only and is not intended to actually assert a claim under the MCPA.

COUNT II

BREACH OF CONTRACT (BASED ON MASSACHUSETTS LAW)

1006. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1007. Plaintiffs bring this Count on behalf of the Massachusetts Subclass members.

1008. The Defendants' misrepresentations and omissions alleged herein, including the Defendants' failure to disclose the existence of the Adsorber Engine's defect and/or defective design of emissions controls as alleged herein, caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the Adsorber Engine and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1009. Each and every sale or lease of an Affected Vehicle constitutes a contract between FCA and the purchaser or lessee. FCA breached these contracts by selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and the existence of the diesel engine system's defect and/or

defective design of emissions controls, including information known to FCA rendering each Affected Vehicle non-EPA-compliant, and that they were thus less valuable than vehicles not equipped with the Adsorber Engine.

1010. As a direct and proximate result of FCA's breach of contract, Plaintiffs and the Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT III

FRAUDULENT CONCEALMENT (BASED ON MASSACHUSETTS LAW)

1011. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1012. This claim is brought on behalf of the Massachusetts Subclass.

1013. The Defendants intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of the Defendants' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or the Defendants acted

with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

1014. The Defendants further affirmatively misrepresented to Plaintiffs and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles they were selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

1015. The Defendants knew these representations were false when made.

1016. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of the Defendants' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1017. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were

non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1018. As alleged in this Complaint, at all relevant times, the Defendants have held out the Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. The Defendants disclosed certain details about the diesel engine, but nonetheless, the Defendants intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

1019. The truth about the defective emissions controls and the Defendants' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to the Defendants; Plaintiffs and the Subclass members did not know of these facts, and the Defendants actively concealed these facts from Plaintiffs and Subclass members.

1020. Plaintiffs and Subclass members reasonably relied upon the Defendants' deception. They had no way of knowing that the Defendants' representations were false and/or misleading. As consumers, the Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own. Rather, the Defendants intended to deceive Plaintiffs and Subclass members by concealing the true facts about the Affected Vehicle emissions.

1021. The Defendants also concealed and suppressed material facts concerning what is evidently the true culture of the Defendants—a culture characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. Defendants also emphasized profits and sales above the trust that Plaintiffs and Subclass members placed in their representations. Consumers buy diesel cars from the Defendants because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

1022. The Defendants' false representations were material to consumers, because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As the Defendants well knew, their

customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

1023. The Defendants had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to the Defendants, because the Defendants had exclusive knowledge as to such facts, and because the Defendants knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. The Defendants also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as reduced-emissions diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of their vehicles, their actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and their actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Subclass members, the Defendants had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or

leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. The Defendants represented to Plaintiffs and Subclass members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

1024. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect their profits and to avoid the perception that their vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost the Defendants money, and they did so at the expense of Plaintiffs and Subclass members.

1025. The Defendants still have not made full and adequate disclosures, and continue to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of the Affected Vehicles.

1026. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have

purchased purportedly reduced-emissions diesel cars manufactured by the Defendants, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. The Defendants were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

1027. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of the Defendants' concealment of the true quality and quantity of those vehicles' emissions and the Defendants' failure to timely disclose the defect or defective design of the diesel engine system, the actual emissions qualities and quantities of the Defendants' vehicles, and the serious issues engendered by the Defendants' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Defendants' disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1028. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of the Defendants' fraudulent concealment of the defective

emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Defendants' brand name attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1029. Accordingly, the Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

1030. The Defendants' acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Subclass members' rights and the representations that the Defendants made to them, in order to enrich the Defendants. The Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

W. Claims Brought on Behalf of the Minnesota Subclass

COUNT I

VIOLATION OF THE MINNESOTA PREVENTION OF CONSUMER FRAUD ACT (MINN. STAT. § 325F.68 *ET SEQ.*)

1031. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

1032. This claim is brought on behalf of the Minnesota Subclass.

1033. The Affected Vehicles constitute "merchandise" within the meaning of Minn. Stat. § 325F.68(2).

1034. The Minnesota Prevention of Consumer Fraud Act ("Minnesota CFA") prohibits "[t]he act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby." Minn. Stat. § 325F.69(1). The Minnesota CFA also prohibits the dissemination, directly or indirectly, of an advertisement "of any sort regarding merchandise," where that advertisement contains "any material assertion, representation, or statement of fact which is untrue, deceptive, or misleading." Minn. Stat. § 325F.67. In the course of Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of Defendants' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, Defendants used or employed a fraud, false pretense, false

promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby and disseminated advertisements containing material assertions, representations, or statements of fact which were untrue, deceptive, or misleading, all in violation of the Minnesota CFA.

1035. In the course of the Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of the Defendants' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, the Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer; making a representation of fact or

statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is; and failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

1036. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

1037. Plaintiffs and Subclass members reasonably relied upon the Defendants' false misrepresentations. They had no way of knowing that the Defendants' representations were false and gravely misleading. As alleged herein, the Defendants engaged in extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own.

1038. The Defendants' actions as set forth above occurred in the conduct of trade or commerce.

1039. The Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1040. The Defendants intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

1041. The Defendants knew or should have known that their conduct violated the Minnesota CFA.

1042. The Defendants owed Plaintiffs and the Subclass a duty to disclose the truth about their emissions systems manipulation because the Defendants:

a. Possessed exclusive knowledge that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;

b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or

c. Made incomplete representations that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

1043. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had

emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1044. The Defendants' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

1045. Plaintiffs and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of Defendants' conduct in that Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Defendants' misrepresentations and omissions.

1046. Defendants' violations present a continuing risk to Plaintiffs as well as to the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

1047. Pursuant to Minn. Stat. § 8.31(3a), Plaintiffs and the Minnesota Subclass seek actual damages, attorneys' fees, and any other just and proper relief available under the Minnesota CFA.

1048. Plaintiffs also seek punitive damages under Minn. Stat. § 549.20(1)(a) given the clear and convincing evidence that Defendants' acts show deliberate disregard for the rights of others.

COUNT II

BREACH OF CONTRACT
(BASED ON MINNESOTA LAW)

1049. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1050. Plaintiffs bring this Count on behalf of the Minnesota Subclass.

1051. The Defendants' misrepresentations and omissions alleged herein, including, but not limited to, the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the defective Adsorber Engine and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1052. Each and every sale or lease of an Affected Vehicle constitutes a contract between FCA and the purchaser or lessee. FCA breached these contracts by, among other things, selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that they were thus less valuable than vehicles not equipped with the Adsorber Engine.

1053. As a direct and proximate result of FCA's breach of contract, Plaintiffs and the Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT III

FRAUDULENT CONCEALMENT
(BASED ON MINNESOTA LAW)

1054. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1055. This claim is brought on behalf of the Minnesota Subclass.

1056. The Defendants intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants

higher than a reasonable consumer would expect in light of the Defendants' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or the Defendants acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

1057. The Defendants further affirmatively misrepresented to Plaintiffs and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles they were selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

1058. The Defendants knew these representations were false when made.

1059. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of the Defendants' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1060. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions

and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1061. As alleged in this Complaint, at all relevant times, the Defendants have held out the Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. The Defendants disclosed certain details about the diesel engine, but nonetheless, the Defendants intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

1062. The truth about the defective emissions controls and the Defendants' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to the

Defendants; Plaintiffs and the Subclass members did not know of these facts, and the Defendants actively concealed these facts from Plaintiffs and Subclass members.

1063. Plaintiffs and Subclass members reasonably relied upon the Defendants' deception. They had no way of knowing that the Defendants' representations were false and/or misleading. As consumers, the Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own. Rather, the Defendants intended to deceive Plaintiffs and Subclass members by concealing the true facts about the Affected Vehicle emissions.

1064. The Defendants also concealed and suppressed material facts concerning what is evidently the true culture of the Defendants—a culture characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. Defendants also emphasized profits and sales above the trust that Plaintiffs and Subclass members placed in their representations. Consumers buy diesel cars from the Defendants because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

1065. The Defendants' false representations were material to consumers, because they concerned the quality of the Affected Vehicles, because they

concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As the Defendants well knew, their customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

1066. The Defendants had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to the Defendants, because the Defendants had exclusive knowledge as to such facts, and because the Defendants knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. The Defendants also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as reduced-emissions diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of their vehicles, their actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and their actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and

Subclass members, the Defendants had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. The Defendants represented to Plaintiffs and Subclass members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

1067. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect their profits and to avoid the perception that their vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost the Defendants money, and they did so at the expense of Plaintiffs and Subclass members.

1068. The Defendants still have not made full and adequate disclosures, and continue to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of the Affected Vehicles.

1069. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars manufactured by the Defendants, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. The Defendants were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

1070. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of the Defendants' concealment of the true quality and quantity of those vehicles' emissions and the Defendants' failure to timely disclose the defect or defective design of the diesel engine system, the actual emissions qualities and quantities of the Defendants' vehicles, and the serious issues engendered by the Defendants' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Defendants' disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members

who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1071. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of the Defendants' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Defendants' brand name attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1072. Accordingly, the Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

1073. The Defendants' acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Subclass members' rights and the representations that the Defendants made to them, in order to enrich the Defendants. The Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

X. Claims Brought on Behalf of the Missouri Subclass

COUNT I

VIOLATIONS OF THE MISSOURI MERCHANDISING PRACTICES ACT (MO. REV. STAT. § 407.010 *ET SEQ.*)

1074. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

1075. Plaintiffs bring this Count on behalf of the Missouri Subclass.

1076. Each of the Defendants, Plaintiffs, and the Missouri Subclass are "persons" within the meaning of Mo. Rev. Stat. § 407.010(5).

1077. Each of the Defendants engaged in "trade" or "commerce" in the State of Missouri within the meaning of Mo. Rev. Stat. § 407.010(7).

1078. The Missouri Merchandising Practices Act ("Missouri MPA") makes unlawful the "act, use or employment by any person of any deception, fraud, false pretense, misrepresentation, unfair practice, or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise." Mo. Rev. Stat. § 407.020. In the course of Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of Defendants' advertising campaign,

and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, Defendants used or employed deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce, in violation of the Missouri MPA. Defendants' conduct offends public policy; is unethical, oppressive, or unscrupulous; and presents a risk of, or causes, substantial injury to consumers.

1079. In the course of the Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of the Defendants' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, the Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; failing to reveal a material fact,

the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer; making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is; and failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

1080. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

1081. Plaintiffs and Subclass members reasonably relied upon the Defendants' false misrepresentations. They had no way of knowing that the Defendants' representations were false and gravely misleading. As alleged herein, the Defendants engaged in extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own.

1082. The Defendants' actions as set forth above occurred in the conduct of trade or commerce.

1083. The Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1084. The Defendants intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

1085. The Defendants knew or should have known that their conduct violated the Missouri MPA.

1086. The Defendants owed Plaintiffs and the Subclass a duty to disclose the truth about their emissions systems manipulation because the Defendants:

a. Possessed exclusive knowledge that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;

b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or

c. Made incomplete representations that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

1087. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions

and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1088. The Defendants' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

1089. Plaintiffs and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of the Defendants' conduct in that Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of the Defendants' misrepresentations and omissions.

1090. The Defendants' violations present a continuing risk to Plaintiffs as well as to the general public. The Defendants' unlawful acts and practices complained of herein affect the public interest.

1091. The Defendants are liable to Plaintiffs and the Missouri Subclass for damages in amounts to be proven at trial, including attorneys' fees, costs, and punitive damages, and any other just and proper relief under Mo. Rev. Stat. § 407.025.

COUNT II

BREACH OF CONTRACT (BASED ON MISSOURI LAW)

1092. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1093. Plaintiffs bring this Count on behalf of the Missouri Subclass members.

1094. The Defendants' misrepresentations and omissions alleged herein, including, but not limited to, the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the Adsorber Engine and which were not marketed as including such a system. Accordingly, Plaintiffs

and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1095. Each and every sale or lease of an Affected Vehicle constitutes a contract between FCA and the purchaser or lessee. FCA breached these contracts by, among other things, selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and is thus less valuable than vehicles not equipped with the Adsorber Engine.

1096. As a direct and proximate result of FCA's breach of contract, Plaintiffs and the Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT III

FRAUDULENT CONCEALMENT (BASED ON MISSOURI LAW)

1097. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1098. This claim is brought on behalf of the Missouri Subclass.

1099. The Defendants intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving

conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of the Defendants' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or the Defendants acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

1100. The Defendants further affirmatively misrepresented to Plaintiffs and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles they were selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

1101. The Defendants knew these representations were false when made.

1102. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of the Defendants' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1103. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1104. As alleged in this Complaint, at all relevant times, the Defendants have held out the Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. The Defendants disclosed certain details about the diesel engine, but nonetheless, the Defendants intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

1105. The truth about the defective emissions controls and the Defendants' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to the Defendants; Plaintiffs and the Subclass members did not know of these facts, and the Defendants actively concealed these facts from Plaintiffs and Subclass members.

1106. Plaintiffs and Subclass members reasonably relied upon the Defendants' deception. They had no way of knowing that the Defendants' representations were false and/or misleading. As consumers, the Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own. Rather, the Defendants intended to deceive Plaintiffs and Subclass members by concealing the true facts about the Affected Vehicle emissions.

1107. The Defendants also concealed and suppressed material facts concerning what is evidently the true culture of the Defendants—a culture characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. Defendants also emphasized profits and sales above the trust that Plaintiffs and Subclass members placed in their representations. Consumers buy diesel cars from the Defendants because they feel they are clean

diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

1108. The Defendants' false representations were material to consumers, because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As the Defendants well knew, their customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

1109. The Defendants had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to the Defendants, because the Defendants had exclusive knowledge as to such facts, and because the Defendants knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. The Defendants also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as reduced-emissions diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the

additional facts set forth above regarding the actual emissions of their vehicles, their actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and their actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Subclass members, the Defendants had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. The Defendants represented to Plaintiffs and Subclass members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

1110. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect their profits and to avoid the perception that their vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which

perception would hurt the brand's image and cost the Defendants money, and they did so at the expense of Plaintiffs and Subclass members.

1111. The Defendants still have not made full and adequate disclosures, and continue to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of the Affected Vehicles.

1112. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars manufactured by the Defendants, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. The Defendants were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

1113. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of the Defendants' concealment of the true quality and quantity of those vehicles' emissions and the Defendants' failure to timely disclose the defect or defective design of the diesel engine system, the actual emissions qualities and quantities of the Defendants' vehicles, and the serious

issues engendered by the Defendants' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Defendants' disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1114. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of the Defendants' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Defendants' brand name attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1115. Accordingly, the Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

1116. The Defendants' acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Subclass members' rights and the representations that the Defendants made to them, in order to enrich the Defendants. The Defendants' conduct warrants an

assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

Y. Claims Brought on Behalf of the Montana Subclass

COUNT I

VIOLATION OF MONTANA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT OF 1973 (MONT. CODE ANN. § 30-14-101 *ET SEQ.*)

1117. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1118. This claim is brought only on behalf of the Montana Subclass.

1119. Each of the Defendants, Plaintiffs, and the Montana Subclass are "persons" within the meaning of Mont. Code Ann. § 30-14-102(6).

1120. Montana Subclass members are "consumer[s]" under Mont. Code Ann. § 30-14-102(1).

1121. The sale or lease of the Affected Vehicles to Montana Subclass members occurred within "trade and commerce" within the meaning of Mont. Code Ann. § 30-14-102(8), and Defendants committed deceptive and unfair acts in the conduct of "trade and commerce" as defined in that statutory section.

1122. The Montana Unfair Trade Practices and Consumer Protection Act ("Montana CPA") makes unlawful any "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." Mont.

Code Ann. § 30-14-103. In the course of Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of Defendants' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, Defendants engaged in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce in violation of the Montana CPA.

1123. In the course of the Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of the Defendants' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, the Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices, including representing that Affected Vehicles have characteristics, uses, benefits,

and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer; making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is; and failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

1124. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

1125. Plaintiffs and Subclass members reasonably relied upon the Defendants' false misrepresentations. They had no way of knowing that the Defendants' representations were false and gravely misleading. As alleged herein, the Defendants engaged in extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own.

1126. The Defendants' actions as set forth above occurred in the conduct of trade or commerce.

1127. The Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1128. The Defendants intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

1129. The Defendants knew or should have known that their conduct violated the Montana CPA.

1130. The Defendants owed Plaintiffs and the Subclass a duty to disclose the truth about their emissions systems manipulation because the Defendants:

a. Possessed exclusive knowledge that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;

b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or

c. Made incomplete representations that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

1131. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1132. The Defendants' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

1133. Plaintiffs and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of the Defendants' conduct in that Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of the Defendants' misrepresentations and omissions.

1134. The Defendants' violations present a continuing risk to Plaintiffs as well as to the general public. The Defendants' unlawful acts and practices complained of herein affect the public interest.

1135. Because the Defendants' unlawful methods, acts, and practices have caused Plaintiffs and Montana Subclass members to suffer an ascertainable loss of money and property, Plaintiffs and the Subclass seek from the Defendants actual damages or $500, whichever is greater, discretionary treble damages, reasonable attorneys' fees, and any other relief the Court considers necessary or proper, under Mont. Code Ann. § 30-14-133.

COUNT II

BREACH OF CONTRACT
(BASED ON MONTANA LAW)

1136. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1137. Plaintiffs bring this Count on behalf of the Montana Subclass members.

1138. The Defendants' misrepresentations and omissions alleged herein, including, but not limited to, the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations

and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the Adsorber Engine and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1139. Each and every sale or lease of an Affected Vehicle constitutes a contract between FCA and the purchaser or lessee. FCA breached these contracts by, among other things, selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that they were thus less valuable than vehicles not equipped with the Adsorber Engine.

1140. As a direct and proximate result of FCA's breach of contract, Plaintiffs and the Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT III

FRAUDULENT CONCEALMENT (BASED ON MONTANA LAW)

1141. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1142. This claim is brought on behalf of the Montana Subclass.

1143. The Defendants intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of the Defendants' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or the Defendants acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

1144. The Defendants further affirmatively misrepresented to Plaintiffs and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles they were selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

1145. The Defendants knew these representations were false when made.

1146. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of the Defendants' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1147. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1148. As alleged in this Complaint, at all relevant times, the Defendants have held out the Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. The Defendants disclosed certain details about the diesel engine, but nonetheless, the Defendants intentionally failed to disclose the important facts that

the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

1149. The truth about the defective emissions controls and the Defendants' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to the Defendants; Plaintiffs and the Subclass members did not know of these facts, and the Defendants actively concealed these facts from Plaintiffs and Subclass members.

1150. Plaintiffs and Subclass members reasonably relied upon the Defendants' deception. They had no way of knowing that the Defendants' representations were false and/or misleading. As consumers, the Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own. Rather, the Defendants intended to deceive Plaintiffs and Subclass members by concealing the true facts about the Affected Vehicle emissions.

1151. The Defendants also concealed and suppressed material facts concerning what is evidently the true culture of the Defendants—a culture

characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. Defendants also emphasized profits and sales above the trust that Plaintiffs and Subclass members placed in their representations. Consumers buy diesel cars from the Defendants because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

1152. The Defendants' false representations were material to consumers, because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As the Defendants well knew, their customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

1153. The Defendants had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to the Defendants, because the Defendants had exclusive knowledge as to such facts, and because the Defendants knew these facts were not known to or reasonably

discoverable by Plaintiffs or Subclass members. The Defendants also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as reduced-emissions diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of their vehicles, their actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and their actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Subclass members, the Defendants had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. The Defendants represented to Plaintiffs and Subclass members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

1154. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect their profits and to avoid the perception that their vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost the Defendants money, and they did so at the expense of Plaintiffs and Subclass members.

1155. The Defendants still have not made full and adequate disclosures, and continue to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of the Affected Vehicles.

1156. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars manufactured by the Defendants, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. The Defendants were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

1157. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are

diminished in value as a result of the Defendants' concealment of the true quality and quantity of those vehicles' emissions and the Defendants' failure to timely disclose the defect or defective design of the diesel engine system, the actual emissions qualities and quantities of the Defendants' vehicles, and the serious issues engendered by the Defendants' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Defendants' disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1158. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of the Defendants' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Defendants' brand name attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1159. Accordingly, the Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

1160. The Defendants' acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Subclass members' rights and the representations that the Defendants made to them, in order to enrich the Defendants. The Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

Z. Claims Brought on Behalf of the Nebraska Subclass

COUNT I

VIOLATION OF THE NEBRASKA CONSUMER PROTECTION ACT (NEB. REV. STAT. § 59-1601 *ET SEQ.*)

1161. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1162. This claim is brought on behalf of the Nebraska Subclass.

1163. The Defendants, Plaintiffs and Nebraska Class Members are "person[s]" under the Nebraska Consumer Protection Act ("Nebraska CPA"), Neb. Rev. Stat. § 59-1601(1).

1164. The Defendants' actions as set forth herein occurred in the conduct of trade or commerce as defined under Neb. Rev. Stat. § 59-1601(2).

1165. The Nebraska CPA prohibits "unfair or deceptive acts or practices in the conduct of any trade or commerce." Neb. Rev. Stat. § 59-1602. The

Defendants' conduct as set forth herein constitutes unfair or deceptive acts or practices.

1166. In the course of the Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of the Defendants' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, the Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer; making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is; and failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

1167. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

1168. Plaintiffs and Subclass members reasonably relied upon the Defendants' false misrepresentations. They had no way of knowing that the Defendants' representations were false and gravely misleading. As alleged herein, the Defendants engaged in extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own.

1169. The Defendants' actions as set forth above occurred in the conduct of trade or commerce.

1170. The Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1171. The Defendants intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

1172. The Defendants knew or should have known that their conduct violated the Nebraska CPA.

1173. The Defendants owed Plaintiffs and the Subclass a duty to disclose the truth about their emissions systems manipulation because the Defendants:

a. Possessed exclusive knowledge that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;

b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or

c. Made incomplete representations that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

1174. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected

Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1175. The Defendants' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

1176. Because the Defendants' conduct caused injury to Nebraska Subclass members' property through violations of the Nebraska CPA, Plaintiffs and the Nebraska Subclass seek recovery of actual damages, as well as enhanced damages up to $1,000, an order enjoining the Defendants' unfair or deceptive acts and practices, court costs, reasonable attorneys' fees, and any other just and proper relief available under Neb. Rev. Stat. § 59-1609.

COUNT II

FRAUDULENT CONCEALMENT
(BASED ON NEBRASKA LAW)

1177. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

1178. Plaintiffs bring this Count on behalf of the Nebraska Subclass.

1179. The Defendants intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of the Defendants'

advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or the Defendants acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

1180. The Defendants further affirmatively misrepresented to Plaintiffs and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles they were selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

1181. The Defendants knew these representations were false when made.

1182. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of the Defendants' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1183. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device,"

emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1184. As alleged in this Complaint, at all relevant times, the Defendants have held out the Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. The Defendants disclosed certain details about the diesel engine, but nonetheless, the Defendants intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

1185. The truth about the defective emissions controls and the Defendants' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to the Defendants; Plaintiffs and the Subclass members did not know of these facts, and

the Defendants actively concealed these facts from Plaintiffs and Subclass members.

1186. Plaintiffs and Subclass members reasonably relied upon the Defendants' deception. They had no way of knowing that the Defendants' representations were false and/or misleading. As consumers, the Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own. Rather, the Defendants intended to deceive Plaintiffs and Subclass members by concealing the true facts about the Affected Vehicle emissions.

1187. The Defendants also concealed and suppressed material facts concerning what is evidently the true culture of the Defendants—a culture characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. Defendants also emphasized profits and sales above the trust that Plaintiffs and Subclass members placed in their representations. Consumers buy diesel cars from the Defendants because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

1188. The Defendants' false representations were material to consumers, because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations

regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As the Defendants well knew, their customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

1189. The Defendants had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to the Defendants, because the Defendants had exclusive knowledge as to such facts, and because the Defendants knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. The Defendants also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as reduced-emissions diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of their vehicles, their actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and their actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Subclass members, the Defendants had the duty to disclose not just the partial

truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. The Defendants represented to Plaintiffs and Subclass members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

1190. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect their profits and to avoid the perception that their vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost the Defendants money, and they did so at the expense of Plaintiffs and Subclass members.

1191. The Defendants still have not made full and adequate disclosures, and continue to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of the Affected Vehicles.

1192. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars manufactured by the Defendants, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. The Defendants were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

1193. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of the Defendants' concealment of the true quality and quantity of those vehicles' emissions and the Defendants' failure to timely disclose the defect or defective design of the diesel engine system, the actual emissions qualities and quantities of the Defendants' vehicles, and the serious issues engendered by the Defendants' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Defendants' disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members

who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1194. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of the Defendants' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Defendants' brand name attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1195. Accordingly, the Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

1196. The Defendants' acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Subclass members' rights and the representations that the Defendants made to them, in order to enrich the Defendants. The Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT III

BREACH OF CONTRACT
(BASED ON NEBRASKA LAW)

1197. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

1198. Plaintiffs bring this Count on behalf of the Nebraska Subclass.

1199. The Defendants' misrepresentations and omissions alleged herein, including, but not limited to, the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the defective Adsorber Engine and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1200. Each and every sale or lease of an Affected Vehicle constitutes a contract between FCA and the purchaser or lessee. FCA breached these contracts by, among other things, selling or leasing to Plaintiffs and the other Subclass

members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that they were thus less valuable than vehicles not equipped with the Adsorber Engine.

1201. As a direct and proximate result of FCA's breach of contract, Plaintiffs and the Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

AA. Claims Brought on Behalf of the Nevada Subclass

COUNT I

VIOLATIONS OF THE NEVADA DECEPTIVE TRADE PRACTICES ACT (NEV. REV. STAT. § 598.0903 *ET SEQ.*)

1202. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

1203. Plaintiffs bring this Count on behalf of the Nevada Subclass.

1204. The Nevada Deceptive Trade Practices Act ("Nevada DTPA"), Nev. Rev. Stat. § 598.0903 *et seq.*, prohibits deceptive trade practices. Nev. Rev. Stat. § 598.0915 provides that a person engages in a "deceptive trade practice" if, in the course of business or occupation, the person: "5. Knowingly makes a false representation as to the characteristics, ingredients, uses, benefits, alterations or quantities of goods or services for sale or lease or a false representation as to the

sponsorship, approval, status, affiliation or connection of a person therewith"; "7. Represents that goods or services for sale or lease are of a particular standard, quality or grade, or that such goods are of a particular style or model, if he or she knows or should know that they are of another standard, quality, grade, style or model"; "9. Advertises goods or services with intent not to sell or lease them as advertised"; or "15. Knowingly makes any other false representation in a transaction." Accordingly, Defendants have violated the Nevada DTPA by knowingly representing that Affected Vehicles have uses and benefits which they do not have; representing that Affected Vehicles are of a particular standard, quality, and grade when they are not; advertising Affected Vehicles with the intent not to sell or lease them as advertised; representing that the subject of a transaction involving Affected Vehicles has been supplied in accordance with a previous representation when it has not; and knowingly making other false representations in a transaction.

1205. In the course of the Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of the Defendants' advertising campaign, and that the Affected

Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, the Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer; making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is; and failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

1206. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

1207. Plaintiffs and Subclass members reasonably relied upon the Defendants' false misrepresentations. They had no way of knowing that the

Defendants' representations were false and gravely misleading. As alleged herein, the Defendants engaged in extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own.

1208. The Defendants' actions as set forth above occurred in the conduct of trade or commerce.

1209. The Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1210. The Defendants intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

1211. The Defendants knew or should have known that their conduct violated the Nevada DTPA.

1212. The Defendants owed Plaintiffs and the Subclass a duty to disclose the truth about their emissions systems manipulation because the Defendants:

a. Possessed exclusive knowledge that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;

b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or

c. Made incomplete representations that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

1213. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1214. The Defendants' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

1215. Plaintiffs and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of the Defendants' conduct in that Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the

direct and natural consequence of the Defendants' misrepresentations and omissions.

1216. The Defendants' violations present a continuing risk to Plaintiffs as well as to the general public. The Defendants' unlawful acts and practices complained of herein affect the public interest.

1217. Accordingly, Plaintiffs and the Nevada Subclass seek their actual damages, punitive damages, court costs, attorney's fees, and all other appropriate and available remedies under the Nevada DTPA. Nev. Rev. Stat. § 41.600.

COUNT II

BREACH OF CONTRACT
(BASED ON NEVADA LAW)

1218. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1219. Plaintiffs bring this Count on behalf of the Nevada Subclass members.

1220. The Defendants' misrepresentations and omissions alleged herein, including the Defendants' failure to disclose the existence of the diesel engine system's defect and/or defective design of emissions controls as alleged herein, caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected

Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the Adsorber Engine and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1221. Each and every sale or lease of an Affected Vehicle constitutes a contract between FCA and the purchaser or lessee. FCA breached these contracts by selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and the existence of the diesel engine system's defect and/or defective design of emissions controls, including information known to FCA, rendering each Affected Vehicle non-EPA-compliant, and thus less valuable than vehicles not equipped with the Adsorber Engine.

1222. As a direct and proximate result of FCA's breach of contract, Plaintiffs and the Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT III

FRAUDULENT CONCEALMENT (BASED ON NEVADA LAW)

1223. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1224. This claim is brought on behalf of the Nevada Subclass.

1225. The Defendants intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of the Defendants' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or the Defendants acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

1226. The Defendants further affirmatively misrepresented to Plaintiffs and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles they were selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

1227. The Defendants knew these representations were false when made.

1228. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of the Defendants' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1229. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1230. As alleged in this Complaint, at all relevant times, the Defendants have held out the Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. The Defendants disclosed certain details about the diesel engine, but nonetheless, the Defendants intentionally failed to disclose the important facts that

the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

1231. The truth about the defective emissions controls and the Defendants' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to the Defendants; Plaintiffs and the Subclass members did not know of these facts, and the Defendants actively concealed these facts from Plaintiffs and Subclass members.

1232. Plaintiffs and Subclass members reasonably relied upon the Defendants' deception. They had no way of knowing that the Defendants' representations were false and/or misleading. As consumers, the Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own. Rather, the Defendants intended to deceive Plaintiffs and Subclass members by concealing the true facts about the Affected Vehicle emissions.

1233. The Defendants also concealed and suppressed material facts concerning what is evidently the true culture of the Defendants—a culture

characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. Defendants also emphasized profits and sales above the trust that Plaintiffs and Subclass members placed in their representations. Consumers buy diesel cars from the Defendants because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

1234. The Defendants' false representations were material to consumers, because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As the Defendants well knew, their customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

1235. The Defendants had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to the Defendants, because the Defendants had exclusive knowledge as to such facts, and because the Defendants knew these facts were not known to or reasonably

discoverable by Plaintiffs or Subclass members. The Defendants also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as reduced-emissions diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of their vehicles, their actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and their actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Subclass members, the Defendants had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. The Defendants represented to Plaintiffs and Subclass members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

1236. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect their profits and to avoid the perception that their vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost the Defendants money, and they did so at the expense of Plaintiffs and Subclass members.

1237. The Defendants still have not made full and adequate disclosures, and continue to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of the Affected Vehicles.

1238. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars manufactured by the Defendants, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. The Defendants were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

1239. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are

diminished in value as a result of the Defendants' concealment of the true quality and quantity of those vehicles' emissions and the Defendants' failure to timely disclose the defect or defective design of the diesel engine system, the actual emissions qualities and quantities of the Defendants' vehicles, and the serious issues engendered by the Defendants' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Defendants' disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1240. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of the Defendants' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Defendants' brand name attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1241. Accordingly, the Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

1242. The Defendants' acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Subclass members' rights and the representations that the Defendants made to them, in order to enrich the Defendants. The Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

BB. Claims Brought on Behalf of the New Hampshire Subclass under New Hampshire Law

COUNT I

VIOLATION OF N.H. CONSUMER PROTECTION ACT (N.H. REV. STAT. ANN. § 358-A:1 *ET SEQ.*)

1243. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1244. Plaintiffs bring this claim on behalf of the New Hampshire Subclass.

1245. Plaintiffs, the New Hampshire Subclass, and each of the Defendants are "persons" under the New Hampshire Consumer Protection Act ("New Hampshire CPA"), N.H. Rev. Stat. § 358-A:1.

1246. The Defendants' actions as set forth herein occurred in the conduct of trade or commerce as defined under N.H. Rev. Stat. § 358-A:1.

1247. The New Hampshire CPA prohibits a person, in the conduct of any trade or commerce, from using "any unfair or deceptive act or practice," including

"but … not limited to, the following: … (V) Representing that goods or services have … characteristics, … uses, benefits, or quantities that they do not have;" "(VII) Representing that goods or services are of a particular standard, quality, or grade, … if they are of another;" and "(IX) Advertising goods or services with intent not to sell them as advertised." N.H. Rev. Stat. § 358-A:2.

1248. In the course of the Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of the Defendants' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, the Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer; making a representation of fact or statement of fact material to the transaction such that a person reasonably believes

the represented or suggested state of affairs to be other than it actually is; and failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

1249. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

1250. Plaintiffs and Subclass members reasonably relied upon the Defendants' false misrepresentations. They had no way of knowing that the Defendants' representations were false and gravely misleading. As alleged herein, the Defendants engaged in extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own.

1251. The Defendants' actions as set forth above occurred in the conduct of trade or commerce.

1252. The Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1253. The Defendants intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

1254. The Defendants knew or should have known that their conduct violated the New Hampshire CPA.

1255. The Defendants owed Plaintiffs and the Subclass a duty to disclose the truth about their emissions systems manipulation because the Defendants:

a. Possessed exclusive knowledge that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;

b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or

c. Made incomplete representations that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

1256. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had

emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1257. The Defendants' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

1258. Because the Defendants' willful conduct caused injury to New Hampshire Subclass members' property through violations of the New Hampshire CPA, Plaintiffs and the New Hampshire Subclass seek recovery of actual damages or $1,000, whichever is greater, treble damages, costs and reasonable attorneys' fees, an order enjoining the Defendants' unfair and/or deceptive acts and practices, and any other just and proper relief under N.H. Rev. Stat. § 358-A:10.

COUNT II

FRAUDULENT CONCEALMENT
(BASED ON NEW HAMPSHIRE LAW)

1259. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1260. Plaintiffs bring this claim on behalf of the New Hampshire Subclass.

1261. The Defendants intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving

conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of the Defendants' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or the Defendants acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

1262. The Defendants further affirmatively misrepresented to Plaintiffs and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles they were selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

1263. The Defendants knew these representations were false when made.

1264. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of the Defendants' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1265. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1266. As alleged in this Complaint, at all relevant times, the Defendants have held out the Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. The Defendants disclosed certain details about the diesel engine, but nonetheless, the Defendants intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

1267. The truth about the defective emissions controls and the Defendants' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to the Defendants; Plaintiffs and the Subclass members did not know of these facts, and the Defendants actively concealed these facts from Plaintiffs and Subclass members.

1268. Plaintiffs and Subclass members reasonably relied upon the Defendants' deception. They had no way of knowing that the Defendants' representations were false and/or misleading. As consumers, the Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own. Rather, the Defendants intended to deceive Plaintiffs and Subclass members by concealing the true facts about the Affected Vehicle emissions.

1269. The Defendants also concealed and suppressed material facts concerning what is evidently the true culture of the Defendants—a culture characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. Defendants also emphasized profits and sales above the trust that Plaintiffs and Subclass members placed in their representations. Consumers buy diesel cars from the Defendants because they feel they are clean

diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

1270. The Defendants' false representations were material to consumers, because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As the Defendants well knew, their customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

1271. The Defendants had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to the Defendants, because the Defendants had exclusive knowledge as to such facts, and because the Defendants knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. The Defendants also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as reduced-emissions diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the

additional facts set forth above regarding the actual emissions of their vehicles, their actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and their actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Subclass members, the Defendants had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. The Defendants represented to Plaintiffs and Subclass members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

1272. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect their profits and to avoid the perception that their vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which

perception would hurt the brand's image and cost the Defendants money, and they did so at the expense of Plaintiffs and Subclass members.

1273. The Defendants still have not made full and adequate disclosures, and continue to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of the Affected Vehicles.

1274. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars manufactured by the Defendants, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. The Defendants were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

1275. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of the Defendants' concealment of the true quality and quantity of those vehicles' emissions and the Defendants' failure to timely disclose the defect or defective design of the diesel engine system, the actual emissions qualities and quantities of the Defendants' vehicles, and the serious

issues engendered by the Defendants' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Defendants' disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1276. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of the Defendants' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Defendants' brand name attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1277. Accordingly, the Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

1278. The Defendants' acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Subclass members' rights and the representations that the Defendants made to them, in order to enrich the Defendants. The Defendants' conduct warrants an

assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT III

BREACH OF CONTRACT
(BASED ON NEW HAMPSHIRE LAW)

1279. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1280. Plaintiffs bring this Count on behalf of the New Hampshire Subclass.

1281. The Defendants' misrepresentations and omissions alleged herein, including the Defendants' failure to disclose the existence of the diesel engine system's defect and/or defective design of emissions controls as alleged herein, caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the Adsorber Engine and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1282. Each and every sale or lease of an Affected Vehicle constitutes a contract between FCA and the purchaser or lessee. FCA breached these contracts by selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and the existence of the diesel engine system's defect and/or defective design of emissions controls, including information known to FCA, rendering each Affected Vehicle non-EPA-compliant, and thus less valuable than vehicles not equipped with the Adsorber Engine.

1283. As a direct and proximate result of FCA's breach of contract, Plaintiffs and the Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

CC. Claims Brought on Behalf of the New Jersey Subclass Under New Jersey Law

COUNT I

VIOLATIONS OF THE NEW JERSEY CONSUMER FRAUD ACT (N.J.S.A. § 56:8-1 *ET SEQ.*)

1284. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1285. Plaintiffs bring this Count on behalf of the New Jersey Subclass.

1286. The New Jersey Consumer Fraud Act, N.J.S.A. § 56:8-1 *et seq.* ("NJ CFA"), prohibits unfair or deceptive acts or practices in the conduct of any trade or commerce.

1287. In the course of the Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of the Defendants' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, the Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer; making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is; and

failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

1288. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

1289. Plaintiffs and Subclass members reasonably relied upon the Defendants' false misrepresentations. They had no way of knowing that the Defendants' representations were false and gravely misleading. As alleged herein, the Defendants engaged in extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own.

1290. The Defendants' actions as set forth above occurred in the conduct of trade or commerce.

1291. The Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1292. The Defendants intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

1293. The Defendants knew or should have known that their conduct violated the NJ CFA.

1294. The Defendants owed Plaintiffs and the Subclass a duty to disclose the truth about their emissions systems manipulation because the Defendants:

a. Possessed exclusive knowledge that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;

b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or

c. Made incomplete representations that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

1295. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had

emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1296. The Defendants' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

1297. The Defendants' conduct proximately caused injuries to Plaintiffs and the other Class and Subclass members.

1298. Plaintiffs and the other Class and Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of the Defendants' conduct in that Plaintiffs and the other Class and Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of the Defendants' misrepresentations and omissions.

1299. The Defendants' violations present a continuing risk to Plaintiffs as well as to the general public. The Defendants' unlawful acts and practices complained of herein affect the public interest.

1300. Pursuant to N.J.S.A. § 56:8-20, Plaintiffs will serve the New Jersey Attorney General with a copy of this Complaint within 10 days of filing.

COUNT II

BREACH OF CONTRACT
(BASED ON NEW JERSEY LAW)

1301. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1302. Plaintiffs bring this Count on behalf of the New Jersey Subclass.

1303. The Defendants' misrepresentations and omissions alleged herein, including, but not limited to, the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions caused Plaintiffs and the other Class members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Class members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the Adsorber Engine and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Class members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1304. Each and every sale or lease of an Affected Vehicle constitutes a contract between FCA and the purchaser or lessee. FCA breached these contracts by, among other things, selling or leasing to Plaintiffs and the other New Jersey Class members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and is thus less valuable than vehicles not equipped with the Adsorber Engine.

1305. As a direct and proximate result of FCA's breach of contract, Plaintiffs and the Class have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT III

FRAUDULENT CONCEALMENT
(BASED ON NEW JERSEY LAW)

1306. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1307. Plaintiffs bring this Count on behalf of the New Jersey Subclass.

1308. The Defendants intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants

higher than a reasonable consumer would expect in light of the Defendants' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or the Defendants acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

1309. The Defendants further affirmatively misrepresented to Plaintiffs and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles they were selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

1310. The Defendants knew these representations were false when made.

1311. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of the Defendants' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1312. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions

and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1313. As alleged in this Complaint, at all relevant times, the Defendants have held out the Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. The Defendants disclosed certain details about the diesel engine, but nonetheless, the Defendants intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

1314. The truth about the defective emissions controls and the Defendants' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to the

Defendants; Plaintiffs and the Subclass members did not know of these facts, and the Defendants actively concealed these facts from Plaintiffs and Subclass members.

1315. Plaintiffs and Subclass members reasonably relied upon the Defendants' deception. They had no way of knowing that the Defendants' representations were false and/or misleading. As consumers, the Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own. Rather, the Defendants intended to deceive Plaintiffs and Subclass members by concealing the true facts about the Affected Vehicle emissions.

1316. The Defendants also concealed and suppressed material facts concerning what is evidently the true culture of the Defendants—a culture characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. Defendants also emphasized profits and sales above the trust that Plaintiffs and Subclass members placed in their representations. Consumers buy diesel cars from the Defendants because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

1317. The Defendants' false representations were material to consumers, because they concerned the quality of the Affected Vehicles, because they

concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As the Defendants well knew, their customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

1318. The Defendants had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to the Defendants, because the Defendants had exclusive knowledge as to such facts, and because the Defendants knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. The Defendants also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as reduced-emissions diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of their vehicles, their actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and their actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and

Subclass members, the Defendants had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. The Defendants represented to Plaintiffs and Subclass members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

1319. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect their profits and to avoid the perception that their vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost the Defendants money, and they did so at the expense of Plaintiffs and Subclass members.

1320. The Defendants still have not made full and adequate disclosures, and continue to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of the Affected Vehicles.

1321. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars manufactured by the Defendants, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. The Defendants were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

1322. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of the Defendants' concealment of the true quality and quantity of those vehicles' emissions and the Defendants' failure to timely disclose the defect or defective design of the diesel engine system, the actual emissions qualities and quantities of the Defendants' vehicles, and the serious issues engendered by the Defendants' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Defendants' disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members

who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1323. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of the Defendants' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Defendants' brand name attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1324. Accordingly, the Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

1325. The Defendants' acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Subclass members' rights and the representations that the Defendants made to them, in order to enrich the Defendants. The Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

DD. Claims Brought on Behalf of the New Mexico Subclass

COUNT I

VIOLATIONS OF THE NEW MEXICO UNFAIR TRADE PRACTICES ACT (N.M. STAT. ANN. § 57-12-1 *ET SEQ.*)

1326. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1327. This claim is brought on behalf of the New Mexico Subclass.

1328. The Defendants, Plaintiffs and New Mexico Subclass members are or were "person[s]" under the New Mexico Unfair Trade Practices Act ("New Mexico UTPA"), N.M. Stat. Ann. § 57-12-2. 010549-11 816608 V1

1329. The Defendants' actions as set forth herein occurred in the conduct of trade or commerce as defined under N.M. Stat. Ann. § 57-12-2.

1330. The New Mexico UTPA makes unlawful "a false or misleading oral or written statement, visual description or other representation of any kind knowingly made in connection with the sale, lease, rental or loan of goods or services … by a person in the regular course of the person's trade or commerce, that may, tends to or does deceive or mislead any person," including but not limited to "failing to state a material fact if doing so deceives or tends to deceive." N.M. Stat. Ann. § 57-12- 2(D). The Defendants' acts and omissions described herein constitute unfair or deceptive acts or practices under N.M. Stat. Ann. § 57-12-2(D). In

addition, the Defendants' actions constitute unconscionable actions under N.M. Stat. Ann. § 57-12-2(E), since they took advantage of the lack of knowledge, ability, experience, and capacity of the New Mexico Subclass members to a grossly unfair degree.

1331. In the course of the Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of the Defendants' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, the Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer; making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is; and

failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

1332. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

1333. Plaintiffs and Subclass members reasonably relied upon the Defendants' false misrepresentations. They had no way of knowing that the Defendants' representations were false and gravely misleading. As alleged herein, the Defendants engaged in extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own.

1334. The Defendants' actions as set forth above occurred in the conduct of trade or commerce.

1335. The Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1336. The Defendants intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

1337. The Defendants knew or should have known that their conduct violated the New Mexico UTPA.

1338. The Defendants owed Plaintiffs and the Subclass a duty to disclose the truth about their emissions systems manipulation because the Defendants:

a. Possessed exclusive knowledge that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;

b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or

c. Made incomplete representations that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

1339. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had

emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1340. The Defendants' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

1341. The Defendants' violations present a continuing risk to Plaintiffs as well as to the general public. The Defendants' unlawful acts and practices complained of herein affect the public interest.

1342. As a direct and proximate result of the Defendants' violations of the New Mexico UTPA, Plaintiffs and the New Mexico Subclass have suffered injury-in-fact and/or actual damage.

1343. New Mexico Subclass members seek punitive damages against the Defendants because the Defendants' conduct was malicious, willful, reckless, wanton, fraudulent and in bad faith. Because the Defendants' conduct was malicious, willful, reckless, wanton, fraudulent and in bad faith, it warrants punitive damages.

1344. Because the Defendants' unconscionable, willful conduct caused actual harm to New Mexico Class Members, Plaintiffs and the New Mexico

Subclass seek recovery of actual damages or $100, whichever is greater, discretionary treble damages, punitive damages, and reasonable attorneys' fees and costs, as well as all other proper and just relief available under N.M. Stat. Ann. § 57-12-10.

COUNT II

FRAUDULENT CONCEALMENT (BASED ON NEW MEXICO LAW)

1345. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1346. Plaintiffs bring this Count on behalf of the New Mexico Subclass.

1347. The Defendants intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of the Defendants' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or the Defendants acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

1348. The Defendants further affirmatively misrepresented to Plaintiffs and Subclass members in advertising and other forms of communication, including

standard and uniform material provided with each car, that the Affected Vehicles they were selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

1349. The Defendants knew these representations were false when made.

1350. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of the Defendants' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1351. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1352. As alleged in this Complaint, at all relevant times, the Defendants have held out the Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. The Defendants disclosed certain details about the diesel engine, but nonetheless, the Defendants intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

1353. The truth about the defective emissions controls and the Defendants' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to the Defendants; Plaintiffs and the Subclass members did not know of these facts, and the Defendants actively concealed these facts from Plaintiffs and Subclass members.

1354. Plaintiffs and Subclass members reasonably relied upon the Defendants' deception. They had no way of knowing that the Defendants' representations were false and/or misleading. As consumers, the Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on

their own. Rather, the Defendants intended to deceive Plaintiffs and Subclass members by concealing the true facts about the Affected Vehicle emissions.

1355. The Defendants also concealed and suppressed material facts concerning what is evidently the true culture of the Defendants—a culture characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. Defendants also emphasized profits and sales above the trust that Plaintiffs and Subclass members placed in their representations. Consumers buy diesel cars from the Defendants because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

1356. The Defendants' false representations were material to consumers, because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As the Defendants well knew, their customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

1357. The Defendants had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to the Defendants, because the Defendants had exclusive knowledge as to such facts, and because the Defendants knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. The Defendants also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as reduced-emissions diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of their vehicles, their actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and their actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Subclass members, the Defendants had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-

compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. The Defendants represented to Plaintiffs and Subclass members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

1358. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect their profits and to avoid the perception that their vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost the Defendants money, and they did so at the expense of Plaintiffs and Subclass members.

1359. The Defendants still have not made full and adequate disclosures, and continue to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of the Affected Vehicles.

1360. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars manufactured by the Defendants, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information

concealed from them. Plaintiffs' and Subclass members' actions were justified. The Defendants were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

1361. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of the Defendants' concealment of the true quality and quantity of those vehicles' emissions and the Defendants' failure to timely disclose the defect or defective design of the diesel engine system, the actual emissions qualities and quantities of the Defendants' vehicles, and the serious issues engendered by the Defendants' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Defendants' disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1362. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of the Defendants' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Defendants' brand name attached to Plaintiffs'

and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1363. Accordingly, the Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

1364. The Defendants' acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Subclass members' rights and the representations that the Defendants made to them, in order to enrich the Defendants. The Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT III

BREACH OF CONTRACT
(BASED ON NEW MEXICO LAW)

1365. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1366. This claim is brought on behalf of the New Mexico Subclass.

1367. The Defendants' misrepresentations and omissions alleged herein, including the Defendants' failure to disclose the existence of the diesel engine system's defect and/or defective design of emissions controls as alleged herein, caused Plaintiffs and the other Subclass members to make their purchases or leases

of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the Adsorber Engine and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1368. Each and every sale or lease of an Affected Vehicle constitutes a contract between FCA and the purchaser or lessee. FCA breached these contracts by selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and the existence of the diesel engine system's defect and/or defective design of emissions controls, including information known to FCA, rendering each Affected Vehicle non-EPA-compliant, and thus less valuable than vehicles not equipped with the Adsorber Engine.

1369. As a direct and proximate result of FCA's breach of contract, Plaintiffs and the Subclass have been damaged in an amount to be proven at trial,

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

EE. Claims Brought on Behalf of the New York Subclass

COUNT I

VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349 (N.Y. GEN. BUS. LAW § 349)

1370. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1371. This claim is brought on behalf of the New York Subclass.

1372. New York's General Business Law § 349 makes unlawful "[d]eceptive acts or practices in the conduct of any business, trade or commerce." In the course of Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of Defendants' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. The challenged act or practice was "consumer-oriented;" (2) that the act or practice was misleading in a material way; and (3) Plaintiffs suffered injury as a result of the

deceptive act or practice. Accordingly, Defendants have violated General Business Law § 349.

1373. In the course of the Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of the Defendants' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, the Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer; making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is; and failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

1374. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

1375. Plaintiffs and Subclass members reasonably relied upon the Defendants' false misrepresentations. They had no way of knowing that the Defendants' representations were false and gravely misleading. As alleged herein, the Defendants engaged in extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own.

1376. The Defendants' actions as set forth above occurred in the conduct of trade or commerce.

1377. The Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1378. The Defendants intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

1379. The Defendants knew or should have known that their conduct violated New York's General Business Law § 349.

1380. The Defendants owed Plaintiffs and the Subclass a duty to disclose the truth about their emissions systems manipulation because the Defendants:

a. Possessed exclusive knowledge that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;

b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or

c. Made incomplete representations that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

1381. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected

Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1382. The Defendants' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

1383. Plaintiffs and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of the Defendants' conduct in that Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of the Defendants' misrepresentations and omissions.

1384. The Defendants' violations present a continuing risk to Plaintiffs as well as to the general public. The Defendants' unlawful acts and practices complained of herein affect the public interest.

1385. Pursuant to N.Y. Gen. Bus. Law § 349(h), Plaintiffs and each Subclass member may recover actual damages, in addition to three times actual damages up to $1,000 for the Defendants' willful and knowing violation of N.Y. Gen. Bus. Law § 349.

COUNT II

VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 350 (N.Y. GEN. BUS. LAW § 350)

1386. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

1387. This claim is brought on behalf of the New York Subclass.

1388. New York's General Business Law § 350 makes unlawful "[f]alse advertising in the conduct of any business, trade or commerce[.]" False advertising includes "advertising, including labeling, of a commodity … if such advertising is misleading in a material respect," taking into account "the extent to which the advertising fails to reveal facts material in the light of … representations [made] with respect to the commodity." N.Y. Gen. Bus. Law § 350-a.

1389. Defendants caused to be made or disseminated throughout New York, through advertising, marketing, and other publications, statements that were untrue or misleading, and which were known, or which by the exercise of reasonable care should have been known to Defendants, to be untrue and misleading to consumers, including Plaintiffs and the other Subclass members.

1390. Defendants have violated N.Y. Gen. Bus. Law § 350 because the misrepresentations and omissions alleged herein, including but not limited to Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1391. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

1392. Plaintiffs and Subclass members reasonably relied upon Defendants' false misrepresentations. They had no way of knowing that Defendants' representations were false and gravely misleading. As alleged herein, Defendants engaged in extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel Defendants' deception on their own.

1393. Defendants' actions as set forth above occurred in the conduct of trade or commerce.

1394. Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1395. Defendants intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

1396. Defendants knew or should have known that their conduct violated General Business Law § 350.

1397. Defendants owed Plaintiffs and the Subclass a duty to disclose the truth about their emissions systems manipulation because Defendants:

a. Possessed exclusive knowledge that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;

b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or

c. Made incomplete representations that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

1398. Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1399. Defendants' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

1400. Plaintiffs and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of Defendants' conduct in that Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Defendants' misrepresentations and omissions.

1401. Defendants' violations present a continuing risk to Plaintiffs as well as to the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

1402. Plaintiffs and the other Subclass members are entitled to recover their actual damages or $500, whichever is greater. Because Defendants acted willfully or knowingly, Plaintiffs and the other Subclass members are entitled to recover three times actual damages, up to $10,000.

COUNT III

BREACH OF CONTRACT
(BASED ON NEW YORK LAW)

1403. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1404. Plaintiffs bring this Count on behalf of the New York Subclass members.

1405. The Defendants' misrepresentations and omissions alleged herein, including the Defendants' failure to disclose the existence of the diesel engine system's defect and/or defective design of emissions controls as alleged herein, caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the Adsorber Engine and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1406. Each and every sale or lease of an Affected Vehicle constitutes a contract between FCA and the purchaser or lessee. FCA breached these contracts by selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and the existence of the diesel engine system's defect and/or

defective design of emissions controls, including information known to FCA, rendering each Affected Vehicle non-EPA-compliant, and thus less valuable than vehicles not equipped with the Adsorber Engine.

1407. As a direct and proximate result of FCA's breach of contract, Plaintiffs and the Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT IV

FRAUDULENT CONCEALMENT (BASED ON NEW YORK LAW)

1408. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1409. This claim is brought on behalf of the New York Subclass.

1410. The Defendants intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of the Defendants' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or the Defendants acted

with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

1411. The Defendants further affirmatively misrepresented to Plaintiffs and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles they were selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

1412. The Defendants knew these representations were false when made.

1413. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of the Defendants' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1414. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were

non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1415. As alleged in this Complaint, at all relevant times, the Defendants have held out the Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. The Defendants disclosed certain details about the diesel engine, but nonetheless, the Defendants intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

1416. The truth about the defective emissions controls and the Defendants' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to the Defendants; Plaintiffs and the Subclass members did not know of these facts, and the Defendants actively concealed these facts from Plaintiffs and Subclass members.

1417. Plaintiffs and Subclass members reasonably relied upon the Defendants' deception. They had no way of knowing that the Defendants' representations were false and/or misleading. As consumers, the Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own. Rather, the Defendants intended to deceive Plaintiffs and Subclass members by concealing the true facts about the Affected Vehicle emissions.

1418. The Defendants also concealed and suppressed material facts concerning what is evidently the true culture of the Defendants—a culture characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. Defendants also emphasized profits and sales above the trust that Plaintiffs and Subclass members placed in their representations. Consumers buy diesel cars from the Defendants because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

1419. The Defendants' false representations were material to consumers, because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As the Defendants well knew, their

customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

1420. The Defendants had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to the Defendants, because the Defendants had exclusive knowledge as to such facts, and because the Defendants knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. The Defendants also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as reduced-emissions diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of their vehicles, their actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and their actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Subclass members, the Defendants had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or

leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. The Defendants represented to Plaintiffs and Subclass members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

1421. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect their profits and to avoid the perception that their vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost the Defendants money, and they did so at the expense of Plaintiffs and Subclass members.

1422. The Defendants still have not made full and adequate disclosures, and continue to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of the Affected Vehicles.

1423. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have

purchased purportedly reduced-emissions diesel cars manufactured by the Defendants, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. The Defendants were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

1424. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of the Defendants' concealment of the true quality and quantity of those vehicles' emissions and the Defendants' failure to timely disclose the defect or defective design of the diesel engine system, the actual emissions qualities and quantities of the Defendants' vehicles, and the serious issues engendered by the Defendants' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Defendants' disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1425. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of the Defendants' fraudulent concealment of the defective

emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Defendants' brand name attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1426. Accordingly, the Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

1427. The Defendants' acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Subclass members' rights and the representations that the Defendants made to them, in order to enrich the Defendants. The Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

FF. Claims Brought on Behalf of the North Carolina Subclass

COUNT I

VIOLATIONS OF THE NORTH CAROLINA UNFAIR AND DECEPTIVE ACTS AND PRACTICES ACT (N.C. GEN. STAT. § 75-1.1 *ET SEQ.*)

1428. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

1429. Plaintiffs bring this Count on behalf of the North Carolina Subclass.

1430. Defendants engaged in "commerce" within the meaning of N.C. Gen. Stat. § 75-1.1(b).

1431. The North Carolina UDTPA broadly prohibits "unfair or deceptive acts or practices in or affecting commerce." N.C. Gen. Stat. § 75-1.1(a). In the course of Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of Defendants' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, Defendants engaged in unfair and deceptive trade practices because they (1) had the capacity or tendency to deceive, (2) offend public policy, (3) are immoral, unethical, oppressive or unscrupulous, or (4) cause substantial injury to consumers.

1432. In the course of the Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the

Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of the Defendants' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, the Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer; making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is; and failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

1433. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

1434. Plaintiffs and Subclass members reasonably relied upon the Defendants' false misrepresentations. They had no way of knowing that the Defendants' representations were false and gravely misleading. As alleged herein, the Defendants engaged in extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own.

1435. The Defendants' actions as set forth above occurred in the conduct of trade or commerce.

1436. The Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1437. The Defendants intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

1438. The Defendants knew or should have known that their conduct violated the North Carolina UDTPA.

1439. The Defendants owed Plaintiffs and the Subclass a duty to disclose the truth about their emissions systems manipulation because the Defendants:

a. Possessed exclusive knowledge that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;

b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or

c. Made incomplete representations that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

1440. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1441. The Defendants' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

1442. Plaintiffs and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of the Defendants' conduct in that Plaintiffs and the other Subclass members overpaid for

their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of the Defendants' misrepresentations and omissions.

1443. The Defendants' violations present a continuing risk to Plaintiffs as well as to the general public. The Defendants' unlawful acts and practices complained of herein affect the public interest.

1444. Plaintiffs seek an order for treble their actual damages, court costs, attorney's fees, and any other just and proper relief available under the North Carolina Act, N.C. Gen. Stat. § 75-16.

1445. Plaintiffs also seek punitive damages against the Defendants because the Defendants' conduct was malicious, willful, reckless, wanton, fraudulent and in bad faith.

COUNT II

BREACH OF CONTRACT
(BASED ON NORTH CAROLINA LAW)

1446. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1447. Plaintiffs bring this Count on behalf of the North Carolina Subclass members.

1448. The Defendants' misrepresentations and omissions alleged herein, including the Defendants' failure to disclose the existence of the diesel engine system's defect and/or defective design of emissions controls as alleged herein, caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the Adsorber Engine and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1449. Each and every sale or lease of an Affected Vehicle constitutes a contract between FCA and the purchaser or lessee. FCA breached these contracts by selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and the existence of the diesel engine system's defect and/or defective design of emissions controls, including information known to FCA,

rendering each Affected Vehicle non-EPA-compliant, and thus less valuable than vehicles not equipped with the Adsorber Engine.

1450. As a direct and proximate result of FCA's breach of contract, Plaintiffs and the Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT III

FRAUDULENT CONCEALMENT (BASED ON NORTH CAROLINA LAW)

1451. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1452. This claim is brought on behalf of the North Carolina Subclass.

1453. The Defendants intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of the Defendants' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or the Defendants acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

1454. The Defendants further affirmatively misrepresented to Plaintiffs and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles they were selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

1455. The Defendants knew these representations were false when made.

1456. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of the Defendants' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1457. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected

Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1458. As alleged in this Complaint, at all relevant times, the Defendants have held out the Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. The Defendants disclosed certain details about the diesel engine, but nonetheless, the Defendants intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

1459. The truth about the defective emissions controls and the Defendants' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to the Defendants; Plaintiffs and the Subclass members did not know of these facts, and the Defendants actively concealed these facts from Plaintiffs and Subclass members.

1460. Plaintiffs and Subclass members reasonably relied upon the Defendants' deception. They had no way of knowing that the Defendants'

representations were false and/or misleading. As consumers, the Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own. Rather, the Defendants intended to deceive Plaintiffs and Subclass members by concealing the true facts about the Affected Vehicle emissions.

1461. The Defendants also concealed and suppressed material facts concerning what is evidently the true culture of the Defendants—a culture characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. Defendants also emphasized profits and sales above the trust that Plaintiffs and Subclass members placed in their representations. Consumers buy diesel cars from the Defendants because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

1462. The Defendants' false representations were material to consumers, because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As the Defendants well knew, their customers, including Plaintiffs and Subclass members, highly valued that the

vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

1463. The Defendants had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to the Defendants, because the Defendants had exclusive knowledge as to such facts, and because the Defendants knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. The Defendants also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as reduced-emissions diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of their vehicles, their actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and their actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Subclass members, the Defendants had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products

pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. The Defendants represented to Plaintiffs and Subclass members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

1464. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect their profits and to avoid the perception that their vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost the Defendants money, and they did so at the expense of Plaintiffs and Subclass members.

1465. The Defendants still have not made full and adequate disclosures, and continue to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of the Affected Vehicles.

1466. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars manufactured by the

Defendants, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. The Defendants were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

1467. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of the Defendants' concealment of the true quality and quantity of those vehicles' emissions and the Defendants' failure to timely disclose the defect or defective design of the diesel engine system, the actual emissions qualities and quantities of the Defendants' vehicles, and the serious issues engendered by the Defendants' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Defendants' disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1468. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of the Defendants' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the

Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Defendants' brand name attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1469. Accordingly, the Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

1470. The Defendants' acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Subclass members' rights and the representations that the Defendants made to them, in order to enrich the Defendants. The Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

GG. Claims Brought on Behalf of the North Dakota Subclass

COUNT I

VIOLATION OF THE NORTH DAKOTA CONSUMER FRAUD ACT (N.D. CENT. CODE § 51-15-02)

1471. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1472. This claim is brought on behalf of the North Dakota Subclass.

1473. Plaintiffs, the North Dakota Subclass members, and each of the Defendants are "persons" within the meaning of N.D. Cent. Code § 51-15-02(4).

1474. The Defendants engaged in the "sale" of "merchandise" within the meaning of N.D. Cent. Code § 51-15-02(3), (5).

1475. The North Dakota Consumer Fraud Act ("North Dakota CFA") makes unlawful "[t]he act, use, or employment by any person of any deceptive act or practice, fraud, false pretense, false promise, or misrepresentation, with the intent that others rely thereon in connection with the sale or advertisement of any merchandise." N.D. Cent. Code § 51-15-02. As set forth above and below, the Defendants committed deceptive acts or practices, with the intent that North Dakota Subclass members rely thereon in connection with their purchase or lease of the Affected Vehicles.

1476. In the course of the Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of the Defendants' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, the Defendants engaged in unfair methods of competition,

unconscionable acts or practices, and unfair or deceptive acts or practices, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer; making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is; and failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

1477. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

1478. Plaintiffs and Subclass members reasonably relied upon the Defendants' false misrepresentations. They had no way of knowing that the Defendants' representations were false and gravely misleading. As alleged herein, the Defendants engaged in extremely sophisticated methods of deception.

Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own.

1479. The Defendants' actions as set forth above occurred in the conduct of trade or commerce.

1480. The Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1481. The Defendants intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

1482. The Defendants knew or should have known that their conduct violated the North Dakota CFA.

1483. The Defendants owed Plaintiffs and the Subclass a duty to disclose the truth about their emissions systems manipulation because the Defendants:

a. Possessed exclusive knowledge that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;

b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or

c. Made incomplete representations that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving

conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

1484. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1485. The Defendants' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

1486. The Defendants' violations present a continuing risk to Plaintiffs as well as to the general public. The Defendants' unlawful acts and practices complained of herein affect the public interest.

1487. As a direct and proximate result of the Defendants' violations of the North Dakota CFA, Plaintiffs and the North Dakota Subclass have suffered injury-in-fact and/or actual damage.

1488. North Dakota Subclass members seek punitive damages against the Defendants because the Defendants' conduct was egregious. The Defendants' egregious conduct warrants punitive damages.

1489. Further, the Defendants knowingly committed the conduct described above, and thus, under N.D. Cent. Code § 51-15-09, the Defendants are liable to Plaintiffs and the North Dakota Subclass for treble damages in amounts to be proven at trial, as well as attorneys' fees, costs, and disbursements. Plaintiffs further seek an order enjoining the Defendants' unfair and/or deceptive acts or practices, and other just and proper available relief under the North Dakota CFA.

COUNT II

FRAUDULENT CONCEALMENT
(BASED ON NORTH DAKOTA LAW)

1490. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1491. Plaintiffs bring this Count on behalf of the North Dakota Subclass.

1492. The Defendants intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of the Defendants' advertising campaign, emitted unlawfully high levels of pollutants such as NOx,

and were non-compliant with EPA emission requirements, or the Defendants acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

1493. The Defendants further affirmatively misrepresented to Plaintiffs and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles they were selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

1494. The Defendants knew these representations were false when made.

1495. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of the Defendants' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1496. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had

emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1497. As alleged in this Complaint, at all relevant times, the Defendants have held out the Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. The Defendants disclosed certain details about the diesel engine, but nonetheless, the Defendants intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

1498. The truth about the defective emissions controls and the Defendants' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to the Defendants; Plaintiffs and the Subclass members did not know of these facts, and

the Defendants actively concealed these facts from Plaintiffs and Subclass members.

1499. Plaintiffs and Subclass members reasonably relied upon the Defendants' deception. They had no way of knowing that the Defendants' representations were false and/or misleading. As consumers, the Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own. Rather, the Defendants intended to deceive Plaintiffs and Subclass members by concealing the true facts about the Affected Vehicle emissions.

1500. The Defendants also concealed and suppressed material facts concerning what is evidently the true culture of the Defendants—a culture characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. Defendants also emphasized profits and sales above the trust that Plaintiffs and Subclass members placed in their representations. Consumers buy diesel cars from the Defendants because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

1501. The Defendants' false representations were material to consumers, because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations

regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As the Defendants well knew, their customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

1502. The Defendants had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to the Defendants, because the Defendants had exclusive knowledge as to such facts, and because the Defendants knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. The Defendants also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as reduced-emissions diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of their vehicles, their actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and their actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Subclass members, the Defendants had the duty to disclose not just the partial

truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. The Defendants represented to Plaintiffs and Subclass members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

1503. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect their profits and to avoid the perception that their vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost the Defendants money, and they did so at the expense of Plaintiffs and Subclass members.

1504. The Defendants still have not made full and adequate disclosures, and continue to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of the Affected Vehicles.

1505. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars manufactured by the Defendants, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. The Defendants were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

1506. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of the Defendants' concealment of the true quality and quantity of those vehicles' emissions and the Defendants' failure to timely disclose the defect or defective design of the diesel engine system, the actual emissions qualities and quantities of the Defendants' vehicles, and the serious issues engendered by the Defendants' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Defendants' disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members

who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1507. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of the Defendants' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Defendants' brand name attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1508. Accordingly, the Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

1509. The Defendants' acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Subclass members' rights and the representations that the Defendants made to them, in order to enrich the Defendants. The Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT III

BREACH OF CONTRACT
(BASED ON NORTH DAKOTA LAW)

1510. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1511. This claim is brought on behalf of the North Dakota Subclass.

1512. The Defendants' misrepresentations and omissions alleged herein, including the Defendants' failure to disclose the existence of the diesel engine system's defect and/or defective design of emissions controls as alleged herein, caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the Adsorber Engine and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1513. Each and every sale or lease of an Affected Vehicle constitutes a contract between FCA and the purchaser or lessee. FCA breached these contracts by selling or leasing to Plaintiffs and the other Subclass members defective

Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and the existence of the diesel engine system's defect and/or defective design of emissions controls, including information known to FCA, rendering each Affected Vehicle non-EPA-compliant, and thus less valuable than vehicles not equipped with the Adsorber Engine.

1514. As a direct and proximate result of FCA's breach of contract, Plaintiffs and the Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

HH. Claims Brought on Behalf of the Ohio Subclass

COUNT I

VIOLATIONS OF THE OHIO CONSUMER SALES PRACTICES ACT (OHIO REV. CODE § 1345.01 *ET SEQ.*)

1515. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1516. This claim is brought on behalf of the Ohio Subclass.

1517. Plaintiffs and the other Ohio Subclass members are "consumers" as defined by the Ohio Consumer Sales Practices Act, Ohio Rev. Code § 1345.01 ("Ohio CSPA"). Each of the Defendants is a "supplier" as defined by the Ohio

CSPA. Plaintiffs' and the other Ohio Subclass members' purchases or leases of Affected Vehicles were "consumer transactions" as defined by the Ohio CSPA.

1518. The Ohio CSPA, Ohio Rev. Code § 1345.02, broadly prohibits unfair or deceptive acts or practices in connection with a consumer transaction. Specifically, and without limitation of the broad prohibition, the Act prohibits suppliers from representing (i) that goods have characteristics or uses or benefits which they do not have; (ii) that their goods are of a particular quality or grade they are not; and (iii) the subject of a consumer transaction has been supplied in accordance with a previous representation, if it has not. *Id.* The Defendants' conduct as alleged above and below constitutes unfair and/or deceptive consumer sales practices in violation of Ohio Rev. Code § 1345.02.

1519. In the course of the Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of the Defendants' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, the Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices,

including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer; making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is; and failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

1520. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

1521. Plaintiffs and Subclass members reasonably relied upon the Defendants' false misrepresentations. They had no way of knowing that the Defendants' representations were false and gravely misleading. As alleged herein, the Defendants engaged in extremely sophisticated methods of deception.

Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own.

1522. The Defendants' actions as set forth above occurred in the conduct of trade or commerce.

1523. The Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1524. The Defendants intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

1525. The Defendants knew or should have known that their conduct violated the Ohio CSPA.

1526. The Defendants owed Plaintiffs and the Subclass a duty to disclose the truth about their emissions systems manipulation because the Defendants:

a. Possessed exclusive knowledge that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;

b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or

c. Made incomplete representations that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving

conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

1527. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1528. The Defendants' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

1529. Plaintiffs and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of the Defendants' conduct in that Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of the Defendants' misrepresentations and omissions.

1530. The Defendants' violations present a continuing risk to Plaintiffs as well as to the general public. The Defendants' unlawful acts and practices complained of herein affect the public interest.

1531. Plaintiffs and the Subclass sustained damages as a result of the Defendants' unlawful acts and are, therefore, entitled to damages and other relief as provided under the Ohio CSPA.

1532. Plaintiffs also seek court costs and attorneys' fees as a result of Defendants' violations of the OCSPA as provided in Ohio Rev. Code § 1345.09.

COUNT II

BREACH OF CONTRACT
(BASED ON OHIO LAW)

1533. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1534. Plaintiffs bring this Count on behalf of Ohio Subclass members.

1535. The Defendants' misrepresentations and omissions alleged herein, including, but not limited to, the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased

these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the Adsorber Engine and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1536. Each and every sale or lease of an Affected Vehicle constitutes a contract between FCA and the purchaser or lessee. FCA breached these contracts by, among other things, selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, thus rendering each Affected Vehicle less valuable, than vehicles not equipped with the Adsorber Engine.

1537. As a direct and proximate result of FCA's breach of contract, Plaintiffs and the Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT III

FRAUDULENT CONCEALMENT (BASED ON OHIO LAW)

1538. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1539. This claim is brought on behalf of the Ohio Subclass.

1540. The Defendants intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of the Defendants' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or the Defendants acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

1541. The Defendants further affirmatively misrepresented to Plaintiffs and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles they were selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

1542. The Defendants knew these representations were false when made.

1543. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable

consumer would expect in light of the Defendants' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1544. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1545. As alleged in this Complaint, at all relevant times, the Defendants have held out the Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. The Defendants disclosed certain details about the diesel engine, but nonetheless, the Defendants intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants,

and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

1546. The truth about the defective emissions controls and the Defendants' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to the Defendants; Plaintiffs and the Subclass members did not know of these facts, and the Defendants actively concealed these facts from Plaintiffs and Subclass members.

1547. Plaintiffs and Subclass members reasonably relied upon the Defendants' deception. They had no way of knowing that the Defendants' representations were false and/or misleading. As consumers, the Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own. Rather, the Defendants intended to deceive Plaintiffs and Subclass members by concealing the true facts about the Affected Vehicle emissions.

1548. The Defendants also concealed and suppressed material facts concerning what is evidently the true culture of the Defendants—a culture characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. Defendants also emphasized profits and sales above the trust that Plaintiffs and Subclass members placed in their representations.

Consumers buy diesel cars from the Defendants because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

1549. The Defendants' false representations were material to consumers, because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As the Defendants well knew, their customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

1550. The Defendants had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to the Defendants, because the Defendants had exclusive knowledge as to such facts, and because the Defendants knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. The Defendants also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as reduced-emissions diesel cars and as compliant with all laws in each country,

which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of their vehicles, their actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and their actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Subclass members, the Defendants had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. The Defendants represented to Plaintiffs and Subclass members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

1551. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect their profits and to avoid the perception that their vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which

perception would hurt the brand's image and cost the Defendants money, and they did so at the expense of Plaintiffs and Subclass members.

1552. The Defendants still have not made full and adequate disclosures, and continue to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of the Affected Vehicles.

1553. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars manufactured by the Defendants, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. The Defendants were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

1554. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of the Defendants' concealment of the true quality and quantity of those vehicles' emissions and the Defendants' failure to timely disclose the defect or defective design of the diesel engine system, the actual emissions qualities and quantities of the Defendants' vehicles, and the serious

issues engendered by the Defendants' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Defendants' disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1555. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of the Defendants' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Defendants' brand name attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1556. Accordingly, the Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

1557. The Defendants' acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Subclass members' rights and the representations that the Defendants made to them, in order to enrich the Defendants. The Defendants' conduct warrants an

assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

II. Claims Brought on Behalf of the Oklahoma Subclass

COUNT I

VIOLATION OF OKLAHOMA CONSUMER PROTECTION ACT (OKLA. STAT. TIT. 15 § 751 *ET SEQ.*)

1558. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

1559. Plaintiffs bring this Count on behalf of the Oklahoma Subclass.

1560. Plaintiffs and the Oklahoma Subclass members are "persons" under the Oklahoma Consumer Protection Act ("Oklahoma CPA"), Okla. Stat. tit. 15 § 752.

1561. Each of the Defendants is a "person," "corporation," or "association" within the meaning of Okla. Stat. tit. 15 § 15-751(1).

1562. The sale or lease of the Affected Vehicles to the Oklahoma Subclass members was a "consumer transaction" within the meaning of Okla. Stat. tit. 15 § 752, and the Defendants' actions as set forth herein occurred in the conduct of trade or commerce.

1563. The Oklahoma CPA declares unlawful, *inter alia*, the following acts or practices when committed in the course of business: "mak[ing] a false or misleading representation, knowingly or with reason to know, as to the

characteristics, … uses, [or] benefits, of the subject of a consumer transaction," or making a false representation, "knowingly or with reason to know, that the subject of a consumer transaction is of a particular standard, style or model, if it is of another or "[a]dvertis[ing], knowingly or with reason to know, the subject of a consumer transaction with intent not to sell it as advertised;" and otherwise committing "an unfair or deceptive trade practice." *See* Okla. Stat. tit. 15, § 753.

1564. In the course of the Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of the Defendants' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, the Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer; making a representation of fact or

statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is; and failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

1565. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

1566. Plaintiffs and Subclass members reasonably relied upon the Defendants' false misrepresentations. They had no way of knowing that the Defendants' representations were false and gravely misleading. As alleged herein, the Defendants engaged in extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own.

1567. The Defendants' actions as set forth above occurred in the conduct of trade or commerce.

1568. The Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1569. The Defendants intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

1570. The Defendants knew or should have known that their conduct violated the Oklahoma CPA.

1571. The Defendants owed Plaintiffs and the Subclass a duty to disclose the truth about their emissions systems manipulation because the Defendants:

a. Possessed exclusive knowledge that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;

b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or

c. Made incomplete representations that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

1572. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had

emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1573. The Defendants' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

1574. Plaintiffs and the Oklahoma Class suffered ascertainable loss caused by the Defendants' misrepresentations and concealment of and failure to disclose material information.

1575. The Defendants' unlawful acts and practices complained of herein affect the public interest.

1576. As a direct and proximate result of the Defendants' violations of the Oklahoma CPA, Plaintiffs and the Oklahoma Class have suffered injury-in-fact and/or actual damage.

1577. The Defendants' conduct as alleged herein was unconscionable because (1) the Defendants, knowingly or with reason to know, took advantage of consumers reasonably unable to protect their interests because of their age, physical infirmity, ignorance, illiteracy, inability to understand the language of an agreement or similar factor; (2) at the time the consumer transaction was entered

into, the Defendants knew or had reason to know that price grossly exceeded the price at which similar vehicles were readily obtainable in similar transactions by like consumers; and (3) the Defendants knew or had reason to know that the transaction the Defendants induced the consumer to enter into was excessively one-sided in favor of the Defendants.

1578. Because the Defendants' unconscionable conduct caused injury to Oklahoma Subclass members, Plaintiffs and the Oklahoma Subclass seek recovery of actual damages, discretionary penalties up to $2,000 per violation, punitive damages, and reasonable attorneys' fees, under Okla. Stat. tit. 15 § 761.1. Plaintiffs and the Oklahoma Subclass further seek an order enjoining the Defendants' unfair and/or deceptive acts or practices, and any other just and proper relief available under the Oklahoma CPA.

COUNT II

FRAUDULENT CONCEALMENT (BASED ON OKLAHOMA LAW)

1579. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1580. Plaintiffs bring this Count on behalf of the Oklahoma Subclass.

1581. The Defendants intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted

pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of the Defendants' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or the Defendants acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

1582. The Defendants further affirmatively misrepresented to Plaintiffs and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles they were selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

1583. The Defendants knew these representations were false when made.

1584. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of the Defendants' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1585. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1586. As alleged in this Complaint, at all relevant times, the Defendants have held out the Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. The Defendants disclosed certain details about the diesel engine, but nonetheless, the Defendants intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

1587. The truth about the defective emissions controls and the Defendants' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to the Defendants; Plaintiffs and the Subclass members did not know of these facts, and the Defendants actively concealed these facts from Plaintiffs and Subclass members.

1588. Plaintiffs and Subclass members reasonably relied upon the Defendants' deception. They had no way of knowing that the Defendants' representations were false and/or misleading. As consumers, the Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own. Rather, the Defendants intended to deceive Plaintiffs and Subclass members by concealing the true facts about the Affected Vehicle emissions.

1589. The Defendants also concealed and suppressed material facts concerning what is evidently the true culture of the Defendants—a culture characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. Defendants also emphasized profits and sales above the trust that Plaintiffs and Subclass members placed in their representations. Consumers buy diesel cars from the Defendants because they feel they are clean

diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

1590. The Defendants' false representations were material to consumers, because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As the Defendants well knew, their customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

1591. The Defendants had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to the Defendants, because the Defendants had exclusive knowledge as to such facts, and because the Defendants knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. The Defendants also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as reduced-emissions diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the

additional facts set forth above regarding the actual emissions of their vehicles, their actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and their actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Subclass members, the Defendants had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. The Defendants represented to Plaintiffs and Subclass members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

1592. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect their profits and to avoid the perception that their vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which

perception would hurt the brand's image and cost the Defendants money, and they did so at the expense of Plaintiffs and Subclass members.

1593. The Defendants still have not made full and adequate disclosures, and continue to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of the Affected Vehicles.

1594. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars manufactured by the Defendants, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. The Defendants were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

1595. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of the Defendants' concealment of the true quality and quantity of those vehicles' emissions and the Defendants' failure to timely disclose the defect or defective design of the diesel engine system, the actual emissions qualities and quantities of the Defendants' vehicles, and the serious

issues engendered by the Defendants' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Defendants' disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1596. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of the Defendants' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Defendants' brand name attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1597. Accordingly, the Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

1598. The Defendants' acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Subclass members' rights and the representations that the Defendants made to them, in order to enrich the Defendants. The Defendants' conduct warrants an

assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT III

BREACH OF CONTRACT
(BASED ON OKLAHOMA LAW)

1599. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1600. This claim is brought on behalf of the Oklahoma Subclass.

1601. The Defendants' misrepresentations and omissions alleged herein, including the Defendants' failure to disclose the existence of the diesel engine system's defect and/or defective design of emissions controls as alleged herein, caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the Adsorber Engine and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1602. Each and every sale or lease of an Affected Vehicle constitutes a contract between FCA and the purchaser or lessee. FCA breached these contracts by selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and the existence of the diesel engine system's defect and/or defective design of emissions controls, including information known to FCA, rendering each Affected Vehicle non-EPA-compliant, and thus less valuable than vehicles not equipped with the Adsorber Engine.

1603. As a direct and proximate result of FCA's breach of contract, Plaintiffs and the Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

JJ. Claims Brought on Behalf of the Pennsylvania Subclass

COUNT I

VIOLATIONS OF THE PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW (73 P.S. § 201-1 *ET SEQ.*)

1604. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

1605. Plaintiffs bring this Count on behalf of the Pennsylvania Subclass.

1606. Plaintiffs purchased or leased their Affected Vehicle primarily for personal, family or household purposes within the meaning of 73 P.S. § 201-9.2.

1607. All of the acts complained of herein were perpetrated by Defendants in the course of trade or commerce within the meaning of 73 P.S. § 201-2(3).

1608. The Pennsylvania Unfair Trade Practices and Consumer Protection Law ("Pennsylvania CPL") prohibits unfair or deceptive acts or practices, including: (i) "Representing that goods or services have … characteristics, … [b]enefits or qualities that they do not have;" (ii) "Representing that goods or services are of a particular standard, quality or grade … if they are of another;" (iii) "Advertising goods or services with intent not to sell them as advertised;" and (iv) "Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or misunderstanding." 73 P.S. § 201-2(4).

1609. In the course of the Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of the Defendants' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, the Defendants engaged in unfair methods of competition,

unconscionable acts or practices, and unfair or deceptive acts or practices, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer; making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is; and failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

1610. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

1611. Plaintiffs and Subclass members reasonably relied upon the Defendants' false misrepresentations. They had no way of knowing that the Defendants' representations were false and gravely misleading. As alleged herein, the Defendants engaged in extremely sophisticated methods of deception.

Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own.

1612. The Defendants' actions as set forth above occurred in the conduct of trade or commerce.

1613. The Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1614. The Defendants intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

1615. The Defendants knew or should have known that their conduct violated the Pennsylvania CPL.

1616. The Defendants owed Plaintiffs and the Subclass a duty to disclose the truth about their emissions systems manipulation because the Defendants:

a. Possessed exclusive knowledge that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;

b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or

c. Made incomplete representations that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving

conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

1617. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1618. The Defendants' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

1619. Plaintiffs and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of the Defendants' conduct in that Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of the Defendants' misrepresentations and omissions.

1620. The Defendants' violations present a continuing risk to Plaintiffs as well as to the general public. The Defendants' unlawful acts and practices complained of herein affect the public interest.

1621. The Defendants are liable to Plaintiffs and the Pennsylvania Subclass for treble their actual damages or $100, whichever is greater, and attorneys' fees and costs. 73 P.S. § 201-9.2(a). Plaintiffs and the Pennsylvania Class are also entitled to an award of punitive damages given that the Defendants' conduct was malicious, wanton, willful, oppressive, or exhibited a reckless indifference to the rights of others.

COUNT II

BREACH OF CONTRACT
(BASED ON PENNSYLVANIA LAW)

1622. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1623. Plaintiffs bring this Count on behalf of the Pennsylvania Subclass.

1624. The Defendants' misrepresentations and omissions alleged herein, including, but not limited to, the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have

purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the Adsorber Engine and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1625. Each and every sale or lease of an Affected Vehicle constitutes a contract between FCA and the purchaser or lessee. FCA breached these contracts by, among other things, selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, thus rendering each Affected Vehicle less valuable, than vehicles not equipped with the Adsorber Engine.

1626. As a direct and proximate result of FCA's breach of contract, Plaintiffs and the Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT III

FRAUDULENT CONCEALMENT (BASED ON PENNSYLVANIA LAW)

1627. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

1628. This claim is brought on behalf of the Pennsylvania Subclass.

1629. The Defendants intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of the Defendants' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or the Defendants acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

1630. The Defendants further affirmatively misrepresented to Plaintiffs and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles they were selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

1631. The Defendants knew these representations were false when made.

1632. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of the Defendants' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1633. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1634. As alleged in this Complaint, at all relevant times, the Defendants have held out the Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. The Defendants disclosed certain details about the diesel engine, but nonetheless, the Defendants intentionally failed to disclose the important facts that

the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

1635. The truth about the defective emissions controls and the Defendants' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to the Defendants; Plaintiffs and the Subclass members did not know of these facts, and the Defendants actively concealed these facts from Plaintiffs and Subclass members.

1636. Plaintiffs and Subclass members reasonably relied upon the Defendants' deception. They had no way of knowing that the Defendants' representations were false and/or misleading. As consumers, the Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own. Rather, the Defendants intended to deceive Plaintiffs and Subclass members by concealing the true facts about the Affected Vehicle emissions.

1637. The Defendants also concealed and suppressed material facts concerning what is evidently the true culture of the Defendants—a culture

characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. Defendants also emphasized profits and sales above the trust that Plaintiffs and Subclass members placed in their representations. Consumers buy diesel cars from the Defendants because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

1638. The Defendants' false representations were material to consumers, because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As the Defendants well knew, their customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

1639. The Defendants had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to the Defendants, because the Defendants had exclusive knowledge as to such facts, and because the Defendants knew these facts were not known to or reasonably

discoverable by Plaintiffs or Subclass members. The Defendants also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as reduced-emissions diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of their vehicles, their actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and their actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Subclass members, the Defendants had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. The Defendants represented to Plaintiffs and Subclass members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

1640. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect their profits and to avoid the perception that their vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost the Defendants money, and they did so at the expense of Plaintiffs and Subclass members.

1641. The Defendants still have not made full and adequate disclosures, and continue to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of the Affected Vehicles.

1642. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars manufactured by the Defendants, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. The Defendants were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

1643. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are

diminished in value as a result of the Defendants' concealment of the true quality and quantity of those vehicles' emissions and the Defendants' failure to timely disclose the defect or defective design of the diesel engine system, the actual emissions qualities and quantities of the Defendants' vehicles, and the serious issues engendered by the Defendants' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Defendants' disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1644. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of the Defendants' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Defendants' brand name attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1645. Accordingly, the Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

1646. The Defendants' acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Subclass members' rights and the representations that the Defendants made to them, in order to enrich the Defendants. The Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

KK. Claims Brought on Behalf of the Rhode Island Subclass

COUNT I

VIOLATION OF THE RHODE ISLAND UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT (R.I. GEN. LAWS § 6-13.1 *ET SEQ.*)

1647. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

1648. Plaintiffs bring this Count on behalf of the Rhode Island Subclass.

1649. Plaintiffs are persons who purchased or leased one or more Affected Vehicles primarily for personal, family, or household purposes within the meaning of R.I. Gen. Laws § 6-13.1-5.2(a).

1650. Rhode Island's Unfair Trade Practices and Consumer Protection Act ("Rhode Island CPA") prohibits "unfair or deceptive acts or practices in the conduct of any trade or commerce" including: "(v) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or

quantities that they do not have"; "(vii) Representing that goods or services are of a particular standard, quality, or grade, … if they are of another"; "(ix) Advertising goods or services with intent not to sell them as advertised"; "(xii) Engaging in any other conduct that similarly creates a likelihood of confusion or of misunderstanding"; "(xiii) Engaging in any act or practice that is unfair or deceptive to the consumer"; and "(xiv) Using any other methods, acts or practices which mislead or deceive members of the public in a material respect." R.I. Gen. Laws § 6-13.1-1(6).

1651. The Defendants engaged in unlawful trade practices, including: (1) representing that the Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; (2) representing that the Affected Vehicles are of a particular standard and quality when they are not; (3) advertising the Affected Vehicles with the intent not to sell them as advertised; and (4) otherwise engaging in conduct that is unfair or deceptive and likely to deceive.

1652. The Defendants' actions as set forth above occurred in the conduct of trade or commerce.

1653. In the course of the Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the

Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of the Defendants' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, the Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer; making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is; and failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

1654. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

1655. Plaintiffs and Subclass members reasonably relied upon the Defendants' false misrepresentations. They had no way of knowing that the Defendants' representations were false and gravely misleading. As alleged herein, the Defendants engaged in extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own.

1656. The Defendants' actions as set forth above occurred in the conduct of trade or commerce.

1657. The Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1658. The Defendants intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

1659. The Defendants knew or should have known that their conduct violated the Rhode Island CPA.

1660. The Defendants owed Plaintiffs and the Subclass a duty to disclose the truth about their emissions systems manipulation because the Defendants:

a. Possessed exclusive knowledge that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;

b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or

c. Made incomplete representations that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

1661. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1662. The Defendants' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

1663. Plaintiffs and the Rhode Island Class suffered ascertainable loss caused by the Defendants' misrepresentations and concealment of and failure to disclose material information. Plaintiffs who purchased the Affected Vehicles

either would have paid less for their vehicles or would not have purchased or leased them at all.

1654. The Defendants' unlawful acts and practices complained of herein affect the public interest.

1655. As a direct and proximate result of the Defendants' violations of the Rhode Island CPA, Plaintiffs and the Rhode Island Class have suffered injury-in-fact and/or actual damage.

1656. Plaintiffs and the Rhode Island Class are entitled to recover the greater of actual damages or $200 pursuant to R.I. Gen. Laws § 6-13.1-5.2(a). Plaintiffs also seek punitive damages in the discretion of the Court because of the Defendants' egregious disregard of consumer and public safety and their long-running concealment of the serious safety defects and their tragic consequences.

COUNT II

FRAUDULENT CONCEALMENT
(BASED ON RHODE ISLAND LAW)

1664. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1665. Plaintiffs bring this Count on behalf of the Rhode Island Subclass.

1666. The Defendants intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted

pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of the Defendants' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or the Defendants acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

1667. The Defendants further affirmatively misrepresented to Plaintiffs and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles they were selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

1668. The Defendants knew these representations were false when made.

1669. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of the Defendants' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1670. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1671. As alleged in this Complaint, at all relevant times, the Defendants have held out the Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. The Defendants disclosed certain details about the diesel engine, but nonetheless, the Defendants intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

1672. The truth about the defective emissions controls and the Defendants' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to the Defendants; Plaintiffs and the Subclass members did not know of these facts, and the Defendants actively concealed these facts from Plaintiffs and Subclass members.

1673. Plaintiffs and Subclass members reasonably relied upon the Defendants' deception. They had no way of knowing that the Defendants' representations were false and/or misleading. As consumers, the Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own. Rather, the Defendants intended to deceive Plaintiffs and Subclass members by concealing the true facts about the Affected Vehicle emissions.

1674. The Defendants also concealed and suppressed material facts concerning what is evidently the true culture of the Defendants—a culture characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. Defendants also emphasized profits and sales above the trust that Plaintiffs and Subclass members placed in their representations. Consumers buy diesel cars from the Defendants because they feel they are clean

diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

1675. The Defendants' false representations were material to consumers, because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As the Defendants well knew, their customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

1676. The Defendants had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to the Defendants, because the Defendants had exclusive knowledge as to such facts, and because the Defendants knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. The Defendants also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as reduced-emissions diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the

additional facts set forth above regarding the actual emissions of their vehicles, their actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and their actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Subclass members, the Defendants had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. The Defendants represented to Plaintiffs and Subclass members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

1677. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect their profits and to avoid the perception that their vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which

perception would hurt the brand's image and cost the Defendants money, and they did so at the expense of Plaintiffs and Subclass members.

1678. The Defendants still have not made full and adequate disclosures, and continue to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of the Affected Vehicles.

1679. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars manufactured by the Defendants, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. The Defendants were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

1680. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of the Defendants' concealment of the true quality and quantity of those vehicles' emissions and the Defendants' failure to timely disclose the defect or defective design of the diesel engine system, the actual emissions qualities and quantities of the Defendants' vehicles, and the serious

issues engendered by the Defendants' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Defendants' disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1681. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of the Defendants' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Defendants' brand name attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1682. Accordingly, the Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

1683. The Defendants' acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Subclass members' rights and the representations that the Defendants made to them, in order to enrich the Defendants. The Defendants' conduct warrants an

assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT III

BREACH OF CONTRACT
(BASED ON RHODE ISLAND LAW)

1684. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1685. This claim is brought on behalf of the Rhode Island Subclass.

1686. The Defendants' misrepresentations and omissions alleged herein, including the Defendants' failure to disclose the existence of the diesel engine system's defect and/or defective design of emissions controls as alleged herein, caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the Adsorber Engine and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1687. Each and every sale or lease of an Affected Vehicle constitutes a contract between FCA and the purchaser or lessee. FCA breached these contracts by selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and the existence of the diesel engine system's defect and/or defective design of emissions controls, including information known to FCA, rendering each Affected Vehicle non-EPA-compliant, and thus less valuable than vehicles not equipped with the Adsorber Engine.

1688. As a direct and proximate result of FCA's breach of contract, Plaintiffs and the Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

LL. Claims Brought on Behalf of the South Carolina Subclass

COUNT I

VIOLATIONS OF THE SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT (S.C. CODE ANN. § 39-5-10 *ET SEQ.*)

1689. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1690. This claim is brought on behalf of the South Carolina Subclass.

1691. Each Defendant is a "person" under S.C. Code Ann. § 39-5-10.

1692. The South Carolina Unfair Trade Practices Act ("South Carolina UTPA") prohibits "unfair or deceptive acts or practices in the conduct of any trade or commerce." S.C. Code Ann. § 39-5-20(a).

1693. In the course of the Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of the Defendants' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, the Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer; making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is; and

failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

1694. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

1695. Plaintiffs and Subclass members reasonably relied upon the Defendants' false misrepresentations. They had no way of knowing that the Defendants' representations were false and gravely misleading. As alleged herein, the Defendants engaged in extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own.

1696. The Defendants' actions as set forth above occurred in the conduct of trade or commerce.

1697. The Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1698. The Defendants intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

1699. The Defendants knew or should have known that their conduct violated the South Carolina UTPA.

1700. The Defendants owed Plaintiffs and the Subclass a duty to disclose the truth about their emissions systems manipulation because the Defendants:

a. Possessed exclusive knowledge that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;

b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or

c. Made incomplete representations that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

1701. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had

emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1702. The Defendants' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

1703. Plaintiffs and the South Carolina Class suffered ascertainable loss caused by the Defendants' misrepresentations and concealment of and failure to disclose material information. Plaintiffs who purchased the Affected Vehicles either would have paid less for their vehicles or would not have purchased or leased them at all. 1694. The Defendants' unlawful acts and practices complained of herein affect the public interest.

1704. As a direct and proximate result of the Defendants' violations of the South Carolina UTPA, Plaintiffs and the South Carolina Class have suffered injury-in-fact and/or actual damage.

1705. Pursuant to S.C. Code Ann. § 39-5-140(a), Plaintiffs seek monetary relief against the Defendants to recover for their economic losses. Because the Defendants' actions were willful and knowing, Plaintiffs' damages should be trebled. *Id.*

1706. Plaintiffs further allege that the Defendants' malicious and deliberate conduct warrants an assessment of punitive damages because the Defendants carried out despicable conduct with willful and conscious disregard of the rights and safety of others, subjecting Plaintiffs and the Class to cruel and unjust hardship as a result.

COUNT II

VIOLATIONS OF THE SOUTH CAROLINA REGULATION OF MANUFACTURERS, DISTRIBUTORS, AND DEALERS ACT (S.C. CODE ANN. § 56-15-10 *ET SEQ.*)

1707. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1708. This claim is brought only on behalf of the South Carolina Subclass.

1709. Each of the Defendants was a "manufacturer" as set forth in S.C. Code Ann. § 56-15-10, as each was engaged in the business of manufacturing or assembling new and unused motor vehicles.

1710. Defendants committed unfair or deceptive acts or practices that violated the South Carolina Regulation of Manufacturers, Distributors, and Dealers Act ("Dealers Act"), S.C. Code Ann. § 56-15-30.

1711. Defendants engaged in actions which were arbitrary, in bad faith, unconscionable, and which caused damage to Plaintiffs, the South Carolina Subclass, and to the public.

1712. Defendants' bad faith and unconscionable actions include, but are not limited to: (1) representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have, (2) representing that Affected Vehicles are of a particular standard, quality, and grade when they are not, (3) advertising Affected Vehicles with the intent not to sell them as advertised, (4) representing that a transaction involving Affected Vehicles confers or involves rights, remedies, and obligations which it does not, and (5) representing that the subject of a transaction involving Affected Vehicles has been supplied in accordance with a previous representation when it has not.

COUNT III

FRAUDULENT CONCEALMENT
(BASED ON SOUTH CAROLINA LAW)

1713. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1714. Plaintiffs bring this Count on behalf of the South Carolina Subclass.

1715. The Defendants intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of the Defendants' advertising campaign, emitted unlawfully high levels of pollutants such as NOx,

and were non-compliant with EPA emission requirements, or the Defendants acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

1716. The Defendants further affirmatively misrepresented to Plaintiffs and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles they were selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

1717. The Defendants knew these representations were false when made.

1718. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of the Defendants' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1719. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had

emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1720. As alleged in this Complaint, at all relevant times, the Defendants have held out the Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. The Defendants disclosed certain details about the diesel engine, but nonetheless, the Defendants intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

1721. The truth about the defective emissions controls and the Defendants' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to the Defendants; Plaintiffs and the Subclass members did not know of these facts, and

the Defendants actively concealed these facts from Plaintiffs and Subclass members.

1722. Plaintiffs and Subclass members reasonably relied upon the Defendants' deception. They had no way of knowing that the Defendants' representations were false and/or misleading. As consumers, the Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own. Rather, the Defendants intended to deceive Plaintiffs and Subclass members by concealing the true facts about the Affected Vehicle emissions.

1723. The Defendants also concealed and suppressed material facts concerning what is evidently the true culture of the Defendants—a culture characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. Defendants also emphasized profits and sales above the trust that Plaintiffs and Subclass members placed in their representations. Consumers buy diesel cars from the Defendants because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

1724. The Defendants' false representations were material to consumers, because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations

regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As the Defendants well knew, their customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

1725. The Defendants had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to the Defendants, because the Defendants had exclusive knowledge as to such facts, and because the Defendants knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. The Defendants also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as reduced-emissions diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of their vehicles, their actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and their actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Subclass members, the Defendants had the duty to disclose not just the partial

truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. The Defendants represented to Plaintiffs and Subclass members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

1726. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect their profits and to avoid the perception that their vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost the Defendants money, and they did so at the expense of Plaintiffs and Subclass members.

1727. The Defendants still have not made full and adequate disclosures, and continue to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of the Affected Vehicles.

1728. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars manufactured by the Defendants, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. The Defendants were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

1729. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of the Defendants' concealment of the true quality and quantity of those vehicles' emissions and the Defendants' failure to timely disclose the defect or defective design of the diesel engine system, the actual emissions qualities and quantities of the Defendants' vehicles, and the serious issues engendered by the Defendants' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Defendants' disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members

who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1730. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of the Defendants' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Defendants' brand name attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1731. Accordingly, the Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

1732. The Defendants' acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Subclass members' rights and the representations that the Defendants made to them, in order to enrich the Defendants. The Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT IV

BREACH OF CONTRACT
(BASED ON SOUTH CAROLINA LAW)

1733. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1734. This claim is brought on behalf of the South Carolina Subclass.

1735. The Defendants' misrepresentations and omissions alleged herein, including the Defendants' failure to disclose the existence of the diesel engine system's defect and/or defective design of emissions controls as alleged herein, caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the Adsorber Engine and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1736. Each and every sale or lease of an Affected Vehicle constitutes a contract between FCA and the purchaser or lessee. FCA breached these contracts by selling or leasing to Plaintiffs and the other Subclass members defective

Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and the existence of the diesel engine system's defect and/or defective design of emissions controls, including information known to FCA, rendering each Affected Vehicle non-EPA-compliant, and thus less valuable than vehicles not equipped with the Adsorber Engine.

1737. As a direct and proximate result of FCA's breach of contract, Plaintiffs and the Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

MM. Claims Brought on Behalf of the Tennessee Subclass

COUNT I

VIOLATIONS OF THE TENNESSEE CONSUMER PROTECTION ACT (TENN. CODE ANN. § 47-18-101 *ET SEQ.*)

1738. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

1739. Plaintiffs bring this Count on behalf of the Tennessee Subclass.

1740. Plaintiffs and the Tennessee Subclass are "natural persons" and "consumers" within the meaning of Tenn. Code Ann. § 47-18-103(2).

1741. Each Defendant is a "person" within the meaning of Tenn. Code Ann. § 47-18-103(2).

1742. The Defendants' conduct complained of herein affected "trade," "commerce" or "consumer transactions" within the meaning of Tenn. Code Ann. § 47-18-103(19).

1743. The Tennessee Consumer Protection Act ("Tennessee CPA") prohibits "[u]nfair or deceptive acts or practices affecting the conduct of any trade or commerce," including but not limited to: "Representing that goods or services have … characteristics, [or] … benefits … that they do not have…;" "Representing that goods or services are of a particular standard, quality or grade … if they are of another;" "Advertising goods or services with intent not to sell them as advertised;" and "Engaging in any other act or practice which is deceptive to the consumer or any other person." Tenn. Code Ann. § 47-18-104. In the course of Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of Defendants' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, Defendants violated the Tennessee CPA by engaging in unfair or deceptive acts, including representing that Affected Vehicles have characteristics or benefits that they did not have;

representing that Affected Vehicles are of a particular standard, quality, or grade when they are of another; advertising Affected Vehicles with intent not to sell them as advertised; and engaging in acts or practices that are deceptive to consumers.

1744. In the course of the Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of the Defendants' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, the Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer; making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is; and

failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

1745. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

1746. Plaintiffs and Subclass members reasonably relied upon the Defendants' false misrepresentations. They had no way of knowing that the Defendants' representations were false and gravely misleading. As alleged herein, the Defendants engaged in extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own.

1747. The Defendants' actions as set forth above occurred in the conduct of trade or commerce.

1748. The Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1749. The Defendants intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

1750. The Defendants knew or should have known that their conduct violated the Tennessee CPA.

1751. The Defendants owed Plaintiffs and the Subclass a duty to disclose the truth about their emissions systems manipulation because the Defendants:

a. Possessed exclusive knowledge that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;

b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or

c. Made incomplete representations that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

1752. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had

emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1753. The Defendants' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

1754. Plaintiffs and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of the Defendants' conduct in that Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Defendants' misrepresentations and omissions.

1755. The Defendants' violations present a continuing risk to Plaintiffs as well as to the general public. The Defendants' unlawful acts and practices complained of herein affect the public interest.

1756. Pursuant to Tenn. Code § 47-18-109(a), Plaintiffs and the Tennessee Subclass seek monetary relief against the Defendants measured as actual damages in an amount to be determined at trial, treble damages as a result of the

Defendants' willful or knowing violations, and any other just and proper relief available under the Tennessee CPA.

COUNT II

BREACH OF CONTRACT
(BASED ON TENNESSEE LAW)

1757. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1758. Plaintiffs bring this Count on behalf of the Tennessee Subclass.

1759. The Defendants' misrepresentations and omissions alleged herein, including, but not limited to, the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the Adsorber Engine and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1760. Each and every sale or lease of an Affected Vehicle constitutes a contract between FCA and the purchaser or lessee. FCA breached these contracts by, among other things, selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, thus rendering each Affected Vehicle less valuable, than vehicles not equipped with the Adsorber Engine.

1761. As a direct and proximate result of FCA's breach of contract, Plaintiffs and the Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT III

FRAUDULENT CONCEALMENT
(BASED ON TENNESSEE LAW)

1762. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

1763. This claim is brought on behalf of the Tennessee Subclass.

1764. The Defendants intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants

higher than a reasonable consumer would expect in light of the Defendants' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or the Defendants acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

1765. The Defendants further affirmatively misrepresented to Plaintiffs and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles they were selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

1766. The Defendants knew these representations were false when made.

1767. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of the Defendants' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1768. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions

and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1769. As alleged in this Complaint, at all relevant times, the Defendants have held out the Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. The Defendants disclosed certain details about the diesel engine, but nonetheless, the Defendants intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

1770. The truth about the defective emissions controls and the Defendants' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to the

Defendants; Plaintiffs and the Subclass members did not know of these facts, and the Defendants actively concealed these facts from Plaintiffs and Subclass members.

1771. Plaintiffs and Subclass members reasonably relied upon the Defendants' deception. They had no way of knowing that the Defendants' representations were false and/or misleading. As consumers, the Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own. Rather, the Defendants intended to deceive Plaintiffs and Subclass members by concealing the true facts about the Affected Vehicle emissions.

1772. The Defendants also concealed and suppressed material facts concerning what is evidently the true culture of the Defendants—a culture characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. Defendants also emphasized profits and sales above the trust that Plaintiffs and Subclass members placed in their representations. Consumers buy diesel cars from the Defendants because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

1773. The Defendants' false representations were material to consumers, because they concerned the quality of the Affected Vehicles, because they

concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As the Defendants well knew, their customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

1774. The Defendants had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to the Defendants, because the Defendants had exclusive knowledge as to such facts, and because the Defendants knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. The Defendants also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as reduced-emissions diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of their vehicles, their actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and their actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and

Subclass members, the Defendants had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. The Defendants represented to Plaintiffs and Subclass members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

1775. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect their profits and to avoid the perception that their vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost the Defendants money, and they did so at the expense of Plaintiffs and Subclass members.

1776. The Defendants still have not made full and adequate disclosures, and continue to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of the Affected Vehicles.

1777. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars manufactured by the Defendants, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. The Defendants were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

1778. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of the Defendants' concealment of the true quality and quantity of those vehicles' emissions and the Defendants' failure to timely disclose the defect or defective design of the diesel engine system, the actual emissions qualities and quantities of the Defendants' vehicles, and the serious issues engendered by the Defendants' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Defendants' disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members

who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1779. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of the Defendants' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Defendants' brand name attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1780. Accordingly, the Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

1781. The Defendants' acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Subclass members' rights and the representations that the Defendants made to them, in order to enrich the Defendants. The Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

NN. Claims Brought on Behalf of the Texas Subclass

COUNT I

VIOLATIONS OF THE DECEPTIVE TRADE PRACTICES ACT (TEX. BUS. & COM. CODE § 17.41 *ET SEQ.*)

1782. The Georgia Fair Business Practices Act ("Georgia FBPA") declares "[u]nfair or deceptive acts or practices in the conduct of consumer transactions and consumer acts or practices in trade or commerce" to be unlawful, Ga. Code. Ann. § 10-1-393(a), including, but not limited to, "representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have," "[r]epresenting that goods or services are of a particular standard, quality, or grade … if they are of another," and "[a]dvertising goods or services with intent not to sell them as advertised." Ga. Code. Ann. § 10-1-393(b). Plaintiffs will make a demand in satisfaction of O.C.G.A. § 10-1-399(b), and may amend this Complaint to assert claims under the Georgia FBPA once the required notice period has elapsed. This paragraph is included for purposes of notice only and is not intended to actually assert a claim under the Georgia FBPA.

COUNT II

BREACH OF CONTRACT (BASED ON TEXAS LAW)

1783. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1784. Plaintiffs bring this Count on behalf of the Texas Subclass members.

1785. The Defendants' misrepresentations and omissions alleged herein, including the Defendants' failure to disclose the existence of the Adsorber Engine's defect and/or defective design of emissions controls as alleged herein, and failure to disclose that the Affected Vehicles did not meet and maintain the advertised MPG rate, caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the defective Adsorber Engine and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1786. Each and every sale or lease of an Affected Vehicle constitutes a contract between FCA and the purchaser or lessee. FCA breached these contracts by selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the Affected Vehicles would not meet and maintain their advertised MPG rate, and by misrepresenting or failing to disclose that the NOx reduction system in the

Affected Vehicles turns off or is limited during normal driving conditions and the existence of the Adsorber Engine's defect and/or defective design of emissions controls, including information known to FCA, rendering each Affected Vehicle non-EPA-compliant, and thus less valuable than vehicles not equipped with the defective Adsorber Engine.

1787. As a direct and proximate result of FCA's breach of contract, Plaintiffs and the Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT III

FRAUDULENT CONCEALMENT
(BASED ON TEXAS LAW)

1788. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1789. This claim is brought on behalf of the Texas Subclass.

1790. The Defendants intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, failed to meet and maintain the advertised MPG rate, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of the Defendants' advertising campaign, emitted

unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or the Defendants acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

1791. The Defendants further affirmatively misrepresented to Plaintiffs and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles they were selling had no significant defects, were Earth-friendly and low-emission vehicles, met and maintained the advertised MPG rate, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

1792. The Defendants knew these representations were false when made.

1793. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, not meeting and maintaining the advertised MPG rate, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of the Defendants' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1794. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions

and that these Affected Vehicles were defective, did not meet and maintain the advertised MPG rate, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, and failed to meet and maintain the advertised MPG rate, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1795. As alleged in this Complaint, at all relevant times, the has held out the Affected Vehicles to be reduced emission, EPA-compliant vehicles. The Defendants disclosed certain details about the diesel engine, but nonetheless, the Defendants intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deployed a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

1796. The truth about the defective emissions controls and the Defendants' manipulations of those controls, unlawfully high emissions, the "Defeat Device,"

failure to meet and maintain the advertised MPG rate, and non-compliance with EPA emissions requirements was known only to the Defendants; Plaintiffs and the Subclass members did not know of these facts and the Defendants actively concealed these facts from Plaintiffs and Subclass members.

1797. Plaintiffs and Subclass members reasonably relied upon the Defendants' deception. They had no way of knowing that the Defendants' representations were false and/or misleading. As consumers, Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own. Rather, the Defendants intended to deceive Plaintiffs and Subclass members by concealing the true facts about the Affected Vehicle emissions.

1798. The Defendants also concealed and suppressed material facts concerning what is evidently the true culture of each Defendant—one characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. They also emphasized profits and sales above the trust that Plaintiffs and Subclass members placed in their representations. Consumers buy diesel cars from the Defendants because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

1799. The Defendants' false representations were material to consumers because they concerned the quality and cost-effectiveness of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As the Defendants well knew, their customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

1800. The Defendants had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to the Defendants, because the Defendants had exclusive knowledge as to such facts, and because the Defendants knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. The Defendants also had a duty to disclose because they made general affirmative representations about the qualities of the Affected Vehicles with respect to emissions, starting with references to them as *reduced-emissions diesel cars* and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of their vehicles, their actual philosophy with respect to compliance with federal and state clean air

law and emissions regulations, and their actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Subclass members, the Defendants had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, meets and maintains the advertised MPG rate, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. The Defendants represented to Plaintiffs and Subclass members that they were purchasing or leasing fuel-efficient, reduced-emissions diesel vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

1801. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect their profits and to avoid the perception that their vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost the Defendants money, and they did so at the expense of Plaintiffs and Subclass members.

1802. The Defendants had still not made full and adequate disclosures, and continue to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of the Affected Vehicles.

1803. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars manufactured by Defendants, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. The Defendants were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

1804. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of the Defendants' concealment of the true quality and quantity of those vehicles' emissions and fuel efficiency and the Defendants' failure to timely disclose the defect or defective design of the Adsorber Engine, the actual emissions qualities and quantities of the Defendants' vehicles, and the serious issues engendered by the Defendants' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the

Affected Vehicles, and the Defendants' disregard for the truth and compliance with applicable federal and state law and regulations, and their failure to meet and maintain the advertised MPG rate, Plaintiffs and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1805. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of the Defendants' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Defendants' brand names, attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1806. Accordingly, the Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

1807. The Defendants' acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Subclass members' rights and the representations that the Defendants made to them, in order to enrich the Defendants. The Defendants' conduct warrants an

assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

OO. Claims Brought on Behalf of the Utah Subclass

COUNT I

VIOLATIONS OF THE UTAH CONSUMER SALES PRACTICES ACT (UTAH CODE ANN. § 13-11-1 *ET SEQ.*)

1808. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

1809. Plaintiffs bring this Count on behalf of the Utah Subclass.

1810. Each of the Defendants qualifies as a "supplier" under the Utah Consumer Sales Practices Act ("Utah CSPA"), Utah Code Ann. § 13-11-3.

1811. Plaintiffs and the Subclass members are "persons" under Utah Code Ann. § 13-11-3.

1812. Sales of the Affected Vehicles to Plaintiffs and the Subclass were "consumer transactions" within the meaning of Utah Code Ann. § 13-11-3.

1813. The Utah CSPA makes unlawful any "deceptive act or practice by a supplier in connection with a consumer transaction" under Utah Code Ann. § 13-11-4. Specifically, "a supplier commits a deceptive act or practice if the supplier knowingly or intentionally: (a) indicates that the subject of a consumer transaction has sponsorship, approval, performance characteristics, accessories, uses, or benefits, if it has not" or "(b) indicates that the subject of a consumer transaction is

of a particular standard, quality, grade, style, or model, if it is not." Utah Code Ann. § 13-11-4. "An unconscionable act or practice by a supplier in connection with a consumer transaction" also violates the Utah CSPA. Utah Code Ann. § 13-11-5.

1814. In the course of the Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of the Defendants' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, the Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer; making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is; and

failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

1815. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

1816. Plaintiffs and Subclass members reasonably relied upon the Defendants' false misrepresentations. They had no way of knowing that the Defendants' representations were false and gravely misleading. As alleged herein, the Defendants engaged in extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own.

1817. The Defendants' actions as set forth above occurred in the conduct of trade or commerce.

1818. The Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1819. The Defendants intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

1820. The Defendants knew or should have known that their conduct violated the Utah CSPA.

1821. The Defendants owed Plaintiffs and the Subclass a duty to disclose the truth about their emissions systems manipulation because the Defendants:

a. Possessed exclusive knowledge that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;

b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or

c. Made incomplete representations that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

1822. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had

emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1823. The Defendants' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

1824. Plaintiffs and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of the Defendants' conduct in that Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of the Defendants' misrepresentations and omissions.

1825. The Defendants' violations present a continuing risk to Plaintiffs as well as to the general public. the Defendants' unlawful acts and practices complained of herein affect the public interest.

1826. Pursuant to Utah Code Ann. § 13-11-4, Plaintiffs and the Subclass seek monetary relief against the Defendants measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the

amount of $2,000 for each Plaintiff and Utah Class member, reasonable attorneys' fees, and any other just and proper relief available under the Utah CSPA.

COUNT II

BREACH OF CONTRACT
(BASED ON UTAH LAW)

1827. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1828. Plaintiffs bring this Count on behalf of the Utah Subclass members.

1829. The Defendants' misrepresentations and omissions alleged herein, including the Defendants' failure to disclose the existence of the diesel engine system's defect and/or defective design of emissions controls as alleged herein, caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the Adsorber Engine and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1830. Each and every sale or lease of an Affected Vehicle constitutes a contract between FCA and the purchaser or lessee. FCA breached these contracts by selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and the existence of the diesel engine system's defect and/or defective design of emissions controls, including information known to FCA, rendering each Affected Vehicle non-EPA-compliant, and thus less valuable than vehicles not equipped with the Adsorber Engine.

1831. As a direct and proximate result of FCA's breach of contract, Plaintiffs and the Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT III

FRAUDULENT CONCEALMENT (BASED ON UTAH LAW)

1832. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1833. Plaintiffs bring this Count on behalf of the Utah Subclass.

1834. The Defendants intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving

conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of the Defendants' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or the Defendants acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

1835. The Defendants further affirmatively misrepresented to Plaintiffs and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles they were selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

1836. The Defendants knew these representations were false when made.

1837. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of the Defendants' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1838. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1839. As alleged in this Complaint, at all relevant times, the Defendants have held out the Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. The Defendants disclosed certain details about the diesel engine, but nonetheless, the Defendants intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

1840. The truth about the defective emissions controls and the Defendants' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to the Defendants; Plaintiffs and the Subclass members did not know of these facts, and the Defendants actively concealed these facts from Plaintiffs and Subclass members.

1841. Plaintiffs and Subclass members reasonably relied upon the Defendants' deception. They had no way of knowing that the Defendants' representations were false and/or misleading. As consumers, the Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own. Rather, the Defendants intended to deceive Plaintiffs and Subclass members by concealing the true facts about the Affected Vehicle emissions.

1842. The Defendants also concealed and suppressed material facts concerning what is evidently the true culture of the Defendants—a culture characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. Defendants also emphasized profits and sales above the trust that Plaintiffs and Subclass members placed in their representations. Consumers buy diesel cars from the Defendants because they feel they are clean

diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

1843. The Defendants' false representations were material to consumers, because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As the Defendants well knew, their customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

1844. The Defendants had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to the Defendants, because the Defendants had exclusive knowledge as to such facts, and because the Defendants knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. The Defendants also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as reduced-emissions diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the

additional facts set forth above regarding the actual emissions of their vehicles, their actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and their actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Subclass members, the Defendants had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. The Defendants represented to Plaintiffs and Subclass members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

1845. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect their profits and to avoid the perception that their vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which

perception would hurt the brand's image and cost the Defendants money, and they did so at the expense of Plaintiffs and Subclass members.

1846. The Defendants still have not made full and adequate disclosures, and continue to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of the Affected Vehicles.

1847. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars manufactured by the Defendants, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. The Defendants were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

1848. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of the Defendants' concealment of the true quality and quantity of those vehicles' emissions and the Defendants' failure to timely disclose the defect or defective design of the diesel engine system, the actual emissions qualities and quantities of the Defendants' vehicles, and the serious

issues engendered by the Defendants' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Defendants' disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1849. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of the Defendants' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Defendants' brand name attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1850. Accordingly, the Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

1851. The Defendants' acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Subclass members' rights and the representations that the Defendants made to them, in order to enrich the Defendants. The Defendants' conduct warrants an

assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

PP. Claims Brought on Behalf of the Vermont Subclass

COUNT I

VIOLATION OF VERMONT CONSUMER FRAUD ACT
(VT. STAT. ANN. TIT. 9, § 2451 *ET SEQ.*)

1852. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1853. This claim is brought on behalf of the Vermont Subclass.

1854. Each of the Defendants is a seller within the meaning of Vt. Stat. Ann. tit. 9, § 2451(a)(c).

1855. The Vermont Consumer Fraud Act ("Vermont CFA") makes unlawful "[u]nfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce." Vt. Stat. Ann. tit. 9, § 2453(a).

1856. In the course of the Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of the Defendants' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described

above. Accordingly, the Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer; making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is; and failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

1857. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

1858. Plaintiffs and Subclass members reasonably relied upon the Defendants' false misrepresentations. They had no way of knowing that the Defendants' representations were false and gravely misleading. As alleged herein,

the Defendants engaged in extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own.

1859. The Defendants' actions as set forth above occurred in the conduct of trade or commerce.

1860. The Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1861. The Defendants intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

1862. The Defendants knew or should have known that their conduct violated the Vermont CFA.

1863. The Defendants owed Plaintiffs and the Subclass a duty to disclose the truth about their emissions systems manipulation because the Defendants:

a. Possessed exclusive knowledge that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;

b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or

c. Made incomplete representations that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

1864. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1865. The Defendants' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

1866. The Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true cleanliness and efficiency of the Adsorber Engine, the quality of the Defendants' brands, the devaluing of environmental cleanliness and integrity at the Defendants' companies, and the true value of the Affected Vehicles.

1867. The Defendants intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Vermont Subclass. The Defendants' fraudulent use of the "defeat device" and concealment of the true characteristics of the Clean Diesel engine system were material to Plaintiffs and the Vermont Class. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth more than an otherwise comparable vehicle made by a disreputable and dishonest manufacturer of polluting vehicles that conceals the amount its vehicles pollute rather than make environmentally friendly vehicles.

1868. Plaintiffs and the Vermont Subclass suffered ascertainable loss caused by the Defendants' misrepresentations and concealment of and failure to disclose material information. Plaintiffs who purchased the Affected Vehicles either would have paid less for their vehicles or would not have purchased or leased them at all.

1869. The Defendants had an ongoing duty to all their customers to refrain from unfair and deceptive acts or practices under the Vermont CFA. All owners of Affected Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as a result of the Defendants' deceptive and unfair acts and practices that occurred in the course of the Defendants' business.

1870. The Defendants' violations present a continuing risk to Plaintiffs as well as to the general public. The Defendants' unlawful acts and practices complained of herein affect the public interest.

1447. As a direct and proximate result of the Defendants' violations of the Vermont CFA, Plaintiffs and the Vermont Subclass have suffered injury-in-fact and/or actual damage.

1448. Plaintiffs and the Vermont Subclass are entitled to recover "appropriate equitable relief" and "the amount of [their] damages, or the consideration or the value of the consideration given by [them], reasonable attorney's fees, and exemplary damages not exceeding three times the value of the consideration given by [them]" pursuant to Vt. Stat. Ann. tit. 9, § 2461(b).

COUNT II

FRAUDULENT CONCEALMENT
(BASED ON VERMONT LAW)

1871. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1872. Plaintiffs bring this Count on behalf of the Vermont Subclass.

1873. The Defendants intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants

higher than a reasonable consumer would expect in light of the Defendants' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or the Defendants acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

1874. The Defendants further affirmatively misrepresented to Plaintiffs and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles they were selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

1875. The Defendants knew these representations were false when made.

1876. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of the Defendants' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1877. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions

and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1878. As alleged in this Complaint, at all relevant times, the Defendants have held out the Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. The Defendants disclosed certain details about the diesel engine, but nonetheless, the Defendants intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

1879. The truth about the defective emissions controls and the Defendants' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to the

Defendants; Plaintiffs and the Subclass members did not know of these facts, and the Defendants actively concealed these facts from Plaintiffs and Subclass members.

1880. Plaintiffs and Subclass members reasonably relied upon the Defendants' deception. They had no way of knowing that the Defendants' representations were false and/or misleading. As consumers, the Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own. Rather, the Defendants intended to deceive Plaintiffs and Subclass members by concealing the true facts about the Affected Vehicle emissions.

1881. The Defendants also concealed and suppressed material facts concerning what is evidently the true culture of the Defendants—a culture characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. Defendants also emphasized profits and sales above the trust that Plaintiffs and Subclass members placed in their representations. Consumers buy diesel cars from the Defendants because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

1882. The Defendants' false representations were material to consumers, because they concerned the quality of the Affected Vehicles, because they

concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As the Defendants well knew, their customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

1883. The Defendants had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to the Defendants, because the Defendants had exclusive knowledge as to such facts, and because the Defendants knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. The Defendants also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as reduced-emissions diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of their vehicles, their actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and their actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and

Subclass members, the Defendants had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. The Defendants represented to Plaintiffs and Subclass members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

1884. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect their profits and to avoid the perception that their vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost the Defendants money, and they did so at the expense of Plaintiffs and Subclass members.

1885. The Defendants still have not made full and adequate disclosures, and continue to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of the Affected Vehicles.

1886. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars manufactured by the Defendants, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. The Defendants were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

1887. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of the Defendants' concealment of the true quality and quantity of those vehicles' emissions and the Defendants' failure to timely disclose the defect or defective design of the diesel engine system, the actual emissions qualities and quantities of the Defendants' vehicles, and the serious issues engendered by the Defendants' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Defendants' disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members

who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1888. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of the Defendants' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Defendants' brand name attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1889. Accordingly, the Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

1890. The Defendants' acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Subclass members' rights and the representations that the Defendants made to them, in order to enrich the Defendants. The Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT III

BREACH OF CONTRACT
(BASED ON VERMONT LAW)

1891. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

1892. This claim is brought on behalf of the Vermont Subclass.

1893. The Defendants' misrepresentations and omissions alleged herein, including the Defendants' failure to disclose the existence of the diesel engine system's defect and/or defective design of emissions controls as alleged herein, caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the Adsorber Engine and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1894. Each and every sale or lease of an Affected Vehicle constitutes a contract between FCA and the purchaser or lessee. FCA breached these contracts by selling or leasing to Plaintiffs and the other Subclass members defective

Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and the existence of the diesel engine system's defect and/or defective design of emissions controls, including information known to FCA, rendering each Affected Vehicle non-EPA-compliant, and thus less valuable than vehicles not equipped with the Adsorber Engine.

1895. As a direct and proximate result of FCA's breach of contract, Plaintiffs and the Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

QQ. Claims Brought on Behalf of the Virginia Subclass

COUNT I

VIOLATIONS OF THE VIRGINIA CONSUMER PROTECTION ACT (VA. CODE ANN. § 59.1-196 *ET SEQ.*)

1896. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

1897. This claim is brought on behalf of the Virginia Subclass.

1898. Each Defendant is a "person" as defined by Va. Code Ann. § 59.1-198. The transactions between Plaintiffs and the other Subclass members on the one hand and Defendants on the other, leading to the purchase or lease of the Affected Vehicles by Plaintiffs and the other Subclass members, are "consumer

transactions" as defined by Va. Code Ann. § 59.1-198, because the Affected Vehicles were purchased or leased primarily for personal, family or household purposes.

1899. The Virginia Consumer Protection Act ("Virginia CPA") prohibits "(5) misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits; (6) misrepresenting that goods or services are of a particular standard, quality, grade, style, or model; … (8) advertising goods or services with intent not to sell them as advertised; … [and] (14) using any other deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction[.]" Va. Code Ann. § 59.1-200(A).

1900. In the course of the Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of the Defendants' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, the Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices, including representing that Affected Vehicles have characteristics, uses, benefits,

and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer; making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is; and failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

1901. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

1902. Plaintiffs and Subclass members reasonably relied upon the Defendants' false misrepresentations. They had no way of knowing that the Defendants' representations were false and gravely misleading. As alleged herein, the Defendants engaged in extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own.

1903. The Defendants' actions as set forth above occurred in the conduct of trade or commerce.

1904. The Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1905. The Defendants intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

1906. The Defendants knew or should have known that their conduct violated the Virginia CPA.

1907. The Defendants owed Plaintiffs and the Subclass a duty to disclose the truth about their emissions systems manipulation because the Defendants:

a. Possessed exclusive knowledge that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;

b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or

c. Made incomplete representations that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

1908. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1909. The Defendants' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

1910. Plaintiffs and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of the Defendants' conduct in that Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Defendants' misrepresentations and omissions.

1911. The Defendants' violations present a continuing risk to Plaintiffs as well as to the general public. The Defendants' unlawful acts and practices complained of herein affect the public interest.

1912. Pursuant to Va. Code Ann. § 59.1-204, Plaintiffs and the Subclass seek monetary relief against the Defendants measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of $500 for each Plaintiff and Subclass member. Because Defendants' conduct was committed willfully and knowingly, Plaintiffs are entitled to recover, for each Plaintiff and Subclass member, the greater of (a) three times actual damages or (b) $1,000.

1913. Plaintiffs also seek punitive damages, and attorneys' fees, and any other just and proper relief available under General Business Law § 59.1-204 *et seq.*

COUNT II

BREACH OF CONTRACT
(BASED ON VIRGINIA LAW)

1914. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1915. Plaintiffs bring this Count on behalf of Virginia Subclass members.

1916. The Defendants' misrepresentations and omissions alleged herein, including the Defendants' failure to disclose the existence of the diesel engine system's defect and/or defective design of emissions controls as alleged herein, caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions,

Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the Adsorber Engine and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1917. Each and every sale or lease of an Affected Vehicle constitutes a contract between FCA and the purchaser or lessee. FCA breached these contracts by selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and the existence of the diesel engine system's defect and/or defective design of emissions controls, including information known to FCA, rendering each Affected Vehicle non-EPA-compliant, and thus less valuable than vehicles not equipped with the Adsorber Engine.

1918. As a direct and proximate result of FCA's breach of contract, Plaintiffs and the Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT III

FRAUDULENT CONCEALMENT (BASED ON VIIRGINIA LAW)

1919. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1920. Plaintiffs bring this Count on behalf of the Virginia Subclass.

1921. The Defendants intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of the Defendants' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or the Defendants acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

1922. The Defendants further affirmatively misrepresented to Plaintiffs and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles they were selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

1923. The Defendants knew these representations were false when made.

1924. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of the Defendants' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1925. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1926. As alleged in this Complaint, at all relevant times, the Defendants have held out the Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. The Defendants disclosed certain details about the diesel engine, but nonetheless, the Defendants intentionally failed to disclose the important facts that

the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

1927. The truth about the defective emissions controls and the Defendants' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to the Defendants; Plaintiffs and the Subclass members did not know of these facts, and the Defendants actively concealed these facts from Plaintiffs and Subclass members.

1928. Plaintiffs and Subclass members reasonably relied upon the Defendants' deception. They had no way of knowing that the Defendants' representations were false and/or misleading. As consumers, the Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own. Rather, the Defendants intended to deceive Plaintiffs and Subclass members by concealing the true facts about the Affected Vehicle emissions.

1929. The Defendants also concealed and suppressed material facts concerning what is evidently the true culture of the Defendants—a culture

characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. Defendants also emphasized profits and sales above the trust that Plaintiffs and Subclass members placed in their representations. Consumers buy diesel cars from the Defendants because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

1930. The Defendants' false representations were material to consumers, because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As the Defendants well knew, their customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

1931. The Defendants had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to the Defendants, because the Defendants had exclusive knowledge as to such facts, and because the Defendants knew these facts were not known to or reasonably

discoverable by Plaintiffs or Subclass members. The Defendants also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as reduced-emissions diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of their vehicles, their actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and their actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Subclass members, the Defendants had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. The Defendants represented to Plaintiffs and Subclass members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

1932. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect their profits and to avoid the perception that their vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost the Defendants money, and they did so at the expense of Plaintiffs and Subclass members.

1933. The Defendants still have not made full and adequate disclosures, and continue to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of the Affected Vehicles.

1934. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars manufactured by the Defendants, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. The Defendants were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

1935. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are

diminished in value as a result of the Defendants' concealment of the true quality and quantity of those vehicles' emissions and the Defendants' failure to timely disclose the defect or defective design of the diesel engine system, the actual emissions qualities and quantities of the Defendants' vehicles, and the serious issues engendered by the Defendants' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Defendants' disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1936. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of the Defendants' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Defendants' brand name attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1937. Accordingly, the Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

1938. The Defendants' acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Subclass members' rights and the representations that the Defendants made to them, in order to enrich the Defendants. The Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

RR. Claims Brought on Behalf of the Washington Subclass

COUNT I

VIOLATION OF THE WASHINGTON CONSUMER PROTECTION ACT (WASH. REV. CODE ANN. § 19.86.010 *ET SEQ.*)

1939. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1940. Plaintiffs bring this Count on behalf of the Washington Subclass.

1941. Each Defendant, each Plaintiff, and each member of the Washington Subclass is a "person" under Wash. Rev. Code Ann. § 19.86.010(1) ("Washington CPA").

1942. Defendants engaged in "trade" or "commerce" under Wash. Rev. Code Ann. § 19.86.010(2).

1943. The Washington Consumer Protection Act ("Washington CPA") broadly prohibits "[u]nfair methods of competition and unfair or deceptive acts or

practices in the conduct of any trade or commerce." Wash. Rev. Code. Wash. Ann. § 19.96.010.

1944. In the course of the Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of the Defendants' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, the Defendants engaged in unfair and deceptive business practices prohibited by the Washington CPA. The Defendants' conduct was unfair because it (1) offends public policy as it has been established by statutes, the common law, or otherwise; (2) is immoral, unethical, oppressive, or unscrupulous; or (3) causes substantial injury to consumers. The Defendants' conduct is deceptive because it has the capacity or tendency to deceive.

1945. In the course of the Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would

expect in light of the Defendants' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, the Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer; making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is; and failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

1946. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

1947. Plaintiffs and Subclass members reasonably relied upon the Defendants' false misrepresentations. They had no way of knowing that the Defendants' representations were false and gravely misleading. As alleged herein, the Defendants engaged in extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own.

1948. The Defendants' actions as set forth above occurred in the conduct of trade or commerce.

1949. The Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1950. The Defendants intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

1951. The Defendants knew or should have known that their conduct violated the Washington CPA.

1952. The Defendants owed Plaintiffs and the Subclass a duty to disclose the truth about their emissions systems manipulation because the Defendants:

a. Possessed exclusive knowledge that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;

b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or

c. Made incomplete representations that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

1953. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1954. The Defendants' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

1955. Plaintiffs and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of the Defendants' conduct in that Plaintiffs and the other Subclass members overpaid for

their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of the Defendants' misrepresentations and omissions.

1956. The Defendants' violations present a continuing risk to Plaintiffs as well as to the general public. The Defendants' unlawful acts and practices complained of herein affect the public interest.

1957. The Defendants are liable to Plaintiffs and the Subclass for damages in amounts to be proven at trial, including attorneys' fees, costs, and treble damages, as well as any other remedies the Court may deem appropriate under Wash. Rev. Code. Ann. § 19.86.090.

COUNT II

BREACH OF CONTRACT
(BASED ON WASHINGTON LAW)

1958. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1959. Plaintiffs bring this Count on behalf of the Washington Subclass members.

1960. The Defendants' misrepresentations and omissions alleged herein, including the Defendants' failure to disclose the existence of the diesel engine system's defect and/or defective design of emissions controls as alleged herein,

caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the Adsorber Engine and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1961. Each and every sale or lease of an Affected Vehicle constitutes a contract between FCA and the purchaser or lessee. FCA breached these contracts by selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and the existence of the diesel engine system's defect and/or defective design of emissions controls, including information known to FCA, rendering each Affected Vehicle non-EPA-compliant, and thus less valuable than vehicles not equipped with the Adsorber Engine.

1962. As a direct and proximate result of FCA's breach of contract, Plaintiffs and the Subclass have been damaged in an amount to be proven at trial,

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

COUNT III

FRAUDULENT CONCEALMENT
(BASED ON WASHINGTON LAW)

1963. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1964. Plaintiffs bring this Count on behalf of the Washington Subclass.

1965. The Defendants intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of the Defendants' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or the Defendants acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

1966. The Defendants further affirmatively misrepresented to Plaintiffs and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles they were selling had no significant defects, were Earth-friendly and low-emission

vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

1967. The Defendants knew these representations were false when made.

1968. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of the Defendants' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1969. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1970. As alleged in this Complaint, at all relevant times, the Defendants have held out the Affected Vehicles to be reduced-emissions, EPA-compliant

vehicles. The Defendants disclosed certain details about the diesel engine, but nonetheless, the Defendants intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

1971. The truth about the defective emissions controls and the Defendants' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to the Defendants; Plaintiffs and the Subclass members did not know of these facts, and the Defendants actively concealed these facts from Plaintiffs and Subclass members.

1972. Plaintiffs and Subclass members reasonably relied upon the Defendants' deception. They had no way of knowing that the Defendants' representations were false and/or misleading. As consumers, the Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own. Rather, the Defendants intended to deceive Plaintiffs and Subclass members by concealing the true facts about the Affected Vehicle emissions.

1973. The Defendants also concealed and suppressed material facts concerning what is evidently the true culture of the Defendants—a culture characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. Defendants also emphasized profits and sales above the trust that Plaintiffs and Subclass members placed in their representations. Consumers buy diesel cars from the Defendants because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

1974. The Defendants' false representations were material to consumers, because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As the Defendants well knew, their customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

1975. The Defendants had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to the

Defendants, because the Defendants had exclusive knowledge as to such facts, and because the Defendants knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. The Defendants also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as reduced-emissions diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of their vehicles, their actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and their actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Subclass members, the Defendants had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. The Defendants represented to Plaintiffs and Subclass members that they were purchasing or

leasing reduced-emission diesel vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

1976. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect their profits and to avoid the perception that their vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost the Defendants money, and they did so at the expense of Plaintiffs and Subclass members.

1977. The Defendants still have not made full and adequate disclosures, and continue to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of the Affected Vehicles.

1978. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars manufactured by the Defendants, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. The Defendants were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

1979. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of the Defendants' concealment of the true quality and quantity of those vehicles' emissions and the Defendants' failure to timely disclose the defect or defective design of the diesel engine system, the actual emissions qualities and quantities of the Defendants' vehicles, and the serious issues engendered by the Defendants' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Defendants' disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1980. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of the Defendants' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Defendants' brand name attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1981. Accordingly, the Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

1982. The Defendants' acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Subclass members' rights and the representations that the Defendants made to them, in order to enrich the Defendants. The Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

SS. Claims Brought on Behalf of the West Virginia Subclass

COUNT I

VIOLATIONS OF THE WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT (W. VA. CODE § 46A-1-101 *ET SEQ.*)

1983. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

1984. Plaintiff intends to assert a claim under the West Virginia Consumer Credit and Protection Act ("West Virginia CCPA") which prohibits "unfair or deceptive acts or practices in the conduct of any trade or commerce …." W. VA. CODE § 46A-6-104. Plaintiff will make a demand in satisfaction of W. VA. CODE § 46A-6-106(b), and may amend this Complaint to assert claims under the CCPA once the required 20 days have elapsed. This paragraph is included for

purposes of notice only and is not intended to actually assert a claim under the CCPA.

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COUNT II

BREACH OF CONTRACT
(BASED ON WEST VIRGINIA LAW)

1985. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1986. Plaintiffs bring this Count on behalf of the West Virginia Subclass.

1987. The Defendants' misrepresentations and omissions alleged herein, including, but not limited to, the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the Adsorber Engine and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1988. Each and every sale or lease of an Affected Vehicle constitutes a contract between FCA and the purchaser or lessee. FCA breached these contracts by, among other things, selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, thus rendering each Affected Vehicle less valuable, than vehicles not equipped with the Adsorber Engine.

1989. As a direct and proximate result of FCA's breach of contract, Plaintiffs and the Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT III

FRAUDULENT CONCEALMENT
(BASED ON WEST VIRGINIA LAW)

1990. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1991. Plaintiffs bring this Count on behalf of the West Virginia Subclass.

1992. The Defendants intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants

higher than a reasonable consumer would expect in light of the Defendants' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or the Defendants acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

1993. The Defendants further affirmatively misrepresented to Plaintiffs and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles they were selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

1994. The Defendants knew these representations were false when made.

1995. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of the Defendants' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1996. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions

and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1997. As alleged in this Complaint, at all relevant times, the Defendants have held out the Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. The Defendants disclosed certain details about the diesel engine, but nonetheless, the Defendants intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

1998. The truth about the defective emissions controls and the Defendants' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to the

Defendants; Plaintiffs and the Subclass members did not know of these facts, and the Defendants actively concealed these facts from Plaintiffs and Subclass members.

1999. Plaintiffs and Subclass members reasonably relied upon the Defendants' deception. They had no way of knowing that the Defendants' representations were false and/or misleading. As consumers, the Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own. Rather, the Defendants intended to deceive Plaintiffs and Subclass members by concealing the true facts about the Affected Vehicle emissions.

2000. The Defendants also concealed and suppressed material facts concerning what is evidently the true culture of the Defendants—a culture characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. Defendants also emphasized profits and sales above the trust that Plaintiffs and Subclass members placed in their representations. Consumers buy diesel cars from the Defendants because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

2001. The Defendants' false representations were material to consumers, because they concerned the quality of the Affected Vehicles, because they

concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As the Defendants well knew, their customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

2002. The Defendants had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to the Defendants, because the Defendants had exclusive knowledge as to such facts, and because the Defendants knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. The Defendants also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as reduced-emissions diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of their vehicles, their actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and their actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and

Subclass members, the Defendants had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. The Defendants represented to Plaintiffs and Subclass members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

2003. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect their profits and to avoid the perception that their vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost the Defendants money, and they did so at the expense of Plaintiffs and Subclass members.

2004. The Defendants still have not made full and adequate disclosures, and continue to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of the Affected Vehicles.

2005. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars manufactured by the Defendants, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. The Defendants were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

2006. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of the Defendants' concealment of the true quality and quantity of those vehicles' emissions and the Defendants' failure to timely disclose the defect or defective design of the diesel engine system, the actual emissions qualities and quantities of the Defendants' vehicles, and the serious issues engendered by the Defendants' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Defendants' disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members

who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

2007. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of the Defendants' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Defendants' brand name attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

2008. Accordingly, the Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

2009. The Defendants' acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Subclass members' rights and the representations that the Defendants made to them, in order to enrich the Defendants. The Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

TT. Claims Brought on Behalf of the Wisconsin Subclass

COUNT I

VIOLATIONS OF THE WISCONSIN DECEPTIVE TRADE PRACTICES ACT (WIS. STAT. § 110.18)

2010. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

2011. Plaintiffs bring this claim on behalf of the Wisconsin Subclass.

2012. Each of the Defendants is a "person, firm, corporation or association" within the meaning of Wis. Stat. § 100.18(1).

2013. Plaintiffs and Wisconsin Subclass members are members of "the public" within the meaning of Wis. Stat. § 100.18(1). Plaintiffs and Wisconsin Subclass members purchased or leased one or more Affected Vehicles.

2014. The Wisconsin Deceptive Trade Practices Act ("Wisconsin DTPA") prohibits a "representation or statement of fact which is untrue, deceptive or misleading." Wis. Stat. § 100.18(1). In the course of Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of Defendants' advertising campaign, and that the Affected

Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, Defendants engaged in deceptive business practices prohibited by the Wisconsin DTPA.

2015. In the course of the Defendants' business, they willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of the Defendants' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, the Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer; making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is; and

failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

2016. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

2017. Plaintiffs and Subclass members reasonably relied upon the Defendants' false misrepresentations. They had no way of knowing that the Defendants' representations were false and gravely misleading. As alleged herein, the Defendants engaged in extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own.

2018. The Defendants' actions as set forth above occurred in the conduct of trade or commerce.

2019. The Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

2020. The Defendants intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

2021. The Defendants knew or should have known that their conduct violated the Wisconsin DTPA.

2022. The Defendants owed Plaintiffs and the Subclass a duty to disclose the truth about their emissions systems manipulation because the Defendants:

a. Possessed exclusive knowledge that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;

b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or

c. Made incomplete representations that they manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

2023. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had

emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

2024. The Defendants' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

2025. Plaintiffs and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of the Defendants' conduct in that Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of the Defendants' misrepresentations and omissions.

2026. The Defendants' violations present a continuing risk to Plaintiffs as well as to the general public. The Defendants' unlawful acts and practices complained of herein affect the public interest.

2027. Plaintiffs and the Wisconsin Subclass are entitled to damages and other relief provided for under Wis. Stat. § 100.18(11)(b)(2). Because the

Defendants' conduct was committed knowingly and/or intentionally, Plaintiff` and the Wisconsin Subclass are entitled to treble damages.

2028. Plaintiffs and the Wisconsin Subclass also seek court costs and attorneys' fees under Wis. Stat. § 110.18(11)(b)(2).

COUNT II

BREACH OF CONTRACT
(BASED ON WISCONSIN LAW)

2029. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

2030. Plaintiffs bring this Count on behalf of the Wisconsin Subclass members.

2031. The Defendants' misrepresentations and omissions alleged herein, including, but not limited to, the Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the Adsorber Engine and which were not marketed as including such a system. Accordingly, Plaintiffs

and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

2032. Each and every sale or lease of an Affected Vehicle constitutes a contract between FCA and the purchaser or lessee. FCA breached these contracts by, among other things, selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, thus rendering each Affected Vehicle less valuable, than vehicles not equipped with the Adsorber Engine.

2033. As a direct and proximate result of FCA's breach of contract, Plaintiffs and the Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT III

FRAUDULENT CONCEALMENT (BASED ON WISCONSIN LAW)

2034. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

2035. Plaintiffs bring this Count on behalf of the Wisconsin Subclass.

2036. The Defendants intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving

conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of the Defendants' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or the Defendants acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

2037. The Defendants further affirmatively misrepresented to Plaintiffs and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles they were selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

2038. The Defendants knew these representations were false when made.

2039. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of the Defendants' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

2040. The Defendants had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on the Defendants' material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

2041. As alleged in this Complaint, at all relevant times, the Defendants have held out the Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. The Defendants disclosed certain details about the diesel engine, but nonetheless, the Defendants intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

2042. The truth about the defective emissions controls and the Defendants' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to the Defendants; Plaintiffs and the Subclass members did not know of these facts, and the Defendants actively concealed these facts from Plaintiffs and Subclass members.

2043. Plaintiffs and Subclass members reasonably relied upon the Defendants' deception. They had no way of knowing that the Defendants' representations were false and/or misleading. As consumers, the Plaintiffs and Subclass members did not, and could not, unravel the Defendants' deception on their own. Rather, the Defendants intended to deceive Plaintiffs and Subclass members by concealing the true facts about the Affected Vehicle emissions.

2044. The Defendants also concealed and suppressed material facts concerning what is evidently the true culture of the Defendants—a culture characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. Defendants also emphasized profits and sales above the trust that Plaintiffs and Subclass members placed in their representations. Consumers buy diesel cars from the Defendants because they feel they are clean

diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

2045. The Defendants' false representations were material to consumers, because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As the Defendants well knew, their customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

2046. The Defendants had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to the Defendants, because the Defendants had exclusive knowledge as to such facts, and because the Defendants knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. The Defendants also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as reduced-emissions diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the

additional facts set forth above regarding the actual emissions of their vehicles, their actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and their actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Subclass members, the Defendants had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. The Defendants represented to Plaintiffs and Subclass members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

2047. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect their profits and to avoid the perception that their vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which

perception would hurt the brand's image and cost the Defendants money, and they did so at the expense of Plaintiffs and Subclass members.

2048. The Defendants still have not made full and adequate disclosures, and continue to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of the Affected Vehicles.

2049. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars manufactured by the Defendants, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. The Defendants were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

2050. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of the Defendants' concealment of the true quality and quantity of those vehicles' emissions and the Defendants' failure to timely disclose the defect or defective design of the diesel engine system, the actual emissions qualities and quantities of the Defendants' vehicles, and the serious

issues engendered by the Defendants' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Defendants' disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

2051. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of the Defendants' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Defendants' brand name attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

2052. Accordingly, the Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

2053. The Defendants' acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Subclass members' rights and the representations that the Defendants made to them, in order to enrich the Defendants. The Defendants' conduct warrants an

assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

VI. REQUEST FOR RELIEF

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

A. Certification of the proposed Nationwide Class and State Subclasses, including appointment of Plaintiffs' counsel as Class Counsel;

B. Restitution, including at the election of Class members, recovery of the purchase price of their Affected Vehicles, or the overpayment or diminution in value of their Affected Vehicles;

C. Damages, including punitive damages, costs, and disgorgement in an amount to be determined at trial, except that monetary relief under certain consumer protection statutes, as stated above, shall be limited prior to completion of the applicable notice requirements;

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

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

F. Such other or further relief as may be appropriate.

VII. DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial for all claims so triable.

DATED: November 14, 2016

Respectfully submitted,

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